JUDGMENT OF THE COURT
OF 29 MARCH 1979 [1]

C. J. Meijer B.V.
v Department of Trade, Ministry of Agriculture, Fisheries and Foods and Commissioners of Customs and Excise (preliminary ruling requested by the High Court of Justice, Queen's Bench Division, Commercial Court, London)

"Potato import restrictions"

Case 118/78

Accession of the new Member States to the European Communities — Act of Accession — Agriculture — Provisions relating to the elimination of quantitative restrictions — Derogation in Article 60 (2) — Legal nature — Special provisions within the meaning of Article 9 (2) — No

Article 60 (2) of the Act of Accession cannot be regarded as a special provision within the meaning of the reservation set out in Article 9 (2) of that Act with the result that by virtue of the latter provision its application terminated at the end of 1977.

In Case 118/78,

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Justice, Queen's Bench Division, Commercial Court, London, for a preliminary ruling in the proceedings pending before that court between

C. J. MEIJER B.V.

and

1 — Language of the Case: English

THE DEPARTMENT OF TRADE

THE MINISTRY OF AGRICULTURE, FISHERIES AND FOODS and

THE COMMISSIONERS OF CUSTOMS AND EXCISE

on the interpretation of Article 60 (2) of the Act of Accession,

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. Potatoes are included amongst the agricultural products listed in Annex II to the EEC Treaty but are not yet covered by a common organization of the market. In January 1976 the Commission submitted a proposal for a common organization of the market (Official Journal C 61, p. 76) but the proposal is still being considered by the Council. At the present time potatoes are subject to national legislation in the individual Member States.

2. In the United Kingdom there exists a system for regulating the market in potatoes which comprises, amongst other features, controls on the import and export of main-crop potatoes (also known as "ware" potatoes). These controls are implemented by a system of licences operated by the Department of

Trade under powers derived ultimately from the Import, Export and Customs Powers (Defence) Act 1939. The Ministry of Agriculture keeps the public informed by regular press notices whether and in what circumstances such licences will be granted.

On 28 December 1977 the Ministry announced that the ban on imports of main-crop potatoes into the United Kingdom would continue until further notice.

On 5 January 1978, the plaintiff in the main action, which carries on business in the Netherlands as a producer, dealer and exporter of potatoes, shipped a consignment of 20 tonnes of main-crop potatoes to the United Kingdom. The customs authorities refused entry of the goods at Great Yarmouth on the ground that the ban on the importation of main-crop potatoes from any source was still in force. Following this refusal the plaintiff issued an originating summons in the High Court claiming declarations to the effect that since 1 January 1978 the United Kingdom was no longer authorized to control the importation of potatoes from other Member States.

The defendants in the main action contended that, in the circumstances, the control of imports of potatoes was justified. The national court, after hearing argument by the plaintiff, stayed the proceedings and ordered that the following question be referred to the Court of Justice for a preliminary ruling:

"Whether in the case of an agricultural product which was not covered at the date of accession by a common organization of the market and is still not so covered on 1 January 1978 Article 60 (2) of the Act of Accession or any other provision of Community law permits the retention of quantitative restrictions on imports in respect of that product after 31 December 1977 (if they formed part of a national market organization on the date of accession) to the extent necessary to ensure the maintenance of the national organization and until the common organization of the market for that product is implemented."

3. The relevant provisions of the Act of Accession are Articles 9, 42 and 60. Article 9 provides:

"(1) In order to facilitate the adjustment of the new Member States to the rules in force within the Communities, the application of the original Treaties and acts adopted by the institutions shall, as a transitional measure, be subject to the derogations provided for in that act.

(2) Subject to the dates, time-limits and special provisions provided for in this act, the application of the transitional measures shall terminate at the end of 1977."

Part Four of the Act of Accession, entitled "Transitional measures", contains, in Title I, entitled: "Free movement of goods", Article 42 which provides:

"Quantitative restrictions on imports and exports shall, from the date of accession, be abolished between the Community as originally constituted and the new Member States and between the new Member States themselves.

Measures having equivalent effect to such restrictions shall be abolished by 1 January 1975 at the latest."

Title II of Part Four, entitled "Agriculture", contains four chapters. Article 60, which occurs in Chapter 1 ("General provisions"), is worded as follows:

"(1) In respect of products covered, on the date of accession, by a common organization of the market, the system applicable in the Community as originally constituted in respect of customs duties and charges having equivalent effect and quantitative restrictions and measures having equivalent effect shall, subject to Articles 55 and 59, apply in the new Member States from 1 February 1973.

