normal system applicable to intra-Community trade. The system cannot therefore be criticized in its principles for being contrary to the provisions of the EEC Treaty and the Act of Accession governing the free movement of goods.

Neither Regulation No 569/86 nor the regulations laying down detailed rules for its implementation infringe the 'standstill' requirement under the EEC Treaty or the principles of legal certainty, proportionality or Community preference; the measures which they lay down are covered by the relevant provisions of the Act of Accession.

2. A procedural defect in a regulation, consisting of a factually incorrect statement in one of the recitals in its preamble, cannot lead to its annulment if the other recitals afford a sufficient statement of the reasons for the adoption of the measures which it provides.

REPORT FOR THE HEARING
delivered in Case 119/86 *

I — Facts and procedure

1. *Legal framework*

1.1. *Act of Accession*

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 (hereinafter referred to as 'the Act of Accession'; Official Journal L 302 of 15.11.1985, p. 23) set up a 'supplementary trade mechanism' ('the STM') between the Community as constituted on 31 December 1985 ('the Community of Ten') and Spain. The mechanism applies, on the one hand, to imports into the Community of Ten of fruit and vegetables, viticultural products and new potatoes and, on the other, to imports into Spain of viticultural products and certain products from the following sectors: cereals, milk, fruit and vegetables, beef and veal, and certified seed potatoes. By virtue of the second subparagraph of Article 81 (1) of the Act of Accession, however, fruit and vegetables are subject to the STM only from 1 January 1990 onwards.

Pursuant to Article 249 (1) of the Act of Accession an STM was also set up in respect of trade between the Community of Ten and Portugal. The provision applies to the products listed in Annex XXII of the Act of Accession, which includes products processed from fruit and vegetables, together with live plants and floriculture products. By Council Regulation (EEC) No 3792/85 of 20 December 1985 laying down

* Language of the Case: Spanish.

the arrangements applying to trade in agricultural products between Spain and Portugal (Official Journal 1985, L 367, p. 7), the STM was further extended to the importation from Spain into Portugal of products subject to the STM in trade between Spain and the Community of Ten.

In the provisions of the Act of Accession the STM appears first and foremost to be an instrument for triggering the application of protective measures, whenever necessary. As far as trade between the Community of Ten and Spain is concerned, the provisions may be summarized as follows. In respect of each of the products subject to the STM, Article 83 provides that at the start of each marketing year a 'forward estimate' is to be drawn up, in accordance with the production and consumption estimates in Spain or the Community of Ten. On the basis of the forward estimate the Commission, following the procedure of the Management Committee, is required to draw up a 'forward timetable' for the development of trade and the fixing of an 'indicative import ceiling' in the market in question. Article 83 (2) provides as follows: '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.'

Article 84 provides that the timetable envisaged by Article 83 must include the fixing of 'guide' quantities for 1986 in respect of imports into Spain of certain Community products subject to the STM, and their progress over each of the following three years in relation to the previous year.

Article 85 sets out in detail the protective measures which may be adopted as part of the STM as follows:

'(1) ... 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, the Commission, at the request of a Member State or on its own initiative, shall decide, in accordance with emergency procedures, on:

(i) the interim protective measures that are necessary and which shall apply until the entry into force of the definitive measures provided for in paragraph 3,

(ii) convening the Management Committee of the sector concerned, with a view to examining appropriate measures.

(2) Should the situation referred to in the preceding paragraph cause a serious disturbance on the market, a Member State may request the Commission to take the interim protective measures referred to in paragraph 1 immediately. To that end, the Commission shall take a decision within 24 hours of receiving the request.

If the Commission does not take a decision within that period, the requesting Member State may take interim protective measures, which shall be immediately notified to the Commission.

These measures shall remain applicable until such time as the Commission has acted on the request referred to in the first subparagraph.

(3) Definitive measures shall be adopted as soon as possible in acccordance with the procedure set out in Article 38 of Regulation No 136/66/EEC or, as the case may be, in the corresponding Articles of other Regulations on the common organization of agricultural markets.

These measures may include either:

(a) the revision of the indicative ceiling, if the market in question has not suffered significant disturbances following the development of imports; or

(b) based on the seriousness of the situation, assessed in particular on the basis of the trend in market prices and the quantities forming the subject of trade, the limitation or suspension of imports onto the market of the Community as at present constituted or onto the Spanish market.

