JUDGMENT OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)

10 June 2009 *

In Case T-257/04,

Republic of Poland, represented initially by J. Pietras, and subsequently by E. Ośniecka-Tamecka, T. Nowakowski, M. Dowgielewicz and B. Majczyna, acting as Agents, assisted by M. Szpunar, lawyer,

applicant,

v

Commission of the European Communities, represented initially by A. Stobiecka-Kuik, L. Visaggio and T. van Rijn, and subsequently by T. van Rijn, H. Tserepa-Lacombe and A. Szmytkowska, acting as Agents,

defendant,

ACTION for annulment of Article 3, Article 4(3) and the eighth indent of Article 4(5) of Commission Regulation (EC) No 1972/2003 of 10 November 2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the

* Language of the case: Polish.

accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2003 L 293, p. 3), as amended by Commission Regulation (EC) No 230/2004 of 10 February 2004 (OJ 2004 L 39, p. 13) and Commission Regulation (EC) No 735/2004 of 20 April 2004 (OJ 2004 L 114, p. 13),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber, Extended Composition),

composed of V. Tiili (Rapporteur), President, F. Dehousse, I. Wiszniewska-Białecka, K. Jürimäe and S. Soldevila Fragoso, Judges,

Registrar: K. Pocheć, Administrator,

having regard to the written procedure and further to the hearing on 16 June 2008,

gives the following

Judgment

Facts of the dispute

1 On 10 November 2003, the Commission adopted Regulation (EC) No 1972/2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2003 L 293, p. 3).

2 That regulation was adopted on the basis of Article 2(3) of the Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union (OJ 2003 L 236, p. 17; 'the Accession Treaty'), signed in Athens on 16 April 2003 and ratified by the Republic of Poland on 23 July 2003, and on the basis of the first paragraph of Article 41 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak

Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33; 'the Act of Accession'), annexed to the Accession Treaty.

3 Regulation No 1972/2003, which was amended by Commission Regulation (EC) No 230/2004 of 10 February 2004 (OJ 2004 L 39, p. 13) and Commission Regulation (EC) No 735/2004 of 20 April 2004 (OJ 2004 L 114, p. 13), essentially, and in so far as the present dispute is concerned, introduces, inter alia, a system of charges for certain agricultural products by way of transitional derogation from the Community rules which would otherwise be applicable.

4 Thus, Article 3 of Regulation No 1972/2003 provides as follows:

'Suspensive regime

1. This Article shall apply by way of derogation from Annex IV, Chapter 5, to the Act of Accession and from Articles 20 and 214 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code …

2. Products listed in Article 4(5), which before 1 May 2004 have been in free circulation in the Community of Fifteen or in a new Member State and on 1 May 2004 are in temporary storage or under one of the customs treatments or procedures referred to in Article 4(15)(b) and (16)(b) to (g) of Regulation (EEC) No 2913/92 in the enlarged Community, or which are in transport after having been the subject of export formalities within the enlarged Community shall be charged with the *erga omnes* import duty rate applicable on the date of release for free circulation.

The first subparagraph shall not apply to products exported from the Community of Fifteen if the importer gives evidence that no export refund has been sought for the products of the country of export. Upon the importer's request, the exporter shall arrange to obtain an endorsement by the competent authority on the export declaration that an export refund has not been sought for the products of the country of export.

3. Products listed in Article 4(5) coming from third countries which are under inward processing referred to in Article 4(16)(d) or temporary admission referred to in Article 4(16)(f) of Regulation (EEC) No 2913/92 in a new Member State on 1 May 2004 and which are released for free circulation on or after that date, shall be charged with the import duty applicable on the date of release for free circulation to products coming from third countries.'

5 Article 4 of Regulation No 1972/2003 provides as follows:

'Charges on goods in free circulation

1. Without prejudice to Annex IV, Chapter 4, to the Act of Accession, and where stricter legislation does not apply at national level, the new Member States shall levy charges on holders of surplus stocks at 1 May 2004 of products in free circulation.

2. In order to determine the surplus stock of each holder, the new Member States shall take into account, in particular:

(a) averages of stocks available in the years preceding accession;

(b) the pattern of trade in the years preceding accession;

(c) the circumstances in which stocks were built up.

The notion [of] surplus stocks applies to products imported into the new Member States or originating from the new Member States. The notion [of] surplus stocks applies also to products intended for the market of the new Member States.

…

3. The amount of the charge referred to in paragraph 1 shall be determined by the *erga omnes* import duty rate applicable on 1 May 2004. The revenue of the charge collected by national authorities shall be assigned to the national budget of the new Member State.

…

5. This Article shall apply to products covered by the following CN codes:

…

— in the case of Poland:

0201 30 00, 0202 30 10, 0202 30 50, 0202 30 90, 0204 30 00, 0204 43 10, 0206 29 91, 0207 14 10, 0207 14 70, 0402 10, 0402 21, 0405 10, 0405 90, 0406, 0703 20 00, 0711 51 00, 1001, 1002, 1003, 1004, 1005, 1006 10, 1006 20, 1006 30, 1006 40, 1007, 1008, 1101, 1102, 1103, 1104, 1107, 1108, 1509, 1510, 1602 32 11, 1702 30 [Except for 1702 30 10], 1702 40 [Except for 1702 40 10], 1702 90 [Limited to 1702 90 10, 1702 90 50, 1702 90 75, 1702 90 79], 2003 10 20, 2003 10 30, 2008 30 55, 2008 30 75.

…

6. The Commission may add products to the list or remove products from the list set out in paragraph 5.'

6 Seven of the products on the list referred to in the eighth indent of Article 4(5) of Regulation No 1972/2003, as amended, were added by Regulation No 735/2004, namely, the products covered by CN codes 0202 30 10, 0202 30 50, 0207 14 10, 0207 14 70, 1602 32 11, 2008 30 55 and 2008 30 75. Regulation No 735/2004 merely amended the list in question and not the terms of the other provisions of Regulation No 1972/2003 which are being challenged in the present action.

Procedure

7 The Republic of Poland brought the present action by application lodged at the Registry of the Court of First Instance on 28 June 2004.

8 Taking the view that the case before it raised a question of interpretation identical to that raised in Case C-273/04 *Poland* v *Council*, pending before the Court of Justice, the President of the Third Chamber of the Court of First Instance, by order of 11 July 2006 stayed, pursuant to the third paragraph of Article 54 of the Statute of the Court of Justice and Articles 77(a) and 78 of the Rules of Procedure of the Court of First Instance, proceedings in the present case until the Court of Justice had delivered judgment.

9 By judgment of 23 October 2007 in Case C-273/04 *Poland* v *Council* [2007] ECR I-8925, the Court of Justice dismissed the action before it after ruling at the outset on the substance of the case, but without ruling on the objection of inadmissibility raised by the Council.

10 Following changes in the composition of the Chambers of the Court of First Instance, the Judge-Rapporteur was assigned to the First Chamber; the present case was for that reason allocated to that Chamber.

11 By decision of 8 January 2008, the Court, construing the request of the Republic of Poland for referral of the case to the Grand Chamber as seeking, in the alternative, referral of the case to a Chamber composed of five Judges, on the proposal of the First Chamber referred the case to the First Chamber (Extended Composition) pursuant to the second subparagraph of Article 51(1) of the Rules of Procedure, which states that the case is to be decided by a Chamber composed of at least five Judges when a Member State which is a party to the proceedings so requests.

12 On 11 April 2008, the Court put a number of questions in writing to the Commission, which complied with that request within the prescribed period.

13 Upon hearing the report of the Judge-Rapporteur, the Court (First Chamber, Extended Composition) decided to open the oral procedure.

14 The parties presented oral argument and their answers to the questions put by the Court at the hearing on 16 June 2008.

15 The Republic of Poland claims that the Court should:

— annul Article 3, Article 4(3) and the eighth indent of Article 4(5) of Regulation No 1972/2003, as amended;

— order the Commission to pay the costs.

16 The Commission contends that the Court should:

— dismiss the action in its entirety;

— order the Republic of Poland to pay the costs.

Admissibility

Arguments of the parties

17 While not raising a formal objection of inadmissibility, the Commission contends in its defence that the action has been brought out of time and is for that reason inadmissible.

18 The Commission points out that, in accordance with the fifth paragraph of Article 230 EC, proceedings against a regulation must be instituted within a period of two months starting from the fifteenth day following the publication of that measure. Since Regulation No 1972/2003 was published in the *Official Journal* on 11 November 2003, the period for bringing an action against that regulation expired on 4 February 2004 at midnight.

19 The Commission points out that the Act of Accession does not lay down any rule permitting a derogation from the period prescribed in Article 230 EC. It takes the view that the fixing of a date other than that of the publication of Regulation No 1972/2003 to mark the start of the period within which the Republic of Poland had to bring proceedings would introduce a time-limit for the bringing of actions by the new Member States different from that laid down for the old Member States.

20 In support of its argument, the Commission relies on Case C-194/01 *Commission* v *Austria* [2004] ECR I-4579. It takes the view that, in that judgment, the Court of Justice held that the new Member States could not, after their accession, bring an action for annulment of a Community measure even though the period for challenging that measure had expired before the date of their accession (paragraph 41). The

Commission also relies on Joined Cases 39/81, 43/81, 85/81 and 88/81 *Halyvourgiki and Helleniki Halyvourgia* v *Commission* [1982] ECR 593, paragraphs 9 to 15, in which, in its view, the Court of Justice held that measures adopted between the date of the signature of the Accession Treaty and that of its entry into force automatically bind new Member States from the date on which that Treaty enters into force.

21 Finally, the Commission takes the view that the argument put forward by the Republic of Poland in its reply, namely that, even if the period for bringing an action had expired in regard to Regulation No 1972/2003, the action would in any event be admissible in respect of the products added by Regulation No 735/7004, amounts to a new plea in law within the meaning of Article 48(2) of the Rules of Procedure and is for that reason inadmissible.

22 The Republic of Poland points out that Article 2(3) of the Accession Treaty provides that the institutions of the Union could adopt before accession the measures referred to in Article 41 of the Act of Accession, which would enter into force only subject to and on the date of the entry into force of that Treaty. This latter circumstance, it argues, distinguishes Regulation No 1972/2003 from the other measures adopted by the Community institutions prior to accession, as does the fact that the expression 'Member States' in that regulation refers both to the old Member States and to the new Member States.

23 For that reason, and without challenging the period laid down in Article 230 EC in regard to all measures adopted during the period preceding the accession of a new Member State, the Republic of Poland takes the view that, inasmuch as Regulation No 1972/2003 was adopted on the basis of the Act of Accession and was addressed to it as a Member State, it was entitled to bring an action within two months of its accession.

24 The Republic of Poland points out, in this connection, that the judgments in *Halyvourgiki and Helleniki Halyvourgia* v *Commission* and *Commission* v *Austria*,

cited in paragraph 20 above, do not, in contrast to Regulation No 1972/2003, concern legal acts adopted on the basis of an act of accession.

25 In addition, the Republic of Poland considers that, since Regulation No 1972/2003 was addressed to the Member States of the European Union as of 1 May 2004, it should have been published in the twenty official languages of the European Union in accordance with Annex II, Chapter 22, paragraph 1, to the Act of Accession. Consequently, the process of the publication of that regulation was not concluded on 11 November 2003, but on 1 May 2004, at which date, or from which date, it was published in the twenty official languages.

26 In the view of the Republic of Poland, its argument is confirmed by the case-law which states that, since the different language versions of Community texts are all equally authentic, an interpretation of a provision of Community law involves a comparison of the different language versions (Case 283/81 *Cilfit and Another* [1982] ECR 3415, paragraph 18). On 11 November 2003, Regulation No 1972/2003 had not been published in the Polish language and it was therefore impossible to interpret it correctly.

27 The Republic of Poland also claims that 1 May 2004 is the start of the period within which proceedings had to be brought by all the Member States and not only by those which had acceded on that date, which invalidates the Commission's arguments based on different expiry dates for periods for bringing actions.

28 The Republic of Poland also points out that the Commission's argument implies a lesser degree of judicial protection for the new Member States, even though they are particularly affected by Regulation No 1972/2003. They ought to be in a position to challenge the regulation at issue in their capacity as Member States, since the regulation was addressed to them in that capacity.

