COUNCIL REGULATION (EEC) No 3817/92

of 28 December 1992

laying down general rules for applying the supplementary trade mechanism to imports into Spain of products other than fruit and vegetables

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 89 (1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Whereas Regulation (EEC) No 569/86 (2) lays down general rules for the application of the supplementary mechanism applicable to trade;

Whereas, under that Regulation, trade is monitored at the border by means of a system of licences; whereas the realization of a single market without internal borders on 1 January 1993, of which Spain will form a major integral part, calls for the institution of a new system of monitoring carried out in the countries of destination;

Whereas the obligation to indicate the number of the supplementary trade mechanism (STM) licence used on commercial documents covering products from other Member States to Spain, together with application in that country of on-the-spot checks and of other measures that it may deem appropriate and also of deterrent penalties where the provisions laid down are not complied with, will permit the STM to function properly; whereas on-the-spot checks will in particular be facilitated by the information on origin or provenance that, in accordance with the Community provisions, must appear on products subject to the STM or on packaging thereof; whereas the cooperation of consigning Member States will also contribute to the effectiveness of the arrangements;

Whereas, to cover cases of serious disturbance of markets persisting despite the application of the measures provided for in Article 85 (2) and (3) of the Act of Accession, provision should be made for the application of additional measures that may, where appropriate for local or regional markets, derogate from the provisions on the common organization of the relevant market;

Whereas in view of the foregoing, amendments should be made with regard to Spain to the arrangements provided for in Regulation (EEC) No 569/86 and the latter should be replaced by a new Regulation; whereas, for reasons of clarity, it is appropriate on this occasion to provide, for Spain, arrangements which are independent of those provided for by the abovementioned Regulation and which take into account also the changes made, since 1986, in the administration of the supplementary trade mechanism and the fact that, following the reduction in the list of products covered by the said mechanism and the application of specific rules in the fruit and vegetables sector, the said arrangements will henceforth be applicable for the protection of the Spanish market only,

HAS ADOPTED THIS REGULATION:

TITLE I

Management of the STM

Article 1

1. Products, other than those covered by Regulation (EEC) No 1035/72 (3), from another Member State that are subject, as regards importation into Spain, to the supplementary trade mechanism (hereinafter referred to as the 'STM'), may move within Spain and be released for consumption in that Member State only on presentation of an STM licence.

The provisions of the first subparagraph, as far as movement within Spain is concerned, shall not apply if the holder of the products can prove they are not intended for the Spanish market.

2. STM licences shall be issued on application to any party, irrespective of his place of establishment in the Community.

3. The issue of STM licences may be subject to the provision of a security guaranteeing compliance with the undertaking to enter the goods for consumption during the term of validity of the STM licence. The security shall be wholly or partly forfeit if the operation is not completed within that time or is only partly completed.

4. STM licences may only be issued by a Member State other than the Member State of entry for consumption.

(1) Opinion delivered on 18 December 1992 (not yet published in the Official Journal).

(2) OJ No L 55, 1. 3. 1986, p. 106. Regulation as last amended by Regulation (EEC) No 3296/88 (OJ No L 293, 27. 10. 1988, p. 7).

(3) OJ No L 118, 20. 5. 1972, p. 1. Regulation as last amended by Regulation (EEC) No 1754/92 (OJ No L 180, 1. 7. 1992, p. 23).

Article 2

1. Where products from third countries are entered for free circulation in the Member State to which the STM applies, release for free circulation may be effected only on presentation of an STM import licence. STM import licences shall be valid only in the Member State to which the STM applies.

2. Paragraph 1 shall apply only to products falling within the tariff headings to which Article 1 applies.

3. Paragraph 1 shall not apply to products from third countries which are subject to quantitative restrictions in the Member State to which the STM applies.

4. STM import licences shall be issued on application to any party, irrespective of his place of establishment in the Community.

