JUDGMENT OF THE COURT
20 October 1987 *

In Case 119/86

Kingdom of Spain, represented by Luís Javier Casanova Fernández, Secretary General for the European Communities, acting as Agent, assisted by Fernando Mansito Caballero, Director-General for the Coordination of Legal and Institutional Relations with the Communities, Jaime Folguera Crespo, Assistant Director-General for the Coordination of Legal Affairs concerning the Communities, Antonio Sainz de Vicuña Barroso, Head of the Legal Service at the Ministry of Foreign Affairs, Juan de Miguel Zaragoza, Assistant Director-General for International Legal Cooperation at the Ministry of Justice, and Michel Waelbroeck, Avocat, with an address for service in Luxembourg at the Spanish Embassy, 4-6 boulevard Emmanuel-Servais,

applicant,

v

Council of the European Communities, represented by Antonio Sacchettini, Director of its Legal Service, Arthur Brautigam, its Principal Administrator, and José Elizalde, a member of its General Secretariat, with an address for service in Luxembourg at the offices of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100 boulevard Konrad-Adenauer, Kirchberg,

and

Commission of the European Communities, represented by its Legal Adviser, Jean-Claude Sèche, acting as Agent, assisted by Carlos Palacio, a member of its Legal Department, with an address for service in Luxembourg at the office of G. Kremlis, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendants,

APPLICATION for a declaration that the following regulations are void:

* Language of the Case: Spanish.

Council Regulation (EEC) No 569/86 of 25 February 1986 laying down general rules for the application of the supplementary mechanism applicable to trade (Official Journal 1986, L 55, p. 106);

Commission Regulation (EEC) No 574/86 of 28 February 1986 laying down detailed rules for the application of the supplementary trade mechanism (STM) (Official Journal 1986, L 57, p. 1);

Commission Regulation (EEC) No 624/86 of 28 February 1986 laying down detailed rules for applying the supplementary trade mechanism to new potatoes (Official Journal 1986, L 60, p. 1);

Commission Regulation (EEC) No 641/86 of 28 February 1986 laying down detailed rules for the application of the supplementary trade mechanism to importation into Portugal of the products processed from fruit and vegetables listed in Annex XXII to the Act of Accession (Official Journal 1986, L 60, p. 34);

Commission Regulation (EEC) No 643/86 of 28 February 1986 laying down detailed rules for the application of the supplementary trade mechanism to the live plants and floriculture products listed in Annex XXII to the Act of Accession and imported into Portugal (Official Journal 1986, L 60, p. 39); and

Commission Regulation (EEC) No 647/86 of 28 February 1986 laying down certain detailed rules for the application of the supplementary trade mechanism to viticultural products (Official Journal 1986, L 60, p. 50).

THE COURT,

composed of: G. Bosco, President of Chamber, acting as President, O. Due and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. Kakouris, R. Joliet, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: M. Darmon
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 9 April 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 16 June 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 27 May 1986, the Kingdom of Spain brought an action under the first paragraph of Article 173 of the EEC Treaty for a declaration that the following regulations are void:

Council Regulation (EEC) No 569/86 of 25 February 1986 laying down general rules for the application of the supplementary mechanism applicable to trade (Official Journal 1986, L 55, p. 106);

Commission Regulation (EEC) No 574/86 of 28 February 1986 laying down detailed rules for the application of the supplementary trade mechanism (STM) (Official Journal 1986, L 57, p. 1);

Commission Regulation (EEC) No 624/86 of 28 February 1986 laying down detailed rules for applying the supplementary trade mechanism to new potatoes (Official Journal 1986, L 60, p. 1);

Commission Regulation (EEC) No 641/86 of 28 February 1986 laying down detailed rules for the application of the supplementary trade mechanism to importation into Portugal of the products processed from fruit and vegetables listed in Annex XXII to the Act of Accession (Official Journal 1986, L 60, p. 34);

Commission Regulation (EEC) No 643/86 of 28 February 1986 laying down detailed rules for the application of the supplementary trade mechanism to the live plants and floriculture products listed in Annex XXII to the Act of Accession and imported into Portugal (Official Journal 1986, L 60, p. 39); and

Commission Regulation (EEC) No 647/86 of 28 February 1986 laying down certain detailed rules for the application of the supplementary trade mechanism to viticultural products (Official Journal 1986, L 60, p. 50).

