JUDGMENT OF THE COURT (First Chamber)
15 January 2002 *

In Case C-179/00,

REFERENCE to the Court under Article 234 EC by the Verwaltungsgerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between

Gerald Weidacher (as administrator of the insolvent company Thakis Vertriebs- und Handels GmbH)

and

Bundesminister für Land- und Forstwirtschaft

on the interpretation of Article 149(1) of the Act of Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1) and on the validity and interpretation of Commission Regulation (EC) No 3108/94 of 19 December 1994 on transitional measures to be adopted on account of the accession of Austria, Finland and Sweden in respect of trade in agricultural products (OJ 1994 L 328, p. 42),

* Language of the case: German.

THE COURT (First Chamber),

composed of: P. Jann, President of the Chamber, L. Sevón and M. Wathelet (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Commission of the European Communities, by G. Braun and M. Niejahr, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 20 November 2001,

gives the following

Judgment

1 By order of 17 April 2000, received at the Court on 12 May 2000, the Verwaltungsgerichtshof (Administrative Court) referred to the Court for a preliminary ruling under Article 234 EC five questions on the interpretation of Article 149(1) of the Act of Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1) and on the validity and interpretation of Commission Regulation (EC) No 3108/94 of 19 December 1994 on transitional measures to be adopted on account of the accession of Austria, Finland and Sweden in respect of trade in agricultural products (OJ 1994 L 328, p. 42).

2 Those questions were raised in proceedings between Gerald Weidacher, as administrator of the insolvent company Thakis Vertriebs- und Handels GmbH (hereinafter 'Thakis'), and the Bundesminister für Land- und Forstwirtschaft (Austrian Federal Ministry for Agriculture and Forests) regarding a notice of liability to tax in respect of the holding of surplus stocks of olive oil.

Legal background

3 Under the second indent of Article 137(2) of the Act of Accession, unless otherwise provided 'the rights and obligations resulting from the common agricultural policy shall be applicable in full in the new Member States'.

4 Article 145(2) of the Act of Accession, which deals with agricultural products in stock at the time of accession, states:

'Any stock of products in free circulation within the territory of the new Member States on 1 January 1995 and exceeding the quantity which could be regarded as constituting a normal carryover of stock must be eliminated by these Member States at their cost under Community procedures to be specified and within deadlines to be determined in accordance with the procedure referred to in Article 149(1). The concept of normal carryover stock shall be defined for each product on the basis of criteria and objectives particular to each common market organisation.'

5 Article 149(1) of the Act of Accession provides:

'If transitional measures are necessary to facilitate the transition from the existing regime in the new Member States to that resulting from application of the common organisation of the markets under the conditions set out in this Title, such measures shall be adopted in accordance with the procedure laid down in Article 38 of [Council] Regulation No 136/66/EEC [of 22 September 1966 on the establishment of a common organisation of the market in oils and fats (OJ, English Special Edition 1965–1966, p. 221), amended several times] or, as appropriate, in the corresponding articles of the other regulations on the common organisation of agricultural markets. These measures may be taken during a period expiring on 31 December 1997 and their application shall be limited to that date.'

6 On the basis of Article 149(1) of the Act of Accession, the Commission adopted Regulation No 3108/94, the third recital in the preamble to which states:

'... the movement of agricultural products has not been subject to any control at the internal borders; ... therefore, systematic taxation of products which are subject to deflection of trade, either on their consignment from one Member State to another or on their entry into a Member State from another, does not appear to be sufficiently effective; ... trade deflections liable to disrupt the market organisations often involve products moved artificially with a view to enlargement and do not form part of the normal stocks of the State concerned; ... therefore, provision should be made for the taxation of surplus stocks in the new Member States'.

7 Under Article 4 of Regulation No 3108/94:

'1. Without prejudice to Article 145(2) of the Act of Accession, and where stricter legislation does not apply at national level, the new Member States shall tax the holders of surplus stocks at 1 January 1995.

...

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

— averages of stocks available in the years preceding accession,

— the pattern of trade in the years preceding accession,

— the circumstances in which such stocks were built up.

The notion surplus stocks applies also to agricultural products intended for the market of the new Member States.