(2) In respect of products not covered, on the date of accession, by a common organization of the market, the provisions of Title I concerning the progressive abolition of charges having equivalent effect to customs duties and of quantitative restrictions and measures having equivalent effect shall not apply to those charges, restrictions and measures if they form part of a national market organization on the date of accession.

This provision shall apply only to the extent necessary to ensure the maintenance of the national organization and until the common organization of the market for these products is implemented."

4. The order for reference, dated 12 April 1978, was lodged at the Court Registry on 19 May 1978.

In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Meijer undertaking, represented by F. G. Jacobs and A. S. Grabiner of the London Bar, the Commission of the European Communities, represented by R. Wainwright and B. Hoff-Nielsen, acting as Agents, the British Government, represented by R. D. Munrow, the Netherlands Government, represented by I. Verkade, and the French Government, represented by G. de Lacharrière.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Summary of the written observations submitted to the Court

(a) Observations of Meijer B.V.

C. Meijer B.V., the plaintiff, refers first of all to the provisions of the EEC Treaty, in particular Article 30 *et seq.* and Article 38 (2). As among the original Member States, all quantitative restrictions had to be abolished by the end of the transitional period at the latest. The prohibition of such restrictions applied equally to trade in agricultural products, even where no common organization of the market had yet been established (Case 48/74 *Charmasson* v *Minister for Economic Affairs and Finance* [1974] ECR 1383; Case 68/76 *Commission of the European Communities* v *French Republic* [1977] ECR 515).

According to Meijer, the principle applied in the *Charmasson* case must apply equally or with even greater force in relation to the transitional provisions of the Act of Accession. Furthermore, Meijer alleges that the measures at issue in the present case constitute the clearest and most blatant form of measures prohibited by the Treaty.

The scheme brought into force by the Act of Accession was that quantitative restrictions generally should be abolished as from the date of accession, namely 1 January 1973 (Article 42). Quantitative restrictions in respect of agricultural products had to be abolished from 1 February 1973 (Article 60 (1)), subject to the exception set out in the first sentence of Article 60 (2), for products not yet subject to a common organization of the market. That exception is itself limited by the second sentence of Article 60 (2).

Does Article 60 (2) of the Act of Accession contain an open-ended derogation from the Common Market, limited in time only by the implementation of the common organization of the market for the product in question?

Meijer replies to that question in the negative. It takes the view that such a derogation could not go beyond the general time-limit in Article 9 (2) of the Act of Accession. That interpretation is confirmed by the spirit, the structure and the terms of the Treaty of Accession and of the Act of Accession.

The Act of Accession reflects the fundamental principle underlying the enlargement of the Communities, namely the acceptance by the new Member States of the "acquis communautaire" in its entirety. It may be seen from the Act of Accession itself that that "acquis communautaire" was in principle to apply from the date of accession (Article 2 of the Act of Accession; Case 185/73 *Hauptzollamt Bielefeld* v *König* [1974] ECR 607).

Consequently the "derogations" provided for in Article 9 (1) must not be interpreted extensively, especially where they derogate from a fundamental principle of the Common Market, in particular the free movement of goods (Article 42 of the Act of Accession; Case 15/74 *Centrafarm B.V.* v *Sterling Drug Inc.* [1974] ECR 1147 at p. 1166 and Case 16/74 *Centrafarm B.V.* v *Winthrop* [1974] ECR 1183 at p. 1197).

Article 9 (2) cannot be interpreted as permitting the continuance of transitional measures beyond 31 December 1977. It is true that the provision is "subject to the dates, time-limits and special provisions provided for" in the act, but that reference must generally be understood as referring to *earlier* dates and time-limits. In fact, there are almost no dates or time-limits later than 31 December 1977 as the exceptions relate only to cases of a special nature; they contain no derogation of indefinite duration (Articles 100 to 103, 131, 132 of the Act of Accession and Article 5 (2) of Protocol No 18).

Equally the reference in Article 9 (2) to "special provisions" cannot be understood as meaning that where *no* date or time-limit is specified — as is the case for Article 60 (2) — the derogation is not subject to the general time-limit laid down in Article 9 (2). On the contrary, it is precisely the function of Article 9 (2) to set such a general time-limit.

The second sentence of Article 60 (2) adds nothing to the derogation contained in the first sentence. By providing that if a national organization is replaced by a common organization the derogation should lapse, the sentence must be interpreted as limiting, not extending, the derogation contained in the first sentence.

According to Meijer the principle in the *Charmasson* case is applicable with even greater force in relation to the Act of Accession.

The provisions of the Act of Accession provide both expressly and by implication — in contrast to the EEC Treaty — that for products not subject to a common organization of the market derogations from the Common Market shall be eliminated by the end of the transitional period at the latest.