The restrictive measures referred to in (b) may only be taken to the extent and for such time as is strictly necessary to put an end to the disturbance. With regard to the Community as at present constituted, those measures may be limited to imports intended for certain of its regions, provided that they include appropriate provisions to avoid deflections of trade.

(4) The application of the STM may in no event lead to products coming from Spain or from the Community as at present constituted being treated in a less favourable manner than those coming from third countries benefiting from the most-favoured-nation clause, which are sold in the regions concerned.'

1.2. *The contested regulations*

(a) Council Regulation No 569/86

Council Regulation No 569/86, adopted pursuant to Articles 89 (1) and 234 (2) of the Act of Accession — empowering the Council to adopt the provisions necessary for giving effect to the chapter on agriculture in the context of Spain and Portugal — lays down the general rules for the application of the STM. Referring, in the first recital of the preamble thereto, to the aim of the STM, namely 'to monitor the development of trade' and in the second recital to 'the additional guidelines agreed on at the conference', the Council used the regulation to set up a system of certificates and securities. The main features of the system may be described as follows.

Article 1 (1) of the regulation provides that products subject to the STM may only be released for consumption on presentation of a 'STM certificate or licence' which, under Article 1 (4), may not be issued in respect of Spanish products except by the Spanish authorities. Article 1 (3) further provides that STM certificates or licences are to be issued subject to the provision of a security 'guaranteeing compliance with the undertaking to release for consumption during the period of validity of the STM certificate or licence, which shall be wholly or partly forfeit if the transaction is not completed within that time or is only partly completed.'

In order to monitor the trend in imports into the Community from non-member countries in the same way as the trend in Community imports, Article 3 of Council Regulation No 569/86 provides: 'Where products from third countries enter into free circulation in the Member State in which the STM applies, release for free circulation may be carried out only on presentation of an STM import licence. STM import licences shall be valid only in the Member State in which the STM applies'.

It is further provided that the issuing of STM certificates and STM import licences may be limited to certain products in a sector and may be spread out over the year, and that time-limits may be set for issuing them (Article 4). When the situation on the market calls for a limitation or suspension of imports on the market of the Member State concerned, the issuing of STM certificates or licences may be limited or suspended (Article 5 (1)).

Article 7 provides that the detailed rules for the application of the regulation are to be adopted in accordance with the procedure followed by the Management Committee.

(b) Commission Regulation No 574/86

In Regulation No 574/86, adopted pursuant to Article 7 of Council Regulation No 569/86, the Commission laid down the detailed rules for the application of the STM. Articles 2 and 6 (2) thereof stipulate that the licence authorizes and requires the sale of the net quantity of the designated product during the period of validity of the licence, and that the licence is usually issued on the fifth working day following the lodging of the application.

(c) Commission Regulations Nos 624, 641, 643 and 647/86

The above regulations lay down some specific detailed rules for applying the STM respectively to new potatoes, products processed from fruit and vegetables imported into Portugal (listed in Annex XXII to the Act of Accession), live plants and floriculture products imported into Portugal (also listed in the aforesaid annex), and viticultural products. The regulations fix *inter alia* the indicative ceilings, the period of validity of STM licences and the time-limits for issuing them, together with the amount of the security to be given for them.

2. *Procedure*

The application of the Kingdom of Spain was lodged at the Court Registry on 27 May 1986.

The applicant's request for interim measures to suspend the operation of Regulations Nos 569, 574 and 647/86 was dismissed by an order of the President of the Court of 9 July 1986.

The written procedure followed the normal course but by a letter of 29 September 1986 the Kingdom of Spain waived its right to submit a reply and applied under the second subparagraph of Article 55 (1) of the Rules of Procedure for the case to be given priority for the purposes of fixing the date for the oral procedure. By a decision of 3 October 1986 the President dismissed that application.

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

II — Conclusions of the parties

The *applicant* claims that the Court should:

(1) Declare Council Regulation No 569/86 and Commission Regulations Nos 574, 624, 641, 643 and 647/86 void in their entirety;

(2) Order the defendants to pay the costs.