29 The Republic of Poland claims that it would not have been able to bring an action against Regulation No 1972/2003, before accession, as a non-privileged party under the fourth paragraph of Article 230 EC because, on the one hand, the regulation at issue is a measure of general application and not an individual decision within the meaning of that provision and, on the other, it is not directly and individually concerned by it within the meaning of the case-law of the Court of Justice on actions brought by regional or local authorities (Case C-452/98 *Nederlandse Antillen* v *Council* [2001] ECR I-8973 and Case C-142/00 P *Commission* v *Nederlandse Antillen* [2003] ECR I-3483, paragraph 69). The Republic of Poland takes the view that only measures preventing regional or local authorities from performing their functions in the manner which they consider appropriate may be regarded as being of individual concern to them (Case T-288/97 *Regione autonoma Friuli-Venezia Giulia* v *Commission* [1999] ECR II-1871). Regulation No 1972/2003, however, did not limit its rights in that regard.

30 The Republic of Poland also claims that Article 241 EC is not a useful legal remedy against Regulation No 1972/2003 as it does not constitute an independent right of action and may be invoked only incidentally in proceedings brought on a separate legal basis. In addition, the relevant provisions of Regulation No 1972/2003 are so precise that they do not provide a basis for the adoption of more detailed implementing measures, a fact which makes it impossible to plead their inapplicability on the basis of Article 241 EC. Moreover, a Member State cannot, after expiry of the period prescribed in Article 230 EC, call into question the validity of a Community legal act by way of defence in proceedings for a declaration that it has failed to fulfil its obligation to transpose that act. Consequently, the effect of the Commission's argument would be to deprive it of the right to bring an action against Regulation No 1972/2003.

31 In the alternative, the Republic of Poland claims, in its reply, that the present action, brought on 28 June 2004, is in any event admissible with regard to the products added by Regulation No 735/2004, which was published in the *Official Journal* on 21 April 2004, since it has brought an action for annulment of Regulation No 1971/3002, as amended by Regulation No 735/2004.

Findings of the Court

32 According to the fifth paragraph of Article 230 EC, actions 'shall be instituted within two months of the publication of the measure … or, in the absence thereof, of the day on which it came to the knowledge of the [applicant] …' It is clear simply from the wording of that provision that the criterion of the date on which a measure came to the knowledge of the applicant, as the starting point of the period prescribed for instituting proceedings, is subsidiary to the criteria of publication or notification of the measure (Case C-122/95 *Germany* v *Council* [1998] ECR I-973, paragraph 35).

33 It must also be pointed out that the strict application of Community rules concerning procedural time-limits meets the requirements of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice (order in Case C-59/91 *France* v *Commission* [1992] ECR I-525, paragraph 8; judgment in Case C-137/92 P *Commission* v *BASF and Others* [1994] ECR I-2555, paragraph 40; order in Case C-239/97 *Ireland* v *Commission* [1998] ECR I-2655, paragraph 7, and order in Case C-406/01 *Germany* v *Parliament and Council* [2002] ECR I-4561, paragraph 20). In addition, strict compliance with procedural time-limits meets the requirements of sound administration of justice and procedural economy (Case C-310/97 P *Commission* v *AssiDomän Kraft Products and Others* [1999] ECR I-5363, paragraph 61). Finally, the fact that an action has been brought out of time is a public policy exception which must be ruled on of the Court's own motion (Case 108/79 *Belfiore* v *Commission* [1980] ECR 1769, paragraph 3).

34 In the present case, Regulation No 1972/2003 was published in the *Official Journal* on 11 November 2003. The day on which the period for bringing actions expired must therefore be calculated from that date.

35 Article 101(1)(a) of the Rules of Procedure provides that 'where a period expressed in days, weeks, months or years is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question'. Furthermore, in application of Article 102(1) of the Rules of Procedure, where the period of time allowed for commencing proceedings against a measure adopted by an institution runs

from the publication of that measure, that period is to be calculated, for the purposes of Article 101(1)(a), from the end of the 14th day after publication thereof in the *Official Journal*. It follows that, in the present case, the two-month period for bringing actions is to be calculated from 25 November 2003 at midnight.

36 Furthermore, Article 101(1)(b) of the Rules of Procedure provides that a period expressed in months is to end with the expiry of whichever day in the last month falls on the same date as the day during which the event or action from which the period to be calculated occurred or took place. The period within which proceedings had to be brought in the present case therefore expired on 25 January 2004 at midnight.

37 However, when account is taken of the single period of 10 days on account of distance, which must be added to the prescribed time-limits pursuant to Article 102(2) of the Rules of Procedure, the overall period for bringing an action against Regulation No 1972/2003 expired on 4 February 2004 at midnight.

38 The Republic of Poland, however, lodged the present action on 28 June 2004. It follows that the action was brought out of time in regard to Regulation No 1972/2003.

39 None of the arguments put forward by the Republic of Poland can cast doubt on that conclusion.

40 With regard, first, to the Republic of Poland's argument alleging incomplete publication of Regulation No 1972/2003 inasmuch as it was not published in the twenty official languages of the European Union, it must be pointed out that Article 4 of Regulation No 1 of the Council of 15 April 1958 determining the languages to be used by the European Economic Community (OJ English Special Edition 1952-1958, p. 59), as

amended, provides, in the version applicable on 11 November 2003, that 'Regulations and other documents of general application shall be drafted in the eleven official languages'.

41 As Article 1 of the Accession Treaty provides that the provisions of the Act of Accession are to form an integral part of that Treaty, those provisions enter into enter into force on the same date as the Treaty. Consequently, the amendments to the rules governing the languages to be used, laid down in Annex II, Chapter 22, paragraph 1, to the Act of Accession, which include the languages of the new Member States among the working languages of the institutions, did not enter into force until 1 May 2004.

42 It follows that the Commission was not required to publish Regulation No 1972/2003 in Polish on 11 November 2003 and that it could be interpreted on the basis of the other language versions published on that date.

43 With regard, secondly, to the argument based on the entry into force of Regulation No 1972/2003 subject to, and on the date of, the entry into force of the Accession Treaty, that is to say, on 1 May 2004, it is important not to confuse the challengeability of a measure, which is connected with the completion of all the requisite formalities as to publicity and causes the period for bringing proceedings to start running, with the entry into force of that measure, which may be delayed (see, to that effect, the Opinion of Advocate General Poiares Maduro in *Poland* v *Council*, cited in paragraph 9 above, at I-8962, point 23).

44 The fifth paragraph of Article 230 EC does not lay down the date on which the measure enters into force as the start of the period within which proceedings must be brought. Even if Regulation No 1972/2003 were, as the Republic of Poland claims, different from the rest of the *acquis communautaire* as regards the time at which it was implemented and the group to which it was addressed, that would therefore not prevent the period within which proceedings had to be brought from running from the publication of the regulation at issue.

45 Thirdly, the argument that Regulation No 1972/2003 was addressed to all of the Member States, including the Republic of Poland, with the result that the latter must be able to challenge it in that capacity, must also be rejected.

46 First of all, the Act of Accession provides specifically for the possibility of the Community institutions adopting certain measures between the date on which the Act of Accession was signed and the date on which the new Member States acceded, without, however, laying down any temporary exceptions to the system of judicial review of the legality of Community measures.

47 Secondly, it must be borne in mind that the Community rules concerning procedural time-limits have to be strictly applied (see, to that effect, Case 152/85 *Misset* v *Council* [1987] ECR 223, paragraph 11) and that they may not be derogated from save where the circumstances are quite exceptional, in the sense of being unforeseeable or amounting to *force majeure* (order in Case C-369/03 P *Forum des migrants* v *Commission* [2004] ECR I-1981, paragraph 16). However, the Republic of Poland does not explain how the present circumstances are quite exceptional in regard to it and necessitate a derogation from the principle of strict application of procedural time-limits, thereby prejudicing the principle of legal certainty.

48 Thirdly, if the Republic of Poland's argument is to be understood as meaning that it considered that it had to wait until it became a Member State before it could bring its action, it must be pointed out that the period laid down in Article 230 EC within which proceedings must be brought is of general application. It did not require the Republic of Poland to have the status of a Member State. That period is applicable to it in any event as a legal person.

49 Finally, with regard to the argument based on the right to effective judicial protection, it must be pointed out straight away that that right is in no way undermined by the strict

application of Community rules concerning procedural time-limits which meets, inter alia, the requirements of legal certainty (order in *Germany* v *Parliament and Council*, cited above in paragraph 33, paragraph 20).

50 Moreover, although it is true that the conditions for bringing an action before the Community Courts must be interpreted in the light of the principle of effective judicial protection, such an interpretation cannot have the effect of setting aside a condition expressly laid down in the Treaty without going beyond the jurisdiction conferred by the Treaty on the Community Courts (Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 44; see also, by way of analogy, Case C-75/02 P *Diputación Foral de Álava and Others* v *Commission* [2003] ECR I-2903, paragraph 34).

51 Finally, although it is true that the Community Courts have accepted, in interpreting the second and fourth paragraphs of Article 230 EC, that persons who had no effective judicial remedy against the measures referred to in the first paragraph of Article 230 EC have the capacity to bring actions for annulment against such measures (see, to that effect, Case 294/83 *Les Verts* [1986] ECR 1339, paragraph 23; Case C-295/90 *Parliament* v *Council* [1992] ECR I-4193; and Case C-65/90 *Parliament* v *Council* [1992] ECR I-4593), it remains true that the fact that the start of the period within which proceedings had to be brought ran from the date on which Regulation No 1972/2003 was published did not prevent the Republic of Poland from requesting the Court to review the legality of that regulation. Contrary to its assertions, it could have brought an action against that measure under the fourth paragraph of Article 230 EC.

52 Although non-member countries, including new Member States before accession, cannot claim the status of litigant conferred on the Member States by the Community system, they may bring proceedings under the right of action conferred on legal persons (see, to that effect, the Opinion of Advocate General Poiares Maduro in *Poland* v *Council*, cited in paragraph 43 above, point 40).

53 That interpretation is confirmed by the case-law concerning the right of sub-State bodies to bring actions for annulment, in which it has been held that the purpose of the fourth paragraph of Article 230 EC is to provide appropriate judicial protection for all

persons, natural or legal, who are directly and individually concerned by acts of the Community institutions. Standing to bring an action must accordingly be recognised in the light of that purpose alone and an action for annulment must therefore be available to all those who fulfil the objective conditions prescribed, that is to say, those who possess the requisite legal personality and are directly and individually concerned by the contested measure. This must also be the approach where the applicant is a public entity which satisfies those criteria (*Regione autonoma Friuli-Venezia Giulia* v *Commission*, cited in paragraph 29 above, paragraph 41; see also the Opinion of Advocate General Poiares Maduro in *Poland* v *Council*, cited in paragraph 43 above, point 41), which was applicable to the new Member States before they acceded to the European Union.

54 In the present case, Regulation No 1972/2003 is, admittedly, a measure of general application and not a decision within the meaning of Article 249 EC. However, the fact that a measure is of general application does not prevent it from being of direct and individual concern to certain natural or legal persons (Case C-309/89 *Codorníu* v *Council* [1994] ECR I-1853, paragraph 19, and *Nederlandse Antillen* v *Council*, cited in paragraph 29 above, paragraph 55).

55 According to settled case-law, a measure of general application such as a regulation can be of individual concern to natural or legal persons only if it affects them by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and thereby distinguishes them individually in the same way as the addressee of a decision within the meaning of Article 249 EC (Case C-451/98 *Antillean Rice Mills* v *Council* [2001] ECR I-8949, paragraph 49; *Unión de Pequeños Agricultores* v *Council*, cited in paragraph 50 above, paragraph 36; and *Commission* v *Nederlandse Antillen*, cited in paragraph 29 above, paragraph 65).

56 It must be pointed out in that regard that a sub-State body is directly and individually concerned by a Community measure when that measure directly prevents it from exercising its own powers (see, to that effect, Case T-214/95 *Vlaams Gewest* v *Commission* [1998] ECR II-717, paragraph 29, and *Regione autonoma Friuli-Venezia Giulia* v *Commission*, cited in paragraph 29 above, paragraph 31).

57 That must also apply to the new Member States prior to their accession to the European Union in regard to Community measures adopted after they had signed the Accession Treaty.