A — Subject of the dispute

2 The action seeks a declaration that, by adopting the rules for the application of the supplementary trade mechanism and by requiring *inter alia* the use of a system of licences and securities for the exportation of certain agricultural products from Spain to the other Member States of the Community, the Council and the Commission have infringed the provisions of the EEC Treaty on the free movement of goods, the 'standstill' rule (which excludes any new restrictive measure), and the principles of legal certainty, proportionality and Community preference.

3 The supplementary mechanism applicable to trade between the Community as constituted on 31 December 1985 and Spain, hereinafter referred to as 'the STM', was introduced by Article 81 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (Official Journal 1985, L 302, p. 23; hereinafter referred to as 'the Act of Accession'). The STM applies from 1 March 1986 to 31 December 1995, and governs the products set out under Article 81 (2) of the Act of Accession. As far as imports from Spain into the Community of Ten are concerned, the products in question are viticultural products covered by the common organization of that market, new potatoes falling under subheading 07.01 A II of the Common Customs Tariff, and products of the fruit and vegetable sector covered by the common organization of that market. The last-named category, however, is subject to the STM only from 1 January 1990.

4 Article 83 of the Act of Accession provides that, on the basis of a forward estimate prepared for each marketing year and for each product or group of products, a forward timetable relating to the development of trade is to be drawn up and an 'indicative import ceiling' fixed. The successive fixing of indicative ceilings must reflect a certain steady progress in relation to traditional trade flows, so as to ensure 'a harmonious and gradual opening-up of the market and the full realization of free movement within the Community on the expiry of the period of application of transitional measures' (first subparagraph of Article 83 (2)). To that end, an annual rate of progress is set for the indicative ceilings.

5 Under Article 85 of the Act of Accession, protective measures may be adopted 'should the examination of developments in intra-Community trade show that a significant increase in imports has taken place or is forecast and if that situation should result in the indicative import ceiling for the product being reached or exceeded for the current marketing year or part thereof'. As regards the nature of the protective measures, Article 85 draws a distinction between interim protective measures and definitive measures; definitive measures may include either the revision of the indicative ceiling or the limitation or suspension of the imports in question.

6 Council Regulation No 569/86, the first of the contested regulations, lays down general rules for the application of the STM. In the preamble it states that the aim of the STM is to monitor the development of trade and to apply the measures provided for in the Act of Accession which such development necessitates. Article 1 of Regulation No 569/86 provides that goods subject to the STM can be released for consumption only on presentation of an 'STM certificate or licence' (hereinafter referred to as an 'STM licence') issued by the Spanish authorities in respect of Spanish products imported into the Community of Ten. The STM licence is issued subject to the provision of a security guaranteeing compliance with the undertaking to release the product for consumption during the licence's period of validity; it is wholly or partly forfeit if the transaction is not completed, or is only partly completed, within that time.

7 The other contested regulations set out the detailed rules for applying the scheme laid down by Regulation No 569/86. Amongst these regulations, Commission Regulation No 574/86 defines the conditions for the issue and validity of STM licences, whilst the other regulations concern special detailed rules in respect of certain products or groups of products.

8 Reference is made to the Report for the Hearing for a fuller account of the provisions of the Act of Accession and the contested regulations and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 The applicant puts forward six submissions. The first is that no adequate statement of reasons was given for Council Regulation No 569/86 but that submission

should be considered after the submissions based on the alleged illegality of the scheme established by Regulation No 569/86 as a whole. That scheme is challenged on the grounds that it is contrary not only to the free movement of goods but also to the principles of legal certainty and proportionality, the 'standstill' clauses under the EEC Treaty and the principle of Community preference.