The Council of the European Communities, the *defendant*, contends that the Court should:

(1) Dismiss the application of the Kingdom of Spain, at least as far as Council Regulation No 569/86 is concerned;

(2) Order the applicant to pay the costs

The Commission of the European Communities, the *defendant*, contends that the Court should:

(1) Dismiss the application of the Kingdom of Spain;

(2) Order the applicant to pay the costs.

III — Submissions and arguments of the parties

Summary of the submissions presented

After some general observations on the STM, the Kingdom of Spain recalls the background to the adoption of the disputed regulations. It then explains the grounds on which the detailed rules of the STM, as established by those regulations, constitute an exceptionally serious obstacle to trade.

The applicant then puts forward the following six submissions.

In the first place, Council Regulation No 569/86 is vitiated by a defective statement of reasons, inasmuch as it recites that additional guidelines containing directions relating to the way in which the STM was to operate were 'agreed on at the conference' which negotiated the Treaty of Accession.

In the second place, the disputed regulations are contrary to the provisions of the EEC Treaty on the free movement of goods, since the Act of Accession does not include any measure authorizing a derogation from those provisions.

In the third place, the regulations contravene the principle of legal certainty by leaving traders wishing to export products subject to the STM to the Community of Ten in a situation of grave uncertainty as to whether they can carry out their transactions.

In the fourth place, the system of licences and securities thereby set up is disproportionate to the aim pursued.

In the fifth place, the regulations are contrary to Articles 31 and 32 of the EEC Treaty: in respect of fruit and vegetables and new potatoes, in particular, they introduce a system of trade which is more restrictive than the one which was in force before accession.

In the sixth place, the regulations conflict with the principle of Community preference by placing Spain in the situation of a non-member country as far as trade in agricultural products is concerned.

1. *The STM — general observations*

The *applicant* emphasizes that the indicative ceilings provided for by Article 83 of the Act of Accession must be distinguished from the quotas which the Community may set

within the framework of the common commercial policy, and from the 'guide' quantities under Article 84 thereof. Whereas a quota imposes maximum limits on imports which may not be exceeded, it is perfectly possible to exceed an indicative ceiling. In that connection the applicant observes that the fact that the indicative ceiling has been reached does not automatically trigger the protective mechanism; by virtue of Article 85 of the Act of Accession it is only if a 'significant increase . . . should result in the indicative import ceiling for the product being reached or exceeded' that the Commission will convene the Management Committee of the sector concerned, with a view to examining appropriate measures. Moreover, the distinction drawn between quotas on the one hand and ceilings on the other is not exclusive to the Act of Accession but is also to be found in other areas of commercial policy, in particular in the generalized system of preferences in favour of developing countries. In that context it is accepted that ceilings may usually be exceeded, on the ground that they constitute a sort of guaranteed minimum rather than a permitted maximum.

The *Council* begins by pointing out that the emergency procedure is automatically triggered as soon as there is a risk that the rate of imports, whether actual or foreseeable, is moving up towards the indicative ceiling, even if it does so for only a part of the marketing year.

The Council denies that it is possible to exceed the indicative ceilings, which constitute a sort of guaranteed minimum. In that regard the Council recalls the nature and purpose of the STM, referring in particular to the official publication issued in 1985 by the Spanish Ministry of Agriculture, Fisheries and Food, entitled *Tratado de adhesión España-CEE Agricultura.* This publication quite rightly describes the STM as 'a system for supervising the trade between Spain and the Community as constituted at present, in products which both parties regard as sensitive', and its purpose as being 'to adjust trade so as to match the real potential of the markets under consideration, by preventing excessive imports which might damage irreparably the sectors in question'. That official commentary serves to show the restrictive role which the draftsmen of the Act of Accession wished to assign to the STM; in view of the exceptional sensitivity of certain markets to the importation of a range of agricultural products, and in order to ensure a progressive and balanced transition, the STM was created to control the danger of a sudden, steep increase in imports.

Finally, the Council observes that the system of licences and securities puts the Commission in possession of the information necessary for carrying out the day-to-day supervision required for the proper functioning of the STM, long before imports have reached the threshold at which the stringent measures under Article 85 of the Act of Accession are triggered, and that it affords better guarantees than those offered merely by the official communication of customs declarations or by periodic statistics. The system of licences and securities thus has the effect of avoiding an excessive use of the protective measures provided for by the Act of Accession.

