JUDGMENT OF THE COURT (FIRST CHAMBER)
13 DECEMBER 1984 [1]

GAARM — Groupement des Associations Agricoles pour l'Organisation de la Production et de la Commercialisation des Pommes de Terre et Légumes de la Région Malouine and Others v Commission of the European Communities

(Liability for refusal to authorize a protective measure — Potato market)

Case 289/83

1. *Non-contractual liability — Importation at low prices of new potatoes from Greece — Failure to act on the part of the Commission*

   (EEC Treaty, Art. 46 and Art. 215, second para. Act of Accession of the Hellenic Republic, Arts 130 (2) and 131; Council Regulation No 17, Art. 3, and Council Regulation No 26, Art. 4)

2. *Accession of new Member States to the Communities — Hellenic Republic — Agriculture — Safeguard clause — Conditions governing its application — Appraisal by the Commission*

   (Act of Accession of the Hellenic Republic, Art. 130 (2))

In Case 289/83

1. GAARM — GROUPEMENT DES ASSOCIATIONS AGRICOLES POUR L'ORGANISATION DE LA PRODUCTION ET DE LA COMMERCIALISATION DES POMMES DE TERRE ET LÉGUMES DE LA RÉGION MALOUINE, Saint-Meloir-des-Ondes,
2. ASSOCIATION DES PRIMEURISTES DE LA RÉGION MALOUINE, Cancale,
3. UNION DES COOPÉRATIVES DE PAIMPOL ET TRÉGUIER, Paimpol,
4. COOPÉRATIVE AGRICOLE "LA PAIMPOLAISE", Paimpol,
5. COOPÉRATIVE DES AGRICULTUERS DE BRETAGNE, Landerneau,
6. SOCOPRIM — SYNDICAT INDÉPENDANT DES PRIMEURISTES, Saint-Pol-de-Léon,
7. SYPA — SYNDICAT SPÉCIALISÉ DES PRODUCTEURS DE LÉGUMES DE L'ARMOR, Plouescat,
8. UNION DES COOPÉRATIVES AGRICOLES DU NORD-FINISTÈRE, Saint-Pol-de-Léon,

1 — Language of the Case: French.

9. SOCIÉTÉ COOPÉRATIVE AGRICOLE "LA BAIE", Ploujean Morlaix,
10. SICA DES PRODUCTEURS DE LÉGUMES DU MORBIHAN, Plouhinec,
11. SYNDICAT DES PRODUCTEURS DE POMMES DE TERRE DE PRIMEUR DE PONT-L'ABBÉ, Pont-l'Abbé,
12. SICOMA, Marmande,
13. SICAFEL DU CLAIRACAIS, Clairac,
14. COOPÉRATIVE MARAÎCHÈRE DE L'ÎLE DE RÉ, Le Bois-Plage-en-Ré,
15. COOPÉRATIVE AGRICOLE DE NOIRMOUTIER, Noirmoutier,
16. SYNDICAT DE DÉFENSE DE LA POMME DE TERRE, DU CHOU-FLEUR ET AUTRES LÉGUMES DE LA RÉGION DE CHÂTEAURENARD, Châteaurenard,
17. SOCIÉTÉ COOPÉRATIVE AGRICOLE CAVAILLON PROVENCE PRIMEURS, Cavaillon,
18. FRUICOPROVENCE — UNION DES COOPÉRATIVES AGRICOLES FRUITIÈRES DE PROVENCE, Cavaillon,
19. UNION DES COOPÉRATIVES AGRICOLES DE FRUITS ET LÉGUMES DES PYRÉNÉES-ORIENTALES, Perpignan,

represented by Dominique Schmidt of the Strasbourg Bar, with an address for service in Luxembourg at the Chambers of Guy Harles, Centre Louvigny, 34 B IV Rue Philippe-II,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by François Lamoureux, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for compensation pursuant to Article 215 of the EEC Treaty for the damage caused to the applicants by the fact that the Commission refrained from applying the provisions of Articles 46 and 93 of the EEC Treaty, Articles 130 and 131 of the Act of Accession of Greece and Regulations Nos 17/62 and 26/62 of the Council to stop Greek exports of potatoes,

THE COURT (First Chamber)

composed of: G. Bosco, President, of Chamber, A. O'Keeffe and R. Joliet, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

According to the applicants, as early as 1981 and 1982 loss-making sales of new potatoes of Greek origin had disturbed the markets in the United Kingdom and the Federal Republic of Germany.

