OPINION OF ADVOCATE GENERAL ELMER
delivered on 15 October 1996 *

Introduction

1. In these cases the Kingdom of Belgium has lodged an application for the annulment of the following regulations concerning imports of bananas into the new Member States, Austria, Finland and Sweden (hereinafter 'the Regulations at issue':

— Commission Regulation (EC) No 3303/94 of 21 December 1994 introducing transitional measures for imports of bananas into Austria, Finland and Sweden in the first quarter of 1995; [1] (Case C-71/95)

— Commission Regulation (EC) No 479/95 of 1 March 1995 introducing transitional measures for the application of the tariff quota arrangements for the import of bananas as a result of the accession of Austria, Finland and Sweden for the second quarter of 1995; [2] (Case C-155/95)

— Commission Regulation (EC) No 1219/95 of 30 May 1995 adopting transitional measures for the application of the tariff quota arrangements for imports of bananas for the third quarter of 1995 as a result of the Accession of Austria, Finland and Sweden [3] (Case C-271/95).

On the accession of the new Member States to the European Union they were included in the common agricultural policy, in particular the common organization of the market in bananas. The Regulations at issue enable the authorities in the new Member States to authorize operators in their territory to import bananas from third countries in specified quantities for each of the first three quarters of 1995.

* Original language: Danish.
1 — OJ 1994 L 341, p. 46.
2 — OJ 1995 L 49, p. 18.
3 — OJ 1995 L 120, p. 20.

The common organization of the market in bananas

2. Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas [4] (hereinafter 'the basic regulation') introduced a new market organization for bananas. It provided for the annual opening of a tariff quota for imports of third-country bananas and non-traditional ACP bananas. [5] Under that tariff quota third-country bananas are to be subject to a tariff of ECU 75 per tonne, whereas non-traditional ACP bananas are to be subject to zero duty. Imports of third country bananas and non-traditional ACP bananas not falling within the tariff quota are to be subject to a tariff of ECU 850 and ECU 750 per tonne respectively. A forecast supply balance drawn up each year is to assess the prospects for production and consumption in the Community as well as for import and export. When demand rises in relation to that forecast the tariff quota is to be increased accordingly. The tariff quota is to be allocated between operators on the basis of the average quantity of bananas marketed by the operator over the last three years for which figures are available.

4 — OJ 1993 L 47, p. 1, as most recently amended by Council Regulation (EC) No 3290/94 of 22 December 1994 on the adjustments and transitional arrangements required in the agriculture sector in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations (OJ 1994 L 349, p. 105).

5 — 'Non-traditional imports from ACP States' are defined in the second paragraph of Article 15a under (b) as the quantities of bananas exported by the ACP States which exceed the quantity defined in the regulation. The term 'ACP States' covers a number of countries in Africa, the Caribbean and the Pacific with which the Community has signed the Lomé Conventions.

3. The basic regulation contains the following provisions of relevance to this case:

'*Article 18*

1. A tariff quota of 2.2 million tonnes (net weight) shall be opened each year for imports of third-country bananas and non-traditional ACP bananas.

...

Article 19

1. The tariff quota shall be opened from 1 July 1993 for:

(a) 66.5% to the category of operators who marketed third country and/or non-traditional ACP bananas;

(b) 30% to the category of operators who marketed Community and/or traditional ACP bananas;

(c) 3.5% to the category of operators established in the Community who started marketing bananas other than Community and/or traditional ACP bananas from 1992.

...

2. On the basis of separate calculations for each of the categories of operators referred to in paragraph 1(a) and (b), each operator shall obtain import licences on the basis of the average quantities of bananas that he has sold in the three most recent years for which figures are available ...'

4. Commission Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community [6] (hereinafter 'the implementing regulation') contains *inter alia* provisions on the detailed procedure for calculating and allocating the various quantities referred to in the basic regulation.

The Act of Accession

5. The Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded [7] (hereinafter 'the Act of Accession') contains the following provisions:

'TITLE VI

AGRICULTURE

Article 137

...

6 — OJ 1993 L 142, p. 6, as last amended by Commission Regulation (EC) No 1409/96 of 19 July 1996 amending Regulation (EEC) No 1442/93 laying down detailed rules for the application of the arrangements for importing bananas into the Community, as regards eligibility criteria for category C operators and certain dates relevant to the administration of Community tariff quotas (OJ 1996 L 181, p. 13).

