On those grounds,

THE COURT,

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

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

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 29 March 1979.

A. Van Houtte
Registrar

H. Kutscher
President

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

Mr President,
Members of the Court,

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

1 — Translated from the French.

products to enter British territory on the grounds of a "ban on importation of potatoes from whatever source".

The plaintiff then brought proceedings before the High Court of Justice, Queen's Bench Division, Commercial Court, and it is in these circumstances that that court has referred to the Court of Justice the following question for a preliminary ruling:

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

Before the opening of the oral procedure in the present case the Commission on 19 October 1978 submitted to the Court an application pursuant to Article 169 of the EEC Treaty for a declaration that by failing to repeal or amend the disputed provisions with regard to restrictions on importation of main-crop potatoes, the Government of the United Kingdom of Great Britain and Northern Ireland has failed to fulfil an obligation under the EEC Treaty.

The Court held that it was not possible to join the present case and the action for failure to comply with the Treaty; the clear connexity between the two cases nevertheless leads me to anticipate to a certain extent the course of the proceedings brought under Article 169.

II — Without making an exhaustive study of the potato sector in the Community which would be appropriate in the context of the proceedings for failure to comply with the Treaty I ought nevertheless to sketch in outline the interests of the protagonists which are not just those of the British housewives on whose behalf the Commission is so solicitous.

In principle I shall refer only to ware potatoes, otherwise known as main-crop potatoes or potatoes for human consumption.

Even if this plant beloved of Parmentier is an agricultural product within the meaning of the Treaty it is not now any more than it was on the date when the Act of Accession was signed on 22 January 1972, subject to a common organization of the market.

In comparison with the Netherlands the number of potato producers is higher in the United Kingdom where there are many small producers. The index of prices received by producers in 1973/1974 was 137.4 in the Netherlands and 146.4 in the United Kingdom respectively. After the Federal Republic of Germany and Italy the United Kingdom is the largest importer of potatoes in the Community. There exists a body, the "Potato Marketing Board", which is one element of a national market organization covering the whole of the United Kingdom. Whilst it does not have a monopoly of the purchase of potatoes the Board nevertheless supervises production by quota restrictions on the areas cultivated; furthermore it has the task of purchasing surpluses and prohibiting imports with the exception of new potatoes. It is a

measure of this type in particular which has adversely affected the plaintiff in the main action. If the rates are lower than the guarantee prices fixed by the Board before the marketing season, the Government pays it deficiency payments which are intended to allow it to intervene on the market in periods of surplus. The British system therefore clearly has the characteristics of a national market organization: supervision of production, imports and price supports and, I accept, as did the national court, that the measure which adversely affected the plaintiff in the main action is necessary to support that organization. The Commission also puts forward the opinion in its application in Case No 231/78 that those restrictions are necessary in order to ensure the maintenance of the national organization in its present form as it is probable that the abolition of import restrictions in times of surplus would constrain the Government of the United Kingdom to abandon its intervention system. This point may possibly be the subject of special examination in the context of the action under Article 169 for failure to comply with the Treaty.

In comparison, the Netherlands is the largest exporter of potatoes in the Community. In the last five years the area planted with potatoes has remained more or less unchanged in the various Member States with the exception of the Netherlands where it has increased by 41 %. This efficiency is not explained merely by a difference in production levels and the implications of the Netherlands market organization for potatoes are of considerable significance.

A characteristic trait of the Netherlands market is the vertical integration and horizontal organization. As regards vertical integration, since 18 December 1968 there has existed pursuant, to the Wet op de Bedrijfsorganisatie [Law on trade organization], a Production Board ("Produktschap") which groups together commercial operators whether employers or employed persons on an intra-trade basis.

Besides the Vereniging voor de aardappelverwerkende industrie [Association of potato processors] (V.A.V.I) and the Vereniging ter behartiging van den Nederlandschen aardappelhandel [Association for the promotion of the potato trade in the Netherlands] (V.B.N.A.), the exporters' association to which the plaintiff belongs is thus represented within the Board. It is the Board which bears the cost of phytosanitary inspections on exports; it supports various research bodies by means of subsidies financed by levies.

"Horizontally", in addition to the voluntary associations (such as the aforementioned exporters' association) there has existed since 15 November 1955 a public office of potato wholesalers and intermediaries (called the "Bedrijfschap") which also ensures the equal representation of the employers' and employees' representatives. Mention should also be made of the official representative body of retail sellers of potatoes, fruit and vegetables set up on 21 January 1969.

Personal links exist between the various organizations. In 1976 for example the president of the V.B.N.A. was at the same time president of the Bedrijfschap and also a member of the managing board of the Produktschap.

The various bodies are empowered to adopt regulations in very different fields in particular with regard to cultivation in certain regions (as was the case in 1974 for the province of Groningen), marketing and market stabilization.

Thus in 1975 the Hoofdproduktschap voor Akkerbouwprodukten [Central Board for agricultural products], which groups together the specialized boards, issued a regulation concerning the authorization of exports to Member States of the EEC and, in 1976 it adopted a regulation regarding exports to non-member countries. In the spring of 1976 the increase in prices caused the authorities to fix a maximum price and to give aid to wholesalers registered with the Hoofdproduktschap for sales of potatoes complying with national quality standards in order to ensure the supply to retailers at a "normal" price fixed by the Hoofdproduktschap.

All in all in agreement with the Commission (Application No 231/78, p. 7, numbered paragraph 12) it must be accepted that whilst in the United Kingdom the market is closely controlled and aided by the Government through the intermediary of the "Potato Marketing Board" in the Netherlands there exists a highly organized private sector which dispenses with the need for direct state intervention save in certain circumstances in particular for seed potatoes.

III — Let me now turn to considerations of a more strictly legal nature. The problem before the Court is whether Article 60 (2) of the Act concerning the Conditions of Accession and the Adjustments to the Treaties, generally known as the "Act of Accession", annexed to the Treaty of Brussels of 22 January 1972 signifies that the Treaty rules relating to the free movement of goods can be relied on in the new Member States after 31 December 1977 with regard to agricultural products which are not covered by a common organization of the markets and which come from the original member countries whereas the same agricultural products are subject to a national organization in the new Member States.