The *Commission* begins by describing the transitional measures which the Act of Accession provides in the field of agriculture, and it compares the schemes which applied before and after accession. The Commission goes on to explain the need for a system of licences and securities for the application of the STM. In that connection it notes that, compared to the information derived from licences, purely statistical systems reveal at least two drawbacks which prevent their being used for applying the STM: first, they are based on information drawn from a great many customs posts whereas the issuing of certificates by the country of exportation is centralized, and secondly, such systems enable statistics to be drawn up only *ex post facto* and subject to a time-lag which differs between Member States, rather than ensuring that the operation is an anticipatory one.

2. *The restrictive effects of the system of licences and securities*

According to the *applicant* the system of licences and securities creates a further obstacle to trade which produces its effects independently of the implementation of Article 85 of the Act of Accession. The system makes the exportation of products subject to the STM more difficult and more uncertain, even when such exports have not yet reached the levels fixed by the indicative ceilings. In that connection the applicant draws attention to the following circumstances:

(a) The licence constitutes a prerequisite for any importation into the Community of Ten; its presentation is required before products subject to the STM may be released for consumption, and Article 2 (1) of Commission Regulation No 574/86 states that the STM licence authorizes and requires the sale of the net quantity of the designated product during its period of validity.

The *Council* observes that the situation is the same as regards the release for consumption in Spain and Portugal of products exported by the Community of Ten which are subject to the STM. The Commission observes that the licence, which may be applied for by any interested person operating within the Community — and hence by the purchaser as well — is only necessary for the release for consumption of the products in question. The exporter is therefore free to export without any licence.

(b) According to the applicant, the obligation to provide a security increases the costs and financial risks; an STM licence is not issued unless security has already been provided. The security is not released until evidence has been furnished that the product has been released for consumption in the Member State of importation during the period of validity of the licence (Articles 1 (3) of Regulation No 569/86 and 8 (2) of Regulation No 574/86).

The *Council* and the *Commission* observe that the above consequences proceed from the very nature of a licence system. The provision of security is necessary to prevent certain traders from applying, for speculative purposes, for all the licences available, to the detriment of other traders.

(c) The applicant points out that a licence in respect of Spanish exports can be issued only by the Spanish authorities, and not by the authorities of the country in which the

products are released for consumption (Article 1 (4) of Regulation No 569/86).

The *Council* and the *Commission* take the view that that arrangement works to the advantage of the exporting country; it means that Spanish exporters are not dependent on the competent authorities in the Member States of importation.

(d) The applicant observes that the licence is only issued after a waiting period of seven days; to the five-day period laid down by Article 6 (2) of Regulation No 574/86 should be added a minimum of two non-working days. The restrictive character of the seven-day period was recognized by the Commission in the case of new potatoes, for which the Commission provided that licences should be issued immediately (Article 2 (3) of Regulation No 624/86).

The *Council* and the *Commission* observe in particular that the detailed rules for applying the STM must involve minimum periods so that trade may be effectively monitored.

(e) The issuing of licences may, the applicant says, be limited to certain products in a sector and may be spread out over the year (Article 4 (1) of Regulation No 569/86), even if the quantitative ceilings for the products in question have not yet been reached or exceeded; that option seriously restricts the commercial freedom enjoyed by traders.

The *Council* observes that according to Article 85 of the Act of Accession protective measures may be triggered even before the indicative ceilings have been exceeded. It is thus logical that Article 5 of Regulation No 569/86 should provide that the issuing of licences may be limited or suspended when the market situation calls for a limitation or suspension of imports on the market of the Member State concerned. The provision in Article 4 of that regulation whereby the issuing of licences may be limited to certain products or may be spread out is attributable, first, to the existence of products whose inferior quality makes them unsuitable for trade and, secondly, to the requirements regarding the fixing of the indicative ceiling; Articles 83 and 251 of the Act of Accession provide: 'Within the framework of the overall indicative ceiling, ceilings may be fixed corresponding to the different periods of the marketing year in question'.