3. The amount of the tax referred to in paragraph 1 shall:

— in the case of a product from a third country, be the difference between the import charge applicable in the Community of Twelve as at 31 December 1994 and the import charge applicable in the new Member State as at that same date, where the former is greater than the latter.

...

4. In order to ensure that the tax referred to in paragraph 1 is correctly applied, the new Member States shall without delay carry out a census of stocks available as at 1 January 1995.

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

— in the case of Austria: 1006, 0806 20, 1702 10, 1509, 1510,

...'.

The main proceedings and the questions referred for a preliminary ruling

8 In October 1994 Thakis purchased a large quantity of olive oil in Tunisia. By an agreement providing security, dated 13 December 1994, the goods bound for Austria were pledged to an Austrian bank, the A-Bank. The goods, accompanied by transport documents in the name of the bank, left Tunisia on 21 December 1994 and were cleared through customs on 29 December 1994 before being unloaded.

9 On 31 December 1994 part of the olive oil imported by Thakis was stored in the warehouse of an Austrian wine company under the control of A-Bank, and another part in railway wagons in an Austrian station, under the responsibility of the carrier.

10 Taking the view that Thakis was, on 1 January 1995, the holder of 1 091 341 kg of surplus stocks of Tunisian olive oil, within the meaning of Article 4 of Regulation No 3108/94, on 1 February 1995 the Agrarmarkt Austria (Austrian Office for Supervision of the Agricultural Markets) instructed it to provide security for the tax debt assessed in advance in respect of the holding of surplus stocks and, on 3 April 1995, after the company became bankrupt, served on it a tax demand for ATS 11 086 683.

11 The amount was calculated in accordance with Article 4(3) of Regulation No 3108/94 on the basis of the different rates of taxation for imported olive oil in force on 31 December 1994 as between the Community of Twelve and Austria.

12 The customs duty applicable in Austria on that date was ATS 70 per 100 kg, plus a supplement of 18%, whereas the levy applicable in the Community of Twelve was, by virtue of Annex I to Commission Regulation (EC) No 3307/94 of 29 December 1994 fixing the minimum levies on the importation of olive oil and levies on the importation of other olive oil sector products (OJ 1994 L 341, p. 53), ECU 66.31 per 100 kg (or ATS 1 098.48/100 kg).

13 The instruction to provide security and the notice of assessment were challenged by Thakis, and then, when it became insolvent, by its administrator in administrative proceedings. Objection was made, first, to the description of Thakis as 'holder' of a stock of olive oil as at 1 January 1995; second, to the amount of the import charge which, according to Thakis, should have been determined pursuant to Council Regulation (EC) No 287/94 of 7 February 1994 laying down special measures for the import of olive oil from Tunisia (OJ 1994 L 39, p. 1); third, the legality of Regulation No 3108/94 which, first, did not fall within the competence of the Commission under Article 149(1) of the Act of Accession and, second, infringed the principle of the protection of legitimate

expectations in that Article 4 thereof also applied to operators in the new Member States who effected transactions prior to the adoption of the latter regulation, that is to say before 19 December 1994.

14 The administrative proceedings were unsuccessful and the case came before the Verwaltungsgerichtshof. Entertaining doubts, in view of the claims made before it, as to the validity and interpretation of Regulation No 3108/94, it stayed proceedings and referred the following questions to the Court for a preliminary ruling:

'1. Does the levying of tax on surplus stocks in the new Member States as from 1 January 1995, as provided for in Article 4 of Commission Regulation (EC) No 3108/94 of 19 December 1994, constitute a transitional measure necessary to facilitate the transition from the existing regime in the new Member States to that resulting from application of the common organisation of the markets under the conditions set out in Title VI, Agriculture, of the Act of Accession, within the meaning of Article 149(1) of that Act, or is that regulation wholly or partially void for lack of competence on the part of the Commission?

2. Does the fundamental right to protection of legitimate expectations or the principle of proportionality preclude the application of Article 4 of Regulation (EC) No 3108/94 to surplus stocks which were attributable to disposals (purchases or resales) made

(a) before the date on which that regulation was published, or

(b) before the time when those concerned should have been aware that levies on surpluses were planned?