5. The issue of STM import licences may be subject to the provision of a security guaranteeing compliance with the undertaking to enter the goods for free circulation during the term of validity of the licence. The security shall be wholly or partly forfeit if the operation is not completed within that time or is only partly completed.

6. STM import licences may be issued by any Member State.

7. Save where special provisions are laid down, STM import licences shall replace import licences laid down for certain products by Community regulations.

Article 3

1. The issuing of STM licences and import licences may be :

— limited to certain products in a product group,

— spread out over the year.

2. A time limit may be set for the issuing of STM licences and import licences.

Article 4

Where the situation on the market calls for a limiting or suspending of imports into the Member State concerned, the issuing of STM licences may be limited or suspended.

Article 5

1. In assessing the market situation in a Member State to which the STM applies, account shall be taken in particular of :

— the trend in domestic prices in that Member State,

— the trend in domestic demand in that Member State,

— the quantities of products traded without further processing or after processing between that Member State and the other Member States and third countries.

2. The information referred to in paragraph 1 shall also serve as the basis for assessing the situation in the different regions or on the different markets of the Member State to which the STM applies.

3. Where serious disturbance of the markets appears and persists despite the application of the measures provided for in point b of the second subparagraph of Article 85 (3) of the Act of Accession, suitable measures other than those provided for in that Article may be adopted in addition to the latter in accordance with the procedure provided for therein.

Such measures may entail derogations from the provisions on the common organization of the markets, as far as local or regional markets are concerned.

TITLE II

Controls and penalties

Article 6

Invoices and other commercial documents to be determined, except for those made out at the stage of retail sale, relating to products covered by this Regulation that are imported into Spain from other Member States shall show the number of the STM licence used for entry for consumption in that country and any other necessary information.

Article 7

1. The Spanish authorities shall carry out on-the-spot checks on all operators, except retailers, who hold products for importation of which from the other Member States a licence as indicated in Article 1 is required. The purpose of these checks shall be to verify from the commercial documents indicated in Article 6 and the indications on the products and their packaging that products in stock brought from the other Member States were imported under cover of an STM licence.

2. To ensure that the STM arrangements are properly complied with the Spanish authorities may supplement the checks provided for in paragraph 1 by other measures. They may in particular stipulate that

— operators as indicated in paragraph 1 who buy and sell the products in question shall keep stock records showing the name and place of business of the suppliers of these products,

— other operators must be able to show at any time to whom the products in question belong.

3. The authorities of the other Member States shall, in line with the provisions of Regulation (EEC) No 1468/81 [1], afford the Spanish authorities all necessary cooperation, in particular where the checks indicated in paragraphs 1 and 2 point to responsibilities on the part of undertakings located in their territory. They may to this end require undertakings in the relevant sectors to keep appropriate records.

4. None of the checks indicated in the previous paragraphs may be effected at the borders between Member States.

Article 8

Where the provisions laid down in this Regulation or the detailed rules adopted for its application are not complied with, the Spanish authorities and those of the other Member States shall apply penalties which shall be proportional to the seriousness of the infringements committed.

In the case of operators who have imported products subject to the STM from other Member States without an STM licence, these penalties shall amount to at least twice the value of products placed on the market without a licence.

TITLE III

General and final provisions

Article 9

Detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 27 of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal [2] or, as the case may be, the corresponding Articles of the other regulations on common organization of agricultural markets.

Article 10

Regulation (EEC) No 569/86 shall no longer apply to deliveries in Spain of products subject to the STM.

Article 11

This Regulation shall enter into force on 1 January 1993.

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

Done at Brussels, 28 December 1992.

For the Council

The President

J. GUMMER

[1] OJ No L 144, 2. 6. 1981, p. 1. Regulation as last amended by Regulation (EEC) No 945/87 (OJ No L 90, 2. 4. 1987, p. 3).

[2] OJ No L 148, 28. 6. 1968, p. 24. Regulation as last amended by Regulation (EEC) No 2068/92 (OJ No L 215, 30. 7. 1992, p. 58).