On 5 April 1983, because they considered that Greek exporters were again going to dump produce on the Community markets in the 1983 marketing year, certain associations of French potato producers asked the Commission to take such action as might be necessary to prevent entirely any repetition of the discriminatory practices complained of in 1981 and 1982.

By a telex message of 22 April 1983 the Commission replied that it was studying the problem closely and that it would not fail to take the appropriate action.

On 2 June 1983 the associations in question notified the Commission that the prices of new potatoes on the German, United Kingdom and French markets were dropping as a result of imports of Greek potatoes which, in their opinion, were subsidized by the Greek Government. On the same day, the French Government expressed its wish that the Commission should take the measures necessary to remedy the situation as soon as possible.

On 9 June 1983 the French Government asked the Commission to adopt a protective measure regarding new potatoes coming from Greece. A similar request was made by the Government of the United Kingdom on 20 June 1983. The Commission did not accede to those requests.

On 20 June 1983 two associations of potato producers, the *Société d'Initiatives et de Coopération Agricoles*, Kerisnel, Saint-Pol-de-Léon, and the *Société Interprofessionnelle des Producteurs et Expéditeurs de Fruits, Légumes, Bulbes et Fleurs d'Ille-et-Vilaine*, of Saint-Meloir-des-Ondes, brought an action based on Article 175 and on the second paragraph of Article 215 of the EEC Treaty (Case 114/83).

An application for the adoption of interim measures which was lodged by those associations on 1 July 1983 was dismissed by the President of the Court of Justice by an order dated 12 July 1983. As a result, the associations discontinued their action in so far as it was based on Article 175 of the EEC Treaty.

By a document entitled "Reply and Application to Intervene", which was lodged on 2 September 1983 by the lawyer representing the applicants in

Case 114/83, a further 25 associations of French potato producers declared that they wished to intervene as parties to the action.

On 19 October 1983 the Court made an order rejecting the application to intervene on the grounds that the conclusions contained therein went beyond the conclusions set out in the original application and that, in so far as they purported to support the conclusions of the applicants, the prospective interveners had no interest in intervening in relation to the conclusions of one of the parties to the action.

On 23 October 1983 the 25 associations whose application to intervene in Case 114/83 had been refused brought an action based on the second paragraph of Article 215 of the EEC Treaty.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry. By an order dated 20 June 1984 it assigned the case to the First Chamber.

By an order of the Court (First Chamber) of 10 July 1984, made pursuant to Article 38 (7) of the Rules of Procedure, the action was declared inadmissible in respect of the following associations:

Union des Producteurs Vendeurs de Fruits et Légumes, Marmande,

Groupement des Producteurs de Pommes de Terre de Primeur du Bassin de l'Adour, Dax,

Sorep — Syndicat pour l'Organisation Économique des Productions, Hyères,

Groupement de Producteurs du Sud-Est de Fruits et Légumes pour la Conserve et le Marché du Frais, Orange,

Syndicat pour l'Organisation Économique des Producteurs de Fruits et Légumes du Roussillon, Perpignan, and,

Syndicat des Producteurs de Légumes et Fruits de la Basse-Vallée du Gardon, Meynes,

which by the above-mentioned date, had not put their application in order by producing the necessary documents, namely the instruments constituting and regulating them and proof of the authority granted to their lawyer.

II — Conclusions of the parties

The *applicants* claim that the Court should:

Declare and decide that the Community is liable to the applicants, by virtue of the second paragraph of Article 215 of the Treaty of Rome, for the wrongful failure of the Commission to act;

Order the Community to make a payment on account to the applicants of FF 5 000 000;

Appoint such expert as the Court of Justice may decide, to quantify the damage suffered by the applicants from an accounting, commercial and financial point of view after making all necessary inquiries;

Reserve to the applicants the right to fix, after the expert's report has been received by the Court, the final amount of compensation due to them;

Order the defendant to pay the costs in their entirety, including travelling expenses, the cost of preparing the case and the lawyer's fees.

The *Commission* contends that the Court should:

Dismiss the application as inadmissible and, in the alternative, as unfounded;

Order the applicant to pay the costs.