58 It is clear that the provisions of Regulation No 1972/2003 imposed various obligations on the Republic of Poland and thereby affected the exercise of its own powers.

59 The Republic of Poland was required, inter alia, under Article 4 of Regulation No 1972/2003, to carry out, without delay, an inventory of available stocks of certain agricultural products as at 1 May 2004 and to levy charges on holders of surplus stocks of products in free circulation in an amount equal to the *erga omnes* import duty rate applicable on that date.

60 In addition, Article 3 of Regulation No 1972/2003 required the Republic of Poland to levy a charge equal to the *erga omnes* import duty rate applicable on the date of release for free circulation on the products listed in the eighth indent in Article 4(5) of that regulation which had been in free circulation in its territory before 1 May 2004 and were on that date in temporary storage or under one of the customs treatments or procedures referred to in Article 4(15)(b) and (16)(b) to (g) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) in the enlarged Community, or which were in transport within the enlarged Community after having been the subject of export formalities.

61 Consequently, before it became a Member State, the Republic of Poland was directly and individually concerned by Regulation No 1972/2003 and could have brought an action for annulment of that regulation under the fourth paragraph of Article 230 EC.

62 It follows from the foregoing that the strict application of the period within which proceedings had to be brought, starting from the date on which Regulation No 1972/2003 was published, did not, in the present case, prevent the Republic of Poland from asserting its rights or deprive it of the benefit of effective judicial protection.

63 In the light of the foregoing, it must be concluded that, in regard to Regulation No 1972/2003, the present action is out of time and must therefore be dismissed as inadmissible.

64 Consequently, it is necessary to examine the argument put forward in the alternative by the Republic of Poland that, since the present action was brought on 28 June 2004, it is, in any event, admissible in respect of the products added by Regulation No 735/2004, which was published in the *Official Journal* on 21 April 2004.

65 It must be noted at the outset that, in the case of the Republic of Poland, Regulation No 735/2004, inter alia, added to the list of products subject to the measures laid down in Regulation No 1972/2003 seven products which had not previously been the subject of similar measures (see paragraph 6 above).

66 The Republic of Poland brought the present action against Regulation 1972/2003, as amended by, inter alia, Regulation No 735/2004. It follows that, from the time at which it brought the action, the Republic of Poland was challenging the fact that the seven products added by Regulation No 735/2004 had been made subject to the same measures as those initially introduced by Regulation No 1972/2003 for other products.

67 It is thus necessary to reject the Commission's argument that, by putting forward its argument in the alternative and only in the reply, the Republic of Poland introduced a

new plea in law in the course of proceedings, which is prohibited by the first subparagraph of Article 48(2) of the Rules of Procedure.

68 Although the procedural argument which has just been rejected is the only one put forward by the Commission by way of objection to the admissibility of the action in regard to the products added by Regulation No 735/2004 being made subject to the abovementioned measures, the present issue of admissibility must also be considered from a material point of view inasmuch as, as has been pointed out in paragraph 33 above, the fact that an action has been brought out of time is a public-policy exception which must be ruled on of the Court's own motion.

69 Since the Republic of Poland is not challenging the addition, as such, in regard to it, of seven products to the list of products subject to the measures laid down in Regulation No 1972/2003 but is challenging rather the legality of those measures, it is thus necessary to consider whether the present action ought not to be regarded as inadmissible in regard to the products added by Regulation No 735/2004 on the ground that, by this plea, the Republic of Poland is not actually challenging the legality of the amendments made by that regulation but rather the legality of the measures originally introduced by Regulation No 1972/2003 for other products, thereby evading the time-bar in regard to the latter regulation.

70 It must be pointed out in that regard that, although the definitive character of a measure which has not been challenged within the time-limit concerns not only the measure itself but also any later measure which is merely confirmatory, an approach which is justified by the requirement of legal stability and applies to individual measures as well as to those which have a legislative character, such as a regulation, where a provision in a regulation is amended, a fresh right of action arises, not only against that provision alone, but also against all the provisions which, even if not amended, form a whole with it (see, to that effect, Case C-299/05 *Commission* v *Parliament and Council* [2007] ECR I-8695, paragraphs 29 and 30).

71 A Community act under which products are added to a list cannot but form a whole with the provisions of another Community act which lay down the measures to which

the products on that list are subject because, if the position were otherwise, the act under which the products were added to the list would be deprived entirely of legal effect.

72 It must also be pointed out that a person who has *locus standi* to bring an action against a Community act under which products on a list are made subject to certain measures but fails to bring his action within the required time-limit cannot, on that ground, be prevented from raising, in the context of an action against another act under which products have been added to the list at issue, the illegality of the measures to which those additional products are henceforth subject. Such measures constitute new measures in regard to the products added to the list by the second act adopted. The second act adopted cannot therefore be regarded as purely confirmatory in regard to those measures.

73 The conclusion must therefore be drawn that the present action is admissible in so far as it can be construed as amounting to an application for annulment of Regulation No 735/2004, to the extent to which that regulation, in the case of the Republic of Poland, makes seven additional products subject to the same measures as were initially introduced by Regulation No 1972/2003 for other products ('the contested measures'), which the Republic of Poland considers unlawful in regard to those seven additional products. The pleas in law and arguments of the Republic of Poland challenging the contested provisions of Regulation No 1972/2003 must be interpreted in that manner.

Substance

74 The present action is essentially divided into four parts.

75 In the first part, the Republic of Poland puts forward five pleas in law in support of its application for annulment of Regulation No 735/2004 in so far as, in regard to it, that regulation makes seven additional products subject to the measures referred to in

Article 3 of Regulation No 1972/2003, something which it considers to be unlawful in respect of the products at issue. The first plea alleges infringement of the principle of free movement of goods. The second plea alleges that the Commission did not have the power to adopt the abovementioned measures and that Articles 22 and 41 of the Act of Accession have been infringed. The third plea alleges infringement of the principle of non-discrimination on grounds of nationality. The fourth plea alleges a lack of a statement of reasons or an insufficient statement of reasons. Finally, the fifth plea alleges infringement of the principle of the protection of legitimate expectations.

76 In the second part, the Republic of Poland puts forward two pleas in law in support of its application for annulment of Regulation No 735/2004 in so far as, in regard to it, that regulation makes seven additional products subject to the measure referred to in Article 4(3) of Regulation No 1972/2003, something which it considers to be unlawful in respect of the products at issue. The first plea alleges an infringement of Article 41 of the Act of Accession and of the principle of proportionality. The second plea alleges an infringement of the principle of non-discrimination on grounds of nationality.

77 In the third part, the Republic of Poland puts forward a single plea in law in support of its application for annulment of Regulation No 735/2004 in so far as, in regard to it, that regulation adds seven additional products to the list of products contained in the eighth indent of Article 4(5) of Regulation No 1972/2003, which it considers to have been amended in violation of Article 41 of the Act of Accession and of the principle of proportionality.

78 Finally, in the fourth part, the Republic of Poland puts forward a single plea in law in support of its application for annulment of Regulation No 735/2004 in so far as, in regard to it, that regulation makes seven additional products subject to all of the contested measures, which it considers to be unlawful in respect of the products at issue. The single plea alleges a misuse of powers.

79 It is appropriate to examine first of all the pleas put forward by the Republic of Poland in the second part of its action, and subsequently those put forward in the third, first and fourth parts of the action.

The second part of the action: application for annulment of Regulation No 735/2004 in so far as it makes seven additional products subject to the measure referred to in Article 4(3) of Regulation No 1972/2003

80 As appears from recital 1 in the preamble to Regulation No 1972/2003, transitional measures were to be adopted in order to avoid the risk of deflection of trade affecting the common organisation of agricultural markets due to the accession of 10 new States to the European Union on 1 May 2004. Recital 3 in the preamble to the regulation also states that such deflections often involve products moved artificially with a view to enlargement and thus do not form part of the normal stocks of the State concerned, although surplus stocks may also result from national production. Finally, it is stated that provision should accordingly be made for deterrent charges to be levied on surplus stocks in the new Member States.

81 Article 4 of Regulation No 1972/2003 introduces that charge. As appears from Article 4(1), read in conjunction with Article 4(2), without prejudice to Annex IV, Chapter 4, to the Act of Accession, and where stricter legislation did not apply at national level, the new Member States were to levy charges on holders of surplus stocks at 1 May 2004 of products in free circulation, those stocks consisting of, inter alia, products imported into the new Member States or originating in the new Member States in a quantity exceeding that of the holder's usual stock, having regard, in particular, to the average of stocks available in the years preceding accession.

82 It should also be pointed out that Annex IV, Chapter 4, to the Act of Accession, concerning agriculture, provides that:

'1. Public stocks held at the date of accession by the new Member States and resulting from their market-support policy shall be taken over by the Community at the value resulting from the application of Article 8 of Council Regulation (EEC) No 1883/78 laying down general rules for the financing of interventions by the European Agricultural Guidance and Guarantee Fund, Guarantee Section …. The said stocks shall be taken over only on condition that public intervention for the products in question is provided for in the Community rules and that the stocks meet the Community intervention requirements.

2. Any stock of product, private as well as public, in free circulation at the date of accession within the territory of the new Member States exceeding the quantity which could be regarded as constituting a normal carryover of stock must be eliminated at the expense of the new Member States.

The concept of normal carryover stock shall be defined for each product on the basis of criteria and objectives specific to each common market organisation.

3. The stocks referred to in paragraph 1 [above] shall be deducted from the quantity exceeding the normal carryover of stocks.

…'

83 It follows that, by virtue of those provisions, the new Member States were under an obligation to eliminate, at their own expense, surplus stocks of certain agricultural products existing in their territory and to levy a charge on such stocks.

84 Finally, Article 4(3) of Regulation No 1972/2003 provides that the amount of the charge referred to in paragraph 1 ('the contested charge') was to be determined by the *erga omnes* import duty rate applicable on 1 May 2004 and that the revenue of that charge was to be assigned to the national budget of each new Member State.

The first plea: infringement of Article 41 of the Act of Accession and of the principle of proportionality

— Arguments of the parties

85 The Republic of Poland accepts that, when exercising its powers under the common agricultural policy, the Commission may have recourse to a wide discretion, with the result that the legality of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate in terms of the objective which the competent institution is seeking to achieve. It points out, however, that, under the principle of proportionality, the actions of the Community institutions must not go beyond what is essential to attain the objective laid down and must use the least restrictive means which are appropriate in view of the goal to be attained.

86 However, the Republic of Poland claims that the charges levied on holders of surplus stocks of the products at issue by Article 4(3) of Regulation No 1972/2003 were equal to the *erga omnes* import duties applicable on that date, that is to say, at a level which exceeded the difference between the Community and Polish import duties in force on

30 April 2004. That, it claims, is manifestly inappropriate in view of the goal to be attained, which, according to recital 3 in the preamble to Regulation No 1972/2003, is to prevent speculative practices.

87 That such was in fact the objective is confirmed by the fact that the transitional measures adopted on the basis of the first paragraph of Article 41 of the Act of Accession were intended to prevent unjustified advantages linked to the difference between the Community import duties and those of the new Member States. Consequently, that article has also been infringed.

88 The Republic of Poland thus accepts that the fact that, before 30 April 2004, national import duties in the new Member States on certain agricultural products were lower than the Community duties might have encouraged traders to import those products into the new Member States with a view to selling them in the common market after accession. It also accepts that the Commission can adopt measures designed to prevent or neutralise the build-up of stocks of agricultural products. However, it argues, the only measure which would have been adequate and proportionate for preventing that risk would have been the introduction of a charge the amount of which was fixed on the basis of a duty corresponding to the difference between the rates of Community import duties and those of the new Member States on 30 April 2004.

89 The Republic of Poland takes the view that the case-law supports its argument. It refers in this regard to Case C-179/00 *Weidacher* [2002] ECR I-501, which concerned the legality of Article 4(3) of Commission Regulation (EC) No 3108/94 of 19 December 1994 on transitional measures to be adopted on account of the accession of Austria, Finland and Sweden in respect of trade in agricultural products (OJ 1994 L 328, p. 42). That provision fixed the amount of a charge similar to that in the present case as the difference between the customs duty applicable in the Community as on 31 December 1994 and the customs duty applicable in the new Member States as on that date. The Republic of Poland points out that the Court of Justice has stated in this context that, by means of the special taxation at issue on surplus stocks, the Commission was specifically concerned to facilitate the transition of the new Member States to the common organisation of the markets since such a tax tended, first, to preclude the build-up of stocks for speculative purposes and, second, to neutralise the economic advantages which would have accrued to operators who had actually built up surplus stocks at low prices (paragraph 22 of *Weidacher*).