With regard to industrial products (Title I of Part Four of the Act of Accession — "Free movement of goods") the first paragraph of Article 42 of the Act provides that quantitative restrictions on imports and exports shall, from the date of accession, be abolished between the Community as originally constituted and the new Member States. The second paragraph of Article 42 provides that: "Measures having equivalent effect to such restrictions shall be abolished by 1 January 1975, at the latest".

As regards agricultural products (Title II of Part Four of the Act of Accession) the immediate application pure and simple of Community law in its entirety to the new Member States was even more unthinkable. It was for that reason that a number of provisions both general (Chapter 1) and particular relating to certain common organizations of markets (Chapter 2) introduce amendments in sectors where that appears indispensable.

Article 52 provides that the prices to be applied in each new Member State shall be aligned with the level of the common prices in six stages, the last of which is to end on 31 December 1977: Article 52 (4) provides "The common prices shall be applied in the new Member States by 1 January 1978 at the latest".

Simultaneously Article 59 lays down a time-table for the reduction of customs duties on imports between the Community as originally constituted and the new Member States; the progressive reduction is intended to result in the complete abolition of duties on 1 January 1978 on which date the new Member States are to apply in full the Common Customs Tariff.

Article 60 of the Act, however, draws a distinction both for customs duties and charges having equivalent effect and for

quantitative restrictions and measures having equivalent effect between "products covered, on the date of accession, by a common organization of the market" and products which, on the same date, are not so covered. The rules relating to customs duties and charges having equivalent effect for the former products are, as from 1 February 1973, those applicable in the Community as originally constituted subject to the provisions of Articles 55 and 59 which deal essentially with "accession" compensatory amounts, that is to say, amounts charged or granted in order to permit trade between the new and the original Member States as the price rules are progressively aligned between them.

Article 60 (1) constitutes, for measures having an effect equivalent to customs duties, a derogation from the general rules of Article 36 of the Act. The date of 1 February 1973 is that prescribed by Article 151 of the Act for the application to the new Member States of the Community agricultural rules. As regards quantitative restrictions and measures having equivalent effect Article 60 similarly derogates from the general rules of Article 42 and lays down that they shall be abolished in their entirety by 1 February 1973.

On the other hand for products which, on the date of accession, were not covered by a common organization of the market Article 60 (2) provides:

"... the provisions of Title I concerning the progressive abolition of charges having equivalent effect to customs duties and of quantitative restrictions and measures having equivalent effect shall not apply to those charges, restrictions and measures if they form part of a national market organization on the date of accession.

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

In the context of Article 60 (2), the provision whereby in respect of products not covered, on the date of accession, by a common organization of the market, the provisions of Title I concerning the progressive abolition of charges having an effect equivalent to customs duties and of quantitative restrictions and measures having equivalent effect shall not apply, can refer only to those quantitative restrictions or measures having equivalent effect which, as between the original Member States and the new States, had to be abolished in accordance with the conditions laid down by the second subparagraph of Article 60 (2).

It would appear therefore that Article 42 of the Act has no effect on the prohibition of imports which are necessary in order to ensure the maintenance of a national market organization. This is subject to the principle inherent in the Treaty and the Act whereby the provisions of the Treaties establishing the European Communities relating to the free movement of goods, and, in particular, of Article 30 of the EEC Treaty, are applicable as from the accession of the new Member States *save as expressly otherwise provided.*

However whilst the retention of those taxes, restrictions and measures is lawful until the implementation of the common organization of the markets it is lawful only in so far as it is necessary to ensure the maintenance of the national organization, which is clearly emphasized, as was observed by the British Government, by the German version of this text which literally translated reads:

"Subparagraph 1 shall apply until the implementation of the common organization of the market for these products and" — a limitation on that unconditional proposition — "only in so far as it is necessary to maintain the national organization of the market".

Article 60 (2) does not specify who has jurisdiction to determine to what extent the retention in whole or in part of the charges, restrictions and measures in question is necessary. The view may be taken that it is for the national authorities to decide on this point subject to the power of supervision of the Community institutions.

These provisions are of considerable importance. The text expressly recognizes that, at the time when the accession took effect, on 1 January 1973, there existed products which were still subject to a national organization of the market as was moreover self-evident (cf. also point 2 of Protocol No 19 on spirituous beverages obtained from cereals). To some extent it "legalizes" the situation by recognizing that it has legal effects even after 1 January 1970, the date on which the transitional period under Article 8 (7) of the EEC Treaty expired.

A first question arises: should the date of 31 December 1977 referred to in Articles 52 and 59 of the Act of Accession be regarded as the end of a transitional period in the sense that the application in full of the Treaty rules must be automatically accepted from that date even if on 1 January 1978 the national organization has not been replaced by a common organization?

In general the negotiators took pains to prevent, save in exceptional circumstances, the duration of the application of transitional measures from exceeding five years. That is expressed in Article 9 of the Act of Accession the second paragraph of which provides:

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

As Mr Puissochet wrote in his work on "L'élargissement des Communautés Européennes" (The enlargement of the European Communities — p. 201 *et seq.*) "Article 9 complies with the principle recognized in the course of the negotiations whereby the difficulties which could ensue in the new Member State from pure and simple accession must be resolved not by definitive amendments to secondary legislation but by mere transitional derogations from that legislation. It thus serves a two-fold function: it reduces temporarily the scope of Articles 2, 3 and 4 of the Act by recognizing the existence of derogating provisions, it states that those provisions may be only of a transitional nature and that their application must, in principle, terminate at the end of 1977... Even where no specific date is fixed for the expiry of certain derogating measures, the recognition of the 'transitional' nature of the measure in question has the effect of suggesting that it will one day be terminated. It thus constitutes an indication of policy and even an undertaking on the part of the competent institutions of the Community not to allow it to be prolonged indefinitely if the final date in Article 9 (2) is not applicable".

The article is in a way the counterpart of Article 8 (7) of the EEC Treaty. The date of 31 December 1977 in principle clearly marks the end of the period for which transitional measures are foreseen *on condition that they were for a limited duration* and does not relate only to the provisions of Articles 52 and 59.