B — The free movement of goods

10 The applicant points out that the provisions of Article 30 of the EEC Treaty form an integral part of the common organization of the markets, that they prohibit any provisions liable to obstruct intra-Community trade either directly or indirectly, actually or potentially, and that that prohibition applies to trade between Spain and the Community of Ten from 1 January 1986 onwards, as is apparent from Article 42 of the Act of Accession. Whilst conceding that the provisions of the Act of Accession governing agricultural products permit certain specific restrictions on a transitional basis, the applicant claims that none of those provisions is applicable in this instance.

11 More specifically, the applicant maintains that the Act of Accession does not authorize the setting-up of a generalized scheme of licences and securities such as the system provided for by the contested regulations. The STM permits the Community institutions to adopt restrictive measures — whether interim protective measures or definitive measures — when trade between Spain and the Community of Ten develops in such a way that there is a risk of the indicative import ceiling being reached or exceeded; however, it is not intended to impose restrictive measures even before such a situation has arisen.

12 Lastly, the applicant emphasizes that the scheme set up by the contested regulations is restrictive in character, in particular since (a) it demands not only the presentation of the STM licence but also the provision of the requisite security as a condition for releasing the goods for consumption in the Member State of importation, (b) it permits the issue of STM licences to be spread out over the year, and (c) it allows the issue of such licences to be limited to certain products in a given sector even before the indicative import ceiling for that product has been reached.

13 The Council and the Commission contend that the provisions on the STM contained in the Act of Accession constitute a provisional derogation from the rules of the EEC Treaty on the free movement of goods. That being so, the point at issue is not whether the scheme chosen for the implementation of the STM restricts intra-Community trade but whether a legal basis for it may be found in the provisions of the Act of Accession.

14 In that respect the defendant institutions maintain that the system of licences and securities, as created by the contested regulations, is an integral part of the STM, since the STM cannot operate without reliable and up-to-date information. Furthermore, account must be taken of the broad discretion enjoyed by Community institutions in matters concerning the common agricultural policy, by virtue of the responsibilities conferred on them in that regard by the EEC Treaty.

15 As the defendant institutions rightly contend, the Court should first consider whether the system of licences and securities, which the applicant challenges, is an integral part of the transitional measures under the Act of Accession. If so, the scheme cannot be fundamentally criticized as being contrary to the provisions contained in the EEC Treaty and in the Act of Accession on the free movement of goods.

16 According to Articles 81, 83 and 85 of the Act of Accession, the application of the STM consists of three elements, namely the fixing of indicative import ceilings, the monitoring of developments in trade between the acceding States and the Community of Ten, and (where appropriate) the introduction of interim protective measures or definitive measures on trade. Together, those three elements must, in accordance with Article 83 (2), ensure a gradual transition to the full realization of the free movement of goods on the expiry of the period of application of the STM.

17 In order to enable the STM to play the role assigned to it by the Act of Accession, the monitoring of developments in trade must enable the Commission to take action in good time and in full knowledge of the facts. It follows that the Commission must be reliably and rapidly informed about trade flows. The markets for the products subject to the STM are, as indeed the applicant concedes, susceptible to sudden fluctuations.

18 In that connection, the Council and the Commission have argued that the statistics reaching the Commission are considerably delayed and that a system whereby importations are merely declared after the event cannot, unless some guarantee as to its application is given, afford the requisite degree of certainty. According to the Council, the experience of the Community has shown that the only way to make a monitoring system based on licences operate properly is to demand securities to accompany them.

19 Those arguments of the defendant institutions must be upheld. It has not been demonstrated that the system of providing securities has any aim other than to ensure that the imports for which the licences have been requested are genuine, and that is something of which the Community authorities need to be sure in order to be able to monitor developments in trade on the basis of reliable, rapid information.

20 It follows that the system of licences accompanied by securities, which the applicant has challenged, must be regarded as an integral part of the transitional measures provided for by the Act of Accession.

