OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 16 June 1987 *

Mr President,
Members of the Court,

I — Scope and subject-matter of the proceedings

1. The outcome of this action for annulment depends on the interpretation, within the general framework 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'), [1] of the provisions by which the Act of Accession introduced a 'supplementary trade mechanism' ('STM') in respect of certain agricultural products. An appraisal of the arrangements implementing the STM, as contained in the various regulations in dispute, must indeed take account of the specific characteristics of the Act of Accession, which was designed to create during a transitional period conditions favourable to the integration of the new Member States into the structure of the Community they were joining — introducing, where appropriate, provisions derogating from the rules normally governing that Community.

2. The subject-matter of the action should first be defined. As is clear from the documents before the Court, Spain contests neither the STM as such nor even the need on the part of the Community institutions to adopt measures giving effect to it. It is the legality of the detailed rules chosen for that purpose which is criticized, and in particular the subjecting of Spanish exports to the Community as constituted prior to the accession ('the Community of Ten') to a system of licences and securities. The main subject of challenge is Council Regulation No 569/86 of 25 February 1986 laying down general rules for the application of the supplementary mechanism applicable to trade. [2]

3. In essence, the Spanish Government maintains that the system of trade-supervision thereby set up may not be viewed as a measure merely implementing the provisions in the Act of Accession which govern the STM, on the grounds that it overlays that mechanism with further obstacles to trade in the products covered by it. More specifically, the applicant takes the view that the Council:

(a) set up a system with which Spain had expressly disagreed during the negotiations, contrary to what is stated in the second recital of the preamble to Regulation No 569/86;

(b) raised obstacles to trade which contravene the principles of the Act of Accession and the EEC Treaty regarding the free movement of goods, thereby leaving those concerned in a state of uncertainty as to whether trans-

* Translated from the French.

1 — Official Journal 15.11.1985, L 302, p. 23.

2 — Official Journal 1986, L 55, p. 106.

actions can be carried out and applying to some of the products subject to the STM rules more stringent than those in force prior to Spain's accession;

(c) established a system of supervision which cannot be considered necessary for the purposes of the aim pursued;

(d) lastly, disregarded the principle of Community preference, to the detriment of Spanish products.

4. With regard to the other regulations adopted by the Commission and challenged in the application, a distinction should be drawn between Regulation No 574/86, [3] which supplements and defines the general rules laid down by the basic regulation, and the other regulations which serve to apply the general supervisory system to some of the products subject to the STM. [4] Those specific regulations are not disputed except in so far as they give effect to the system thus set up. Their legality is therefore dependent on the legality of those two regulations. It is within these terms of reference that the solution to this dispute must be sought. For that purpose it is appropriate to begin by analysing the components which make up the STM and the disputed supervisory system (see part II below) before turning to an appraisal of the various submissions put forward by the applicant (part III).

3 — Regulation No 574/86 of 28 February 1986; Official Journal 1986, L 57, p. 1.

4 — Commission Regulations Nos 624 and 647/86, both of 28 February 1986, are concerned with trade with Spain in new potatoes and viticultural products respectively (Official Journal 1986, L 60, pp. 1 and 50 respectively). Regulations Nos 641 and 643/86 concern products processed from fruit and vegetables and products from the live plants and floriculture sector imported into Portugal (Official Journal 1986, L 60, pp. 34 and 39 respectively).

II — The STM and the system of supervision

5. In order to determine whether the contested system of trade-supervision is in conformity with Community law, it is necessary to situate the STM within the overall context of the provisions governing Spain's accession, to analyse its internal structure and to define its aims.

6. Article 1 (2) of the Treaty of Accession, concluded between the ten Member States making up the European Community at that time, on the one hand, and Spain and Portugal on the other, refers to the Act of Accession annexed thereto for the determination of the 'conditions of admission' and of the 'adjustments of the original Treaties'. [5] Although Article 2 of the Act of Accession provides

'From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions of the Communities before accession shall be binding on the new Member States',

it adds that all those primary and secondary provisions

'... shall apply in those States *under the conditions laid down* in those Treaties *and in this Act*'. [6]

As this Court has emphasized with reference to an analogous article inserted in the Act of Accession of Denmark, Ireland and the United Kingdom, such a provision

'makes it clear that the integration of the new Member States into the Community is the fundamental objective of that Act'. [7]

5 — Official Journal L 302, 15.11.1985, p. 9. An analogous provision appears in the Council decision of 11 June 1985 on the accession of the two new Member States to the ECSC (Official Journal L 302, p. 5).

6 — Emphasis supplied.

7 — Case 231/78 *Commission* v *United Kingdom* [1979] ECR 1447, paragraph 11.

The legal rules governing the accession are thus determined by the ordinary rules of Community law to which the ten Member States are subject, as modified by the Act of Accession. In the same spirit, Article 9 thereof proclaims its broadly exemptive character:

'The application of the original Treaties and Acts adopted by the institutions shall, *as a transitional measure*, be subject to the *derogations* provided for in this Act'. [8]

The Act of Accession of Denmark, Ireland and the United Kingdom is even more explicit, since it stipulates that the derogations are provided 'in order to facilitate the adjustment of the new Member States to the rules in force within the Communities'.[7] As we shall see, the STM accords perfectly with that purpose.

7. As the basis for the integration of the new Member States into the European Community, the Act of Accession thus seeks to create — particularly in the more sensitive areas — progressive phases in the transition to definitive integration. To that end it may include provisions which derogate from the normal rules of Community law, provided that the measures in question are temporary ones, justified by the goal to be attained. In this connection it comes as no surprise that much of the Act of Accession of Spain and Portugal is largely concerned with transitional measures applicable to agriculture. The anxieties and expectations which the accession aroused on that delicate issue are well known. Because the common policy is so developed and complex, the transitional derogations constitute an essential condition for successful accession.