7 — OJ 1994 C 241, p. 21.

2. Except where this Act provides otherwise:

...

— the rights and obligations resulting from the common agricultural policy shall be applicable in full in the new Member States.

...

Article 148

1. Unless otherwise stipulated in specific cases, the Council, acting by a qualified majority on a proposal from the Commission, shall adopt the necessary provisions to implement this Title.

2. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may make the adaptations to the provisions appearing in this Title which may prove necessary as a result of a modification in Community rules.

Article 149

1. If transitional measures are necessary to facilitate the transition from the existing regime in the new Member States to that resulting from application of the common organization of the markets under the conditions set out in this Title, such measures shall be adopted in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC or, as appropriate, in the corresponding Articles of the other Regulations on the common organization of agricultural markets. These measures may be taken during a period expiring on 31 December 1997 and their application shall be limited to that date.

...

Article 150

1. The transitional measures relating to implementation of the instruments concerning the common agricultural policy not specified in this Act, including in the field of structures, which are required as a result of accession shall be adopted prior to accession in accordance with the procedure laid down in paragraph 3 and shall enter into force on the date of accession at the earliest.

...

3. The Council, acting by a qualified majority on a proposal from the Commission, shall adopt the transitional measures referred to in paragraphs 1 and 2. Nevertheless, the measures affecting instruments initially adopted by the Commission will be adopted by this institution following the procedure referred to in Article 149(1).'

The Regulations at issue

6. The Regulations at issue were adopted by reference to Article 149 of the Act of Accession.

7. The second recital in the preamble to the first Regulation at issue is worded as follows:

'... to facilitate the transition from the arrangements existing in the new Member States before their accession to those resulting from the application of the common organization of the market in bananas, operators established in those countries should be authorized to import in the first quarter of 1995, as a transitional measure, a specific quantity of bananas originating in third countries; ... this quantity should be determined on the basis of the average quantity that each operator imported to supply these markets in the reference period used for determining the rights of the operators under the tariff quota arrangements; ... this allocation must not, however, predetermine the allocation of the reference quantity to be employed subsequently for 1995 pursuant to ... [the implementing regulation].

Article 4

1. For the first quarter of 1995, the competent authorities of Austria, Finland and Sweden shall authorize the operators established on their territory who have imported bananas in 1991 and/or 1992 and/or 1993 to import bananas originating in third countries up to a limit of 35 785 tonnes in Austria, 22 606 tonnes in Finland and 47 532 tonnes in Sweden respectively.

...

Each operator's authorization to import may not cover a quantity greater than 30% of the average of the annual quantities imported by him in the years 1991, 1992 and 1993.

This authorization shall not predetermine the reference quantity to be allocated to the operator in question for 1995 pursuant to ... [the implementing regulation].

...'

8. The second Regulation at issue contains a recital in its preamble corresponding to the above-cited recital in the preamble to the first Regulation at issue. Article 1 of the former regulation is worded as follows:

'*Article 1*

1. For the second quarter of 1995, under the tariff quota arrangements referred to in Articles 18 and 19 of [the basic regulation] the competent authorities of Austria, Finland and Sweden shall authorize the operators established on their territory who have imported bananas in 1991 and/or 1992 and/or 1993 to import bananas originating in third countries up to a limit of 32 206 tonnes in Austria, 20 346 tonnes in Finland and 42 616 tonnes in Sweden, respectively.

...

Each operator's authorization to import may not cover a quantity greater than 27% of the average of the annual quantities imported by him in the years 1991, 1992 and 1993.

This authorization shall not predetermine the reference quantity to be allocated to the operator in question for 1995 pursuant to ... [the implementing regulation].

...'

9. The third recital of the preamble to and Article 1 of the third Regulation at issue are worded as follows:

'... in order to facilitate the switchover from the arrangements applying in the new Member States prior to their accession to those resulting from the application of the rules of the common organization of the market in bananas, transitional measures should be adopted for the third quarter of 1995; ... pending the adjustment of the tariff quota following the accession of Austria, Finland and Sweden, reference quantities within the meaning of ... [the implementing regulation] cannot be determined for the operators in the new Member States in respect of 1995 without at the same time provisionally reducing the reference quantities determined at the end of 1994 for the operators in the other Member States in respect of the same

year; ... operators established in the new Member States should accordingly be authorized to import a certain quantity of bananas originating in third countries during that third quarter; ... that quantity should be determined on the basis of the average quantity which the operators concerned have imported to supply those markets during the reference period used to determine the operators' rights under the tariff quota arrangements; ... the quantities determined must, however, be without prejudice to the reference quantities to be allocated subsequently in respect of 1995 pursuant to ... [the implementing regulation].