However, substantial differences in wording may be observed between the two texts. Article 8 of the EEC Treaty which provides for the progressive establishment of the Common Market over a transitional period of 12 years (which could have been extended to 15 years although this was not done) provides in paragraph 7:

"Save for the *exceptions* or *derogations* provided for in this Treaty, the expiry of the transitional period shall constitute the *latest date* by which all the rules laid down must enter into force and all the measures required for establishing the Common Market must be implemented."

As we know the French Government relied on that provision in particular to demand and obtain the establishment of the common agricultural policy before 1 January 1970. Article 9 (2) of the Act of Accession, which is the corresponding provision, was negotiated in a different context: in the course of the negotiations, as the High Contracting Parties were evidently not unaware, the completion of the establishment of the Common Market was far from being achieved, in particular by virtue of the fact that a large number of the regulations or directives which were necessary for that achievement had not yet been adopted (right of establishment, value added tax etc.). Even in agriculture certain sectors had not yet been "organized".

Article 9 (2) of the Act of Accession uses the words "subject to the dates, time-limits and *special provisions* provided for in this Act ...". The term "special provisions" may certainly be interpreted more flexibly. The same is true of the words "the application of the transitional measures shall terminate at the end of 1977" if it is compared with Article 8 (7) of the EEC Treaty:

"the expiry of the transitional period shall constitute the latest date by which all the rules laid down must enter into force ..."

The United Kingdom and French Governments lay great emphasis on this aspect of the matter as was done by Mr Puissochet in his above-mentioned work (p. 47 *et seq.*): the Act "provides for transitional measures" and *not* for a true "transitional period" of fixed duration as was possible in the original Treaties ... Neither Article 9 nor any other provision of the Act of Accession uses the term "transitional period". Indeed the system adopted *is not* that of a transitional period which is comparable for example to that existing in the EEC by virtue of Article 8 of the Treaty of Rome. It is true that the various transitional measures are certainly not unconnected. In particular the negotiators took pains to establish a parallelism described as "adequate" between the tempo and calendar of the dismantling of tariffs within the Community and for moving towards the Common Customs Tariff on the one hand and the tempo for the application by the new Member States of all the elements of the common agricultural policy, in particular the prices which are characteristic of it, on the other.

However in the case of accession there exists a series of transitional measures in various fields the durations of which may differ.

Whilst the most important of those measures lasts for approximately five years there are shorter periods (for example for the liberalization of capital movements (Articles 121 to 126)) but more especially longer periods.

In this respect reference may be made to the financial provisions (Article 131 provides for the possibility of extending until 31 December 1979 the application

of transitional measures by introducing special correctives described during the negotiations as "post-transitional correctives"), the measures relating to fishing (Articles 100 to 103 which provide for exceptional rules for at least ten years) and Protocol No 18 concerning dairy products from New Zealand.

All the same in agreement with Mr Puissochet (p. 201) it must further be noted that the purpose of a good number of the transitional measures and of almost all those relating to agriculture is to ensure the progressive application not of the provisions of the Treaty itself but of the provisions of secondary legislation existing at the time of accession; these measures constitute temporary derogations from the principle of the immediate and general application of secondary legislation in the new Member States.

Nevertheless the second paragraph of Article 9 reflects the negotiators' hesitation about abandoning altogether the concept of "transitional period". The traces are to be found, as we have seen, in the wording used in that provision. That paragraph provides that the application of transitional measures shall terminate at the end of 1977 by which is meant 31 December 1977, that is to say, five years after accession. Nevertheless that provision does not constitute a rule which can be *directly implemented.* Indeed the final date of the end of 1977 is only laid down "subject to the dates, time-limits and special provisions" provided for in the Act of Accession. The reference to dates and time-limits is clear. The term "special provisions" is very much more vague. Apparently it can refer only to the provisions contained in various parts of the Act of Accession whereby the negotiators concluded some of the most difficult discussions by using intentionally vague terms. That is the case for the determination of the rules applicable to fishing after 31 December 1982; it is also the case in my opinion for Article 60 (2).

Article 9, contained in Part One of the Act of Accession entitled "Principles", and also Article 60, contained in Part Four entitled "Transitional Measures" under Title II "Agriculture", are based on a *selective* conception of dates, time-limits and special provisions which must be complied with or implemented in their entirety by the end of 1977 at the latest but subject to the express provisions of the Act of Accession itself. There exists not *a* transitional period but *some* selective transitional measures.

If the view of the Commission, supported by the Netherlands Government, is correct the second subparagraph of Article 60 (2) should have been worded as follows: "This provision shall apply only to the extent necessary to ensure the maintenance of the national organization and until 31 December 1977 at the latest". The phrase "and until the common organization of the market for these products is implemented" would have been completely superfluous or, as Mr Advocate General J.-P. Warner said in his opinion in the Charmasson case (Case 48/74 *Charmasson* v *Minister for Economic Affairs and Finance* [1974] 2 ECR 1383 at p. 1401): "Article 60 (2) of that Act ... indeed would make nonsense on any other view". In my opinion as well that wording corresponds much more closely to the interpretation which, as the Commission recognizes, prevailed at the time of the negotiations that the interpretation which the Commission claims to deduce *"a posteriori"* from the Charmasson judgment.

At this point I can say that Article 60 (2) signifies two things:

(1) until 31 December 1977 quantitative restrictions remain lawful in so far as they are necessary in the view of the new Member State concerned in order to ensure the maintenance of its national organization of the market;

(2) after 31 December 1977 the restrictions remain lawful in so far as, in the opinion of the Council deciding by qualified majority, the common organization does not offer equivalent guarantees for employment and the standard of living of the producers concerned and in so far as the "legislature" has not consequently substituted a common organization for the national organizations but only to the extent necessary to ensure that that objective is complied with.

With regard to the Act of Accession it can reasonably be argued that the application of Article 60 which constitutes a "special provision" within the meaning of Article 9 (2) is subject to the conditions defined by it, that is to say in the perfectly explicit words of the second subparagraph of Article 60 (2) "until the common organization of the market . . . is implemented" and only "to the extent necessary to ensure the maintenance of the national organization". The legal link which is thus set up between the abolition of the national organization and its replacement by a common organization is so clear that it must permit and even necessitate the maintenance of the national organization after 1 January 1978 if, contrary to the EEC Treaty but as was to be feared from 1 January 1973, the common organization was not implemented on that date. Only what is replaced is destroyed.