21 That conclusion does not imply that all the detailed rules for the system of monitoring, as laid down by the Council and Commission regulations, are necessarily immune to any challenge based on the principle of the free movement of goods. On that point the applicant draws attention in particular to Article 4 (1) of Regulation No 569/86, under which the issue of STM licences may be limited to certain products in a sector or may be spread out over the year. Such an option is, the applicant maintains, a serious limitation on the commercial freedom of those engaged in trade between Spain and the Community of Ten, even when the quantitative ceilings for the products in question have not yet been reached.

22 That argument must be rejected. Limiting the issue of licences to certain products in a given sector cannot have the effect of obstructing trade; on the contrary, the consequence of such a limitation is that the other products in the sector in question may be imported into the Community of Ten without a licence. As far as spreading out the issue of licences over the year is concerned, it should be

observed that under Article 83 (2) of the Act of Accession it is possible, within the limits of the overall indicative ceiling, to fix ceilings corresponding to the various periods of the marketing year in question; the spreading-out of the issue of licences over the year may, as the Council has stated, serve to give flexibility to the resultant scheme, and the applicant has not shown that such an arrangement would give rise to an arbitrary practice.

23 Consequently, the submission based on the infringement of the free movement of goods must be rejected.

C — Legal certainty

24 The applicant alleges that the system established by the contested regulations creates a situation of profound uncertainty as to whether traders may carry out projected export operations. In support of that claim the applicant refers, in particular, to the following circumstances:

— A Spanish exporter is obliged to rely on the diligence and cooperation of his contracting partner, since the security is not released until after the importer has returned Copy 1 of the STM licence, duly endorsed by the customs authorities of the Member State of importation;

— The rights conferred by an STM licence are not certain, inasmuch as they may be withdrawn at will in respect of one or more Member States;

— It is hazardous to conclude a number of contracts because, since the STM licence is not issued until a five-day waiting period has elapsed, traders are compelled to wait almost a whole week before they can carry out the transaction in question.

25 The argument based on the requirement of cooperation with the importer in a Member State of the Community of Ten is not borne out by the relevant provisions. The subject is dealt with in Article 8 (2) of Commission Regulation No 574/86, which provides that proof of entry for home use is given by producing Copy 1 of the STM licence, endorsed by the customs authorities, or else by producing either the customs document of entry for home use or a copy of it

certified as being authentic either by the customs office concerned or by the official departments of the Member State in which the product is entered for home use.

26 The criticism that it is possible for a licence to be withdrawn at the authorities' discretion with effect for one or more Member States refers to the application of Article 5 (2) of Council Regulation No 569/86. Article 5 (1) provides that, where the situation on the market calls for a limitation or suspension of imports on the market of the Member State concerned, the issue of STM licences may be limited or suspended. Article 6 of that regulation sets out the criteria of which particular account must be taken in assessing the market situation of a Member State subject to the STM. Article 5 (2) provides *inter alia* that 'in such cases' provision may be made for the licences issued to be valid only in a Member State other than the Member State affected by the application of Article 5 (1). It follows that, as the Council has rightly argued, imports are not limited or suspended at will but are subject to specific conditions defined by Article 5 (1) and Article 6 of Regulation No 569/86.

27 With regard to the period of five working days laid down for the issue of STM licences, it is not disputed that a three- or five-day period was also incorporated in other schemes for the importation of goods where the need arose to follow import trends with particular care in order to assess the possibility of disturbance or threatened disturbance of the market. The insertion of such a period between the application for a licence and its issue serves a legitimate purpose, namely to facilitate the adoption of appropriate measures in the event of a disturbance or threatened disturbance of the market.

28 The applicant further argues that the five-day period constitutes an exceptionally serious obstacle to the development of trade in the case of perishable foodstuffs such as fruit and vegetables, which must often be exported within 24 or 48 hours.