...

Each operator's authorization to import may not cover a quantity greater than 25% of the average annual quantity he imported in 1991, 1992 and 1993.

Such authorizations shall be without prejudice to the reference quantity to be allocated to the operators concerned in respect of 1995 pursuant to ... [the implementing regulation].

...'

Article 1

1. For the third quarter of 1995, under the tariff quota arrangements laid down in Articles 18 and 19 [of the basic regulation], the competent authorities of Austria, Finland and Sweden shall authorize operators established on their territory who have imported bananas in 1991, 1992 or 1993 to import bananas originating in third countries up to a limit of 29 821 tonnes in Austria, 18 839 tonnes in Finland and 39 460 tonnes in Sweden.

10. Moreover, it should be noted that by Commission Regulation (EC) No 1924/95 of 3 August 1995 laying down transitional measures for the application of the tariff quota arrangements for imports of bananas as a result of the accession of Austria, Finland and Sweden (hereinafter the 'additional quantity regulation') [8] adopted on the basis of Article 149, an additional quantity was fixed for the new Member States for the whole of 1995. The import quantities authorized by the new Member States in the first three quarters were to be set against the overall quantity and the remaining balance was to be allocated between the operators in

8 — OJ 1995 L 185, p. 24.

the new Member States in the fourth quarter of 1995. [9]

Pleas in law

11. In these applications, which were lodged on 14 March 1995, 17 May 1995 and 10 August 1995 respectively, the Belgian Government has claimed that the Regulations at issue should be annulled on the grounds that:

— they should have been drawn up on the basis of Articles 148 or 150 rather than Article 149 of the Act of Accession;

— the transitional measures discriminate against operators in the Community of Twelve in relation to operators in the new Member States; and

— they do not contain an adequate statement of reasons.

9 — Moreover, for 1996 the Commission raised the quota to 2 553 000 tonnes (see Commission Regulation (EC) No 1559/96 increasing the volume of the tariff quota for imports of bananas provided for in Article 18 of Council Regulation (EEC) No 404/93 for 1996 (OJ 1996 L 193, p. 12).

12. The Commission drew the Court's attention to an issue of admissibility in respect of the plea concerning the legal basis of the first two Regulations at issue, asking that the applications be dismissed.

13. The French Government intervened in the cases concerning the first and second Regulations at issue in support of the Commission.

Admissibility

14. In its applications concerning the first and second of the Regulations at issue, the Belgian Government stated that those regulations were drawn up by the Commission on the basis of Article 149(1) of the Act of Accession which, as regards the procedure for the adoption of the transitional measures provided for refers to Article 149(3), under which transitional measures are to be adopted by the Council or the Commission, according to which of them drew up the instruments affected by the transitional measure in question. The basic regulation was adopted by the Council. The first two Regulations at issue contain transitional measures which derogate from the basic regulation in relation to the three new Member States and hence the Council rather than the Commission is competent.

15. In its defences in those cases, under the heading 'Legal basis', the Commission stated that it would appear that the Belgian Government had not based itself on the final text of Article 149 but had probably used a draft version of the Act of Accession, since the Belgian Government's version of Article 149 corresponds to Article 150 in the final version. The Commission concluded that the Belgian Government's pleas in law concerning Article 149 are manifestly unfounded since Article 149 of the Act of Accession does in fact empower the Commission to put into operation transitional measures following a committee procedure which is what occurred.

16. In its replies in those cases, under the same heading as the Commission had introduced in its defence, the Belgian Government admitted that in its application it had based itself on a previous version of the Act of Accession. It further claimed that the first and second of the Regulations at issue should have been adopted on the basis of Article 148 or 150 rather than Article 149, and examined those provisions in further detail for the purpose of developing its argument in that connection.

17. In its rejoinders, the Commission answered the Belgian Government's arguments in its replies.

18. It further drew the Court's attention, in the rejoinders, to an issue of admissibility which, in the Commission's view, results from the fact that the arguments put forward by the Belgian Government in its replies concerning the first and second of the Regulations at issue are completely different from the summary presentation in the applications and must therefore be treated as new pleas in law under Articles 38 and 42 of the Rules of Procedure.