IV — It is now appropriate to consider whether that interpretation of the Act of Accession is called in question by the "clarification" contained in the preliminary ruling in the Charmasson case [1974] 2 ECR 1383) and whether the doctrine contained in that judgment can purely and simply be transferred to the effects of the expiry of a "transitional period" allegedly referred to in Articles 52 and 59 of the Act of Accession.

That judgment was delivered — and the date is important — on 10 December 1974 in the context of proceedings for a preliminary ruling on two questions raised by the French Conseil d'État in a dispute between the French administration and a French importer of bananas from third countries other than those having special relationships with France.

One of the questions was whether the existence of a national market organization in a particular sector was something which precluded the application of Article 33 of the EEC Treaty for the products concerned, that is to say, the progressive abolition of quotas during the transitional period of the EEC Treaty which expired on 31 December 1969.

The Court replied that: "Whilst a national organization of the market existing at the date of coming into force of the Treaty could, during the transitional period, preclude the application of Article 33 thereof, to the extent that such application would have impaired its functioning" — as was the case in that instance with the result that Mr Charmasson's action was finally dismissed by the Conseil d'État — "this cannot, however, be the case after the expiration of that period, when the provisions of Article 33 must be fully effective".

As that judgment was delivered in proceedings for an interpretation of the Treaty pursuant to Article 177 it is axiomatic that the answer given by the Court is not limited to the banana sector which was the subject-matter of those proceedings but holds good for all the sectors governed by a national market organization existing after 1 January 1970 and not yet replaced by a common organization under Article 40. In this respect the answer is clear: no system of quotas may be maintained. Article 33 is fully effective and becomes directly applicable and the benefit of its application can be claimed, before the courts if necessary, by any interested party.

The issue in respect of which the Court was asked to give an interpretation concerned the quota rules under a national organization of the market, specifically the organization of the banana market in France. Supposing that that organization consisted of something other than such a system of quotas — which to the Court appeared to be at least dubious, although it took care not to define the French scheme in all its aspects as it had before it only a request for a preliminary ruling — the Court ruled directly only on the incidence of the expiration of the transitional period of the EEC Treaty on the applicability of Article 33 of the Treaty to this scheme. The Court added that even a true market organization, more highly structured, consisting of more than a mere system of quotas, ceased to operate after the end of the transitional period only because, in formulating the question, the Conseil d'État presented the French system as forming an integral part of a national market organization. It was in order to keep within the bounds traced by the Conseil d'État that the Court ruled that even if an organization of the market in bananas existed in France such an organization was no longer lawful after the expiration of that time-limit.

In strict law the scope of the judgment, which lawyers call the "force of *res judicata*", is confined to the express terms of the operative part, that is to say the incompatibility with the Treaty of the maintenance, after 1 January 1970, of quantitative restrictions resulting from a national market organization. Nevertheless the grounds for the decision clearly show that it is the national organization itself which cannot continue after the end of the transitional period to the extent that it includes derogations from the general rules of the Treaty (not only those of Articles 30 and 33 on quotas) even if, on 1 January 1970, it has not yet been replaced by a common organization of the market under Article 40 as it should have been.

In addition it may be supposed that, in the mind of the Court, all the market organizations provided for by the Treaty should have been implemented or would be implemented within a short time and should have taken over the roles of the national organizations and the ruling of the Court was formulated all the more easily as there was no provision for, and to my knowledge there does not exist, a common agricultural organization or a common policy relating to bananas, a fruit which in the present Community is produced only in the French overseas departments.

Subsequently the decision in the Charmasson case was confirmed in a series of decisions. The *Miritz* case of 17 February 1976 (*Hauptzollamt Göttingen* v *Miritz* [1976] ECR 217) confirmed the decision and extended it to all barriers to freedom of movement (customs duties or charges having equivalent effect). I may also refer to the judgment of 16 March 1977

(Commission v *French Republic* [1977] ECR 515) delivered in the particular sector of potatoes and finally, the judgment of 20 April 1978 (Société Les Commissionnaires Réunis v Receveur des Douanes [1978] ECR 927) where the Court ruled that Articles 39 to 46 of the EEC Treaty contain no provision which either expressly or by necessary implication provides for or authorizes, after the end of the transitional period, the introduction of charges having an effect equivalent to customs duties in intra-Community trade in agricultural products.

With regard to that last judgment I cannot however overlook the fact that a clear example of derogation from the principle of free movement of goods between the original Member States notwithstanding the end of the transitional period referred to in Article 8 is provided by a regulation of the Council of 20 March 1970 on Luxembourg wines, adopted on the basis of the first subparagraph of Article 1 (1) of the Protocol on the Grand Duchy of Luxembourg. That regulation has been repeatedly extended, most recently on 19 December 1977 by Council Regulation No 2875/77, until 31 December 1978. Of course one might say that it is the exception which proves the rule:

Two observations may be made with regard to these decided cases:

(1) they all concern the transitional period of the *EEC Treaty*;

(2) they all concern either measures adopted by the *original* Member States or products covered by an *established* market organization.

The *Charmasson* judgment therefore must not be regarded as absolute nor taken out of context. It does not have the force of *"res judicata"* with regard to the Act of Accession. That is indeed a distinct treaty and the question whether analogous interpretation must be adopted for relations between the Community and the new Member States which form the subject-matter of the Act of Accession has not been decided.

V — At this point in the discussion the plaintiff in the main action, supported by the Commission and by the Netherlands Government, argues that even if the Act of Accession differs from the EEC Treaty the doctrine in the *Charmasson* judgment should nevertheless guide the interpretation of the Act of Accession as otherwise unfortunate discrimination may be brought about between on the one hand, the original Member States and, on the other, the new States which would have the result of maintaining, at least for some time, a sort of "Community on two levels or at two stages".

I should like to examine this objection.

First since the *Charmasson* judgment the original Member States have had the time to adapt themselves whilst the new Member States (to which no reference is made in the *Charmasson* judgment) might have thought that that decision was not applicable to them. Another conclusion may be drawn from the relative brevity of the second "transitional period" — if it does indeed exist — in comparison with the first period since the problems arising by virtue of the entry of the new Member States into the Community were at least as difficult. The present case is but one example.