If so, is that regulation wholly or partially void because it infringes those fundamental rights, or is it to be interpreted as meaning that no levy is payable in such cases?

3. (a) Is the purchaser of goods which it had already resold prior to 1 January 1995, but without physically handing them over to the customer, to be regarded as the "holder" of those goods on 1 January 1995 where

(i) the goods and the proceeds therefrom were pledged to a bank, and pursuant to the pledging agreement:

— that bank held, as at 1 January 1995, the keys to the proportion of the goods stored in a pledge warehouse, or

— the transport documents, in particular the multimodal bill of lading relating to the remaining proportion of the goods which, having cleared customs, were situated in railway wagons at an Austrian railway station on 1 January 1995, are made out to the order of that bank and are in its possession, and

— that bank had a 20% interest in the proceeds of the sales transaction concluded by the pledgor,

and, furthermore, where

(ii) — the import charges were paid by the pledgor,

— the purchase money due to the pledgor was subsequently paid into the account which he held with that bank but which he was unable to use on account of the pledging agreement?

(b) Is the pledgor of the goods not the "holder" thereof if, on 1 January 1995, he already intended to hold them for his customer subject to the restrictions arising under the pledge agreement? In that connection, does the matter turn on whether or not that intention became outwardly apparent?

(c) In a situation such as that described in (a) or (b), is the pledgee, the pledgor's customer, the forwarder, the warehouse keeper or the carrier the "holder" for the purposes of this regulation?

4. In the case of Tunisian olive oil falling within CN code 1509 10, is the term "the import charge applicable in the Community of Twelve as at 31 December 1994" within the meaning of Article 4(3) of Regulation (EC) No 3108/94 invariably to be understood as meaning

(a) the special levy of ECU 7.8 per 100 kilograms laid down in Article 1(1) of Council Regulation (EC) No 287/94 of 7 February 1994 or

(b) the levy of ECU 79 minus ECU 12.69, that is to say, ECU 66.31 per 100 kilograms, as provided for in Annex I to Commission Regulation (EC) No 3307/94

or

(c) does the answer to this question turn on whether the importation of Tunisian olive oil within the quota laid down in Article 1(2) of Regulation (EC) No 287/94 was still possible in the Member States of the Community of Twelve without any difficulty even at the end of 1994 or

(d) is the rate of duty to be determined in each case on the basis of whether, if importation into an EC Member State had been planned, the taxable person would have been able to acquire a (preferential) quota at the time when the transaction was concluded?

5. If Article 4 of Commission Regulation (EC) 3108/94 is understood as having the meaning set out at 4(b), would it be void because it infringed the principle of equal treatment?'

The first question

15 By its first question the national court seeks in essence to ascertain whether the Commission was competent, under Article 149(1) of the Act of Accession, to adopt the measures provided for in Article 4 of Regulation No 3108/94.

16 The question seeks to establish whether or not the levying of a compensatory tax, of the kind provided for in Article 4 of that regulation, constitutes a transitional measure which is necessary, within the meaning of Article 149(1) of Act of Accession, to facilitate, in the agricultural sector, the transition from the regime in force in the new Member States before their accession to the European Union to that resulting from application of the common organisation of the markets.

17 Before the national court, the claimant in the main proceedings submits that the levying of a tax of the kind provided for in Article 4 of Regulation No 3108/94 cannot be seen as one of the transitional measures referred to by Article 149(1) of the Act of Accession since the words 'facilitate the transition' in that provision make it clear that those measures should benefit the new Member States, and the taxation at issue in the main proceedings does not do so.

18 It must be remembered that, under the second indent of Article 137(2) of the Act of Accession, the rights and obligations resulting from the common agricultural policy are, save where otherwise provided, immediately applicable in the new Member States. It is in order 'to facilitate the transition from the existing regime in the new Member States to that resulting from application of the common organisation of the markets' that Article 149(1) of the same act provides for the adoption of the 'necessary' transitional measures 'in accordance with the

procedure laid down in Article 38 of Regulation No 136/66/EEC or, as appropriate, in the corresponding articles of the other regulations on the common organisation of agricultural markets.'