90 The position of the Court of Justice confirms the view expressed by Advocate General Mischo, who stated in his Opinion in *Weidacher*, cited in paragraph 89 above, [2002] ECR I-505, at I-524, that the taxation at issue did not infringe the principle of proportionality since it would do no more than cause an unjustified advantage to disappear, but without penalising the holder of the stock as such (point 58 of the Opinion).

91 In the present case, the contested charge could not have been introduced in order to discourage 'speculative production'. First of all, the idea of speculation is inseparably linked to commerce, not to production, and certainly not to agricultural production, which has a long cycle and depends on numerous objective factors. Moreover, because of the long cycle in agricultural production, any speculative production could have appeared only in the 2003 production season or in earlier years. Finally, even if one were to accept the existence of speculative production and the possibility of preventing it in the period between 11 November 2003 and 1 May 2004, the levying of compensatory duties would have been sufficient to achieve the objective pursued.

92 The Commission takes issue with the argument put forward by the Republic of Poland.

— Findings of the Court

93 In the present plea, the Republic of Poland essentially puts forward two arguments. First, it submits that the charges levied by virtue of Article 4(3) of Regulation No 1972/2003 on holders of surplus stocks of the products at issue in free circulation on 1 May 2004 exceeded the difference between the Community and Polish import duties in force on 30 April 2004, which is manifestly inappropriate in view of the goal to be attained, namely, to prevent speculative practices. It is thus claimed that the Commission infringed the principle of proportionality.

94 Secondly, the Republic of Poland claims that the transitional measures adopted on the basis of the first paragraph of Article 41 of the Act of Accession were intended solely to prevent unjustified advantages being obtained from the difference between Community import duties and those of the new Member States and that, consequently, that article has also been breached.

95 The Republic of Poland's second argument must be examined first.

96 It must be recalled in this regard that Regulation No 1972/2003 was adopted, in particular, on the basis of Article 2(3) of the Accession Treaty and on the basis of the first subparagraph of Article 41 of the Act of Accession.

97 Article 2(3) of the Accession Treaty provides as follows:

'Notwithstanding paragraph 2, the institutions of the Union may adopt before accession the measures referred to in [Article 41] of the Act of Accession [and] Annexes III to XIV to that Act … These measures shall enter into force only subject to and on the date of the entry into force of [the Accession Treaty].'

98 The first paragraph of Article 41 of the Act of Accession provides that:

'If transitional measures are necessary to facilitate the transition from the existing regime in the new Member States to that resulting from the application of the common agricultural policy under the conditions set out in [the Act of Accession], such measures shall be adopted by the Commission in accordance with the procedure referred to in Article 42(2) of Council Regulation (EC) No 1260/2001 on the common

organisation of the markets in the sugar sector [OJ 2001 L 178, p. 1], or as appropriate, in the corresponding Articles of the other Regulations on the common organisation of agricultural markets or the relevant committee procedure as determined in the applicable legislation. The transitional measures referred to in this Article may be taken during a period of three years following the date of accession and their application shall be limited to that period …'

99 It must be pointed out that the terms of the first paragraph of Article 41 of the Act of Accession are very similar to those of Article 149(1) of 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 (OJ 1994 C 41, p 21), as amended. Following the enlargement of the European Union in 1995, the Court of Justice ruled on the question whether a charge on surplus stocks of certain agricultural products existing in the new Member States could be regarded as a measure intended to facilitate the transition from the regime existing in the new Member States to that resulting from the application of the common agricultural policy pursuant to that Article 149(1). The Court took the view that the taxation at issue was intended to facilitate that transition since it tended, first, to preclude the build-up of stocks for speculative purposes and, second, to neutralise the economic advantages which would have accrued to operators who had actually built up surplus stocks at low prices (*Weidacher*, cited in paragraph 89 above, paragraph 22).

100 In addition, the Court pointed out that the taxation of surplus stocks made it possible to reduce in that case the burden of the obligation imposed on the new Member States by Article 145(2) of 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, as amended, to eliminate such stocks at their own cost (*Weidacher*, cited in paragraph 89 above, paragraph 23). The wording of that provision is very similar to that of Annex IV, Chapter 4, paragraph 2, to the Act of Accession.

101 It follows, by analogy, that, on the one hand, both prevention of the build-up of stocks for speculative purposes and the neutralisation of the economic advantages which would have accrued to operators who had built up surplus stocks at low prices are

capable of justifying the adoption by the Commission of a measure under the first paragraph of Article 41 of the Act of Accession and, on the other, that the levying of a charge on surplus stocks must be regarded as intended to facilitate the transition of the new Member States to the common organisation of the markets inasmuch as it reduces the burden of the obligation imposed on the new Member States by Annex IV, Chapter 4, paragraph 2, to the Act of Accession to eliminate such stocks at their own expense.

102 Consequently, it must be concluded that the first paragraph of Article 41 of the Act of Accession allowed the Commission to require the new Member States to levy a charge on surplus stocks of the products at issue which existed in their territories.

103 At this stage, it is important to state that the Republic of Poland's argument that the charge at issue infringes the abovementioned provision on the ground that the latter merely permits the prevention of advantages related to the difference between Community import duties and those of the new Member States constitutes a criticism of the amount of the contested charge, and not a criticism of the levying of the charge as such. That interpretation is confirmed by the fact that the Republic of Poland pleads solely the unlawfulness of Article 4(3) of Regulation No 1972/2003, which concerns the amount of the contested charge, and not Article 4(1) and (2) of that regulation, which concern the actual introduction of the contested charge and the method of calculating surplus stocks respectively. However, the Republic of Poland's argument in regard to Article 41 of the Act of Accession, thus construed, is not autonomous and must be regarded as forming part of its first argument that the contested charge is disproportionate.

104 With regard to that argument, it has consistently been held that the principle of proportionality is one of the general principles of Community law. In order to establish whether a provision of Community law complies with the principle of proportionality, it is necessary to ascertain whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it (Case 56/86 *Société pour l'exportation des sucres* [1987] ECR 1423, paragraph 28, and Case 47/86 *Roquette Frères* [1987] ECR 2889, paragraph 19).

105 By virtue of that principle, measures imposing financial charges on traders are lawful provided that they are appropriate and necessary for attaining the objectives legitimately pursued by the rules in question. However, when there is a choice between several appropriate measures, the least onerous measure must be used and the charges imposed must not be disproportionate to the aims pursued (Case C-8/89 *Zardi* [1990] ECR I-2515, paragraph 10).

106 It must be pointed out, however, that the Commission may exercise a wide discretion when exercising the powers conferred on it by the Council, or indeed those who drafted the Act of Accession, in regard to the common agricultural policy for the implementation of the rules which it lays down, with the result that the legality of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate in terms of the objective which the competent institution is seeking to pursue (*Weidacher*, cited in paragraph 89 above, paragraph 26 and the case-law cited therein).

107 It must first be pointed out the Republic of Poland itself accepts that the Commission can adopt measures designed to prevent the build-up of surplus stocks of agricultural products. However, it argues that, by virtue of the principle of proportionality, those measures must be essential to prevent speculative practices connected with the enlargement of the European Union on 1 May 2004 and it accordingly takes the view that it was sufficient to introduce a charge the amount of which was fixed on the basis of the difference between Community and Polish import duties.

108 The Republic of Poland relies on *Weidacher*, cited in paragraph 89 above, in support of its argument. That judgment, it argues, confirmed Advocate General Mischo's view in his Opinion in that case, cited in paragraph 90 above, that the taxation at issue did not infringe the principle of proportionality as it did no more than cause an unjustified advantage to disappear, but without penalising the holder of the stock as such (point 58 of the Opinion).

109 It must be pointed out that, unlike what was provided in regard to the contested charge here, the amount of the charge at issue in *Weidacher*, cited in paragraph 89, above, corresponded to the difference between the Community customs duties and those in force in the new Member States at that time. That is why Advocate General Mischo could confine himself to taking the view that that charge was intended to deprive traders in those States of any interest in speculating on the enlargement of the European Union in 1995 by buying, before that date, agricultural products subject to a lower import duty than the Community import duty and selling them later within the enlarged Community.

110 However, the foregoing does not prejudge the question whether a charge of a higher amount could also be regarded as being proportionate in regard to the objective pursued.

111 It must be pointed out in this regard that, contrary to what the Republic of Poland argues, the objective which the Commission was pursuing by means of the contested charge was not solely to prevent the build-up of stocks of the products at issue for speculative purposes arising from trade, but quite simply to prevent the build-up of surplus stocks, that is to say, stocks which were not part of the usual reserves found in the new Member States. That is clear from recital 3 in the preamble to Regulation No 1972/2003. That recital states that, although trade deflections liable to disrupt the market organisations often involve products moved artificially with a view to enlargement, the surplus stocks which the measures laid down in Regulation No 1972/2003 are intended to prevent may also result from national production.

112 It must also be observed that the approach adopted by the Commission is consistent with the idea which those who drafted the Act of Accession had of surplus stocks to be eliminated at the expense of the new Member States. It is clear from Annex IV, Chapter 4, paragraphs 1 and 2, to the Act of Accession that the existence of surplus stocks resulting from national production in the new Member States disturbed the common organisation of agricultural markets. Those who drafted the Act of Accession in no way limited the abovementioned obligation solely to stocks arising from trade.

113 In the light of the foregoing, it is necessary to examine whether the Republic of Poland has succeeded in showing that the fixing of the amount of the contested charge on the basis of the *erga omnes* import duty applicable on 1 May 2004 manifestly exceeded what was necessary to prevent the build-up of surplus stocks from whatever source.

114 In that regard, the Republic of Poland, argues, first, that a charge the amount of which was fixed on the basis of a duty corresponding to the difference between Polish and Community import duties on 30 April 2004 would have been sufficient to avoid the risk of surplus stocks being built up. However, although such a charge could have been useful in preventing the build-up of surplus stocks from imports, it is far from clear that it would also have been sufficient to prevent the build-up of surplus stocks from national production.

115 If importation of the products at issue was subject, before 1 May 2004, to a Polish import duty equal to, or higher than, the Community import duty or if the difference between their price in Poland and their price in the Community was such that a duty equal to the difference between Community and Polish customs duties could not have offset it, fixing the amount of the contested charge on the basis of a duty equivalent to that difference would have had no dissuasive effect on the build-up of surplus stocks from national production, as the Republic of Poland itself acknowledged at the hearing. Such stocks could, however, have been built up by traders established in the new Member States with a view to the enlargement of the European Union on 1 May 2004, in particular if, before that date, the price of the products at issue had been higher in the Community than in Poland or if production thereof in the Community had been subject to restrictions laid down within the framework of the common agricultural policy intended to fix a given total quantity of production.

116 Those surplus stocks built up from national production would not have been subject to any charge and could therefore have disturbed the Community market from 1 May 2004. In addition, the Republic of Poland would have been obliged to eliminate them pursuant to Annex IV, Chapter 4, to the Act of Accession and, consequently, Polish traders would not necessarily have been in a better position if the contested charge on

surplus stocks of the products at issue had not existed, whereas the Republic of Poland would have lost the revenue from that tax and would have been obliged to finance the elimination of the stocks.

117 Secondly, the Republic of Poland also claims, in regard to the products at issue, that the build-up of surplus stocks from national production was not possible, because their production cycle is long and it would not have been possible to produce more during the six months between the adoption of Regulation No 735/2004 and the date of accession with a view to establishing surplus stocks.

118 None the less, and without there being any need to rule on whether or not the latter claim is well founded, it must be pointed out that the Republic of Poland has not established that the surplus stocks could not have been built up before Regulation No 735/2004 was adopted. However, with regard to agricultural products in respect of which the price in the new Member States was lower than the price in the Community, traders established in those States had an obvious interest, from the date at which they considered it probable that enlargement would take place on 1 May 2004, which could already have occurred during the year preceding enlargement or even earlier, in limiting their sales in their respective States of origin in order to build up reserves which they could later place on the enlarged Community market.