If the *Charmasson* principle were not applied in relation to the Act of Accession, whilst continuing to be applied to the original Member States, there would be a serious disparity between the systems in the original Member States and those in the new Member States. As respects relationships between these States prohibitions on imports and exports and charges having an effect equivalent to customs duties could continue to apply indefinitely.

Finally, since the *Charmasson* judgment, Member States have had notice that during the transitional period "the national organization must adapt itself to the fullest possible extent to the requirements of the Common market with a view to facilitating the establishment of the common agricultural policy" (paragraph 16).

Meijer claims that the United Kingdom Government was aware of its obligations in this respect and even accepted them. It refers to a publication in the technical press of 2 December 1977 according to which the Minister of Agriculture stated that after 31 December 1977 there must be free trade in potatoes among the Member States (Annex 4 to Meijer's observations).

In conclusion the plaintiff submits that the questions raised by the national court should be answered as follows:

"In the case of an agricultural product which was not covered at the date of accession by a common organization of the market and was still not so covered on 1 January 1978 neither Article 60 (2) of the Act of Accession nor any other provision of Community law permits the retention of quantitative restrictions on imports in respect of that product after 31 December 1977."

(b) Observations of the Netherlands Government

The Netherlands Government points out that, in accordance with Article 9 (2) of the Act of Accession, the application of the transitional measures was to terminate at the end of 1977, subject to the dates, time-limits and special provisions provided for in the act. Apart from the words "until the common organization of the market for these products is implemented" which may shorten the duration of the derogation, Article 60 (2) contains no such date, time-limit or special provision.

It follows that as from 1 January 1978 the general provisions of the EEC Treaty are applicable to trade in the products in question. The lack of a common organization of the market for the products in question does not alter that fact. This was the meaning of the Court's judgment in the *Charmasson* case.

(c) Observations of the French Government

The French Government claims that by the provisions of Article 60 (2) the authors of the Act of Accession intended to make allowance in areas not yet

covered by a common organization of the market for the existence in both the old and the new Member States of national organizations of the market based on fundamentally different principles. In view of this fact, the authors of the Act of Accession expressly provided, in a specific provision by way of derogation, that the abolition of charges having an effect equivalent to customs duties and of quantitative restrictions was not to apply to products coming under a national organization of the market until the introduction of a common organization.

(d) Statement of case of the British Government

The British Government, as defendant in the main action, claims that it is authorized to make use of the derogation provided for agricultural products in Article 60 (2) of the Act of Accession.

The question how long the derogation is to last must be answered by reference to Article 9 (2) of the Act of Accession. The "special provision" of Article 60 (2) is that the derogation is to last "until the common organization of the market for these products is implemented".

In order to give the article the meaning which the plaintiff desires to attribute to it it would be necessary to add at the end the words "or at the end of 1977 whichever is the earlier". No rule of interpretation can properly allow such words to be added.

In referring to the reasons for the derogation the British Government states that when the new Member States acceded it was necessary for them to change from the national market organization for each product to the common organization of the market where there was one. Where there was no common organization of the market, in the view of the British Government it would have been inconceivable for the new Member States to agree to abandon their own market organizations with nothing to put in their place. Accordingly Article 60 (2) of the Act of Accession enabled the new Member States to retain in respect of products which at the moment of accession were subject to a national organization of the market quantitative restrictions and measures having equivalent effect until the common organization of the market for those products was implemented.

Under the EEC Treaty there should have been by the end of the transitional period in 1969 a common organization of the market for every agricultural product. The Act of Accession did not alter the obligations of the original Member States to establish a common organization of the market for agricultural products or extend the transitional period applicable.

It is against this background that the *Charmasson* case must be interpreted.

In the present case on the other hand the new Member States joined a Community in which the original Member States were already in default as regards their obligations to establish the common agricultural policy within the period fixed by Article 40 (1) of the EEC Treaty. The situation which arose was accordingly expressly provided for in the Act of Accession.

In conclusion the British Government asks the Court to answer in the affirmative the question which has been referred to it.

(e) Observations of the Commission of the European Communities

First of all the Commission summarizes the organization of the market in potatoes in the United Kingdom:

— Each year the Ministry of Agriculture calculates the probable consumption and yield of potatoes in the United Kingdom, based on recent trends, and fixes a target acreage which is intended to provide enough potatoes for home demand with a slight surplus.

— Producers who grow more than one acre of potatoes for sale must be registered with the Potato Marketing Board (hereinafter referred to as "the Board").