19. On that issue of admissibility, the Belgian Government claimed that the mistake in the applications only concerns the reference to the articles, not the basic argument which, in the Belgian Government's view, remains intact.

20. The French Government expressed its support for the claim that the applications should be dismissed and stated that in its applications in the said questions, apart from the plea of discrimination and inadequate statement of reasons, the Belgian Government had claimed solely that the Commission was not competent to adopt the first and second of the Regulations at issue, since competence under Article 149 was conferred on the Council. The applications, however, contain no statement that Article 149 is not applicable as a basis for those regulations. That argument was first put in the replies and should therefore be dismissed under Article 42(2) of the Rules of Procedure. In that connection the French Government

referred to the judgment in Case 108/81 *Amylum* v *Council*. [10]

21. The relevant provisions in the Rules of Procedure read as follows:

'*Article 38*

1. An application ... shall state:

...

(c) the subject-matter of the proceedings and a summary of the pleas in law on which the application is based;

...

Article 42

...

2. No new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.

...'

22. I should point out that under the Court's case-law a plea in law can only be considered new if it has not been mentioned directly or indirectly in the application. [11] That is also clear from Case 108/81 *Amylum* v *Council*, cited by the French Government, in which the Court stated:

'... the new submission made by the applicant cannot be regarded ... as amplifying a submission made previously because it is only in the reply that the legal rule alleged to have been infringed is mentioned and the cause of nullity thus invoked was referred to

10 — [1982] ECR 3107.

11 — Joined Cases 19/60, 21/60, 2/61 and 3/61 *Fives Lille Cail and Others* v *High Authority* [1961] ECR 281.

neither directly nor by implication in the application originating the proceedings' (paragraph 25).

23. Apart from alleging discrimination and an inadequate statement of reasons the application, as mentioned above, states that, pursuant to Article 149, the Regulations at issue should have been adopted by the Council and not by the Commission. Strictly speaking, it could therefore be regarded as a new plea in law when the reply states that the Regulations at issue should have been adopted on the basis of Article 148 or 150 and not Article 149.

24. The discussion in the application of the content of 'Article 149' reveals, however, that the Belgian Government is in fact referring to the content of Article 150 and has thus mistaken the provisions; the Commission, which was well acquainted with the provisions, reached the same conclusion.

25. Where the Belgian Government, in its application, discusses the content of 'Article 149', that is to say of Article 150 which it mistakenly considers to be the Article 149 to which the Regulations at issue refer, and in that connection claims that under that provision the decision should have been taken by the Council and not by the Commission, it shows, albeit indirectly, that the Government considers the choice of 'Article 149' and hence Article 150 as the legal basis to be correct. In the circumstances the Commission should have been able to conclude, with a modicum of good will, that in the Belgian Government's view Article 149 was not the proper legal basis. The Commission's introduction in the defence of the heading 'Legal basis' confirms in my opinion the further view that the Commission simply understood the plea to concern the legal basis of the Regulations at issue. In its defence the Commission, however, despite the heading, did not comment further on the question of the legal basis, but merely stated that the plea in law concerning Article 149 was obviously unfounded, because the Belgian Government had based itself on an earlier version of the Act of Accession.

26. I should, moreover, point out that both the replies and the rejoinders, and the French Government's intervention, contain a thorough discussion of the question of the legal basis of the Regulations at issue, which was also dealt with at the hearing. The Commission was not, therefore, prevented from effectively safeguarding its interests, just as, in my view, the Court has a sufficient basis for reaching a decision in the case, so that the essential considerations underlying the said rules in the Rules of Procedure are satisfied.

27. In any event the Court will, furthermore, have to reach a decision on the same plea in law concerning the legal basis in connection with the third Regulation at issue so that it could lead to jarring results if that regulation were annulled on the ground of unlawfulness while the first and second of the Regulations at issue were upheld on procedural grounds although they were adopted on absolutely the same legal basis as the third, and would accordingly be vitiated by the same unlawfulness.

28. Accordingly it is my view that the most appropriate approach is to treat the plea in law concerning the legal basis as a development within the context of the approach taken in the application rather than as a new plea in law.

29. I would therefore propose that the Court examine the merits of the objection to the validity of all the Regulations at issue.