119 The abovementioned traders also had every interest in focusing their agricultural operations on products in respect of which the price difference was greatest and on products which could best be stored, to the detriment of the products at issue for which the prices at Community and national levels were closest. The latter operation could also, by reason of an increase in production capacity available before enlargement, have generated an abnormal quantity of stocks of the products at issue.

120 Finally, it must be stressed that Article 4(2) of Regulation No 1972/2003 left the new Member States a certain discretion in determining whether the stocks of the products at issue located in their territory were the result of activity justified by normal conduct

in the market, which allowed them, in such a case, not to classify them as 'surplus stocks'. That allowed them to limit the taxation of holders of such stocks to those cases in which the build-up gave rise to a risk of market disturbance and reinforces the proportionate nature of the measure referred to in Article 4(3) of Regulation No 1972/2003 in regard to the objective pursued.

121 In conclusion, it must be held that the Republic of Poland has not succeeded in showing that the fixing of the amount of the contested charge on the basis of the *erga omnes* import duty applicable on 1 May 2004 was manifestly inappropriate or disproportionate to the objective being pursued. Consequently, the present plea must be rejected.

The second plea: infringement of the principle of non-discrimination on grounds of nationality

— Arguments of the parties

122 The Republic of Poland points out that, when the European Union was enlarged in 1995, the new Member States at that time were treated in a manner different to it. It submits that, unlike the transitional measures adopted at that time, the amount of the contested charge levied on holders of surplus stocks of the products at issue in free circulation on 1 May 2004 exceeded the difference between the Community and Polish import duties at 30 April 2004. For that reason it takes the view that the measure provided for in Article 4(3) of Regulation No 1972/2003 was adopted contrary to the principle of non-discrimination.

123 The Republic of Poland considers that the levying of a charge for the purpose of eliminating the unjustified advantages for traders in the new Member States which could be connected with the possession of surplus stocks and placing those traders in the same situation as that of traders established in the Community before 1 May 2004 would justify different treatment of those two types of traders. That was the situation in *Weidacher*, cited in paragraph 89 above. By contrast, the contested charge in the present case unjustifiably placed Polish traders in a less favourable situation than traders established in the Community before 1 May 2004.

124 In the view of the Republic of Poland, the Commission cannot justify such discrimination on the basis of factors such as the size of the markets concerned, the differences in price between the products at issue in those markets or the level of export refunds because, had the Commission really taken account of those factors for the purpose of fixing the amount of the contested charge, that charge would have had to vary from one new Member State to another. However, unlike the transitional measures adopted when the European Union was enlarged in 1995, the amount of the contested charge was the same for all traders in the new Member States.

125 Finally, in the Republic of Poland's view, it is irrelevant that Article 4(2) of Regulation No 1972/2003 leaves the new Member States a large degree of freedom to determine whether stocks were the result of activity justified by normal market conduct or also the result of speculative activities, since the present plea concerns the amount of the contested charge to which holders of surplus stocks were subject.

126 The Commission disputes those arguments.

— Findings of the Court

127 In the context of the present plea, the Republic of Poland submits, first, that the difference in treatment of Polish traders compared with those established in the Community before 1 May 2004 amounts to discrimination on grounds of nationality.

128 It must be recalled in that regard that the principle of non-discrimination between producers or consumers in the Community, laid down in regard to the common organisation of agricultural markets in the second subparagraph of Article 34(2) EC, requires that comparable situations should not be treated in a different manner, or different situations treated in the same manner, unless such treatment is objectively justified. Measures taken under the common organisation of the market must therefore not be differentiated according to regions and other conditions relating to production or consumption except on the basis of objective criteria which ensure that the advantages and disadvantages are distributed proportionately among those concerned, without any distinction being made between the territories of the Member States (Case 203/86 *Spain* v *Council* [1988] ECR 4563, paragraph 25).

129 However, the agricultural situation in the new Member States was radically different from that in the old Member States (*Poland* v *Council*, cited in paragraph 9 above, paragraph 87). Before enlargement of the European Union in 2004, those two categories of traders were subject to different rules, quotas and production support mechanisms. Moreover, although the Community institutions could prevent the build-up of surplus stocks within the Community by methods specific to the common organisation of agricultural markets, they could not prevent the build-up of surplus stocks in the territory of the future Member States. It is for that reason that Annex IV, Chapter 4, paragraphs 1 to 4, to the Act of Accession imposed an obligation on the new Member States to eliminate their surplus stocks at their own expense without imposing a parallel obligation on the old Member States, a situation which the Republic of Poland accepted when it signed the Act of Accession.

130 Consequently, it must be held that the situation of Polish traders and that of traders established in the Community before 1 May 2004 cannot be regarded as comparable.

131 Secondly, the Republic of Poland stresses the difference in the treatment which it received in comparison with that of the Member States which joined the European Union in 1995.

132 Suffice it to point out in that regard that the transitional measures to be adopted in regard to agriculture at the time of each enlargement of the European Union must be adapted to the actual risks of disturbance of the agricultural markets which that enlargement may involve. Consequently, the institutions are not required to apply equivalent transitional measures in the context of two successive enlargements.

133 In particular, the Commission was entitled to take account, among the differences between the enlargements of the European Union in 1995 and 2004, of the fact that the goal of avoiding disruption on the Community market by reason of the build-up of surplus stocks was more difficult to achieve in 2004 by reason of the size of the markets of the new Member States in 2004 and their much greater production capacity, to which the Commission refers in its pleadings, without being challenged on that point by the Republic of Poland. Moreover, the price differences between the Community and the new Member States were also greater. The combination of those two factors made the risk of agricultural market destabilisation substantially greater and therefore justified the adoption of more severe transitional measures.

134 The Republic of Poland argues in this regard that, if the Commission had really taken account of those factors for the purpose of fixing the amount of the contested charge, that amount ought to have been different for each new Member State. However, it is clear that account was taken of the circumstances of each new Member State when the products to be subject to the contested charge were being designated since, under Article 4(5) of Regulation No 1972/2003, the list is different for each new Member State, a fact which invalidates the Republic of Poland's argument.

135 Consequently, the Republic of Poland has not succeeded in showing that there has been an infringement of the principle of non-discrimination on grounds of nationality. The present plea must therefore be rejected.

136 In the light of the foregoing, it is necessary to reject the application for annulment of Regulation No 735/2004 in so far as it makes seven categories of agricultural products of Polish origin subject to the measure referred to in Article 4(3) of Regulation No 1972/2003.

The third part of the action: application for annulment of Regulation No 735/2004 in so far as it adds seven products to the list of products in the eighth indent of Article 4(5) of Regulation No 1972/2003

Arguments of the parties

137 The Republic of Poland claims, first, that the fundamental objective of the transitional measures which could be adopted on the basis of Article 41 of the Act of Accession was to prevent the build-up of surplus stocks in the new Member States and the disturbances which might result therefrom for the various agricultural markets. Those transitional measures should therefore have facilitated the realisation by those States of their obligation to eliminate such stocks, as laid down in Annex IV, Chapter 4, paragraph 4, to the Act of Accession.

138 In the view of the Republic of Poland, however, that obligation to eliminate surplus stocks referred only to products the quantity of which exceeded, at national level, that which could be regarded as a normal carryover of stocks. Consequently, although it was necessary to determine the stocks of products at issue held by individual traders in order to determine whether there were surplus stocks in the new Member States, that question should have been decided at national level on the day of accession. Therefore, if the stocks of a given product found to exist at national level did not exceed the normal quantity, the obligation to eliminate them and to levy a charge on those holding such

stocks would have served no purpose in the absence of a risk of disturbance of trade in agricultural products by reason of accession, since the fact that a trader held a large quantity of the products at issue would have been offset by the absence of those same products in the hands of other traders.

139 However, the Republic of Poland points out that no surplus stocks of the products in the list in the eighth indent of Article 4(5) of Regulation No 1972/2003 were found to exist at national level on 1 May 2004, including the products at issue which were added by Regulation No 735/2004. It even refers to products in respect of which Polish production was below the norm in 2003. Consequently, the Republic of Poland takes the view that, in adopting the eighth indent of Article 4(5) of Regulation No 1972/2003, the Commission exceeded the powers granted to it by the first paragraph of Article 41 of the Act of Accession and introduced a measure which was disproportionate to the objective to be attained, namely, to prevent the build-up of surplus stocks of products for speculative purposes.

140 The Republic of Poland also states that the objective of the contested measure might have been to prevent a trader established in Poland from obtaining an unjustified economic advantage over traders established in the Community before 1 May 2004 in the case where there was no risk that trade in agricultural products would be disturbed in the absence of surplus stocks in the new Member States, measured at national level. However, that possibility was not mentioned in the preamble to Regulation No 1972/2003 and was not authorised by Article 41 of the Act of Accession. In addition, it did not prevent that measure from being disproportionate in so far as it was not limited to neutralising unjustified advantages related to the existence of Community import duties which differed from those of the new Member States, which benefited Polish traders who held surplus stocks of those products, but penalised them by making them subject to the contested charge.

141 Finally, the Republic of Poland points out that the principal reason for stocking agricultural products for speculative purposes lies in their importation linked to the difference between the Community import duties and the national import duties in force in the new Member States. However, the consequence of the addition of the

products at issue to the list in the eighth indent of Article 4(5) of Regulation No 1972/2003 was to make the holders of such products subject to an *erga omnes* import duty applicable on 1 May 2004, whereas certain products were already subject to the import duties which were in force in Poland on 30 April 2004 and which were not lower than the Community import duties in force on that date.

142 The Commission disputes the Republic of Poland's arguments.

Findings of the Court

143 The Republic of Poland challenges the legality of the amendment of the list of products in the eighth indent of Article 4(5) of Regulation No 1972/2003, relying on several arguments which it is appropriate to examine in succession.

144 First of all, the Republic of Poland claims that the fundamental objective of the transitional measures which could be adopted on the basis of Article 41 of the Act of Accession was to prevent the build-up of surplus stocks, the existence of which was to be determined at national level in such a way as if, in a Member State, the stocks of a product at national level did not exceed the normal quantity, holders who had built up such stocks individually to a level higher than normal would not be obliged to eliminate them, unless there was a risk of disturbance to trade. In that context, the addition of the products at issue to the list in the eighth indent of Article 4(5) of Regulation No 1972/2003 is unlawful because it relates to products in respect of which no surplus stocks were found to exist at national level, and there were even some products in respect of which Polish production in 2003 was below the normal level.

145 The Court takes the view that the Republic of Poland's argument is based on an erroneous interpretation of Annex IV, Chapter 4, to the Act of Accession and must be rejected.

146 The wording of paragraph 2 of that chapter, which provides that any stock of product, private as well as public, in free circulation at the date of accession within the territory of the new Member States exceeding the quantity which could be regarded as constituting a normal carryover of stock must be eliminated at the expense of the new Member States, requires, in the same way, the elimination of surplus stocks regardless of whether they are calculated in respect of each individual trader or for all traders at national level.

147 Furthermore, both prevention of the build-up of stocks for speculative purposes and the neutralisation of the economic advantages which would have accrued to operators who had built up surplus stocks at low prices were capable of justifying the adoption by the Commission of a measure under the first paragraph of Article 41 of the Act of Accession (see paragraph 101 above). It follows that the transitional measures which the Commission could adopt under that provision include measures intended to prevent individual traders established in the new Member States from building up surplus stocks of the products at issue prior to 1 May 2004 with a view to marketing them at higher prices after that date.

148 Similarly, it must be pointed out that in *Weidacher*, cited in paragraph 89 above, the Court of Justice took the view that the taxation at issue of surplus stocks was proportionate and in accordance with the objectives laid down in the Act of Accession. That tax was levied on an individual trader in what was then a new Member State by virtue of the surplus stock which he held, without any finding having been made as to the existence of stocks at national level.

149 It must also be pointed out that the purpose of Regulation No 1972/2003 was, precisely, as has been stated in paragraph 111 above, to prevent the build-up of surplus stocks. That is why the Commission argued, without being contradicted by the Republic of Poland on that point, that it took account of the statistical information supplied by the

Republic of Poland itself in order to identify the categories of products which might be stored for speculative purposes. In that context, the Commission cannot be criticised for the fact that the existence, at national level, of surplus stocks of some of the products at issue was not established on 1 May 2004. That fact may indeed have been attributable to the deterrent effect of the regulation itself.