III — Submissions and arguments of the parties

Admissibility of the application

The *Commission* submits that the application is inadmissible on the ground that the applicants do not themselves have any interest in bringing an action. In the Commission's view, the applicants have failed to show that they are producers or that they constitute a producers' cooperative. Instead, as trade associations whose object under the instruments constituting and regulating them is the marketing of fruit and vegetables, they are claiming a collective right to compensation for damage to the financial interests of their members. The Court has refused to recognize the existence of such a right. The Commission adds that, even if it were established that the applicants have an interest in bringing an action as producers, they could not seek compensation for damage which affects all French producers of new potatoes. If, on the other hand, they were found to have an interest in bringing an action as dealers, they would still have to show how the alleged damage directly concerns their activities as defined in the instruments constituting and regulating them.

The *applicants* state in reply that, as is apparent from the instruments constituting and regulating them, they are in fact associations of producers which acquire the producers' produce and sell it on the wholesale markets. They also maintain that they are seeking compensation not for the damage suffered by all the producers but for the damage which they themselves suffered.

Substance

The *applicants* maintain that Greek exports of potatoes during the 1983 marketing year were subsidized by the Greek State as part of a concerted campaign involving the State, the producers and middlemen (in this case the firm Agrex) and that those exports, at extremely low prices, gave rise to a serious crisis on the markets in France, the Federal Republic of Germany and the United Kingdom.

In their view, the aid granted by Greece to its exporters is contrary to the EEC Treaty, to the legislation implementing the Treaty and to the Act of Accession of Greece, since it gives rise to serious discrimination between Community producers, affects the competitive position of similar production in other Member States, distorts competition by favouring Greek exporters on the United Kingdom, German and French markets and, finally, since it increased between 1981 and 1983 instead of decreasing, is in breach of the principle of degressivity referred to in Article 69 of the Act of Accession.

In the opinion of the applicants, the Commission, although well aware of those infringements, wrongly failed to take any action, notwithstanding that it had the means to enforce the EEC Treaty and the Act of Accession.

Among such means of action, the applicants list the following:

The adoption of protective measures under Article 130 of the Act of Accession. In that connection the applicants state that all the conditions required for the adoption of a protective measure were satisfied: the volume of Greek imports was very high and in Great Britain during the second half of June 1983 it accounted for 25 to 35% of total British imports of new potatoes; the prices of Greek potatoes were lower than those of potatoes of comparable quality from the other Member States; the

markets were disrupted by the imports, as is proved by the fact that, for example, on the London market prices had remained stable until the first week of June, despite the existence of very large stocks of ware potatoes, and that they only dropped after the arrival of large quantities of Greek new potatoes.

The adoption of recommendations addressed, under Article 131 of the Act of Accession, to the person or persons responsible for the dumping "for the purpose of putting an end" thereto.

The adoption of measures under Article 3 of Regulation No 17/62, the Commission being entitled to determine, even on its own initiative, whether the rules of competition have been infringed.

The power to determine, even on the Commission's own initiative, pursuant to Article 2 (3) of Regulation No 26/62 applying certain rules of competition to production of and trade in agricultural products, whether certain agreements, decisions and practices are excluded from the scope of Article 85 (1) of the EEC Treaty by virtue of Article 2 (1) of that regulation.

The adoption of decisions pursuant to Article 93 (2) of the EEC Treaty to compel a Member State to abolish or alter any aid incompatible with the common market.

The adoption of decisions under Article 46 of the EEC Treaty in order to re-establish competition where a product in a Member State is subject to "a national market organization".

The fact that the infringement procedure provided for by Article 169 was commenced against Greece for failure to notify the aid can in no way detract from the conclusion that the Commission failed to use the means available to it. That procedure was in fact commenced on 4 July 1983, whilst the existence of the Greek aid had already been reported in 1981 and 1982 and the Commission had been made aware as early as 5 April 1983 of the possibility that such aid might be granted for the 1983 season as well and had been informed no later than 2 June 1983 that it was actually being given.

As a result of the Commission's failure to act an unfair situation arose and persisted, affecting the applicants' capacity to compete on the French, United Kingdom and German markets in new potatoes. By its inaction, the Commission therefore failed to observe Article 155 of the EEC Treaty, which imposes on it the duty of ensuring that the Treaty is applied, and clearly breached the overriding principle of equality, as a result of which its unlawful conduct is particularly serious.

The applicants therefore consider themselves justified in seeking to establish the liability of the Community, under the second paragraph of Article 215 of the EEC Treaty, for the unlawful conduct of which the Commission is guilty by reason of its deliberate and unlawful failure to act.