— The Board, which is a statutory body established under the Potato Marketing Scheme (Approval) Order 1955, notifies each registered producer how many acres he should plant (the "quota") in order that the target acreage may be achieved.

— Each registered producer must pay to the Board a contribution on each acre planted. Producers who wish to plant more than their quota are required to pay an additional contribution.

— In order to provide a minimum guaranteed price for the producer, the Board may, with the approval of the Ministry of Agriculture, institute a buying-in programme for main-crop potatoes conforming to standards under which any registered producer may offer his potatoes for sale to the Board at a price designed to cover his costs of production and storage. This price is increased as the season advances. Potatoes bought by the Board are sold as stock feed, the price difference being largely made up by the government.

— If at the end of the crop season the average potato market price is shown to have fallen below the guaranteed price despite buying-in by the Board, the government makes a deficiency payment which is paid to the Board to be used for recouping the costs of the present or future buying-in programmes.

— The Board regulates the sales of potatoes for human consumption by prescribing the minimum size and quality of potatoes which may be sold by producers and by requiring sales normally to be made only to licensed merchants.

— Imports and exports of main-crop potatoes are controlled by the Department of Trade under powers derived from the Import of Goods (Control) Order 1954. In order to keep the United Kingdom market in balance, exports are banned in times of shortage and imports are banned in times of surplus.

— Since the accession of the United Kingdom on 1 January 1973, it seems

that there have been export bans on main-crop potatoes in 1973 (30 March to 31 May), 1974 (20 February to 31 May) and 1975 (16 October to 7 August 1977). At all other times, save from September to October 1975, the "normal ban" on imports applied.

Within the Community there are considerable differences between the prices quoted on the markets of the different Member States. The Commission attaches as an appendix to its observations a paper giving the wholesale prices of main-crop potatoes during the crop seasons 1973/1974 to 1976/1977 and also for the crop season 1977/1978.

The figures show that the continuance of the ban on imports of main-crop potatoes into the United Kingdom after the end of 1977 helped to maintain prices on the London market at the beginning of 1978 whilst it depressed prices on the Rotterdam and particularly the Arras markets.

The facts of the case have already been the subject of an exchange of correspondence between the Commission and the Government of the United Kingdom: This correspondence has led the Commission to deliver a reasoned opinion under Article 169 of the EEC Treaty.

In summarizing the case-law of the Court in the matter the Commission states that the *Charmasson* judgment is confirmed by the judgments given in Case 68/76 *Commission* v *French Republic* [1977] ECR 515 and in Joined Cases 80 and 81/77 *Commissionnaires Réunis and Les Fils de Henri Ramel* v *Receveur des Douanes,* judgment of 20 April 1978.

Article 60 (2) of the Act of Accession must be read in the context of the whole act and in particular of Articles 2 and 9. Article 2 enunciates the principle, which is fundamental to the Act of Accession, of acceptance of the "acquis communautaire". An exception is made to this principle by a system of transitional measures (Article 9).

The Commission does not accept that the phrase "until the common organization of the markets ... is implemented" (Article 60 (2)) is a "special provision" to which the time-limit provided by Article 9 is subject. The drafting of Article 60 (2) does not permit such an interpretation since the placing of the phrase indicates that it is intended to be a limitation to an exception to the general rule, as is the other part of the sentence.

On the other hand the provisions of the Act of Accession which might be interpreted as being "special provisions" in the sense of Article 9, entailing an extension of transitional measures beyond 31 December 1977 are quite explicit in this regard.

In fact Article 60 (2) of the Act of Accession must be placed in its proper context. At the time of its drafting the prevailing interpretation of the Treaty was to the effect that, in the absence of a common organization of the market in a product, the original Member States still possessed the power to retain certain barriers to free movement of goods within the Community, a power which was an integral part of a national organization. The system in the Act of Accession was therefore assimilated to that thought to pertain under the Treaty, on the understanding that if at 31 December 1977 there were still no common organization, the position regarding trade restrictions in the new

Member States would be exactly the same as in the original Member States. In this sense Article 60 (2) was not to be regarded as a "transitional measure" at all, any more than was Article 60 (1).

In its judgment in the *Charmasson* case the Court declared that as regard the original Member States the derogations which a national organization of the market could effect from the general rules of the Treaty were only permissible during the "transitional period". In the light of that judgment Article 60 (2) has taken on the character of a transitional measure permitting, for trade involving the new Member States, a system different from that applicable to trade involving merely the original Member States.

A contrary interpretation of Article 60 (2) would mean an extension beyond the limit fixed by Article 9 of two different sets of rules. This would manifestly be contrary to the intent of that article as it was originally envisaged.