150 Finally, it must be pointed out that the effect of making the imposition of the charge on surplus stocks of the products at issue held by individual traders subject to the condition that such stocks had been found to exist at national level would have been that the consequences of building up surplus stocks would have been neither fair nor predictable in regard to traders established in the new Member States.

151 Such a situation might have encouraged some traders established in the new Member States to build up additional stocks of the products at issue before 1 May 2004 with a view to selling them on the Community market after that date in the hope that the stocks at national level did not exceed their usual quantity. In that hypothesis, those traders would have found themselves, on 1 May 2004, in a more favourable situation than that of other traders established in the same Member State who had not built up surplus stocks of the products at issue for speculative purposes and had thereby contributed to achieving the objectives of Regulation No 1972/2003 and of Annex IV, Chapter 4, to the Act of Accession. That would have been unacceptable.

152 Furthermore, had it been necessary to establish the existence of surplus stocks at national level on 1 May 2004, traders established in the new Member States who had built up additional stocks of such products would not have been able to determine before that date whether they would be liable to the contested charge, the amount of which might have turned out to be significant. That would have introduced an element of uncertainty not only into their economic planning but also on to all the markets related to the products at issue inasmuch as prices might have evolved significantly by reason of the fact that a part of the production might, where appropriate, have been made subject to a special charge.

153 Secondly, the Republic of Poland argues that the imposition of the contested charge on the products covered by the eighth indent of Article 4(5) of Regulation No 1972/2003 is disproportionate because it did not merely neutralise unjustified advantages, linked to the existence of Community customs duties that differed from those of the new Member States, from which Polish traders who held surplus stocks of such products might have benefited, but also penalised those traders by making them subject to the contested charge.

154 In order to reject that argument, it is sufficient to point out that the neutralisation of those advantages was not the only legitimate objective of the measures introduced by Regulation No 1972/2003. Other legitimate objectives were prevention of the build-up of surplus stocks and prevention of the build-up of stocks at low prices by traders in the new Member States with a view to marketing those stocks later at a much higher price following enlargement.

155 In addition, in so far as the argument put forward by the Republic of Poland amounts, essentially, to pleading an infringement of the principle of non-discrimination, reference must be made to paragraphs 127 to 136 of the present judgment.

156 Thirdly, the Republic of Poland argues that the principal reason for stocking agricultural products for speculative purposes lies in their importation linked to the difference between the customs duties in the Community of Fifteen and those in the new Member States, and it points out in that regard that, by virtue of the eighth indent of Article 4(5) of Regulation No 1972/2003, as amended, certain products were made subject to the contested charge even though the Polish import duties in force on 30 April 2004 were not lower than the Community import duties.

157 That argument cannot be accepted.

158 The Republic of Poland puts forward no reason to justify the conclusion that the principal cause of the speculative stocking of agricultural products was the possibility that there might be a difference between the import duties between the Community of Fifteen and the new Member States.

159 In any event, even if that claim were correct, the fact remains that the objectives of the measures provided for in Regulation No 1972/2003 include not only the prevention of a build-up of stocks for speculative purposes connected either with a difference between the import duties applicable to the same product in the Community and those in the new Member States respectively or with the existence, in those States, of duty-free import quotas, in addition to the prevention of a build-up of surplus stocks from national production (see paragraphs 111 to 116 above). The latter objective, which flows directly from Annex IV, Chapter 4, to the Act of Accession, could not have been carried out fully if the eighth indent of Article 4(5) of Regulation No 1972/2003 had confined itself to imposing the contested charge on those products in respect of which Polish import duties were lower than the Community import duties, as has been pointed out in paragraphs 114 and 115 above.

160 In the light of the foregoing, the present plea must be rejected.

The first part of the action: application for annulment of Regulation No 735/2004 in so far as it makes seven additional products subject to the measures provided for in Article 3 of Regulation No 1972/2003

161 Annex IV, Chapter 5, to the Act of Accession provides as follows:

'… Regulation … No 2913/92 and Regulation (EEC) No 2454/93 shall apply to the new Member States subject to the following specific provisions:

1. Notwithstanding Article 20 of Regulation … No 2913/92, goods which on the date of accession are in temporary storage or under one of the customs treatments and procedures referred to in Article 4(15)(b) and (16)(b) to (g) of that Regulation in the enlarged Community, or which are in transport within the enlarged Community after having been the subject of export formalities, shall be free of customs duties and other customs measures when entered for free circulation on condition that one of the following is presented: …'

162 It must be pointed out that Article 3 of Regulation No 1972/2003 applies precisely by way of derogation from the aforementioned provision and from Articles 20 and 214 of Regulation No 2913/92.

163 Thus, under Article 3(2) of Regulation No 1972/2003, products listed in Article 4(5) thereof, which before 1 May 2004 had been in free circulation in the Community of Fifteen or in a new Member State and on 1 May 2004 were in temporary storage or under one of the customs treatments or procedures referred to in Article 4(15)(b) and (16)(b) to (g) of Regulation No 2913/92 in the enlarged Community, or which were in transport after having been the subject of export formalities within the enlarged Community were to be charged with the *erga omnes* import duty rate applicable on the date of release for free circulation. However, the foregoing did not apply to products exported from the Community of Fifteen if the importer gave evidence that no export refund had been sought for the products of the country of export.

164 In addition, under Article 3(3), products listed in Article 4(5) coming from non-member countries which were under inward processing referred to in Article 4(16)(d) or temporary admission referred to in Article 4(16)(f) of Regulation No 2913/92 in a new Member State on 1 May 2004 and which were released for free circulation on or after that date were to be charged with the import duty applicable on the date of release for free circulation to products coming from non-member countries.

165 It must be pointed out, first, that the customs-approved treatment or use of goods referred to in Article 4(15)(b) of Regulation No 2913/92 is entry into a free zone or free warehouse and, second, that the customs procedures referred to in Article 4(16)(b) to (g) are, in order, transit, customs warehousing, inward processing, processing under customs control, temporary admission and outward processing.

166 Pursuant to Article 166(a) of Regulation No 2913/92, free zones and free warehouses are, inter alia, parts of the customs territory of the Community, or premises situated in that territory and separated from the rest of it, in which non-Community goods are considered, for the purpose of import duties and commercial policy import measures, as not being on Community customs territory, provided that they are not released for free circulation or placed under another customs procedure or used or consumed under conditions other than those provided for in customs regulations.

167 According to Article 91 of Regulation No 2913/92, the external transit procedure must allow the movement from one point to another within the customs territory of the Community of:

'(a) non-Community goods, without such goods being subject to import duties and other charges or to commercial policy measures;

(b) Community goods which are subject to a Community measure involving their export to third countries and in respect of which the corresponding customs formalities for export have been carried out.'

168 Under Article 98 of Regulation No 2913/92, the customs warehousing procedure must allow the storage in a customs warehouse of, first, non-Community goods, without such goods being subject to import duties or commercial policy measures, and, second, Community goods, where Community legislation governing specific fields provides that their being placed in a customs warehouse is to attract the application of measures normally attaching to the export of such goods.

169 Article 114(1)(a) of Regulation No 2913/92 provides that the inward processing procedure is to allow non-Community goods intended for re-export from the customs territory of the Community in the form of compensating products to be used in the customs territory of the Community in one or more processing operations, without such goods being subject to import duties or commercial policy measures.

170 Under Article 130 of Regulation No 2913/92, the procedure for processing under customs control is to allow non-Community goods to be used in the customs territory of the Community in operations which alter their nature or state, without their being subject to import duties or commercial policy measures, and to allow the products resulting from such operations to be released for free circulation at the rate of import duty appropriate to them.

171 By virtue of Article 137 of Regulation No 2193/92, the temporary importation procedure is to allow the use in the customs territory of the Community, with total or partial relief from import duties and without their being subject to commercial policy measures, of non-Community goods intended for re-export without having undergone any change except normal depreciation due to the use made of them.

172 Article 145(1) of Regulation No 2913/92 provides that the outward processing procedure is to allow Community goods to be exported temporarily from the customs

territory of the Community in order to undergo processing operations and the products resulting from those operations to be released for free circulation with total or partial relief from import duties.

173 It follows from the preceding paragraphs that the customs-approved treatment or use of goods and the customs procedures referred to in Article 3 of Regulation No 1972/2003 concern, in particular, situations in which goods cross Community frontiers without the corresponding customs duties being paid on them, either because their final destination is not yet determined or because they are intended for a non-Community market. Those goods, which would have become Community goods on 1 May 2004, in the same way as goods which were in transport in the enlarged Community after completion of export formalities, were subject, by virtue of the measure laid down in Article 3 of Regulation No 1972/2003, to the *erga omnes* import duty applicable on the day on which they were placed in free circulation.

The first plea: infringement of the principle of free movement of goods

— Arguments of the parties

174 The Republic of Poland takes the view that the duties introduced by Article 3(2) of Regulation No 1972/2003 are customs duties, as is indicated by the very fact that they are collected by the customs services in the context of customs procedures concerning products subject to a suspensive regime when they cross Community frontiers. That they are customs duties is also confirmed, first of all, by the fact that the measures under Article 3(1) apply by way of derogation from the provisions of the Act of Accession providing for products to be exempted from customs duties when released for free circulation, secondly, by the existence of a similar provision, namely Article 5 of Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2004 L 9, p. 8), as stated by the Commission in recital 6 in the preamble to that regulation, and,

thirdly, by the fact that Article 3(2) of Regulation No 1972/2003 expressly provides that '[p]roducts … shall be charged with the *erga omnes* import duty rate'.

175 The Republic of Poland points out that, according to Article 25 EC, customs duties on imports and charges having equivalent effect — whether introduced by the Member States or by the Community institutions — are prohibited between Member States, without any possibility of justification by reason of their objective.

176 By reason of the absolute nature of that prohibition, the Court of Justice has held that the powers granted to the Community institutions within the framework of the common agricultural policy must, in any event as from the end of the transitional period, be exercised to the exclusion of any measure compromising the abolition between Member States of customs duties and quantitative restrictions or charges or measures having equivalent effect (Joined Cases 80/77 and 81/77 *Les Commissionnaires Réunis and Les Fils de Henri Ramel* [1978] ECR 927, paragraph 35). Similarly, any possible exception to the prohibition, which in any event must be strictly construed, must be laid down in clear terms (*Les Commissionnaires Réunis and Les Fils de Henri Ramel*, paragraph 24). In particular, derogations from the principle of free movement of goods introduced by the Treaties of Accession must be granted clearly and unambiguously, and interpreted restrictively (Case C-233/97 *KappAhl* [1998] ECR I-8069, paragraphs 18 and 21).

177 Consequently, the Republic of Poland is of the opinion that the Commission cannot justify the charges introduced by reference to the need to avoid the consequences of the rules concerning surplus stocks referred to in Article 4 of Regulation No 1972/2003. The Republic of Poland also points out that the latter measure was intended to avoid speculative conduct and that there was no connection between the customs duties introduced and such conduct.

178 The Commission disputes the arguments adduced by the Republic of Poland.

— Findings of the Court

179 The argument put forward by the Republic of Poland cannot be accepted. Contrary to that argument, levying of the charge imposed by Article 3 of Regulation No 1972/2003 did not infringe the prohibition of customs duties and charges having equivalent effect laid down in Article 25 EC because that charge was not imposed unilaterally by a Member State but was a Community measure adopted, on a temporary basis, in order to address certain difficulties for the common agricultural policy arising from the accession of ten new Member States to the European Union (see, to that effect, Case 136/77 *Racke* [1978] ECR 1245, paragraph 7).

180 Furthermore, it must be pointed out that the Commission adopted Regulation No 1972/2003, and, consequently, Article 3 thereof, on the basis of a provision which allowed it to adopt the transitional measures necessary to facilitate the transition from the rules existing in the new Member States to those resulting from the application of the common agricultural policy, that is to say, Article 41 of the Act of Accession. However, those transitional measures could constitute, inter alia, derogations from the rules which would otherwise apply to a given legal situation, such as Article 25 EC. Consequently, the Court's review must simply deal with the question whether the measures introduced by Article 3 of Regulation No 1972/2003 were an integral part of the transitional measures which could be adopted under that provision of the Act of Accession. If so, the scheme cannot in principle be criticised as being contrary to the provisions contained in the Accession Treaty or the Act of Accession on the prohibition of customs duties (see, to that effect, Case 119/86 *Spain* v *Council and Commission* [1987] ECR 4121, paragraph 15).

