COUNCIL REGULATION (EEC) No 745/93

of 17 March 1993

amending Regulation (EEC) No 3651/90 laying down general rules for applying the supplementary trade mechanism to movement of 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, and in particular Article 43 thereof,

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,

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

Whereas Regulation (EEC) No 3651/90 (2) provided that during sensitive periods the supplementary trade mechanism (STM) was to be operated using licences issued by the Portuguese authorities for fruit and vegetables imported from other Member States;

Whereas hitherto checks on compliance with this scheme have been made at the frontier; whereas the achievement of a Single Market without internal frontiers necessitates the introduction of a new system of checks applied in the country of destination;

Whereas the requirement to indicate the number of the STM licence used on commercial documents relating to products imported into Portugal from other Member States, together with on-the-spot checks in those countries and the application, in case of failure to comply with the provisions, of severe penalties is such as to ensure satisfactory operation of the supplementary trade mechanism; whereas on-the-spot checks may, in particular, be facilitated by the indications as to origin or provenance which, under the terms of the Community provisions, must appear on the packaging of products subject to the supplementary trade mechanism;

Whereas in cases of serious market disturbance which persists in spite of application of the measures provided for in Article 7 of Regulation (EEC) No 3651/90, it should be possible for additional measures to be applied, if necessary derogating for local or regional markets from those laid down in the provisions on common organization of markets;

Whereas preceding factors taken together lead to the conclusion that Regulation (EEC) No 3651/90 should therefore be amended,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3651/90 is amended as follows:

1. in Article 4 (1) shall be replaced by the following:

'1. During sensitive market periods movement within Portugal and release for consumption in that country of the products referred to in Article 1 shall be subject to presentation of an STM licence.

The provisions of the first subparagraph, as far as movement within Portugal is concerned, shall not apply if the holder of the products can prove that they are not intended for the Portuguese market.';

2. in Article 7,

— the present text becomes paragraph 1,

— a paragraph 2 shall be added, as follows:

'2. If all or part of the Portuguese market is affected by serious disturbances which persist in spite of the application of the measures provided for in paragraph 1, appropriate measures, differing from those provided for there and in addition to them, may be adopted according to the procedure provided for in Article 252 of the Act of Accession. These measures may include derogations for local or regional markets from the provisions on common organization of markets.';

3. the following Articles shall be inserted:

'Article 7a

1. Sales invoices and other commercial documents, apart from retail sale documents, to be determined relating to products coming from other Member States and imported into Portugal during those periods when presentation of an STM licence is required in application of Article 6, shall indicate the number of the licence used for purposes of release for consumption in Portugal together with any other necessary information.

2. The Portuguese authorities shall, using the commercial documents indicated in paragraph 1 and the information shown on packages, make checks, in wholesale markets in particular, on whether products coming from other Member States have been released for consumption on presentation of an STM licence during the periods when presentation of such a licence is required in application of Article 6.

(1) OJ No C 21, 25. 1. 1993.
(2) OJ No L 362, 27. 12. 1990, p. 24.

3. None of the checks indicated in paragraphs 1 and 2 may take place at the borders between Member States.

Article 7b

In case of failure to observe the provisions laid down by this Regulation or rules adopted pursuant thereto, the Portuguese authorities and those of other Member States shall apply penalties commensurate with the seriousness of the offence. In the case of operators who have placed on the market into Portugal, without an STM licence, products subject to the STM during periods when presentation of a licence is required pursuant to Article 6, the penalties referred to may not be less than twice the value of the products placed on the market without an STM licence.'

Article 2

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

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

Done at Brussels, 17 March 1993.

For the Council

The President

B. WESTH