Finally the Commission recalls that the Council is at present considering proposals regarding other common organizations of the market for products in which trade involving the new Member States is an important factor in the Community market. A decision by the Court to the effect that restrictions on trade with the new Member States in these products are still permissible might have the effect of postponing yet further a decision by the Council to establish common organizations.

In conclusion the Commission suggests that the Court should reply as follows to the question submitted to it:

"Article 30 of the EEC Treaty together with the Act of Accession, in particular Articles 9 and 60 (2) thereof, is to be interpreted as not permitting the retention of quantitative restrictions on imports of agricultural products into a new Member State after 31 December 1977 notwithstanding — that the restrictions form part of a national market organization and that the products are not covered by a common organization of the market."

III — Oral procedure

At the hearing on 26 October 1978 the plaintiff in the main action, represented by F. G. Jacobs of the London Bar, the Government of the United Kingdom, represented by W. H. Godwin, assisted by L. Bromley, Q. C., of the London Bar, the Netherlands Government, represented by A. Bos, and the Commission of the European Communities, represented by R. Wainwright and B. Hoff Nielsen, presented oral argument.

The Advocate General delivered his opinion at the hearing on 22 November 1978.

Decision

1 By an order of 12 April 1978, which was received at the Court Registry on 19 May 1978, the High Court of Justice, Queen's Bench Division, Commercial Court, referred to the Court of Justice for a preliminary ruling pursuant to Article 177 of the EEC Treaty a question relating to the interpretation of Article 60 (2) of the Act concerning the Conditions of Accession and the Adjustments to the Treaties annexed to the Treaty of 22 January 1972 concerning the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community (hereinafter referred to as "the Act of Accession").

2 The question was raised in the context of a dispute between a Netherlands company which exported potatoes and the competent authorities in the United Kingdom and it relates to the refusal of the latter authorities to permit the entry of a consignment of potatoes which arrived at Great Yarmouth on 6 January 1978.

3 The plaintiff in the main action sought a declaration from the national court to the effect that the United Kingdom is not since 1 January 1978 entitled to prohibit the importation of potatoes from Member States of the European Economic Community whilst the defendants relied on Article 60 (2) of the Act of Accession; the national court therefore asked the Court of Justice to give a preliminary ruling on the following question:

"Whether in the case of an agricultural product which was not covered at the date of accession by a common organization of the market and is still not so covered on 1 January 1978 Article 60 (2) of the Act of Accession or any other provisions of Community law permits the retention of quantitative restrictions on imports in respect of that product after 31 December 1977 (if they formed part of a national market organization on the date of accession) to the extent necessary to ensure the maintenance of the national organization and until the common organization of the market for that product is implemented?"

4 The measures to which the national court refers have formed the subject of proceedings under Article 169 of the EEC Treaty brought by the Commission in Case 231/78 against the United Kingdom for failure to fulfil its obligations.

5 In substance the legal question examined in the context of Case 231/78 is identical to that raised by the question from the High Court of Justice.

6 By judgment delivered this day the Court of Justice has ruled that, by not repealing or amending before the end of 1977 the provisions of its national law which have the effect of restricting imports of potatoes, the United Kingdom has failed to fulfil its obligations under the Treaty.

7 It is sufficient therefore to refer to the judgment in Case 231/78 the text of which is annexed to this judgment (see p. 1447).

8 Taking account of the grounds referred to in that judgment the question put by the High Court of Justice may be answered to the effect that Article 60 (2) of the Act of Accession cannot be regarded as a special provision within the meaning of the reservation set out in Article 9 (2) of that Act with the result that by virtue of the latter provision its application terminated at the end of 1977.

Costs

9 The costs incurred by the Government of the Kingdom of the Netherlands, the Government of the French Republic, the Government of the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

10 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the High Court of Justice, Queen's Bench Division, Commercial Court, by order of 12 April 1978, hereby rules:

"Article 60 (2) of the Act of Accession cannot be regarded as a special provision within the meaning of the reservation set out in Article 9 (2) of that Act with the result that by virtue of the latter provision its application terminated at the end of 1977."

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 29 March 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 22 NOVEMBER 1978 [1]

Mr President,
Members of the Court,

I — The plaintiff in the main action is engaged in the Netherlands in the production, marketing and export of potatoes; it is a member of the Vereniging van Nederlandse exporteurs van aardappelen [Association of Netherlands Potato Exporters] (V.N.E.A.). On 5 January 1975 it shipped a consignment of 20 tonnes of "ware" potatoes to London in order, as it openly declares, to test the British market. The consignment arrived in Great Yarmouth that same day but Her Majesty's Customs and Excise Department refused to allow the

1 — Translated from the French.