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## COMMISSION DECISION

of 6 December 1972

on the French system of aid for the production of paper pulp, for papermaking and forestry research, and for afforestation

(Only the French text is authentic)

(72/436/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 92 (2), and paragraph 3 thereof;

Having given notice to the parties concerned to submit their comments;

## I

Whereas by *Décret* No 68-701 of 1 August 1968 (*Journal Officiel de la République française* of 2 August 1968) amending the *Ordonnance* of 24 September 1958 concerning various financial provisions and the *Décret* of 24 September 1958 concerning the parafiscal charge on paper and paperboard, and the implementing *Arrêté* of the same date, the French Republic has, from 1 August 1968, fixed a new percentage rate for the parafiscal charge; whereas, according to *Décret* No 68-702 of 1 August 1968 on the apportionment of the proceeds of the parafiscal charge on paper and paperboard, those proceeds are applied to the payment of subsidies for French paper pulp production and to financing research and afforestation by the *Fonds forestier national* and also to research on behalf of the paper industry by professional organizations or by the technical centre of the paper and paperboard cellulose industry;

Whereas that charge, the rate of which was fixed at 1.60 % by *Arrêté* of 1 August 1968 (*Journal Officiel de la République française* of 2 August 1968), made in implementation of *Décret* No 68-701, is imposed on paper and paperboard used in France, and whereas paper and paperboard manufactured in France and exported by the manufacturer is not subject to the charge;

Whereas, by the *Arrêté* of 21 January 1969, the charge was fixed at 1 % for paper and paperboard

composed of not more than 25 % of new pulp and whereas by the *Arrêté* of 29 December 1969 the percentages were reduced from 1.60 to 0.80 and from 1 to 0.5; whereas by the *Arrêté* of 26 August 1971, these percentages were reduced from 0.60 to 0.30; whereas by the *Arrêté* of 25 October 1972 these percentages were fixed at 0.70 and 0.35 respectively;

Whereas, by *Décret* No 68-702 of 1 August 1968, 84 % of the proceeds of the charge were to be applied to the payment of subsidies for French paper pulp production; whereas an amount equal to 4 % of the amount of the subsidies was to be deducted from that 84 % for the financing of joint professional research work undertaken on behalf of the paper industry; whereas 16 % of the proceeds of the charge were to be applied to the financing of research and afforestation by the *Fonds forestier national*; whereas the implementing *Arrêté* of the same date fixed the method of payment of the production subsidies;

Whereas, by *Décret* No 69-336 of 11 April 1969, the apportionment of the proceeds of the charge was modified as from 1 January 1969 so that 75 % were to be applied to French paper pulp production, 16 % to research and afforestation by the *Fonds forestier national* and 9 % to research on behalf of the paper industry by professional organizations or by the technical centre of the paper, paperboard and cellulose industry; whereas the implementing *Arrêté* of the same date fixed the method of payment of the production subsidies;

Whereas by the *Arrêté* of 25 October 1972, implementing *Décret* No 72-976 of the same date, at least 10 % of the proceeds of the charge were to be applied to research, by the technical centre of the paper, paperboard and cellulose industry or by appropriate professional organizations; whereas at least 16 % of the proceeds were to be applied to measures for improving the conditions of supply of raw materials to the pulp industry; whereas at least 25 % of the proceeds were to be applied to combating pollution;

Whereas *Arrêtés ministériels* determine, as required, the annual amount of individual aid for pulp production and the method of distribution of such aid;

Whereas the production subsidies were reduced firstly by the *Arrêté* of 11 April 1969 and subsequently by the *Arrêté* of 29 December 1969; whereas the latter reduction was notified to the Commission by letter dated 31 December 1969;

Whereas by letter of 5 April 1971 the French Government informed the Commission that because of the development of the pulp market it had become possible to suspend the payment of production subsidies as from 1 January 1971;

Whereas the French Government informed the Commission by letter of 11 April 1968 that is proposed to adopt a new system of aid for paper pulp as from 1 July 1968; whereas that project was discussed with representatives of the Member States at two multilateral meetings held in May and June 1968; whereas the Commission, in accordance with the second sentence of Article 93 (3) of the EEC Treaty, then initiated the procedure laid down in paragraph 2 of that Article and by letters addressed to all Member States on 28 June 1968 (to the French Government) and on 25 July 1968 (to the Governments of the other Member States) gave them notice to submit their comments;