Furthermore it appears that the measure adopted by the United Kingdom is applicable without discrimination to all producers of the Community and not only to Netherlands producers. If one examines the Act of Accession with regard to the obligations entered into by

the new Member States it is evident that those obligations are defined in fairly broad terms. Thus Article 54 (2) provides that "the United Kingdom shall, for each of the products to which paragraph 1 applies, *endeavour* to abolish these subsidies *as soon as possible* during the period referred to in Article 9 (2)". Similarly Article 154 states that the principles concerning the general arrangements for regional aid, elaborated within the framework of the application of Articles 92 to 94 of the EEC Treaty *"will be supplemented* to take account of the new situation of the Community after accession, so that all the Member States are in the same situation in regard to them".

What would happen if, by chance, these production subsidies were not abolished in their entirety by 1 January 1978 and it was not possible to achieve the harmonization of the guaranteed national prices and the single Community prices as should have been done?

It does not necessarily mean that the obligations entered into by the original States for the establishment of a common policy would be suspended. Indeed the condition of reciprocity which is accepted for bilateral treaties in international law is not applicable to a treaty such as that establishing the Common Market in which the failure by a Member State to comply with its obligations is subject to sanction by the Community institutions and does not permit the other Member States to use such failure to relieve them of their own obligations. Certainly this does not render valueless the distinction between self-executing provisions and other provisions; there is nevertheless a very substantial additional reason for not considering as self-executing those provisions of the Treaty which, in the absence of a common organization of the market, in a sector concerned with the abolition of deficiency payments, would deprive the persons concerned of the protection afforded to them hitherto by their national organization.

However although that factual situation is highly regrettable there exists a fundamental principle the breach of which would be even more unfortunate than the breach of the principle of the free movement of goods, that is to say, the principle of legal certainty which is often raised before the Court.

At the time when enlargement was negotiated, the idea of progressiveness and unbroken continuity which appears to be one of the pillars of the establishment of the common agricultural policy and which is expressed in particular in Article 38 (4), Article 43 (2) and (3) and Article 45 (1) was universally accepted and the Act took account of that requirement in a particularly detailed fashion.

If one thing was truly "established" and one "choice taken" whose "fair" character affected the favourable opinion given by the Commission on 19 January 1972 relating to enlargement, it was that the progressive abolition of quantitative restrictions is not to apply to those restrictions which form part of a national market organization at the date of accession and that a common organization can be substituted for a national organization only subject to the conditions set out in Article 43 of the EEC Treaty. It seems to me that the Community public policy requires that two of the High Contracting Parties to the Act of Accession, and relatively major ones at that, should be able to rely on that "Community patrimony".

All the same it is quite remarkable that even after the *Charmasson* judgment the Commission, as the body putting the

proposal to the legislature, used or is still using language which is singularly different from that of its observations in the present case and that the legislature itself continues to share the opinion which prevailed at the time of the negotiations both as regards the sectors which do form part of a common organization and those which are as yet unorganized. That is what I shall now try to show.

VI — 1. In the sector of milk and milk products a problem relating to the transitional law arose in the *SAIL* case (concerning the Italian milk centres). Under Article 8 (7) and Article 40 (1) of the Treaty the Council should have established, before the expiry of the transitional period, a common organization for that sector. The establishment of this common system would automatically have entailed the abolition of the corresponding national organizations. The Council did not fully comply with that obligation and the question therefore arose whether a Member State could be constrained to abolish its national organization while the Community was not in a position to replace it with an equivalent system.

Article 22 (2) of the basic Regulation No 804/68 limited the period of grace for the Italian milk centres to 31 December 1969. Regulation No 2622/69 of 21 December 1969 prolonged that period of grace until 31 March 1970. It was only on 29 June 1971, however, that, by Article 9 (2) of Regulation No 1411/71, the Council reintroduced a period of grace for those milk centres. Thus right in the middle of the period of the definitive application of the common market a transitional system was revived in respect of a situation which the Council itself recognized as being incompatible with the common organization of the market once that had been established.

Whilst in its judgment of 21 March 1972 ([1972] 1 ECR 119) the Court ruled that the expiry of the period laid down in Article 22 (2) of Regulation No 804/68 of the Council of 27 June 1968 and extended by Article 2 of Regulation No 2622/69 of the Council of 21 December 1969, implied, at the time of the events submitted for consideration by the national court, the abolition of the exclusive sales right laid down within the framework of the "system of collection and distribution areas for milk in the Italian Republic" and that, consequently, all provisions of national legislation granting that exclusive right were inapplicable, it has never been ruled that Regulation No 1411/71 of the Council which allowed Italy a certain additional period in order to permit the reconversion of the "milk centres" was contrary to the Treaty.

Still in that sector it is surprising that the Commission waited until 31 December 1977 (the last day of a "transitional period" of five years) to propose to the Council the necessary provisions to adapt, with a view to a *new* transitional period, the milk marketing boards to the prohibition of the system of co-operatives based on national legislation, which prohibition is laid down in the common organization of the market in this sector which had, however, been in existence for a long time. In fact Council Regulation No 1421/78 of 20 June 1978, amending Regulation No 804/68, authorizes, notwithstanding the existence of the common organization, certain activities of the Milk Marketing Boards existing in the United Kingdom and provides that in each individual case the Council shall lay down general rules

relating to the grant and maintenance of certain rights which at present are held by those boards. In particular those rules contain provisions enabling, in the case of an existing organization, its *progressive* adaption to Community rules within a maximum period *to be determined.* Certainly these provisions must be compatible with the general principles of the Treaty, in particular the free movement of goods and non-discrimination between producers, and may affect competition in the agricultural sector only to the extent strictly necessary and finally they must not call in question the proper functioning of the common organization in the sector in question. However a check that all these criteria have been satisfied can be carried out only *a posteriori.*

Thus the Council has made this derogation although there exists a common organization of the markets and the transitional period under the EEC Treaty has expired. The same should apply *a fortiori* in sectors in which there exists no common organization at least in dealings between original and new Member States and between the latter. The direct effect of the prohibition of charges, restrictions and measures having equivalent effect is not dependent on the passing of a date, but on the prior adoption of a certain number of basic provisions which would make those measures purposeless.