19 Against that background, regard must be had to the broad discretion enjoyed by the Community institutions when adopting measures for the implementation of the common agricultural policy (see in particular Case C-285/94 *Italy* v *Commission* [1997] ECR I-3519, paragraphs 22 and 23, and Case C-289/97 *Eridania* [2000] ECR I-5409, paragraph 48).

20 Furthermore, where stocks of products in free circulation in the new Member States exceed the quantity which could be regarded as constituting a normal carryover of stock, Article 145(2) of the Act of Accession requires those Member States to eliminate them at their cost under procedures to be specified and within deadlines to be determined under Article 149(1) of that act.

21 The authors of the Act of Accession thus considered that the existence on 1 January 1995 in the new Member States of abnormal stocks of products covered by a common organisation of the markets was liable to disrupt the proper functioning of the mechanisms provided for by that organisation, particularly through their impact on price formation.

22 It must be concluded that, in introducing special taxation on surplus stocks on the basis of Article 149(1) of the Act of Accession, the Commission was specifically concerned to facilitate the transition of the new Member States to the common organisation of the markets since such a tax tends, first, to preclude the build-up of stocks for speculative purposes and, second, to neutralise the economic advantages which would have accrued to operators who actually built up surplus stocks at low prices (see the third recital in the preamble to Regulation No 3108/94).

23 Moreover, as the Austrian Government has correctly pointed out, the taxation of surplus stocks made it possible to reduce the burden of the obligation imposed on the new Member States by Article 145(2) of the Act of Accession to eliminate such stocks at their own cost.

24 In view of the foregoing, the answer to the first question must be that the Commission was competent, under Article 149(1) of the Act of Accession, to adopt the measures provided for in Article 4 of Regulation No 3108/94.

The second question

25 By its second question, the national court seeks in essence to determine whether Article 4 of Regulation No 3108/94 is valid in the light of the principle of proportionality and the principle of the protection of legitimate expectations.

26 As regards the principle of proportionality, it must be borne in mind that the Commission, when exercising the powers which the Council, or indeed the authors of the Act of Accession, conferred on it for implementation of the common agricultural policy, may consider it necessary to exercise a broad discretion, and the legality of a measure adopted in that sphere can therefore be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see, to that effect, Case 265/87 *Schräder* [1989] ECR 2237, paragraph 22, and Case C-157/96 *National Farmers' Union and Others* [1998] ECR I-2211, paragraph 61).

27 In this case, by introducing the tax at issue in the main proceedings and laying down arrangements for it to be levied, the Commission chose the formula, amongst several, which it considered most appropriate to avert any risk of

undermining the proper functioning of the common organisation of the markets, such risk being associated with the accumulation of stocks exceeding the quantity which might be regarded as constituting normal carryover stock within the meaning of Article 145(2) of the Act of Accession (see the third recital in the preamble to Regulation No 3108/94).

28 The aim of that taxation is to preclude the build-up of such stocks or, at the very least, to neutralise the economic advantages anticipated by those holding them, by placing the latter on the same footing as operators in the Community of Twelve, with whom they compete in the same market. The principle of that tax must be regarded as conducive to attainment of the aim of facilitating implementation of the common organisation of the markets in the new Member States, referred to in Article 149(1) of the Act of Accession, without going further than was necessary for that purpose.

29 It follows that the Commission did not exceed the bounds of its discretion. The allegation of breach of the principle of proportionality must therefore be rejected.

30 As regards the principle of the protection of legitimate expectations, Mr Weidacher expressed the view before the national court that Article 4 of Regulation No 3108/94 infringed that principle in so far as it applied equally to the holders of surplus stocks who imported the goods at issue before the publication of that regulation.

31 In that connection, it must be borne in mind that, according to the case-law of the Court of Justice, the principle of the protection of legitimate expectations may be invoked as against Community rules only to the extent that the Community itself has previously created a situation which could give rise to a legitimate expectation (see Case C-22/94 *Irish Farmers Association and Others* [1997] ECR I-1809, paragraph 19, and Case C-107/97 *Rombi and Arkopharma* [2000] ECR I-3367, paragraph 67).

32 That is not the case here. First, the Community did not, by act or omission, give the impression to the relevant circles that transitional measures intended to prevent distortion of competition and speculative profits from the accumulation of surplus stocks would not be adopted in relation to the enlargement which took place on 1 January 1995.