It has, they maintain, been proved that the availability of Greek potatoes at extremely low prices as a result of the State subsidies led to a drop in prices on the United Kingdom, German and French markets and that the applicants were thereby obliged either to sell at a

loss or to refrain from exporting. Since that result could have been avoided if the Commission had ensured that the EEC Treaty and the Act of Accession were applied, it follows that the Community is under an obligation to make good the damage suffered by the applicants. The view that French producers could have limited their losses by keeping the new potatoes in the ground and marketing them later as ware potatoes is wholly untenable. They could not reasonably be expected to abandon the very profitable market in new potatoes so as to stand aside for subsidized Greek imports.

The damage suffered by French producers as a result of imports of Greek potatoes sold at extremely low prices on the markets of the Member States reflects both the loss of exports to the United Kingdom and the Federal Republic of Germany and the loss of income due to the state of crisis of the market. That loss is calculated at FF 98 894 410 in respect of lost turnover and at FF 7 000 000 in respect of lost exports to the Federal Republic of Germany. No exact figure is given in respect of lost exports to the United Kingdom.

Each of the applicants intends to produce in due course documents evidencing its individual share in the total losses suffered by the French growers.

In reply to the arguments put forward by the applicants, the *Commission* contends:

1. That it was under no obligation whatsoever to take any measure on the basis of the provisions cited in the application;

2. That, even if it did infringe provisions of Community law, the provisions in question were not superior rules of law for the protection of individuals;

3. That no damage has in fact been proved and in any case there is no causal relationship between the alleged infringement and the damage.

As regards the first point, it considers in detail the provisions relied upon by the applicants.

As regards failure to adopt protective measures under Article 130 of the Act of Accession, the Commission considers that there was no "serious disturbance" of the market such as to justify either the introduction of a countervailing charge or suspension of the contested exports.

It states in particular that:

Greek new potatoes account for only about 5 % of total imports into Member States of the Community and 10 % of intra-Community trade;

The prices of Greek potatoes are not in general lower than those of potatoes of the same quality produced in the other Member States;

In 1983 stocks of ware potatoes were still copious even at the end of June and the fact that they were much cheaper than new potatoes and that the weather was rather cold encouraged consumption of ware potatoes to the detriment of new potatoes, so that the prices of new potatoes fell.

The Commission concludes that, since only small quantities were involved, the market situation did not place it under any duty to adopt such an exceptional measure as stopping, or levying a charge on, imports from Greece.

As regards Article 131 of the Act of Accession, the Commission considers

that it is not applicable to new potatoes but rather may be invoked only with respect to products for which transitional measures or measures derogating from the EEC Treaty are provided for in the Act of Accession, that not being the case with regard to the products in question.

Article 3 of Regulation No 17 places no obligation on the Commission to terminate the infringement in question; moreover, the applicants never submitted an application to the Commission under that article. As regards Article 2 (3) of Regulation No 26/62, the Commission considers that provision to refer only to the procedures for applying paragraph (2) of that article, which, in turn, serves merely to confine the scope of Article 85 (1) to production of and trade in agricultural products. No obligation incumbent upon the Commission to terminate the practices complained of can therefore be inferred from that provision.

Moreover, the applicant's allegations concerning the activities of Agrex are unfounded, since that company is involved in the marketing of citrus fruits and not of new potatoes.

As regards Article 93 (2), the Commission points out that Regulation No 26/62 does not provide for the application of that provision to agriculture. Moreover, even if that provision were applicable at least to products not covered by a common organization of the market, it should be pointed out that by order of 11 July 1979 in Case 59/79 the Court dismissed as inadmissible an application regarding the Commission's failure to declare certain aid to be incompatible with Article 92. The Commission adds that, according to the information which it has been able to obtain, in 1983 the Greek Government abandoned its original intention of granting aid for exports at the end of the new-potato marketing year.

Finally, the Commission points out that, even if Article 46 were still applicable after the end of the transitional period, the applicants have not shown that Greek new potatoes are "subject to a national market organization or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State."

On the second point, the Commission draws attention, so far as may be relevant, to the considerable margin of discretion which it has been recognized by the Court to have in particular with regard to the application of Article 226 of the EEC Treaty, which is equivalent to Article 130 of the Act of Accession of Greece.