The Court itself ruled in a judgment of 2 July 1974 *(Holtz & Willemsen* v *Council and Commission* [1974] 1 ECR 675) that: "At its initiation however the common organization of the market may not completely measure up to the objectives listed in Article 39 of the Treaty and may contain gaps capable of endangering the stability of the market in a part of the Community. Although it is incumbent upon the institutions responsible to seek with all due diligence the causes of such difficulties and to adapt the regulations on the common organization of the markets as soon as possible to remedy the defects revealed, they are at liberty, in the meantime, to take provisional measures, which are limited to those Member States in which the market has been more particularly affected." This must be particularly true where a common organization does not exist and where the new Member States are concerned.

The Court was inspired by a related idea in its judgment in the *Defrenne* case of 8 April 1976 *Defrenne* v *Sabena* [1976] ECR 455) wherein it ruled that: "the application of Article 119 [relating to equal pay] was to have been fully secured by the original Member States as from 1 January 1962 ... and by the new Member States as from 1 January 1973"; that "it is appropriate to take *exceptionally* into account the fact that, over a prolonged period, the parties concerned have been led to continue with practices which were contrary to Article 119" and that "important considerations of legal certainty affecting all the interests involved, both public and private, make it impossible in principle to re-open the question [of remuneration] as regards the past".

2. With regard to the agricultural sectors which are not "organized" it must be held that the system of minimum prices under Article 44 of the EEC Treaty has continued to be applied notwithstanding the expiry of the transitional period. Article 44 was implemented by Council Decision of 4 April 1962 determining the objective criteria for fixing these prices. Paragraph 6 of that article provided that at the end of the transitional period a table of minimum prices still in force should be drawn up and that the Council should "determine the system to be applied

within the framework of the common agricultural policy". If therefore, the maintenance of minimum prices beyond the end of the transitional period was envisaged, it would only be possible in accordance with "rules to be applied in the context of the common agricultural policy". On the basis of that provision, on the eve of the expiry of the transitional period, the Council adopted a Decision of 20 December 1969: as it was not possible to establish before the end of that period a common organization of the markets for a number of products which were still subject to a system of minimum prices and which could be "organized", the decision expressly provided, for certain Member States, either the maintenance in force of the system of minimum prices or the levying of a compensatory charge in its place. Thus the Council authorized the levying of compensatory charges to replace minimum prices on imports into Germany of edible vinegar and substitutes therefor, with the exception of wine vinegar, and on imports into France of seed potatoes and certain fishery products.

The compensatory charges for wine vinegar and for fishery products were abolished on 1 June 1970 in application of Regulation No 816/70 of the Council of 24 April 1970 laying down additional provisions for the common organization of the market in wine and on 1 February 1971 respectively in application of Regulation No 2142/70 of the Council of 20 October 1970 on the common organization of the market in fishery products (that latter regulation provided indeed expressly that the rules laid down therein were to apply only from 1 February 1971 except for the transitional provisions).

The Council Decision of 20 December 1969 the application of which was to cease on 31 December 1970 at the latest was subsequently extended on a number of occasions. Its scope was gradually diminished. However as "no common organization of the market in ... potatoes, including seed potatoes, and edible vinegars and edible substitutes therefor other than wine vinegar, will have been established by 31 December 1973" the system of compensatory charges was extended for the importation respectively into France and Germany, most recently by Council Decision of 17 December 1974.

Thus compensatory charges replacing minimum prices still existed on 31 December 1975 for importations of potato plants into France and certain vinegars into Germany (Commission Decision of 25 January 1975). Similarly France and Germany were authorized to postpone the application of the Common Customs Tariff duties for these products by Commission Decision of 11 December 1974, that is the very day after the Court's judgment in the *Charmasson* case.

3. In its proposals to the Council the Commission adopts an attitude which is radically different from that which it takes before the Court: I shall refer first to the market in sheepmeat and I hope you will excuse this incursion into proceedings which are also pending before the Court.

By Commission Decision of 22 December 1972 France was authorized to apply protective measures for mutton and lamb from third countries put into free circulation in other Member States until the adoption of a Council regu-

lation on the common organization of the market for the product in question. That decision was periodically renewed, most recently on 9 February 1978. Under Article 2 of that decision its validity is limited until the coming into effect of a Council regulation on the establishment of a common organization of the market for the products in question but in any event not beyond 31 December 1978. From the date of accession as regards the new Member States, the measures which could have been taken by the original Member States under the safeguard clause of Article 115 are to be considered as forming part of the national market organization. Those measures lapse only at the time of the entry into force of a common organization.

An even more decisive argument may be brought against the view put forward by the Commission: even after the *Charmasson* judgment and before its last proposal of 31 March 1978 the Commission had submitted a draft of a *provisional* regulation entitled "Proposal for a Council Regulation on the *transitional* common organization of the market in the sheepmeat, which was to apply from 1 January 1976 until 31 December 1977. That draft shows that the Commission itself accepted, until 31 December 1977, derogations from the principle in the *Charmasson* judgment *with regard to the original Member States.*

In its proposal submitted on 18 September 1975 the Commission noted that "at present, trade in sheepmeat products between Member States is governed by the provisions of the Act of Accession and by those of the national market organizations, particularly in France; special transitional provisions should therefore be laid down for the Member States concerned; ... pending the definitive common organization of markets, the national arrangements concerning imports from non-member countries should be allowed to continue; ... however, the provisions of the Act of Accession governing the progressive removal of customs duties within the Community must be observed". The system thereby established was to apply from 1 January 1976 to 31 December 1977.

In its proposal for a regulation on the (definitive) common organization of the market in sheepmeat the Commission still accepted that the transition from the present system in each Member State to that established by that regulation should be effected as smoothly as possible; *transitional* measures may prove necessary to facilitate that process. However, such measures should be limited to the period strictly necessary, to avoid disturbances of trade which might endanger the objectives of Article 39 (2) (b) of the Treaty"; measures may also be taken in the form of aid granted to Community producers in order to comply with the conditions set out in Article 43 (3) (a) of the Treaty.