29 In that connection it should be noted that, by virtue of Article 2 (3) of Regulation No 624/86, licences are issued immediately in the case of new potatoes — the only perishable product to which the STM applies at present, since fruit and vegetables

are not subject to the STM until 1 January 1990. Even if the applicant's criticisms were justifiable with regard to perishable foodstuffs, the mere possibility that the waiting period at issue might be applied to such products cannot make the provision in question illegal. The period at issue, like all the general rules under Regulation No 574/86 for the application of the STM, is established 'without prejudice to provisions derogating therefrom in Community instruments specific to certain products', according to Article 1 (1) of that regulation.

30 It follows that the argument based on the infringement of the principle of legal certainty cannot be accepted.

D — Principle of proportionality

31 The applicant maintains that the system of licences and securities serves no useful purpose and is, in any case, disproportionate to the aim pursued. In support of that claim the applicant first puts forward a number of arguments based on the infringement of Article 30 of the EEC Treaty and on the exceptionally restrictive nature of the security rules. Those arguments have already been considered.

32 The applicant further claims that the disproportionate nature of the scheme set up by the contested regulations is demonstrated by a comparison with other intra-Community monitoring measures, in particular those based on Article 115 of the EEC Treaty relating to products orginating in non-member countries and released for free circulation within the Community. Those measures are, it argues, less stringent inasmuch as they do not require the provision of securities.

33 That comparison is not apposite. Article 115 of the Treaty does not create a scheme for the supervision of trade but empowers the Commission, in the particular circumstances defined therein, to authorize Member States to adopt protective measures, 'the conditions and details of which [the Commission] shall determine'.

34 The applicant also challenges Article 2 (2) and (5) of Regulation No 574/86, under which the rights arising out of an STM licence vest solely in the person cited in the forms as the holder and may not be transferred more than once, the transferee being unable to return his right to the holder. That restriction on the transferability of the licence is a quite unjustified limitation on traders.

35 It should be observed that the rules contested by the applicant in this regard are general in scope, in the sense that they form part of the general scheme for the management of import licences, as is shown in particular by Article 9 of Commission Regulation No 3183/80 of 3 December 1980 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (Official Journal 1980, L 338, p. 1). It may be seen from the recitals in the preamble to that regulation that the restrictions on transferability are in keeping with the concern to facilitate the proper administration of the licence system.

36 In the same context the Council further observes that the STM is a mechanism with a complex structure and one that is important by virtue of its possible implications. It was precisely for that reason that the Community institutions used a proven system which was familiar to traders for the proper monitoring of trade.

37 In the light of those circumstances, the Court holds that the limitation on the transferability of STM licences is due to the desire to guarantee as far as possible the reliability of the resultant information, in accordance with a scheme of proven efficacy. In those circumstances, the limitation in question cannot be regarded as disproportionate to the legitimate aim which it pursues.

38 It follows that the complaints based on the infringement of the principle of proportionality must be rejected.

E — The 'standstill' requirement

39 In support of this submission the applicant puts forward an argument based on the fact that, in the case of two of the three groups of products covered by the STM, namely (i) fruit and vegetables, and (ii) new potatoes, the contested regulations set up a system which was more restrictive of Spanish imports into the Community of Ten than the previous system had been. Only viticultural products were subject to a scheme of licences and securities before Spain's accession. By imposing the same scheme on the other two categories of goods, the defendant institutions infringed the 'standstill' requirement contained in Articles 31 and 32 of the EEC Treaty.

40 In that regard it should be recalled that the contested scheme forms an integral part of a transitional mechanism expressly provided for by the Act of Accession, which derogates from the normal system applicable to intra-Community trade. In order to appraise the legality of the measures adopted to implement the STM, it is appropriate to examine whether those measures are covered by the relevant provisions of the Act of Accession. That examination, which has already been discussed above, shows that such is indeed the case.