According to the decisions of the Court, the exercise of such discretion renders the Community liable only if there is a sufficiently serious infringement of a superior rule of law for the protection of individuals. According to the Commission, the applicants have not claimed that any general principle of Community law has been infringed nor have they proved that the alleged infringement derives from a substantive or manifest error on the part of the Commission.

The Commission denies that any damage was actually suffered since, in its opinion, there was nothing exceptional about the price variations recorded in 1983. Those variations are a factor which growers of a product which is so sensitive to market conditions, in particular climatic conditions, should take into account in their planning, in the absence of a common organization of the market. The Commission cannot guarantee price stability on the new-potato market and is therefore under no obligation to make good any damage resulting from loss of expected profit or commercial risks in general.

According to the Commission, there is nothing special about the damage and it does not seem to be direct damage in so far as the applicants contributed to it by immediately harvesting the new potatoes rather than marketing them as ware potatoes at a later stage.

Finally, the Commission contends that it has not been demonstrated that the prices of the Greek products were responsible for the drop in prices on the principal markets of destination; the true cause of the crisis lies in the size of the ware potato stocks and in the fact that supplies from many different sources were simultaneously available in June 1983.

IV — Oral procedure

The parties presented oral argument at the sitting on 11 October 1984.

The Advocate General delivered his opinion at the sitting on 28 November 1984.

Decision

1 By an application lodged at the Court Registry on 23 October 1983, the Groupement des Associations Agricoles pour l'Organisation de la Production et de la Commercialisation des Pommes de Terre et Légumes de la Région Malouine (GAARM), of Saint-Meloir-des-Ondes, and 18 other associations of French new potato producers brought an action for damages under the second paragraph of Article 215 of the EEC Treaty.

2 The applicants seek compensation for the damage which they claim to have suffered as a result of the fact that the Commission refrained, in their view wrongly, from adopting the necessary measures either to stop imports of Greek new potatoes on to the German, United Kingdom and French markets or to oblige the Greek Government to suspend the aid granted by it for the export of new potatoes. They consider that the Commission's inaction caused prices to fall on the above-mentioned markets by reason of the large quantities of Greek new potatoes which were imported on to those markets and therefore caused serious damage to the applicants, who were no longer able to sell French potatoes on those markets and were obliged to destroy them.

3 The Commission has objected that the application is inadmissible on the ground that the applicant associations, which have not proved that they are producers or production cooperatives, are in fact seeking to enforce a collective right to compensation for damage to the financial interests of the

individual producers making up their membership, whereas according to the case-law of the Court no such right exists (judgment of 18 March 1975 in Case 72/74, *Union Syndicale* v *Council*, [1975] ECR 401).

4 It is not, however, apparent from the applicant's claims that they purport to act in the capacity of producers nor is it possible to infer that capacity from the instruments constituting and regulating them, which were produced to the Court. On the other hand they have stated that they are producers' associations which acquire produce from the growers and sell it on the wholesale markets. They have also stated that they are seeking compensation not for the damage suffered by the associated producers as a whole, but for the damage which they themselves have suffered.

5 In those circumstances, it cannot be denied that the applicants are entitled to bring an action for damages, in so far as the action is based on the loss suffered by them in their capacity as dealers in new potatoes.

6 The submissions put forward by the applicants in support of their application are based primarily on the allegation that the Commission infringed Community law by failing, despite massive imports of Greek new potatoes benefiting from State export aid, to adopt measures to neutralize the adverse consequences of that situation.

7 The measures which, according to the applicants, the Commission should have adopted include, in the first place, a protective measure within the meaning of Article 130 (2) of the Act of Accession of the Hellenic Republic to the European Economic Community. The third subparagraph of Article 130 (2) provides as follows:

"In the agricultural sector, where trade between the Community as at present constituted and Greece causes or threatens to cause serious disturbances on the market of a Member State, the Commission shall act upon a request by a Member State for the application of appropriate measures within 24 hours of receiving such request. The measures thus decided on shall be applicable forthwith and shall take account of the interests of all parties concerned and, in particular, transport problems."

8 Although the applicants maintain that the conditions mentioned in Article 130 (2) existed on three national markets, namely those of Germany, France and the United Kingdom, it appears that only two States, namely France and the United Kingdom, requested authorization, on 9 June and 20 June 1983 respectively, to adopt protective measures.

