COUNCIL REGULATION (EEC) No 3651/90

of 11 December 1990

laying down general rules for applying the supplementary trade mechanism to trade in fresh fruit and vegetables between Portugal and the other Member States

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 234 (2) thereof,

Having regard to the proposal from the Commission,

Whereas Article 249 of the Act of Accession provided for the temporary application of the supplementary trade mechanism, hereinafter referred to as 'the STM', between the Community as constituted on 31 December 1985 and Portugal in order to forestall or, if necessary, react rapidly and appropriately to market disturbance; whereas pursuant to Article 286 (2) of the Act, Council Regulation (EEC) No 3659/90 on products subject to the supplementary trade mechanism during the second stage of Portuguese accession [1] laid down the list of products subject to transition by stages to which the mechanism is to apply from the beginning of the second stage and included certain fruit and vegetables therein;

Whereas the joint declaration annexed to the Act states that, in their mutual trade in agricultural products, the new Member States are in principle, to apply, with respect to each other, the provisions and transitional mechanisms provided for in the Act of Accession under the arrangements applicable to their respective trade with the Community as constituted on 31 December 1985; whereas this declaration was implemented by means of Council Regulation (EEC) No 3792/85 of 20 December 1985 laying down the arrangements applying to trade in agricultural products between Spain and Portugal [2], as last amended by Commission Regulation (EEC) No 3296/88 [3]; whereas the supplementary trade mechanism is thereby applicable to trade between Spain and Portugal;

Whereas experience of the operation of the existing supplementary trade mechanism and considerations pertaining to fruit and vegetables, namely short production periods, short sensitive periods and the nature of marketing structures in the country of consignment, indicate that a specific mechanism should be introduced for products covered by Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables [4], as last amended by Regulation (EEC) No 1193/90 [5]; whereas this mechanism should apply only to the list of products drawn up pursuant to Article 286 (2) of Act of Accession;

Whereas during non-sensitive periods for the Portuguese market action should be confined to statistical monitoring; whereas on the other hand, during periods considered sensitive, to be determined in principle before the beginning of the marketing year by application of defined criteria, entry into Portugal of products from the other Member States should be subject to presentation of an 'STM licence' issued in Portugal;

Whereas the Commission should be able, during sensitive periods for the Portuguese market, to introduce a specific arrangement applicable to fruit and vegetables from non-member countries in order to prevent products from the other Member States being treated less favourably than those from such countries; whereas for imperative reasons of management and surveillance the import document required under such an arrangement should be issued by the Portuguese authorities and be valid for release for free circulation in Portugal alone; whereas, likewise, if the Portuguese market is disturbed or threatened with disturbance suitable action should be taken,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down general rules for applying the STM to imports into Portugal from the Community as

(1) See page 38 of this Official Journal
(2) OJ No L 367, 31. 12. 1985, p. 7.
(3) OJ No L 293, 27. 10. 1988, p. 7
(4) OJ No L 118, 20. 5. 1972, p. 1.
(5) OJ No L 119, 11. 5. 1990, p. 43.

constituted on 31 December 1985 and Spain, of fruit and vegetables covered by Regulation (EEC) No 1035/72 that are subject to that mechanism pursuant to Article 286 (2) of the Act of Accession.

Article 2

1. The period or periods during which the Portuguese market is to be considered sensitive shall be determined for each product before the beginning of the marketing year in accordance with the procedure laid down in Article 8. The periods may be adjusted during the marketing year in accordance with the same procedure.

2. The sensitive market period for each product shall be determined on the basis of:

— production and marketing periods for Portuguese produce,

— the outlook for consumption,

— the likely volume of consignments from the other Member States and its impact of the balance of the Portuguese market.

Article 3

The target ceiling provided for in Article 251 of the Act of Accession need be fixed solely for the sensitive periods of the Portuguese market. It may be split up to cover sub-periods of the sensitive periods.

Article 4

1. During the sensitive periods, release for consumption in Portugal of products covered by Article 1 shall be subject to presentation of an STM licence.

2. An STM licence shall be issued to each applicant irrespective of the place of his establishment in the Community.

3. An STM licence shall be issued against security that the product will be released for consumption during the period of validity of the document. The security shall be forfeit wholly or in part if the transaction is not or is only partly completed within the period.

4. Applications for an STM licence shall be made in Portugal and the licence issued by the Portuguese authorities.

The detailed rules of application may make provision for a period of reflection before an STM licence is issued.

5. During the period under consideration, the issuing of an STM licence shall be without prejudice to the adoption of measures under Article 252 of the Act of Accession.

Article 5

Outside the sensitive periods, the Portuguese authorities shall, by procedures to be determined, monitor the entry of products covered by Article 1 from the other Member States and imports from non-member countries and transmit the relevant data to the Commission.

Article 6

1. During periods of application of Article 4, release for free circulation in Portugal of products covered by Article 1 from non-member countries may be made subject to presentation of an STM import licence.

2. An STM import licence shall be issued to each applicant irrespective of the place of his establishment in the Community.

3. An STM import licence shall be issued against security that the product will be released for free circulation during the period of validity of the document. The security shall be forfeit wholly or in part if the transaction is not or is only partly completed within the period.

4. Applications for an STM import licence shall be made in Portugal and the licence issued by the Portuguese authorities. It shall be valid solely for release for free circulation in Portugal.

Article 7

If the Portuguese market in one or more of the products covered by Article 1 is disturbed or is threatened with disturbance from imports of non-member countries, and also during any period in which Article 252 of the Act of Accession applies, the Commission may restrict or, if necessary, suspend the issuing of STM import licences during the minimum necessary period, in accordance with the procedure laid down in Article 8.

Article 8

Detailed rules for the application of this Regulation shall be adopted in accordance with the procedure set out in Article 33 of Regulation (EEC) No 1035/72.

Article 9

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

It shall apply from 1 January 1991 to 31 December 1995.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 December 1990.

For the Council

The President

V. SACCOMANDI