33 Next, when purchasing a large quantity of olive oil in Tunisia in October 1994, Thakis, like any normally diligent economic operator, must have known, since the publication in the *Official Journal of the European Communities* of 29 August 1994 of the Act of Accession that, under Article 149(1) thereof, the Commission was specifically empowered to adopt transitional measures in order to bring the rules existing in the new Member States into line with the common organisation of the markets, and that such measures might, in some circumstances, have repercussions on surplus stocks already built up when Regulation No 3108/94 was published, that is, on 20 December 1994.

34 Finally, according to the documents before the Court the goods in question were imported into Austria on 21 December 1994 and cleared through customs on 29 December 1994, that is to say after the entry into force of Regulation No 3108/94. Mr Weidacher's argument is therefore irrelevant in any case.

35 Consequently, the plea of breach of the principle of the protection of legitimate expectations must also be rejected.

36 In view of the foregoing, the answer to the second question must be that examination of it has disclosed no factor of such a kind as to affect the validity of Article 4 of Regulation No 3108/94 in the light of the principle of proportionality and the principle of the protection of legitimate expectations.

The third question

37 By its third question, the national court seeks in essence to ascertain whether an undertaking like the claimant in the main proceedings must, in the circumstances in which it finds itself, be regarded as the holder of surplus stock within the meaning of Article 4(1) of Regulation No 3108/94.

38 It must be borne in mind at the outset that a request from a national court for a preliminary ruling under Article 234 EC must relate primarily to the interpretation of the Treaty or the validity and interpretation of an act adopted by a Community institution or the European Central Bank. The application of a provision of Community law to the specific case pending before the national court is a matter for that court.

39 The third question must therefore be construed as seeking clarification as to the term 'holder' of surplus stock used in Article 4 of Regulation No 3108/94, so as to enable the national court to decide whether or not Thakis should be classified as such for the purposes of liability to the tax at issue in the main proceedings.

40 According to the Austrian Government, only the person with authority to dispose of the goods can be regarded as their holder within the meaning of Article 4 of Regulation No 3108/94. In its view, Thakis falls within that category, as the purchaser of the surplus stocks.

41 The Commission contends that the term 'holder' within the meaning of Article 4 of Regulation No 3108/94 refers to the person who has actual control over the

stocks or has actual and physical possession of them. That interpretation derives from the need to guarantee recovery of the tax due, which would not be ensured if the tax were levied on, for example, the owner, who might reside in another Member State or in a non-member country.

42 It must be borne in mind that, by providing for taxation of the holders of surplus stock as at 1 January 1995, the Commission intended, as is noted in paragraph 22 of this judgment, first, to preclude the build-up of stocks for speculative purposes and, second, to neutralise the economic advantages anticipated by operators who had built up such stocks. In those circumstances, the term 'holders' within the meaning of Article 4 of Regulation No 3108/94 must be construed as referring to persons who, on 1 January 1995, had the authority to place the stored products on the market with a view to realising a profit which the taxation at issue in the main proceedings was specifically designed to neutralise.

43 As correctly observed by the Advocate General in point 81 of his Opinion, that interpretation is confirmed by Article 4(2) of Regulation No 3108/94, which indicates the factors to be taken into account by the new Member States in order to determine whether surplus stock exists. Such factors include in particular average levels of stock available and patterns of trade in the years before the accession of the Member State concerned. Such factors clearly could not be taken into account if the status of holder had to be seen as extending to every person who, on the date of accession, had actual control of the stocks — such as a pledgee or a carrier — without necessarily being vested with authority to dispose of them freely.

44 Moreover, the status of holder of surplus stock must be attributed regardless of whether, in a given case, the operator subjected all or any part of the surplus stock to any kind of charge by way of security.

45 The answer to the third question must therefore be that the term 'holder' of surplus stock, within the meaning of Article 4 of Regulation No 3108/94, refers to a person who has authority to place the stored products on the market and thereby realise a profit.