9 The request made by the French Government was not based on serious disturbances arising from the importation of Greek potatoes into France but on massive sales of Greek potatoes in other countries, in particular the United Kingdom market. Those sales are said to have kept French potatoes out of that market and thereby burdened the French market with potatoes which could not be disposed of in the United Kingdom.

10 It thus appears that the risk of disturbing the French market cannot be isolated from the risk affecting the United Kingdom market, which gave rise to a reduction in outlets for French potatoes. It is necessary therefore to consider the question of the possible application of protective measures principally in relation to the situation on the United Kingdom market.

11 In that connection, the Commission did not consider that, either by reason of their quantity or their price, the potatoes from Greece disturbed or were likely to disturb the United Kingdom market seriously. In the proceedings before the Court it contended that the true reasons for the fall in prices on the United Kingdom market were the existence of very large stocks of ware potatoes and the fact that supplies were simultaneously available from various sources during a very short period. It is necessary therefore to establish whether, on the basis of the information in its possession on 20 June 1983, the Commission was justified in not adopting the measures in question.

12 It must in the first place be pointed out that, since a very large quantity of ware potatoes was produced in the Autumn of 1982, large stocks of ware potatoes existed at the beginning of the marketing season for new potatoes, as is proved by the fact that, according to the statistics from the United Kingdom Ministry of Agriculture produced by the Commission, the remaining stocks of ware potatoes still amounted to 60 000 tonnes on 22 June 1983, whereas on 22 June 1982 they had amounted to only 30 000 tonnes.

13 The existence of large stocks of ware potatoes, whose price is normally one-third of that of new potatoes, must inevitably exert considerable influence on the prices of new potatoes. In fact, it is apparent from the above-mentioned statistics that as early as the start of the 1983 marketing year, that is to say well before the arrival of the Greek potatoes on the market, the prices of new potatoes were lower than the prices at the start of the 1982 season. Moreover, there is a fall of prices each year on the United Kingdom market in June as a wholly normal consequence of the simultaneous availability during that period of supplies originating from various places (Cyprus, Greece, Spain, France, Jersey and Turkey).

14 In its decision of 1 July 1983 dismissing the request for the application of protective measures made by the United Kingdom Government, the Commission stated in the first place that:

"the United Kingdom's market in early potatoes is traditionally supplied by way of imports from third countries including Cyprus, Egypt and Spain; ... during the current marketing year imports from Greece are expected to account for only about 10 % of all imports."

Whilst recognizing that the price of Greek potatoes was below that of competing produce, it went on to say that:

"that difference, which is due to the characteristics of the products with regard to variety and quality, has had little influence on the prices of such products in the United Kingdom or on those of the main supplier third countries since levels have remained stable during the last 10 days; ... in particular the prices of the British products are well above those recorded during the same period during the 1981 marketing year, a marketing year comparable with the current one."

15 Those assessments are based on findings of fact which are correct. It is apparent from the Potato Marketing Board's statistics that Greek imports into the United Kingdom between 1 June and 11 June 1983 accounted for 220 tonnes out of a total of 34 675 tonnes sold on the United Kingdom market and, between 11 and 17 June, for 3 754 tonnes out of a total of 35 302 tonnes. It was only in the week from 18 to 24 June that they reached the level of 10 402 tonnes out of a total of 42 516 tonnes.

16 In the light of those figures, the Commission was justified in concluding that, even if their price was below that of competing produce, the Greek potatoes, by reason of their small quantities, could not have given rise to a general downward movement during the period preceding the request for protective measures. Nor is there any basis for taking the view, as the applicants do, that the announcement that large quantities of Greek potatoes were expected to arrive after 17 June 1983 could have upset prices as from 7 June 1983.

17 The question now to be considered is whether it was reasonable for the Commission to take the view that the considerable quantities of Greek potatoes to be imported after 20 June 1983 would not seriously disturb the United Kingdom market.

18 It must be stated in that connection that, on the basis of the experience acquired in the preceding years, the Commission was able to foresee that, even if about 30 000 tonnes of Greek potatoes had not been imported, the market demand, which in 1981 and 1982 had stabilized at about 90 000 tonnes in June, would have led to their place being taken by potatoes from elsewhere and the market situation would not thereby have been significantly affected.

19 Moreover, it was reasonable for the Commission to take account of the fact that in 1981, when the market prices were even lower, the United Kingdom Government did not consider that there was serious disturbance of the United Kingdom market.