(f) The applicant complains that scope for transferring the rights arising under a licence is too limited; rights arising thereunder vest solely in the person cited on the form as being the owner and may not be assigned more than once. The possibility of successive transfers of exports between the time when the application for the licence is submitted and the time when the product is dispatched to the consumer is thus much reduced.

The *Commission* observes that the system thereby set up is more flexible than the system under 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), which applies to licences and certificates provided by the market organizations.

(g) The applicant points out that the security may not be released otherwise than on presentation of the licence, duly stamped by the customs authorities of the country of importation, within six months from the last day of validity of the licence (Article 8 (5) of Regulation No 574/86). The exporter

who has lodged the security therefore has to proceed on the basis of a document which is usually in the possession of the purchaser of the product.

The *Commission* contends that that circumstance may not be considered an insurmountable obstacle.

(h) The rights contained in the licence may, the applicant observes, be withdrawn at the Commission's discretion in respect of one or more Member States (Article 5 (2) of Regulation No 569/86); the exporter thus finds himself in a situation of permanent legal uncertainty.

The *Council* replies that the limitation or suspension of imports is subject to the well-defined conditions contained in Article 5 (2) and in the first indent of Article 6 of Regulation No 569/86.

The *Commission* adds that, by virtue of Article 85 (2) of the Act of Accession, Member States may adopt protective measures only after a decision by the Commission.

(i) The applicant's final point is that even if the exporter has made a mistake in his application for the issue of a licence, it cannot be revoked.

3. *Background to the adoption of the contested regulations*

The *applicant* argues that the statement in the second recital of the preamble to Council Regulation No 569/86, that 'additional guidelines' containing directions relating to the way in which the STM was to operate were 'agreed on at the conference', is incorrect. On the occasion of the ministerial meeting of 28 March 1985 during which agreement was reached on the main provisions of the STM, the Spanish Government became aware of a draft declaration by the Commission on the implementing measures to be adopted in connection with the STM. The declaration envisaged the setting-up of a system of licences and securities. The draft was discussed during the last session of the conference on 6 and 7 June 1985, at the deputies level. The Community delegation attempted on that occasion, without success, to obtain the consent of the Spanish delegation to the inclusion of the declaration as a joint declaration in the Act of Accession. The Spanish Government took the view that the system of licences and securities restricted considerably the mechanism for fixing quantitative ceilings, on which both sides had reached agreement on 28 March 1985. For the same reason the Spanish delegation refused to insert the declaration into the Act of Accession as a unilateral declaration by the Community of Ten. The conference had consequently limited itself to relegating the declaration to an appendix to the Report of the 33rd Session of the Deputies, thereby exposing the absence of agreement.

4. *Infringement of essential procedural requirements*

Inasmuch as Council Regulation No 569/86 is based on the second recital of its preamble, mentioned above, the *applicant* claims that it should be declared void for lack of a statement of reasons.

The *Council* admits that the adjectival phrase 'agreed on' in the recital in question might be misleading if it were interpreted as recording an agreement between all the contracting parties at the accession negotiations. However, the presence of an inappropriate adjectival phrase in a recital is not sufficient to indicate a breach of essential procedural requirements, since sufficient

reasons are given elsewhere in the regulation. Furthermore, both the *Council* and the *Commission* argue that an adequate legal basis for Regulation No 569/86 is in any event to be found in Article 89 (1) of the Act of Accession. The recitals in the regulation rightly recalled that it was Article 81 of the Act of Accession which made provision for the STM, the aim of which is 'to monitor the development of trade and to apply the requisite measures provided for in the Act.'

5. *Breach of the principle of the free movement of goods*

The *applicant* claims that the disputed regulations are contrary to Article 30 of the Treaty in the following respects:

— they require not only the production of a licence but also the provision of security as a condition for the release of goods for consumption in the country of exportation;

— they permit the issuing of licences to be spread out through the year; and

— they allow the issuing of licences to be limited to a certain product in a given sector even before the indicative ceilings have been reached.