The fourth question

46 By its fourth question, the national court seeks in essence to ascertain whether, in relation to the import of Tunisian olive oil, the 'import charge' mentioned in Article 4(3) of Regulation No 3108/94, applicable in the Community of Twelve on 31 December 1994, is the one provided for in Annex I to Regulation No 3307/94 or the one provided for by Regulation No 287/94.

47 It need merely be stated, as has been pointed out by the Austrian Government and the Commission, that the special levy provided for by Regulation No 287/94 was no longer applicable on 31 December 1994, the reference date specified by Article 4(3) of Regulation No 3108/94. Under Articles 1 and 3 of Commission Regulation (EC) No 548/94 of 10 March 1994 laying down detailed rules for the application of Council Regulation (EC) No 287/94 (OJ 1994 L 69, p. 3), the import licences required for application of the special levy regime were valid only between 1 March and 31 October of each marketing year. Consequently, on 31 December 1994, olive oil from Tunisia could be imported into the Community only under the general system of levies provided for by Regulation No 3307/94.

48 The answer to the fourth question must therefore be that Article 4(3) of Regulation No 3108/94 must be interpreted as meaning that, in the case of imports of Tunisian olive oil, the 'import charge' applicable in the Community of Twelve on 31 December 1994 is the one provided for in Annex I to Regulation No 3307/94.

The fifth question

49 By its fifth question, the national court seeks in essence to ascertain whether Article 4(3) of Regulation No 3108/94 is valid in the light of the principle of equal treatment even though that provision does not envisage the possibility of applying the special levy created by Regulation No 287/94 to imports of olive oil from Tunisia by operators in the new Member States, when operators in the Community of Twelve were able to benefit from such a levy.

50 It must be pointed out, as noted by the Commission, that operators in the new Member States who, on 1 January 1995, held surplus stocks of Tunisian olive oil imported under the rules in force in those States were not in a situation comparable to that of operators in the Community of Twelve who, from 1 March to 31 October 1994, were able, where appropriate, to import olive oil originating in Tunisia under the preferential regime provided for by the former cooperation agreement between the European Economic Community and the Tunisian Republic approved on behalf of the Community by Council Regulation (EEC) No 2212/78 of 26 September 1978 (OJ 1978 L 265, p. 1).

51 In those circumstances, by providing for taxation, under the general rules contained in Regulation No 3307/94, of surplus stocks held on 1 January 1995 in the new Member States, with a view to preventing or neutralising deflections of trade liable to disrupt the common organisation of the markets, Article 4(3) of Regulation No 3108/94 does not infringe the principle of equal treatment for economic operators in the Member States.

52 The answer to the fifth question must therefore be that examination of it has disclosed no factor of such a kind as to affect the validity of Article 4(3) of Regulation No 3108/94 in the light of the principle of equal treatment.

Costs

53 The costs incurred by the Austrian Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Verwaltungsgerichtshof by order of 17 April 2000, hereby rules:

1. The Commission of the European Communities was competent, under Article 149(1) of the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, to adopt the measures provided for in Article 4 of Commission Regulation (EC) No 3108/94 of 19 December 1994 on transitional measures to be adopted on account of the accession of Austria, Finland and Sweden in respect of trade in agricultural products.

2. Examination of the second question has disclosed no factor of such a kind as to affect the validity of Article 4 of Regulation No 3108/94 in the light of the principle of proportionality and the principle of the protection of legitimate expectations.

3. The term 'holder' of surplus stock, within the meaning of Article 4 of Regulation No 3108/94, refers to a person who has authority to place the stored products on the market and thereby realise a profit.

4. Article 4(3) of Regulation No 3108/94 must be interpreted as meaning that, in the case of imports of Tunisian olive oil, the 'import charge' applicable in the Community of Twelve on 31 December 1994 is the one provided for in Annex I to Commission Regulation (EC) No 3307/94 of 29 December 1994 fixing the minimum levies on the importation of olive oil and levies on the importation of other olive oil sector products.

5. Examination of the fifth question has disclosed no factor of such a kind as to affect the validity of Article 4(3) of Regulation No 3108/94 in the light of the principle of equal treatment.

Jann Sevón Wathelet

Delivered in open court in Luxembourg on 15 January 2002.

R. Grass

Registrar

P. Jann

President of the First Chamber