20 In view of those circumstances, it must be concluded that the Commission was justified in considering that the foreseeable fall in prices would not be due to "trade between the Community as at present constituted and Greece", in the words of the third subparagraph of Article 130 (2) of the Act of Accession, and that by refusing to authorize the application of a protective measure it did not exceed the limits of the margin of discretion accorded to it for the assessment of economic data.

21 The applicants also claim that the exports of Greek potatoes were the subject of concerted practices between Greek producers and exporters constituting an infringement of Article 85 of the EEC Treaty and that the Commission should have determined, even on its own initiative, pursuant to Article 3 of Council Regulation No 17/62, that an infringement had taken place and should have compelled the undertakings concerned to terminate that

infringement, after establishing that they were not entitled to benefit from the conditions laid down in Council Regulation No 26/62.

22 In their correspondence with the Commission, however, the applicants never supported their assertions that the competition rules had been infringed by referring to any matters of fact or of law showing the existence of agreements incompatible with Article 85 of the EEC Treaty. The arguments put forward and the documents produced by the applicants in connection with this application cannot in any event be taken into consideration in assessing the conduct of the Commission, which must be judged solely on the basis of the information which was available to it when it was asked to grant the authorization to adopt a protective measure.

23 The Commission also stated at the hearing that it did not remain inactive when the applicants asserted that agreements existed which were contrary to the competition rules of the Treaty but in fact sent an inspector to Greece who, however, found no trace of the existence of any agreements between undertakings dealing in new potatoes.

24 In those circumstances, the Commission cannot be criticized for failing to adopt any decision under Article 3 of Regulation No 17/62.

25 Nor is it pertinent to refer to Article 131 of the Act of Accession, under which the Commission has the power, "before the expiry of the period of application of the transitional measures laid down under this Act for each case", to address recommendations, upon application by a Member State or any other interested party, to the person or persons responsible for dumping for the purpose of putting an end to that practice. Since no transitional measure was laid down for new potatoes, it must be considered that the normal rules of the Treaty are to apply to that product.

26 According to the applicants, the Commission could also have decided under Article 93 (2) of the EEC Treaty that Greece was to abolish the aid for the export of potatoes.

27 There is no need give any decision as to the actual existence of such aid, it being sufficient to point out with regard to that argument that under Article 42 of the EEC Treaty "The provisions of the Chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the Council" and that Article 4 of Council Regulation No 26/62, which declares Article 93 (1) and (3) to be applicable to agricultural products, does not declare applicable Article 92, which prohibits State aid, or Article 93 (2), which confers upon the Commission power to decide that a Member State must abolish or alter such aid. Since potatoes are not subject to a common organization of the market, the provisions of Article 4, mentioned above, are so far the only provisions applicable to them.

28 According to the applicants, Article 46 of the EEC Treaty confers upon the Commission a power of decision of its own, in particular power to impose a countervailing charge on imports, so as to redress the balance of competition where it is jeopardized by "a national market organization or ... internal rules having equivalent effect which affect the competitive position of similar production in another Member State".

29 In view of the foregoing considerations, in particular those relating to the conditions necessary for the adoption of protective measures under the Act of Accession of the Hellenic Republic, it must be held that the balance of competititon, within the meaning of Article 46 of the EEC Treaty, does not appear to have been so jeopardized on the United Kingdom and French markets as to justify the introduction of countervailing charges under that provision.

30 Nor are there any grounds for considering that the balance of competition was jeopardized on the German market, in respect of which, moreover, the Government of the Federal Republic of Germany made no request for authorization to adopt protective measures. Indeed, if the conditions for the application of Article 46 of the EEC Treaty were not satisfied on the United Kingdom market, where imports of Greek new potatoes amounted to 12.6% of the total imports, *a fortiori* they were not satisfied on the German market, where imports of Greek new potatoes did not exceed 5% of the total imports.

31 It must therefore be concluded that the Commission was not under any obligation to adopt any of the various measures which the applicants claim that it should have adopted.

32 The application must therefore be dismissed.

Costs

33 Under Article 69 (2) of the Rules of Procedure the unsuccessful party must be ordered to pay the costs, if they have been asked for in the successful party's pleadings. Since the applicants have been unsuccessful in their submissions, they must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the applicants to pay the costs.**

Bosco O'Keeffe Joliet

Delivered in open court in Luxembourg on 13 December 1984.

For the Registrar

D. Louterman

Administrator

G. Bosco

President of the First Chamber