Legal basis

30. The Belgian Government amplified its plea in law concerning Article 149 of the Act of Accession by stating that that provision may only be applied in the adoption of transitional measures which facilitate the transition to application of the common organization of the markets 'under the conditions set out in this Title'. Measures adopted under Article 149 must not therefore undermine the effect of Article 137(2), which implies that the common organization of the market in bananas is to be fully applicable in the new Member States. The choice of Article 149 is incorrect, since it is not taken on the basis of the real purpose and content of the Regulations at issue. Provisions such as those contested here should instead be adopted on the basis of Article 148 of the Act of Accession concerning implementing provisions, or Article 150, concerning transitional measures. Under those provisions competence lies with the Council.

31. The Commission contended that the purpose of Article 149 is to take into account unforeseeable situations in the new Member States, as is clear from the wording 'to facilitate the transition from the existing regime in the new Member States to ...'. In contrast to Article 148, Article 149 concerns transitional measures of limited duration which is also the case of the Regulations at issue (see the last sentence of Article 149(1)). Measures may be taken with a view to facilitating the transition to the regime resulting from 'application of the common organization of the markets under the conditions set out in this Title'. The phrase 'under the conditions set out in this Title' thus refers to application of the market organization. That application is regulated in Article 137, which specifies that the common market organization for bananas is to be applicable in the new Member States from 1 January 1995, and no tran-

sitional arrangements are laid down. Article 149 does not contain any restrictions on the kind of measures which may be applied to facilitate the transition. Even measures which involve implementation of the market organization being postponed for the time being are therefore possible. The only requirement laid down is that the measures should 'facilitate the transition'.

Article 148(1) of the Act of Accession concerns 'the necessary provisions to implement this Title', that is to say, Title VI on Agriculture (Articles 137 to 150), and that provision cannot therefore be applied to derogate from Article 137 of the Act of Accession. According to its wording, Article 150 may furthermore only be used in the period between the signing and entry into force of the Act of Accession, and what is involved are solely adaptations to the Community instruments which for one reason or another did not take place in the Act of Accession. The Regulations at issue could hardly, therefore, be based on Article 150 since what is involved is not adaptation of the common organization of the market but postponement of its application.

32. The French Government stated that Article 149(1) of the Act of Accession empowers the Commission to lay down transitional measures which may consist *inter alia* in provisionally exempting the new Member States from application of the provisions of a common market organization. The scope of application of the provision is not restricted to the areas of competence granted to the Commission by the Council in the context of a common market organization. If that had been the case, Article 149 would have been devoid of purpose, since the Commission is already competent to adapt or amend measures which fall within its competence.

33. Operators in the new Member States who, in the years prior to accession on 1 January 1995, had imported bananas could justifiably, in my opinion, have expected that they could continue to import bananas after Accession to the European Union and hence could continue to supply the market in the new Member States with bananas.

34. A sharing out of the unamended tariff quota of 2.2 million tonnes annually, calculated for 12 Member States, between operators in an expanded Union of 15 Member States would have meant a reduction of importing rights for the operators in the former Community of 12 and an allocation of insufficient importing rights to operators in the new Member States. Such a sharing out of an unamended tariff quota would have given rise to a shortage of bananas accompanied by price rises in the common market. Operators would further have been unable to supply the same quantities as hitherto and would have found themselves in a situation

where they could not fulfil obligations already entered into, so that traditional trading patterns could not have been maintained. That would have been diametrically opposed to the objectives of the market organization. Accordingly there is no ground for considering that it was the intention of the Community legislature that on the accession of the new countries operators should not be able to obtain the quantities needed to supply their customers. In my view it was necessary to lay down measures to facilitate the transition for operators in the new Member States without creating problems for operators in the former Community of 12. Article 149 of the Act of Accession specifically provides a basis for the Commission to lay down such provisions.

35. There is nothing in Article 149 of the Act of Accession to indicate that certain types of measures should be excluded in principle if these conditions, specifically the condition that they be necessary, are satisfied. Accordingly there is no basis for thinking that Article 149 should not enable provisions to be laid down postponing the transition to the common organization of the market in bananas.

36. I would therefore suggest that the Court should dismiss the plea in law that Article 149 does not provide a sufficient legal basis.

37. Accordingly there is no reason to proceed to a more detailed examination of Articles 148 and 150. In connection with Article 148 I would simply point out that I agree with the Commission that Title VI in the Act of Accession indicates that the common organization of the market in bananas is to be fully applicable in the new Member States and that provisions *implementing* Title VI cannot therefore involve the *postponement* of certain aspects of that market organization in the new Member States. In connection with Article 150, I would point out that that provision too is irrelevant since it must be regarded as a type of safety valve which may be applied until accession in order to lay down transitional measures which, for one reason or another, have not been dealt with in the Act of Accession, even if room should have been found for them there.