Successive judgments of the Court confirm that, apart from the exceptions provided for by Community law itself, Articles 30 and 34 of the Treaty prohibit the application to intra-Community trade of any measure which requires, even purely as a formality, import or export licences or any other similar procedure. In that connection the applicant refers *inter alia* to the judgments of the Court of 15 December 1971 (Joined Cases 51 to 54/71 *International Fruit Company* v *Produktschap Groenten en Fruit* [1971] ECR 1107), 15 December 1976 (Case 41/76 *Donckerwolcke* v *Procureur de la République* [1976] ECR 1921), and 11 June 1985 (Case 288/83 *Commission* v *Ireland* [1985] ECR 1761).

In its judgment of 16 March 1977 (Case 68/76 *Commission* v *France* [1977] ECR 515), moreover, the Court has held that even if export licences are granted without delay and for all the quantities requested, and even if the object of the measure is merely to ascertain the intentions of exporters, it must be regarded as a measure having an effect equivalent to a quantitative restriction on exports, because 'the imposition of any special export formality constitutes an obstacle to trade by the delay which it involves and the dissuasive effect that it has upon exporters'.

Turning to the obligation to provide a security, the applicant maintains that it is apparent, both from Commission Directive 70/50/EEC of 22 December 1969 on the abolition of the measures which have an effect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty (Official Journal, English Special Edition 1970 (I), p. 17) and also from the case-law of the Court, that such an obligation constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty. The applicant refers in particular to the judgments of the Court of 9 June 1982 (Case 95/81 *Commission* v *Italy* [1982] ECR 2187 and Joined Cases 206, 207, 209 and 210/80 *Orlandi* v *Ministry of Foreign Trade* [1982] ECR 2147).

The applicant goes on to observe that Article 30 of the Treaty is binding not only upon Member States but also upon Community institutions and that no impairment of the principle of the free movement of goods can be allowed unless there is a mandatory provision in the Act of Accession. However, the Act of Accession contains absolutely no authority for the setting-up of a generalized system of licences and securities, nor for the compulsory spreading-out over the year of the exportation of products subject to the STM, nor for the limitation of imports of such products even before the indicative ceilings in question have been reached.

The *Council* and the *Commission* contend, in the first place, that the subsection of the Act of Accession which deals with the STM affords, in itself, a temporary derogation from the provisions of the Treaty on the free movement of goods. Article 30 of that Treaty is therefore irrelevant to the appraisal of a transitional scheme such as the one introduced by the Act of Accession. Furthermore, the Council observes that Articles 89 (1) and 234 (2) of the Act of Accession vest it with extensive powers to adopt the provisions for applying the STM.

The Council and the Commission go on to note that, in matters of agricultural policy, the institutions enjoy a broad discretion. In that connection the Council refers in particular to the judgments of the Court of 29 October 1980 (Case 168/79 *Roquette Frères* v *Council* [1980] ECR 3333), of 21 February 1979 (Case 138/78 *Stölting* v *Hauptzollamt Hamburg-Jonas* [1979] ECR 713) and of 30 September 1982 (Case 108/81 *Amylum* v *Council* [1982] ECR 3107).

Lastly, the Council and the Commission observe that the measures adopted apply only to trade between the Community of Ten and the two acceding States, because that is the context of the Act of Accession and because, according to the provisions of that Act, the measures are designed to ensure 'the full realization of free movement within the Community on the expiry of the period of application of transitional measures' (Articles 83 (2) and 251 of the Act of Accession).

6. *Breach of the principle of legal certainty*

According to the *applicant*, the system of licences and securities leaves traders in a state of grave uncertainty as to whether they can carry out their planned exports. In that regard the applicant points to the circumstances set out under heading 2 above, and in particular to sections (d), (e), (g) and (h) thereof. The uncertainty amounts to a breach of the principle of legal certainty.

The *Council* and the *Commission* reiterate their denial of the facts as presented by the applicant. Furthermore, uncertainty cannot be said to arise from such a classic mechanism, and one as familiar to traders, as a system of licences and securities.

7. *Breach of the principle of proportionality*

The *applicant* asserts in the first place that the purpose of the detailed rules giving effect to the STM can only be to establish a system for monitoring and evaluating trade, not to introduce a control mechanism additional to the STM itself. However, the disputed system of licences and securities constitutes a quantitative control, additional to the STM and superfluous to the protection of a Community of Ten against imports of Spanish products.