181 Consequently, the Republic of Poland cannot usefully invoke an infringement of the principle of free movement of goods and, in particular, of Article 25 EC in order to challenge the legality of the duties introduced by Article 3 of Regulation No 1972/2003. At the very most, it could argue that the derogation from the Treaty rules laid down by Article 3 of Regulation No 1972/2003 goes beyond the powers granted to the Commission by Article 41 of the Act of Accession. It invokes this argument in its second plea in law, which it is for that reason necessary to examine forthwith.

The second plea: the Commission's lack of powers and breach of Articles 22 and 41 of the Act of Accession.

— Arguments of the parties

182 The Republic of Poland claims that the Act of Accession was the result of negotiations between, on the one hand, the States that were candidates for accession to the European Union and, on the other, the European Union itself. It points out that, according to Article 22 thereof, '[t]he measures listed in Annex IV to [the Act of Accession] shall be applied under the conditions laid down in that Annex'. However, according to Article 3(1) of Regulation No 1972/2003, that provision applies 'by way of derogation from Annex IV, Chapter 5, to the Act of Accession', which indicates that the Commission was conferring on itself a unilateral right to amend the conclusions of the accession negotiations, contrary to the procedures for amendment or suspension of the provisions of the Act of Accession which are laid down in Articles 7 to 9 thereof.

183 The Republic of Poland takes the view that the first paragraph of Article 41 of the Act of Accession could serve solely as a basis for the transitional measures necessary to facilitate the transition to the rules resulting from the application of the common agricultural policy under the conditions laid down in the Act of Accession. However, the purpose of the transitional measures provided for in Article 3 of Regulation No 1972/2003 was not to supplement the Act of Accession but to introduce divergent solutions which prevented the Republic of Poland from adopting the measures provided for in Annex IV, Chapter 5, to the Act of Accession and to amend the conditions of accession in a manner detrimental to it.

184 In the view of the Republic of Poland, the Commission cannot claim that it merely clarified the contents of the Act of Accession inasmuch as the measure provided for by Article 3 of Regulation No 1972/2003 introduced a derogation from the rules governing the application of the suspensive regimes set out in Annex IV, Chapter 5, to the Act of Accession.

185 The Commission disputes the Republic of Poland's arguments.

— Findings of the Court

186 It is indeed true that the Commission could amend the terms of the Act of Accession outside of the legal framework laid down in that regard by the Accession Treaty and the Act of Accession. However, as the Commission has correctly pointed out, the fact remains that Article 41 of the Act of Accession authorised it to adopt any measure necessary to facilitate the transition from the existing regime in the new Member States to that resulting from the application of the common agricultural policy.

187 It is also necessary to point out that, as is clear from what has been stated earlier in the present judgment, the system of levying charges on surplus stocks of products in free circulation in the new Member States on 1 May 2004, provided for in Article 4 of Regulation No 1972/2003, which included the levying of charges on surplus stocks held by individual traders, was one of the transitional measures which could be adopted by the Commission under the first paragraph of Article 41 of the Act of Accession.

188 Consequently, the measures necessary to safeguard the effectiveness of that system of charges must also be covered by the latter provision since, otherwise, the objectives on the Community market which the system at issue sought to attain, and which were nonetheless necessary to facilitate the transition from the existing rules in the new Member States to those resulting from the application of the common agricultural policy, could not have been achieved.

189 It is for that reason necessary to examine whether, as the Commission argued in its reply to the first plea, the fact of levying, on products subject to a suspensive regime or in transport in the enlarged Community after completing export formalities, the *erga omnes* import duty applicable on the day on which they were placed in free circulation pursuant to Article 3 of Regulation No 1972/2003 was essential to ensure the effectiveness of Article 4 of that regulation.

190 In this regard, the Commission has wide powers to adopt measures in matters concerning the common agricultural policy (Case 265/87 *Schräder HS Kraftfutter* [1989] ECR 2237, paragraph 22, and Case C-445/00 *Austria* v *Council* [2003] ECR I-8549, paragraph 82). Article 3 of Regulation No 1972/2003 may therefore be found to be unlawful only if it is concluded that the measure provided for under Article 3 was manifestly unnecessary to safeguard the effectiveness of Article 4 thereof.

191 As the Commission points out, had it not been for the measures referred to in Article 3 of Regulation No 1972/2003, traders established in the new Member States could have artificially reduced their surplus stocks of the products at issue by placing them under a suspensive regime in one or more Member States, old or new, prior to 1 May 2004. In so doing, those traders would not have been required to pay the charge laid down in Article 4 of Regulation No 1972/2003 in their country of origin in so far as they were not in possession there of surplus stocks on 1 May 2004.

192 The products placed under a suspensive regime would still have been available to them in other Member States and the traders concerned could have placed them in free circulation in the enlarged Community after 1 May 2004 without having to pay the contested charge, something which would have deprived Article 4 of Regulation No 1972/2003 of all effect.

193 It must therefore be concluded that measures such as those provided for in Article 3 of Regulation No 1972/2003 were necessary in order to safeguard the effectiveness of Article 4 of that regulation.

194 Consequently, in so far as the Republic of Poland challenges, by the present plea, the actual power of the Commission to require Member States to levy a charge on products subject to a suspensive regime located in their territory on 1 May 2004, and not the detailed arrangements for, or the proportionate nature of, that charge, the present plea must be rejected.

The third plea: infringement of the principle of non-discrimination on grounds of nationality

— Arguments of the parties

195 The Republic of Poland points out that Article 3(2) of Regulation No 1972/2003 provides that the *erga omnes* import duty is not charged on products exported from the Community of Fifteen to Poland — if the importer provides evidence that no export refund has been sought for the products from the country of export — but does not grant the same exemption to products exported from Poland to the Community of Fifteen.

196 The Republic of Poland adds that no similar discriminatory measures were introduced by the Commission after the enlargement of the European Union in 1995.

197 The Republic of Poland takes the view that such discrimination cannot be justified by the argument that the risk of speculation arose in particular from the flow of goods from Poland to the Community of Fifteen, something which, it contends, has in no way been established. Moreover, even if there really was a risk of speculation deriving in particular from the flow of goods from Poland, that would not have justified the measures adopted, since they applied not only to 'surplus stocks' but to all quantities of the products in question. However, if the risk of speculation came from Polish agricultural products placed under suspensive regimes with the intention of speculation on their being placed in free circulation in the enlarged Community, maintenance of preferential customs duties in force prior to the date of accession on products subject, on 1 May 2004, to suspensive customs regimes would have been a sufficient preventive measure.

198 The Commission disputes the Republic of Poland's arguments.

— Findings of the Court

199 As has been pointed out in paragraphs 128 to 130 above, although the principle of non-discrimination between agricultural producers in the Community laid down in the second subparagraph of Article 34(2) EC requires that comparable situations should not be treated in a different manner, or different situations in the same manner, unless such treatment is objectively justified, the fact remains that, on 1 May 2004, the agricultural situation in the new Member States was radically different from that in the old Member States.

200 That means that no discrimination could result from the mere application of different rules to traders in the new Member States, on the one hand, and to traders in the old Member States, on the other.

201 In the present case, as the Commission has rightly pointed out, although the objective of the provisions referred to in Article 3(2) of Regulation No 1972/2003 in regard to products coming from the new Member States was to prevent traders from being able artificially to reduce the stocks built up before 1 May 2004 by using one of the suspensive regimes so as to place them in free circulation after that date as products not subject to import duties, those provisions clearly had a different objective in regard to products coming from the Community and which were subject to a suspensive regime or which were in transport within the enlarged Community after having been the subject of export formalities.

202 Since the latter products were not subject to the contested charge referred to in Article 4 of Regulation No 1972/2003, the objective of the provisions in Article 3(2) of that regulation could not be, in regard to them, to safeguard the effectiveness of the charge in question.

203 On the contrary, indeed, the objective of the provisions referred to in Article 3(2) of Regulation No 1972/2003 was, inter alia, to prevent agricultural products exported from the Community before 1 May 2004 in respect of which an export refund had been paid from being subsequently placed under a suspensive regime or being in transport after having been the subject of export formalities within the enlarged Community, and being in free circulation in the territory of the European Union without duty having been paid on them, since an export refund could once again be paid, unjustifiably, in respect of those products. That objective is set out in recital 4 in the preamble to Regulation No 1972/2003, which states the following:

'It is necessary to prevent goods in respect of which export refunds were paid before 1 May 2004 from benefiting from a second refund when exported to third countries after 30 April 2004.'

204 It is for that reason alone that Article 3(2) of Regulation No 1972/2003 provided for an exemption only if the trader provided evidence that no export refund had previously been sought for those products.

205 Since the two objectives being pursued by the provisions contained in Article 3 of Regulation No 1972/2003 were necessarily attained by means of different rules for products placed under a suspensive regime which came, on the one hand, from the new Member States and, on the other, from the Community of Fifteen, the application of different rules to those two categories of products cannot be characterised as discriminatory.

206 Finally, with regard to the contention of the Republic of Poland that similar measures were not put in place by the Commission after the enlargement of the European Union in 1995, suffice it to note simply, as was indicated in paragraph 132 above, that the transitional measures to be adopted in regard to agriculture at the time of each enlargement of the Community must be adapted to the actual risks of disturbance of the agricultural markets which that enlargement may involve. Consequently, the institutions are not required to apply equivalent transitional measures during two successive enlargements.

207 The present plea must therefore be rejected.

The fourth plea: lack of reasons or insufficient reasons

— Arguments of the parties

208 The Republic of Poland argues that the introduction of the discriminatory measures referred to in Article 3(2) of Regulation No 1972/2003 constitutes the essential part of Article 3 of that regulation, without any reasons whatsoever being given for those measures.

209 In particular, the Republic of Poland rejects the idea that the statement of the reasons for the introduction of the measure laid down in Article 4 of Regulation No 1972/2003 could be applied by analogy to the measures introduced pursuant to Article 3 of the regulation, since those provisions lay down different transitional measures.

210 The Republic of Poland takes the view that the statement of reasons for the measures introduced by Article 3 of Regulation No 1972/2003 should at least have included a description of the circumstances which justified the introduction, in regard to a certain group of products, of special provisions on suspensive regimes, the definition of the manner in which the measure adopted would serve to achieve the objectives laid down in Article 41 of the Act of Accession, and the reasons justifying the distinction between nationals of the Community of Fifteen and those of the new Member States.

211 The Republic of Poland also claims that the transitional measure introduced under Regulation No 3108/94 when the European Union was enlarged in 1995 was accompanied, in the second recital in the preamble to that regulation, by a more precise statement of reasons than that provided for the measures introduced by Article 3 of

Regulation No 1972/2003. Moreover, that measure was less restrictive than the measure introduced by Article 3 of Regulation No 1972/2003, which strengthened the obligation to state reasons for the latter measure since the Community authority must give an explicit account of its reasoning if the decision goes appreciably further than previous decisions (Case 73/74 *Groupement des fabricants de papiers peints de Belgique and Others* v *Commission* [1975] ECR 1491, paragraph 31, and Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 15).

212 Finally, it claims that a similar transitional measure was laid down in Article 5 of Regulation No 60/2004 and was the subject of a specific statement of reasons in recital 6 in the preamble to that regulation.

213 The Commission contests the arguments of the Republic of Poland.

— Findings of the Court

214 According to settled case-law, the statement of reasons required by Article 253 EC must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review (Joined Cases C-138/03, C-324/03 and C-431/03 *Italy* v *Commission* [2005] ECR I-10043, paragraph 54 and the case-law cited).

215 That requirement must be appraised by reference to the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether

the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (*Italy* v *Commission*, cited in paragraph 214 above, paragraph 55 and the case-law cited).

216 In the case of a regulation, the statement of reasons may be limited to indicating the general situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other (Case 3/83 *Abrias and Others* v *Commission* [1985] ECR 1995, paragraph 30, and Case C-342/03 *Spain* v *Council* [2005] ECR I-1975, paragraph 55).