Infringement of the principle of equal treatment

38. The Belgian Government has stated that the Regulations at issue involve discrimination against operators in the Community of Twelve in relation to operators in the new Member States. In particular they involve derogation from Article 19 of the basic regulation, since every new Member State obtains a separate quota but it is not allocated

between operators according to the rule set out in Article 19 of the basic regulation, as is the case in the Community of Twelve.

39. The Commission states that the Regulations at issue were necessary because the Council had not adapted the tariff quota on 1 January 1995, even though the Commission had submitted a proposal to that effect. Moreover, the allocation of the tariff quota between operators in the Community of Twelve had to a large extent begun early in December 1994 and if that process had been interrupted that would have harmed operators in the Community of Twelve to a significant degree and would have jeopardized supplies in the common market. Import authorizations are without prejudice to the quantities which operators will be allocated for 1995 as a whole. In relation to 1995 as a whole there was therefore no discriminatory treatment of operators in the Community of Twelve as against those in the new Member States.

40. I would point out that the Belgian Government's argument that the Regulations at issue discriminate against operators in the Community of Twelve in relation to operators in the new Member States is not easy to characterize from the legal point of view. What the Belgian Government in fact means would appear, however, to be that, contrary to the principle of equal treatment, there was unlike treatment of like situations.

41. As stated in point 34 above, allocation of an unamended tariff quota of 2.2 million tonnes, calculated for 12 Member States for an entire year, between operators in an extended Union of 15 Member States would have involved a reduction of the importing rights of operators in the Community of 12 and the allocation of insufficient importing rights to operators in the new Member States.

42. Prior to the accession of the new Member States on 1 January 1995, the Commission anticipated that as a consequence of the accession the Council would raise the tariff quota to accommodate a Union of 15 Member States. If only for that reason the Commission did not seek to raise the tariff quota which had been laid down for the Community of Twelve at the time, by way of the committee procedure (see Article 27 of the basic regulation). The forecast which, under Article 16 of the basic regulation, is to provide a basis for adaptation of the tariff quota by way of the committee procedure, is usually made at the end of the year when the forecast can be based on the figures for the first part of the year, a method which was

especially necessary in 1995 because there was no forecasting experience as far as the new Member States were concerned. In addition, an increase of the tariff quota was supposed to have been allocated to categories A, B and C (see Article 19(1) of the basic regulation) whereas operators in the new Member States had exclusively imported bananas in category A.

43. The Commission resolved the problem by means of the Regulations at issue, which made it possible to authorize operators in the new Member States to import bananas from third countries in certain specified quantities for each of the first three quarters of 1995, without being divided into the three categories A, B and C as mentioned in Article 19(1) of the basic regulation, since operators in the new Member States had, according to the evidence, exclusively imported bananas in category A.

44. It should be noted that the Regulations at issue cannot be viewed in isolation but should be seen in relation to the additional quantity regulation. The quantities set out in the Regulations at issue had first to be set against the tariff quota of 2.2 million tonnes, but the additional quantity regulation laid down an additional quantity for imports into the new Member States of third-country and non-traditional ACP bananas (category A) for the whole of 1995. The import quantities authorized in the new Member States in the course of the first three quarters were set against the additional quantity and the remaining part of the additional quantity was shared between the operators in the new Member States in the fourth quarter of 1995. The quota of 2.2 million tonnes could thus be divided in its entirety between operators in the Community of Twelve.

45. Authorizations to the new Member States to import third-country bananas within specified quantities for each of the first three quarters of 1995 were thus justified by the fact that the situations of operators in the new Member States and in the former Community of Twelve were different. The fact that the Commission treated unlike situations differently by departing from the common market organization on that point does not therefore constitute an infringement of the principle of equal treatment, but rather observance of that principle.

46. I would further point out that the Commission has explained that, on 1 January 1995, it did not have the information available concerning operators in the new Member States that was necessary for application of the rules for allocating the tariff quota. It has not been clarified whether, at the time

when it adopted the second Regulation at issue, the Commission had obtained the information concerning operators in the new Member States that was required for that purpose. The Commission did not dispute that that should have been the case. Under the third recital in its preamble, the third Regulation at issue, however, is justified by the fact that the volume of the tariff quota is not yet adapted to the accession of the new Member States, as was also the case with the first and second Regulations at issue.