41 Accordingly, the submission based on the 'standstill' provision must likewise be rejected.

F — Community preference

42 According to the applicant, the scheme of licences and securities places Spanish products on the same footing as those imported from non-member countries, even though Spain has been a full member of the Community since 1 January 1986. In putting forward this submission the applicant reiterates the point that the previous rules were less restrictive as far as fruit and vegetables and new potatoes were concerned. It therefore infers that the principle of Community preference has been infringed.

43 It should first be stated that, in the context of this dispute, Community preference refers to the situation of Spanish products as compared with those from non-member countries after Spain's accession. The applicant's arguments relating

to the situation before accession are therefore irrelevant, because the Community was not obliged to leave that situation unchanged.

44 The Act of Accession does indeed ensure Community preference by providing, in Article 85 (4), that the application of the STM may in no event lead to products coming from the new Member States and subject to the STM being treated in a less favourable manner than those coming from the most favoured non-member countries.

45 Article 85 (4) was not infringed by the contested regulations. The system of monitoring trade in certain categories of product was extended to the products of non-member countries put into free circulation within the Community by Article 3 of Regulation No 569/86. Article 6 of that regulation shows that, in assessing the market situation of a Member State, account is taken of products coming from non-member countries. Consequently, imports of Spanish products are not placed at a disadvantage by comparison with imports of products originating in non-member countries.

46 As far as the situation of new potatoes from non-member countries, to which the applicant drew particular attention, is concerned, the applicant's argument is that although imports of such potatoes into the Community may be subject to national quantitative restrictions they are nevertheless not covered by a scheme of certificates and securities. However, the applicant has not demonstrated the extent to which imports of Spanish new potatoes into the Community could continue to be, and actually were, subject to national quantitative restrictions from 1 March 1986 onwards — the date on which the STM entered into force.

47 The submission based on a disregard of Community preference cannot therefore be accepted.

G — Defective statement of reasons

48 This argument refers to the recital in the preamble to Regulation No 569/86 that 'the additional guidelines agreed on at the conference contained directions' on the detailed rules for the operation of the STM; those directions provided for the issue

of licences subject to the provision of a security guaranteeing the completion of the transactions envisaged by the applications for such licences.

49 The applicant states that, contrary to that assertion, the conference at which the terms of the Act of Accession were negotiated failed to reach agreement on the introduction of a system of licences and securities, since the Community's position on the matter was rejected by the Spanish negotiators. In those circumstances, the conference had confined itself to inserting in the minutes a unilateral declaration by the Community delegation. The declaration contains 'additional guidelines' on the rules for the operation of the STM to which the recital in the preamble to Regulation No 569/86 refers, but it was not 'agreed on at the conference' — Spain having precisely opposed the insertion of a joint declaration in either the Act of Accession or the minutes of the conference.

50 The Council concedes that at the conference Spain did not accept the establishment of a system of licences as part of the scheme for monitoring the STM. None the less, the Council points out that the recital at issue refers merely to 'guidelines' containing 'directions', which is an expression to which no legal force should be attributed. Furthermore, whilst admitting that the expression 'agreed on' might lead to some confusion if it was construed as reflecting agreement between all the contracting parties, the Council contends that the negotiations did indeed make it possible to arrive at certain guidelines regarding the framework in which the STM was to be applied, and that Spain was not unaware of those trends.

51 It is clear from the foregoing considerations that the contested recital contains a factually incorrect statement. That procedural defect cannot, however, lead to the annulment of Regulation No 569/86, since the other recitals in themselves afford a sufficient statement of reasons for the establishment of the monitoring scheme laid down therein.

52 The submission based on an error in the statement of reasons, although well founded, cannot therefore warrant the annulment of the contested regulation.

53 It follows from all the foregoing that the application must be dismissed in its entirety.

Costs

54 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the applicant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the applicant to pay the costs.

Bosco Due Rodríguez Iglesias Koopmans Everling

Bahlmann Galmot Kakouris Joliet O'Higgins Schockweiler

Delivered in open court in Luxembourg on 20 October 1987.

P. Heim
Registrar

G. Bosco
President of Chamber,
acting as President