217 Furthermore, if a measure of general application clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for the various technical choices made (Case C-310/04 *Spain* v *Council* [2006] ECR I-7285, paragraph 59 and the case-law cited).

218 The question whether the statement of reasons for Regulation No 1972/2003 is sufficient in regard to products from the new Member States being made subject to the measures referred to in Article 3 thereof must be determined in the light of those considerations.

219 It should be noted in this regard that the essential reasons for Regulation No 1972/2003 are set out in recitals 1 to 6 of its preamble.

220 Recital 1 in the preamble to Regulation No 1972/2003 states that transitional measures should be adopted in order to avoid the risk of deflection of trade, affecting the common organisation of agricultural markets due to the accession.

221 Recitals 2 and 4 concern measures relating to export refunds.

222 Recital 3 states that trade deflections liable to disrupt the market organisations often involve products moved artificially with a view to enlargement and which do not form part of the normal stocks of the State concerned. The recital adds that surplus stocks may also result from national production and that provision should, therefore, be made for deterrent charges to be levied on such stocks.

223 Finally, recitals 5 and 6 merely state that the measures provided for in Regulation No 1972/2003 are necessary, appropriate and in accordance with the opinion of all the Management Committees concerned, and should be applied in uniform fashion.

224 It follows that none of the recitals cited above expressly sets out the specific reasons which led the Commission to adopt the measures referred to in Article 3 of Regulation No 1972/2003 in regard to products coming from the new Member States.

225 The Republic of Poland has argued in that regard that the Commission provided express reasons for other measures similar to those under Article 3 of Regulation No 1972/2003.

226 The Republic of Poland cites, first of all, the second recital in the preamble to Regulation No 3108/94, which, it says, concerns the second indent of Article 4(3) of that regulation. That provision, according to which non-Community goods which were under the arrangements for customs warehouses, inward processing or temporary admission on 1 January 1995 were subject to a differential tax, where appropriate, over and above the taxation of the new Member State, where the goods were released for free circulation as from that date, has points of similarity to Article 3 of Regulation No 1972/2003. However, contrary to the Republic of Poland's argument, precise grounds for that

provision are not to be found in the second recital in the preamble to Regulation No 3108/94. That recital merely states that, in the interest of simplification, a system ought to be applied on the basis of the principle that intra-Community transactions begun before 1 January 1995 should remain subject to the provisions applicable before that date.

227 It also cites recital 6 in the preamble to Regulation No 60/2004. In its view, that recital provides specific grounds for Article 5 of that regulation, which introduces, for the sugar sector, a measure similar to Article 3 of Regulation No 1972/2003. Thus, recital 6 in the preamble to Regulation No 60/2004 states that Chapter 5 of Annex IV to the Act of Accession provides that goods which are under different types of suspensive regime on the date of accession are exempted from customs duties when released for free circulation provided that certain conditions are met. It also states that in the sugar sector there is a high risk that this possibility may be used for speculative purposes and that it would allow operators to circumvent the obligation laid down in the regulation to eliminate from the market at their expense the quantities of surplus sugar or isoglucose identified by the authorities of the new Member States or to pay charges if proof of elimination of those quantities cannot be provided. Finally, that recital states that products which present such a risk should therefore be subject to import duties on the date of release for free circulation.

228 However, the existence of an express statement of reasons for a later measure similar to that referred to in Article 3 of Regulation No 1972/2003 does not prejudge the question whether the absence of a similar degree of precision in Regulation No 1972/2003 necessarily implies that the statement of reasons therein is insufficient in regard to the measures referred to in Article 3.

229 In order to answer that question, the measures concerned must be placed in their context. It is clear from recital 3 in the preamble to Regulation No 1972/2003 that one of the essential objectives of that regulation was to avoid the risks of trade deflections, generated by the build-up of surplus stocks, which were liable to disrupt the market organisations.

230 In the logic of Regulation No 1972/2003, that objective was implemented by levying the charge referred to in Article 4 thereof on surplus stocks held in the new Member States, a reference to the fact that that charge was appropriate to attain the objective in question being expressly made in recital 3 in the preamble to the regulation at issue.

231 However, the role of Article 3 of Regulation No 1972/2003 in regard to products coming from the new Member States which were subject to a suspensive regime was merely to supplement the system of levying charges on surplus stocks introduced by Article 4 of that regulation and, more precisely, to safeguard the effectiveness of that provision.

232 With regard to the products at issue coming from the new Member States, the need for the measures referred to in Article 3 of Regulation No 1972/2003 to complete the system of charges is evident since, as has been pointed out in paragraphs 191 to 193 above, it is obvious that, if such measures had not been adopted, any trader holding products likely to be subject to the charge introduced by Article 4 of that regulation could have avoided paying it by placing the products in question under one of the customs arrangements mentioned in Article 3 of the regulation in another Member State.

233 It follows that, with regard to the products at issue coming from the new Member States, the measures referred to in Article 3 of Regulation No 1972/2003 constituted merely a technical choice on the part of the Commission intended to give useful effect to Article 4 of the regulation, and the latter provision was, in turn, the Commission's principal technical choice for the purpose of achieving its objective, which was to prevent the build-up of surplus stocks in the new Member States.

234 Consequently, the conclusion must be drawn that that the Commission was not required to provide a more specific statement of reasons for the measures referred to in Article 3 of Regulation No 1972/2003, regard being had to the case-law cited in paragraphs 216 and 217 above, since the reasons given for that regulation expressly

identify the objective of preventing the build-up of surplus stocks and the need to introduce a system of charges on such stocks (recital 3) as well as the general situation which led to the adoption of that regulation (recitals 1 and 3, read together). The statement of reasons at issue must therefore be regarded as being sufficient in that regard.

235 That conclusion is strengthened by the context within which Regulation No 1972/2003 was adopted. The Republic of Poland does not deny that it was closely associated with the process by which that regulation was adopted, since it took part as an observer in various meetings of the committee which discussed its adoption. Moreover, the Republic of Poland engaged in extensive correspondence with the Commission on this question. Finally, it is evident from the file that the Commission demonstrated its willingness to discuss the various issues concerning the regulation and to consider possible changes before the regulation was adopted.

236 It must also be emphasised that it is evident from the file that the Commission discussed specifically with the Republic of Poland, first, the question whether the adoption of the measures referred to in Article 3 of Regulation No 1972/2003 was within the powers of that institution under Article 41 of the Act of Accession and, second, the reasons which underlay the adoption of those measures.

237 In the light of the foregoing, the present plea must be rejected.

The fifth plea: infringement of the principle of the protection of legitimate expectations

— Arguments of the parties

238 The Republic of Poland claims that, by making certain products subject to import duties that were higher than those under the preferential customs arrangements which existed in the period immediately prior to its accession to the European Union, the measures provided for in Article 3 of Regulation No 1972/2003 were adopted in infringement of the principle of the protection of legitimate expectations.

239 The Republic of Poland takes the view that it, together with Polish traders, was legitimately entitled to expect that the procedure applicable to goods which were in temporary storage or under one of the customs procedures, or which were in transport in the enlarged Community after 1 May 2004, would be in accordance with the principles laid down in Annex IV, Chapter 5, to the Act of Accession and that, in any event, the customs duties in force on 30 April 2004 would not be increased after the date of accession even on a transitional basis.

240 The Republic of Poland considers in this regard that, although the principle of the protection of legitimate expectations cannot exclude changes and adaptations for the future in evolving conditions, the transitional measures in question go beyond adaptation and amount to new rules regulating a situation which was previously governed by the Act of Accession.

241 The Republic of Poland takes the view that the Commission, in its defence, admits that prudent traders could not have foreseen the adoption of the contested measure, and it points out that the Commission merely states that those traders could have adapted their activity to the requirements flowing from that measure. However, on the one hand, Regulation No 1972/2003 was not published in Polish prior to accession and, on the other, the possible adaptation of traders to the contested measures could have

consisted either of restricting their commercial activities, that is to say, to the detriment of their normal commercial activity, or in payment of the *erga omnes* import duty.

242 For the rest, the Commission's arguments concerning the purpose behind the introduction of import duties corresponding to the *erga omnes* duties are without foundation since those duties bear no relation to the prevention of speculation.

243 Finally, any reference to the *Weidacher* judgment, cited in paragraph 89 above, with a view to justifying the contested measure is totally without foundation because that judgment did not concern any provision similar to Article 3 of Regulation No 1972/2003.

244 The Commission takes issue with the Republic of Poland's arguments.

— Findings of the Court

245 According to case-law, the principle of the protection of legitimate expectations may be invoked as against Community rules only to the extent to which the Community itself has previously created a situation which could give rise to a legitimate expectation (*Weidacher*, cited in paragraph 89 above, paragraph 31 and the case-law cited).

246 However, it must be pointed out that, in the present case, the Community did not create a situation which could have given rise to a legitimate expectation on the part of the Republic of Poland or Polish traders.

247 First of all, the Community did not in any way give the sectors concerned to understand, whether by act or omission, that transitional measures, in particular those ensuring the effectiveness of measures intended to prevent disturbances of the common market caused by the build-up of surplus stocks, would not be adopted when enlargement took place on 1 May 2004.

248 Next, it must be pointed out that any normally diligent trader who placed products under one of the arrangements referred to in Article 3 of Regulation No 1972/2003 before 1 May 2004 must have known, since the publication of the Act of Accession in the *Official Journal*, that, under the first paragraph of Article 41 thereof, the Commission was empowered to adopt transitional measures in order to bring the rules existing in the new Member States into line with the common organisation of the markets, and that such measures might, in some circumstances, have repercussions on surplus stocks already built up when Regulation No 735/2004 was published and on products subject to a suspensive regime (see, to that effect, *Weidacher*, cited in paragraph 89 above, paragraph 33). Moreover, the Commission communicated the measures envisaged in the present case to the Republic of Poland within the framework of the committee which discussed the adoption of Regulation No 1972/2003. The Republic of Poland cannot therefore argue that its legitimate expectations have been adversely affected.

249 The plea alleging infringement of the principle of the protection of legitimate expectations must accordingly be rejected.

The fourth part of the action: application for annulment of Regulation No 735/2004 in so far as it makes seven additional products subject to all of the contested measures

Arguments of the parties

250 The Republic of Poland points out that, notwithstanding the requirements laid down in Article 41 of the Act of Accession, the contested measures did not facilitate Poland's transition to the system resulting from the implementation of the common agricultural policy under the conditions set out in the Act of Accession. They merely protected the Community of Fifteen against competition linked to the flow of agricultural products from the new Member States, regard being had to their agricultural potential.

251 First of all, the Republic of Poland argues that Article 3 of Regulation No 1972/2003 amounts to taxing, at the level of the Community *erga omnes* customs duty, agricultural products imported into the Community of Fifteen from Poland and not taxing the reverse situation. Secondly, it suggests that the measures provided for in Article 4(3) of Regulation No 1972/2003 imposed on Polish holders of surplus stocks duties the level of which significantly exceeded the profits to be made through speculative activities. Thirdly, it points out that the measures in the eighth indent of Article 4(5) of Regulation No 1972/2003 required it to levy charges on the holders of surplus stocks of agricultural products in regard to which there was no danger of speculative activity and of which no surplus stocks were found to exist at national level. The Republic of Poland takes the view that, under those circumstances, the unavoidable conclusion is that the real purpose of the contested measures was to protect the Community of Fifteen against legitimate competition from traders in the new Member States, something which constitutes an abuse of power on the Commission's part.

252 The Commission contends that the present plea must be rejected.

Findings of the Court

253 In the framework of the present plea, the Republic of Poland merely recapitulates once again the claims already dealt with in earlier parts of the present judgment.

254 It must therefore be held that the present plea is not independent and that it must accordingly be rejected on the same grounds as the pleas which it recapitulates.

255 It follows from all the foregoing that the action must be dismissed in its entirety.

Costs

256 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the Republic of Poland has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders the Republic of Poland to bear its own costs and to pay those of the Commission.**

Tiili Dehousse Wiszniewska-Białecka

Jürimäe Soldevila Fragoso

Delivered in open court in Luxembourg on 10 June 2009.

[Signatures]

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