Article 43 (3) provides that:

"The Council may, acting by a qualified majority and in accordance with paragraph 2, replace the national market organizations by the common organization provided for in Article 40 (2) if:

(a) the common organization offers Member States which are opposed to this measure and which have an organization of their own for the production in question equivalent safeguards for the employment and

standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialization that will be needed with the passage of time; ...".

Title IV of that proposal for a regulation contains under the heading "Other measures", that is to say, what must certainly be called transitional measures, Article 26, the first paragraph of which provides that:

"The Commission may adopt *appropriate measures* to facilitate the transition from the system in force in each Member State before the application of this regulation to the system established by this regulation".

4. With regard to ethyl alcohol of agricultural origin for which a common organization of the market is also provided, I shall confine myself to the following remarks:

The amended proposal submitted by the Commission to the Council on 7 December 1976, which has still to be revised, contains in particular transitional measures for molasses alcohol during a period "which may not exceed seven marketing years" (Article 7) and *transitional* measures applicable until 30 June 1979 "at the latest", "to facilitate the transition from the existing system to the system established by this regulation" (Article 41). In answer to a question which the Court asked it in Case 91/78, *Hansen*, the Commission declares "that so far as it is aware the Federal Republic of Germany wishes to retain its national organization of the market in ethyl alcohol of agricultural origin and, consequently, the price guarantee for covering the costs until the system can be replaced by the proposed common organization of the markets".

5. Let me now return to the sector at issue in the present proceedings.

It is axiomatic that a true Community system of the type generally adopted for agricultural products, that is to say, based on the formation of a market *price* corresponding to the needs of the national producers and accompanied by various compensatory mechanisms, presupposes the abolition by the United Kingdom of its support policy for farmers (deficiency payments and other measures). This is clearly evident from the Act of Accession.

Realizing that a system which is entirely liberalized is hardly satisfactory and also without doubt in order to absolve itself from its responsibilities following the *Charmasson* judgment, the Commission attempted to establish a common organization in order to ensure that after 31 December 1977 there should be no interruption between the national organizations, which were intended to come to an end on that date, and the common organization. On 23 January 1976 it submitted to the Council a proposal for a regulation which is based on the principles set out above. Unfortunately up to now its efforts have been unsuccessful.

Under the proposal submitted by the Commission itself to the Council a transitional period is to be laid down to facilitate the transition to a system established by Community rules. That indicates that the common organization can only definitively be set up over a long period. Indeed Article 34 of the proposal provides that:

"Should transitional measures be necessary to facilitate the transition from the system in force within the Community and in Member States to that established by this regulation, in particular if the introduction of the new system on the date provided for would give rise to substantial difficulties, such measures shall be adopted in accordance

with the procedure laid down in Article 27 (the Management Committee procedure). They shall be applicable *until 31 July 1977* at the latest".

To the best of my knowledge the Commission has not up to now amended its proposal on this point. That implies therefore that in 1976 still, in the view of the Commission, measures of the type taken in the context of the existing national market organizations (compensatory charges, measures having an effect equivalent to quantitative restrictions etc.), which, however, have been incompatible with the EEC Treaty since 1 January 1970 by virtue in particular of the decision of the Court in the *Miritz* case, could once again become lawful until 31 July 1977 if they were transformed into Community measures.

The Commission itself recognizes, in its statement of the grounds for its proposed prices for 1978, that the pure and simple abolition of the national organizations, which *at first sight, could* appear to be a logical consequence of the Treaty rules, *may* not be in conformity with the objectives laid down in Article 39 of the Treaty. It declares that it is fully aware of the situation on the potato market in the Community and of the consequences which could follow from the pure and simple abolition of the present rules in the United Kingdom and it states that it is actively seeking a general solution. According to the Commission those reasons make it indispensable to adopt as a matter of urgency *its* proposal for a common organization of the market which is at present under consideration by the Council or which, more precisely, has been returned to it since the resolution of the European Parliament of 16 September 1976.

Unfortunately that is a declaration without practical effect which can be of no assistance to potato producers in the United Kingdom.

The allegation would be more credible if the Commission initiated proceedings against the Council based on the Council's obligation, in the context of Article 60 (2) as interpreted by the Commission, to adopt a common policy for potatoes. But apart from the political difficulties into which such an initiative would run, the plain fact is that the ball is once again in the Commission's court since the above-mentioned resolution of the European Parliament.

The Commission's argument would also carry more conviction if the Commission had intervened under Article 2 of Regulation No 26 of the Council with regard to the groups of Netherlands producers.

The proposal for a regulation on the common organization of the market in potatoes submitted by the Commission to the Council on 23 January 1976 makes express provision for producer groups (Article 7), but it was provided that the groups should refrain from occupying a dominant position on the common market and that in order to determine that condition the criteria dictated by Commission practice and the case-law of the Court of Justice should be applied. As that proposal has not yet produced any final result it must be concluded that the producer groups which do not satisfy that condition remain prohibited. Similarly, contrary to the proposal submitted by the Commission to the Council, Council Regulation No 1360/78 of 19 June 1978 on producer groups and associations thereof, did not include the potato within its scope. If therefore the Council excluded producer groups from its regulation in spite of or

because of the fact that the Community has not yet adopted a common policy for that product it is because the Treaty rules relating to competition must apply fully to those who harvest and market that product.

Regulation No 26 in conjunction with Article 42 of the Treaty is applicable to potatoes which are an agricultural product within the meaning of Annex II to the Treaty. Its provisions restrict the applicability of the rules to competition and, in particular, those relating to the prohibition of aids granted to agricultural products which do not yet form the subject of a regulation on the common organization of the market.

Article 2 (1) of the regulation provides that:

"Article 85 (1) of the Treaty shall not apply to such of the agreements, decisions and practices ... as form an integral part of a national market organization or are necessary for attainment of the objectives set out in Article 39 of the Treaty". However since the expiry of the transitional period of the EEC Treaty and of the alleged "transitional period" of the Act of Accession, according to the Commission, those bodies automatically cease to be exempt as a matter of course from the provisions of Articles 85 and 86 of the EEC Treaty and are therefore prohibited. It would be interesting to know whether, in the opinion of the Commission, those provisions of Regulation No 26 have also lapsed since 31 December 1977 and whether, consequently, the applicability of the rules relating to competition with regard to potatoes has become automatic as from that date and what conclusions the Commission has drawn with regard to producer groups in the Netherlands.