Whereas the reply from the French Government of 8 July 1969 contained no new material facts;

Whereas the parties concerned, other than the Member States, were given notice by publication in the *Official Journal of the European Communities* No C 69 of 7 June 1969 to submit their comments on the French system of aid;

Whereas, by letter of 5 May 1972, the French Government informed the Commission of its intention to apply part of the proceeds of the parafiscal charge as aid for the financing of purification plants for waste water from paper-mills; whereas it is expected that such aid will take the form of reimbursable grants not exceeding 30 % of the cost of the plants;

Whereas in the same letter the French Government, to take account of the Commission's concern, offered to make compensatory payments, in the event of the subsidies being restored, in respect of Community pulp used in the manufacture of paper and paper-board which are imported by France and are subject to the charge;

Whereas, by letter of 18 October 1972, the French Government forwarded a draft *Décret* modifying the apportionment of the proceeds of the parafiscal charge; whereas that *Décret* was published in the *Journal Officiel de la République française* No 72-

976 of 28 October 1972 together with two implementing *Décrets*, one dealing with the apportionment of the proceeds of the charge, the other fixing the new percentage rates;

## II

Whereas the proceeds of the parafiscal charge are State resources and are wholly applied to aid for paper-making;

Whereas the subsidies for French pulp production had until 1 January 1969 the effect of lowering the production cost of pulp from 1.08 to 10.5 %, according to category; whereas, since 1 January 1970 and until 1 January 1971 the date on which the subsidies were suspended, the percentage reduction varied from 0.50 to 4 %, so that the effect of reintroducing the aid would be to give French pulp a competitive advantage over pulp imported from the other Member States; whereas, therefore, these subsidies threaten to distort competition by favouring French undertakings;

Whereas the portion of the tax which is applied to joint professional research on behalf of the paper industry must, in particular, promote advances in techniques likely to improve output and quality in the paper industry and thus relieve that industry, and in particular undertakings which are not in a position to undertake research work themselves, from part of the expenditure entailed; whereas it is not possible to create conditions for effective participation of all the undertakings concerned in the Community, for even if the rules provided for equality of treatment, in practice French undertakings would inevitably find themselves in a more favourable position;

Whereas aid for forestry research and afforestation financed from the parafiscal charge would tend to encourage French timber production to the disadvantage of imported products and, therefore, to affect trade; whereas in fact such aid must, by relieving the sector of a proportion of planting and research costs, enable price reductions to be made;

Whereas anti-pollution aid, in the form of finance for purification plants, relieves the paper industry of part of such capital costs, which represent between 25 and 30 % of gross direct investment by the industry;

Whereas by thus improving the competitiveness of French undertakings to the detriment of undertakings established in the other Member States, aid for paper pulp production, the financing of purification plants, forestry research and afforestation is such as to affect trade between Member States in respect of products of the sectors concerned;

Whereas the effect of the aid on competition and trade between Member States will be all the greater

in that it is financed from a special charge on paper and paperboard which also affects products coming from the other Member States;

Whereas, consequently, by *Décret* Nos 68-701 and 68-702 of 1 August 1968, the French Government has introduced a system of aid for paper pulp production, for paper-making and forestry research and for afforestation, which is of the kind requiring action as defined in Article 92 (1) of the EEC Treaty, as also is the anti-pollution aid;

### III

Whereas the information supplied by the French Government and the other information available to the Commission do not in any way support the application of one of the derogations provided for in paragraph 2 and subparagraphs (a) and (b) of paragraph 3 of Article 92 of the Treaty, which provisions the French Government has not in fact invoked; whereas, in particular, the aid in question has no specific regional purpose within the meaning of subparagraph (a) of paragraph 3 and is not intended to remedy a serious disturbance in the French economy within the meaning of subparagraph (b) of paragraph 3;

### IV

Whereas it is advisable to ensure that the derogations to Article 92 (1), provided for in Article 92 (3) (c), are applied only to systems of aid which, while distorting competition and adversely affecting trade between Member States, do not exceed what is strictly necessary for the attainment of their legitimate objectives;

Whereas in this particular case aid for paper pulp production and for research on behalf of the paper industry is financed by a parafiscal charge on paper and paperboard sold in France (other than *Afnor I/1* newsprint); whereas that charge has its incidence at the pulp stage; whereas the proceeds of the charge are in large part directly applied to such aid; whereas the parafiscal charge therefore forms an integral part of the system of aid; whereas that is also the case with the proposed aid for the financing of purification plants;