47. As stated by the Commission, all three Regulations at issue nevertheless include a provision that the import authorizations are to be without prejudice to the quantities allocated to operators for 1995 pursuant to Article 6 of the implementing regulation. That implies, in connection with the additional quantity regulation, which puts into effect the rules provided for in Article 19(2) of the basic regulation, and Articles 3 to 6 of the implementing regulation for the new Member States, that over 1995 viewed as a whole there was no discriminatory treatment between operators in the Community of Twelve and the new Member States in relation to those rules.

48. In the light of the foregoing, I do not consider that the plaintiff's plea in law that the principle of equal treatment was infringed can be upheld.

The plea in law concerning inadequate statement of reasons

49. The Belgian Government states that the recitals in the preambles to the Regulations at issue do not contain reasons justifying the transitional measures.

50. The Commission contends that the requirement in Article 190 of the Treaty has been satisfied. The Regulations at issue refer to the implementing regulation and their preambles refer to the new Member States and the adjustments made necessary by accession in those countries. The purpose of the Regulations at issue, to facilitate adjustments, is clearly indicated. Lastly, the content of the transitional measures is set out in the preambles.

51. I would point out that the statement of reasons required under Article 190 must, according to the Court's settled case-law, show clearly and unequivocally the reasoning underlying the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review. [12] It is not necessary, however, for details of all relevant

12 — See, for instance, Case C-353/92 *Greece* v *Council* [1994] ECR I-3411, paragraph 19, and Case C-350/88 *Delacre* [1990] ECR I-395, paragraph 15.

factual and legal aspects to be given, since the statement must be assessed with regard to the context of the measure and weighed against practical realities and the time and technical facilities available for adopting the measure. [13]

52. The purpose of the first two Regulations at issue is given in the second and third recitals in their preambles respectively, from which it appears that it is to facilitate the transition from the arrangements existing in the new Member States to those resulting from application of the common organization of the market in bananas.

53. In the third recital in the preamble of the third Regulation at issue, there is a corresponding statement of its purpose and in addition a statement that, pending the adjustment of the tariff quota following the accession of the new Member States, reference quantities cannot be determined for the operators in the new Member States in respect of 1995 without at the same time provisionally reducing the reference quantities determined at the end of 1994 for the operators in the other Member States in respect of the same year.

54. Moreover, it appears from the additional quantity regulation that the measures for the first three quarters were justified on administrative and technical grounds. Firstly, it had proved impossible to apply the rules in the implementing regulation to the operators in the new Member States within the appropriate time; secondly, without an adjustment of the tariff quota it was not possible to fix import rights for operators in the new Member States without at the same time provisionally reducing the import rights fixed for that year for the operators in the other Member States.

55. The two reasons for the adoption of the Regulations at issue as set out in the additional quantity regulation are identical to the line of reasoning put forward by the Commission in this case. As it appears, the first two Regulations at issue do not contain any statement regarding those reasons, while the third Regulation at issue mentions one of the reasons. In my view, it would have been appropriate for the two reasons set out in the additional quantity regulation to have been explained in each of the Regulations at issue as well.

56. As stated, the case-law of the Court does not, however, require the statement of reasons to give details of all relevant factual and legal aspects, since the statement must be assessed with regard to the context of the measure. I therefore consider that there is not an adequate basis for annulling the

13 — See, for instance *Delacre*, cited in footnote 12, paragraph 16; Case 125/77 *Koninklijke Scholten-Honig* [1978] ECR 1991, paragraphs 18 to 22; Case 92/77 *An Bord Bainne* [1977] ECR 497, paragraphs 36 and 37; and Case 16/65 *Schwarze* [1965] ECR 877.

Regulations at issue on the ground that there was an inadequate statement of reasons.

Costs

57. Under Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been applied for. The Commission did so apply and the Kingdom of Belgium should therefore be ordered to pay the costs.

58. Under Article 69(4) of the Rules of Procedure the Member States and institutions which intervene in the proceedings are to bear their own costs. The French Republic should therefore be ordered to pay its own costs.

Conclusion

59. In the light of the foregoing I would propose that the Court should:

(1) find in favour of the Commission;

(2) order the Kingdom of Belgium to pay the costs and the French Republic to bear its own costs.