Finally the Commission puts forward an argument with regard to policy. As I have said, it must be noted that its efforts have remained unsuccessful up to now. In fact some think that a common organization would be of no avail. Others take the view that the proposed organization would not give sufficient guarantees to producers, which is a condition set out by the Treaty for the substitution of a common organization for the existing national organizations. The result, in law, is that there exists a sort of "free trade zone" or rather a "legal vacuum", without the component of "support measures" which accompanies every common organization of the market as the effect of the *Charmasson* judgment is precisely to exclude any link between the obligations of the Member States in this regard and the adoption of Community measures.

As Mr Advocate General Reischl clearly showed in his opinion in the *Rewe* case ([1976] ECR 181 at p. 208) the effect of considering that the national market organization in question must be deemed to have been adjusted at the end of the "transitional period" notwithstanding the fact that it is provided that the organization must be replaced by a common organization and that such an organization has not been set up, would be to deprive a Member State of an important argument in the negotiations relating to the substitution of a common organization for the existing national organization, which element however is expressly reserved by Article 43 (3). Those Member States which are already not very keen supporters of the establishment of such an organization because production and marketing are organized on a "voluntary" basis or which are not favourable to a "light" organization would have even less reason to accept such an organization or a more "heavy" organization as they would

already have obtained the "adjustment", not to say the dismantling of the competing national organizations; having an interest only in the application of the provisions of the Treaty relating to the free movement of goods, they could achieve their aim simply by obstruction and lapse of time.

Conversely a State which was opposed to the establishment of a wholly limp common organization because it did not offer to the State guarentees equivalent to those of its existing national organization would not be able to use the prerogative which is however, expressly conferred on it by Article 43 (3) (a).

Thus far from being a step forward towards the adoption of a common organization, as is argued by the Commission, the dismantling of the national organization would deprive the establishment of such a common organization of a substantial proportion of its value.

VII — In conclusion I should like to examine the problem on a somewhat higher plane.

In view of the failure of the legislative authority to act it might have been thought that the regulations or directives adopted to implement certain provisions of the Treaty could no longer apply, as the authority conferred to that end was limited to the transitional period and that in consequence, the rights conferred by the Treaty could be exercised in full.

Conversely it might be accepted that the delay in bringing into force the regulations or directives did not dispense with the obligation to adopt them, even after 1 January 1970, and that in the meantime the Treaty provisions, in so far as they could be implemented only by means of these regulations or directives, are not directly applicable.

In a judgment of the Court in the *Reyners* case of 21 June 1974 ([1974] 1 ECR 631) the Court elected to take a middle course by drawing a distinction between the rules which must be regarded as directly applicable by their very nature and those which require implementing measures to be brought properly into force.

Was the Court going to resort to a similar distinction with regard to the delays in the implementation of the common agricultural policy, in particular regarding the establishment of a common organization of the market in certain sectors?

Under Article 38 (2) of the Treaty the rules laid down for the establishment of the Common Market (those of Article 30 *et seq.* for example) are to apply to agricultural products only save as otherwise provided in Articles 39 to 46, that is to say subject to the establishment of a common agricultural policy as defined in Article 39. The setting up of such an organization can only follow from clear and precise rules, which are fully defined and which create rights in favour of individuals. It goes without saying that the provisions of Article 40 of the EEC Treaty are not "directly applicable". That has always been the view of the Commission, both before and after the *Charmasson* judgment. Nevertheless in that judgment the Court substantially extended its conception of direct effect. It is not sufficient solely to verify whether a certain provision is of itself of such a nature as to be immediately applicable, it is also necessary to consider, where several rules were simultaneously applicable, which of them is the most fundamental with regard to the general principles of the Treaty. According to the *Charmasson* judgment, as the abolition of quantitative restrictions, which is one of the foundations of the Common Market, is

directly applicable it must take precedence over the needs of the common agricultural policy in so far as that policy entails an attenuation of the principle of the free movement of goods and in so far as it has not been possible to establish it within the time-limits fixed by the EEC Treaty.

It is no longer merely a question of a concept of direct applicability based on the mere fact that any implementing measure would be purposeless, but of the adoption of a position which is intended to exert pressure on the Community executive and, through it, on the Member States in order to ensure that the Treaty is applied to the full.

It is further necessary that such a result, which *ex hypothesi* requires regulations and other implementing measures, can be obtained rapidly without causing grave distortion or disruption which sudden integration might cause in a given economic sector, in particular with regard to agriculture, if it might possibly run contrary to the principles laid down by Article 39 of the Treaty. Objectively transitional measures may prove to be necessary. A judge cannot however legitimate may be his efforts to ensure that the objectives of the Treaty win the day, substitute completely his responsibility for that of the executive which, to a large extent, is also the legislature. What appears to me to be certain, in any event, is that such a view is necessary where, as in the present case, the problem concerns the application not of the provisions of the Treaty itself, but of those of the Act of Accession. I think that I have shown clearly that the period expiring on 31 December 1977 was quite different both as regards its nature and its effects, from the transitional period of 15 years laid down by the Treaty and that the rules laid down to ensure the assimilation of the economies of the new Member States in as short a time as possible were very much more flexible than those laid down by the Treaty for the achievement of the Common Market between the founding Member States.

The common agricultural policy, as defined in Article 39, cannot be accompanied by the risk of the disappearance in a Member State which entered into the "Community patrimony" in 1972/73 of a whole production sector as might be the case, at least theoretically, in the industrial sphere.

Subject to what may be said in Case 231/78 I propose that the following answer should be given to the question asked:

The application of quantitative restrictions after 31 December 1977 on imports of an agricultural product which was not the subject of a common organization of the market on the date of accession and was still not so subject on 1 January 1978, in so far as these measures were an integral part of a national market organization in force on the date of accession and in so far as it is necessary to ensure the maintenance of the national organization pending the establishment of the common organization of the market for the product in question is not contrary to Article 60 (2) of the Act of Accession.