The *Council* and the *Commission* submit that the detailed rules for the application of the STM cannot be assessed without regard being had to the content of the STM itself. In that connection the Council notes that inasmuch as the STM provides for measures which may even involve the introduction of measures limiting imports intended for certain regions of the Community of Ten it is essential that precise information on patterns of trade should be available.

In the second place, the applicant claims that the judgment of the Court of 16 March 1977 (Case 68/76 *Commission* v *France* [1977] ECR 515) demonstrates that even if the sole purpose of the contested measures is to monitor trade that aim does not justify a contravention of Article 30 of the Treaty.

The *Commission* replies that it is not a question of ascertaining whether the measures adopted to implement Article 81 of the Act of Accession are contrary to Article 30 of the Treaty, but of demonstrating in what respect they are supposed to contravene the principle of proportionality.

The *applicant* observes in the third place that the setting-up of a special mechanism for monitoring trends in trade is superfluous, on the ground that the Commission and the competent national authorities already have, in the form of ordinary customs declarations, an accurate and comprehensive view of the level of trade which enables them where necessary to adopt the measures provided for by Article 85 of the Act of Accession. Thus, in the case of fruit and vegetables for example, Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables (Official Journal, English Special Edition 1972 (II), p. 437) never introduced a system of licences and securities for imports from non-member countries, even though Article 29 thereof similarly provides for protective measures to counteract any disturbances caused by such imports.

The *Council* and the *Commission* recall that they have previously stated that ordinary customs declarations are not sufficiently reliable for the monitoring of trends in the trading of the sensitive products subject to the STM, in view of the nature of the measures provided for by Article 85 of the Act of Accession. The Council also notes that the Court held, in its judgment of 17 December 1970 (Case 11/70 *Internationale Handelsgesellschaft* v *Einfuhr- und Vorratsstelle für Getreide* [1970] ECR 1125), that a system for communicating ordinary customs declarations 'would . . . be incapable of providing the competent authorities with sure data on trends in the movement of goods'.

The *applicant* claims that the system of licences and securities is in any event too stringent. It points in particular to the greater flexibility of the measures laid down on the basis of Article 115 of the Treaty for the monitoring within the Community of products originating in non-member countries which are released for free circulation within the Community. The same is true of the 'surveillance measures' provided for by Council Regulation No 288/82 of 5 February 1982 on common rules for imports (Official Journal 1982, L 35, p. 1). That regulation does make provision for the issuing of licences, but without charges being imposed or securities required.

The *Council* and the *Commission* submit that no parallel may be drawn between the measures which the Commission may authorize under Article 115 of the Treaty and those envisaged by the contested regulations. The Council emphasizes the special

character of the STM as a temporary, transitional, progressive and relatively flexible obstacle to the freedom of Community trade in certain agricultural products which are particularly sensitive, and it stresses the need to have a system available which reduces to a minimum the risks of a disturbance to traditional trade patterns.

The *applicant's* last argument is that a system as general and as restrictive as the one set up by the regulations at issue cannot be justified by the need to monitor trends in trade, since Article 85 (3) of the Act of Accession provides that restrictive measures 'may only be taken to the extent and for such time as is strictly necessary to put an end to the disturbance'.

In reply, the *Council* and the *Commission* allege that the applicant is confusing protective measures, on the one hand, and supervisory measures for their implementation, on the other.

8. *Infringement of Articles 31 and 32 of the EEC Treaty*

The *applicant* argues that the introduction of a system of licences and securities for two of the product categories in question, namely fruit and vegetables and new potatoes, which had not been subject to it prior to accession, is contrary to Articles 31 and 32 of the Treaty which prohibit Member States from introducing between themselves any new quantitative restrictions or measures having equivalent effect.

The *Council* and the *Commission* reply that the supervisory measures introduced by the regulations at issue do not include any restrictions which go beyond those which are incidental to the setting-up of the STM as a transitional instrument. The Council notes in that respect that the STM is particularly severe in the case of importations of 'sensitive' products into the Spanish (and Portuguese) market, whereas the system is much less restrictive towards Spanish (or Portuguese) exports to the Community of Ten.