Whereas the charge is likely to lead to a reduction of foreign manufacturers' profit margins and, to the extent that the charge is passed on to consumers, to a falling-off in their sales; whereas, consequently, the charge is likely to increase the effect of the aid on intra-Community competition and trade;

Whereas it does not appear – nor has the French Government so claimed – that the parafiscal charge, and in particular its application to products imported from other Member States, is a necessary means of attaining the objectives of the aid in so far as these are

legitimate; whereas the French authorities could well replace the proceeds of the parafiscal charge, either entirely or to the extent of the charge on products from other Member States, by funds from other sources, for example contributions from French undertakings;

Whereas the offer by the French Government, in its letter of 5 May 1972, to make compensatory payments, in the event of the production subsidies being restored, in respect of Community pulp used in the manufacture of paper and paperboard which are imported into France and are subject to the charge does not, owing to the estimates which it involves as to the different kinds of pulp entering into different kinds of paper and paperboard and as to the amount of Community pulp entering into such products imported into France, offer any certainty that the total amount of the charge will be refunded;

Whereas such aid, irrespective of the level of the charge, has the effect, by reason of the method employed for financing it, of adversely affecting trade to an extent contrary to the common interest within the meaning of Article 92 (3) (c);

Whereas the aid in the form of subsidies for paper pulp production, which is suspended at the present time but which the French Government proposes to restore, is liable to have a direct and substantial effect on prices in the absence of any corresponding obligations as regards the rationalization of production; whereas this danger is all the greater in that trading conditions between Member States in respect of paper pulp are liable to be affected in a manner contrary to the common interest;

Whereas the absence of corresponding obligations with regard to the rationalization of production suggests that that aid is not likely to be very effective in bringing about the adjustments considered necessary;

Whereas the large number of categories of aid, the various rates of subsidy and the fact that most undertakings produce several kinds of pulp are not calculated to ensure that the aid for paper pulp production will be effective in bringing about adjustments;

Whereas the aid for paper-making research and the anti-pollution aid, setting aside the fact of their being financed by a parafiscal charge, would have the effect of improving manufacturing conditions in that sector without affecting trade to an extent contrary to the common interest; whereas such aid could consequently qualify for the derogation provided for in Article 92 (3) (c), if exception is made of the method of financing;

### V

Whereas, consequently, the aid for paper-making research, the anti-pollution aid and, in the event of a

resumption of payments, the aid for paper pulp production, the level of which was fixed by the *Arrêté* of 29 December 1969, and which was instituted by *Décret* Nos 68-701 and 68-702 of 1 August 1968, amplified by implementing *Arrêtés* of the same date and amended by *Arrêtés* of 11 April 1969 and 29 December 1969, do not qualify for the derogation provided for in Article 92 (3) (c) of the Treaty; whereas the aid for paper-making research and the anti-pollution aid could qualify for that derogation if the charge on products imported from other Member States is abolished;

Whereas aid for forestry research and afforestation contribute to the development of the sector and the supply of timber, without however affecting trading conditions in a manner contrary to the common interest, because it is hardly likely that the imposition of the parafiscal charge on paper and paperboard sold in France would increase the effect of the aid for forestry research and afforestation on intra-Community competition and trade in that sector, the connection between the products subject to the charge and the products receiving aid being very indirect and remote and paper pulp production being only one use for timber; whereas such aid, since it thus qualifies for the derogation provided for in Article 92 (3) (c) of the EEC Treaty, may be maintained,

HAS ADOPTED THIS DECISION:

*Article 1*

The French Republic shall not resume the payment of subsidies for paper pulp production under the system of aid instituted by *Décret* Nos 68-701 and 68-702 of 1 August 1968, as amended successively by *Décret* No 69-336 of 11 April 1968, No 72-976 of 25 October 1972 and by the implementing *Arrêtés* of the same date.

*Article 2*

The French Republic shall modify the aid for paper-making research and the anti-pollution aid notified to the Commission on 5 May 1972 and 18 October 1972 in such a way that paper and paperboard originating in the other Member States is not subject to the parafiscal charge imposed on corresponding French products.

*Article 3*

This Decision is addressed to the French Republic.

Done at Brussels, 6 December 1972.

*For the Commission*

*The President*

S. L. MANSHOLT