9. *Breach of the principle of Community preference*

The *applicant* points out that Article 3 of Council Regulation No 569/86 subjects products originating in third countries to the rules of the STM whenever the products in question are subject to the STM in trade between Spain and the Community of Ten. Article 3 (3) thereof specifies that the STM 'shall not apply to products from third countries which are subject to quantitative restrictions in the Member State in which the STM applies'. However, according to the applicant, there is no comparable provision in respect of Spanish new potatoes imported into another Member State, even though quantitative restrictions operate in respect of those products in a number of Member States (and here the applicant refers to the list of goods subject to national quantitative restrictions; Official Journal C 350 of 31. 12. 1985, p. 16). The applicant takes the view that, in the circumstances, the setting-up of a generalized system of licences and securities for Spain and Portugal constitutes a breach of the principle of Community preference as considered by the Court in its judgment of 13 March 1968 in Case 5/67 (*Beus* v *Hauptzollamt München* [1968] ECR 83).

The *Council* and the *Commission* submit that, as far as imports into Spain from the Community of Ten are concerned, Community preference is automatic, as is confirmed by Article 2 (1) of Council Regulation No 569/86: 'Where products from a third country enter into free circulation in Spain and where such products are the same as those referred to in Article 84 (1) of the Act of Accession, the quantity thereof which may enter into free circulation in Spain may not exceed a quantity equivalent to that resulting from the application of Article 84 of that Act.' On the other hand, as regards the importation into the Community of Ten of Spanish products in respect of which the STM lays down no indicative ceilings, Community institutions observe Community preference whilst complying with the Community's international obligations and giving effect to the Joint Declaration on imports from third countries of products subject to the STM: 'To the extent that the deterioration of the Community market or that of one of its regions is also due to imports from third countries, measures shall only be taken with respect to those imports within the framework and under the conditions of mechanisms already provided for by the common organization of the market and in compliance with the provisions referring to the international commitments of the Community' (Official Journal L 302, 15. 11. 1985, p. 481).

The Council also points out that the differences between 'STM certificates' and 'STM import licences', to which products from third countries are subject, are minimal, and that the adoption of Regulation No 569/86 has not resulted in the Kingdom of Spain's being placed in a less favourable situation than that of third countries.

10. *Illegality of certain specific provisions of the regulations at issue*

Besides the general illegality which vitiates the contested regulations as a whole, the applicant further asserts that the following provisions are, in themselves, illegal:

(a) Article 4 of Regulation No 569/86 is illegal inasmuch as it allows STM licences to be limited to certain products or spread out over the year. This system has no legal basis in the Act of Accession and is contrary to Article 30 of the Treaty.

The *Council* and the *Commission* refer in this respect to their general observations on the compatibility of the scheme of licences and securities with Article 30 of the Treaty.

(b) The first paragraph of Article 6 (2) of Commission Regulation No 574/86 is illegal according to the applicant in that it provides that the STM licence is to be issued on the fifth working day following submission of the application. No provision for a waiting period of that kind is made in respect of third countries, either by Commission Regulation No 3183/80 of 3 December 1980, mentioned above, or by Commission Regulation No 3388/81 of 27 November 1981 laying down special detailed rules in respect of import and export licences in the wine sector (Official Journal 1981, L 341, p. 19). The provision in question is consequently contrary to the principle of Community preference and contrary to Article 30 of the Treaty.

The *Council* and the *Commission* reply that the applicant's allegation is incorrect because the relevant provisions, and in particular Article 10 (6) of Regulation No 574/86, use the same wording.

(c) Lastly, the applicant claims that the second paragraph of Article 6 (2) of Regulation No 574/86 is illegal in providing: 'The Member States shall notify the Commission every Monday and Thursday of the quantity for which licence applications, submitted up to the day of notification, have been made, broken down by product concerned'. As far as wine imports from third countries are concerned, such notifications are made monthly (Article 6 of Commission Regulation No 3388/81, mentioned above); in respect of the importation of other products no licence is required. That provision is consequently contrary to the principle of Community preference.

The *Commission* replies that this contested second paragraph of Article 6 (2) of Regulation No 574/86 is no different from Article 10 (8) thereof, which provides with regard to products from third countries that Member States must inform the Commission every Monday and Thursday of the quantity applied for, broken down by product concerned.

T. Koopmans
Judge-Rapporteur