8. The transitional measures concerning Spain are governed by Title II of the Act of Accession, Chapter 3 of which is entirely devoted to agriculture. It covers all agricultural products except those in the fisheries sector.[9] It lays down, subject to certain exceptions, a transitional period of ten years.[10] Like the parties to the case, I refer essentially to the provisions which apply to Spain, those concerned with Portugal being largely analogous. Apart from the rules relating specifically to certain common organizations of the markets under Articles 92 *et seq.*, Chapter 3 contains general provisions. Those provisions require the progressive alignment of Spanish prices and Community prices, the temporary differences normally being covered by 'accession' compensatory amounts,[11] the dismantling of customs duties[12] and the abolition of national aids.[13] However, the most innovative provision is the one concerning the supplementary trade mechanism, introduced between Spain and the Community of Ten with effect from 1 March 1986, except in respect of fruit and vegetables, to which it does not apply until 1 January 1990.[14] It should be pointed out that the mechanism governs — depending on the products subject to it — on the one

7 — Case 231/78 *Commission* v *United Kingdom* [1979] ECR 1447, paragraph 11.

8 — Emphasis supplied.

9 — Article 67 (1) of the Act of Accession.

10 — Article 67 (3) of the Act of Accession.

11 — Articles 68 *et seq.*, of the Act of Accession.

12 — Article 75 of the Act of Accession.

13 — Article 80 of the Act of Accession.

14 — Article 81 (1) of the Act of Accession.

hand trade between the Community of Ten and the two new Member States, [15] and on the other trade between Spain and Portugal. [16]

9. As is apparent from the provisions defining its nature and operation, the STM is a *mechanism to regulate trade* in certain products, listed exhaustively in Article 81 (2), whose 'sensitive' character, especially as far as traders of the Community of Ten are concerned, made a special system of adjustment necessary (wine, fruit and vegetables may be cited as examples). The system applies reciprocally even if the 'sensitivity' of the respective markets calls for differentiation between the products according to the direction of the trade.

10. The mechanism thereby set up relies on the fixing of an import ceiling, compliance with which is ensured by the study of trends in the volume of trade which, if need be, allows a protective procedure to be set in motion. At the core of this three-part mechanism is the determination, at the beginning of every marketing year for a product, of

'an indicative import ceiling in the market in question'. [17]

This *quantitative threshold*, established on the basis of production or consumption forecasts in the markets concerned, and incorporated in a forward timetable, is reviewed each year pursuant to Article 83 (2). Being in the nature of a guideline, the import ceiling may be seen as the estimated annual limit of what the market of destination can bear without being disrupted. Observance of the import ceiling is ensured by the triggering of a protective procedure whenever the Commission finds that import trends satisfy both conditions set out in Article 85 (1) and consequently that a disturbance is possible. The Commission may then adopt immediate measures of a protective nature, to be superseded later by 'definitive' measures. Under Article 85 (3), definitive measures may — depending on whether or not the disturbance is significant — entail the Commission either revising the indicative ceiling or limiting or suspending imports.

11. The components of the mechanism as described above reveal its dual purpose. The more obvious purpose is to deter and thereby prevent any massive and overwhelming imports which might destabilize markets in sensitive agricultural products. The other is the progressive development of trade with a view to integrating the agricultural markets in question. Through the system of regulation of trade introduced by the STM, both contribute to the achievement of the very aims of the common agricultural policy itself as expressed by Article 39 of the EEC Treaty, in particular the aim of 'ensuring a fair standard of living for the agricultural community' and of 'stabilizing markets'.

12. It is at once clear that the STM is an *instrument of protection* for 'sensitive'

15 — Articles 81 *et seq.* of the Act of Accession for trade with Spain, Articles 249 *et seq.* in conjunction with Annex XXII for trade with Portugal.

16 — Articles 88 and 256 of the Act of Accession and Council Regulation No 3792/85 of 20 December 1985 laying down the arrangements applying to trade in agricultural products between Spain and Portugal (Official Journal 1985, L 367, p. 7).

17 — Second subparagraph of Article 83 (1), last phrase.

products, whose deterrent effect relies on the fixing of an import threshold acceptable to the market of destination, the monitoring of trade and the threat of possible protective measures, triggered when commercial developments do not match the actual absorptive capacity of that market. In activating the protective mechanism the Commission enjoys a considerable margin of discretion. It is the Commission which undertakes 'the examination of developments in intra-Community trade' and assesses those developments with reference to the two cumulative conditions for the triggering of protective measures. With regard to those conditions one cannot fail to note, on the one hand, that whilst the increase in exports is required to be *significant,* it may relate to 'forecast' imports as well as actual imports, and, on the other hand, that it is sufficient for the Commission to find that the *rate* of increase will *'result* in the indicative import ceiling . . . being reached *or* exceeded'. The assessment may be carried out either 'for the current marketing year or part thereof'.[18] The reason is that, besides the aggregate yearly ceiling, intermediate ceilings may be fixed which are spread out through the marketing year for the products in question.[19] The discretion enjoyed by the Commission extends to the methods used for protecting the market which it considers threatened, since the Act of Accession does not define the nature of conceivable protective measures, and cites by way of example only two types of definitive measure. As the applicant has noted, the absence of any significant disturbance may simply lead to 'the revision of the indicative ceiling',[20] which in practice means the raising of it, should the Commission consider that the market is capable of absorbing the higher level of imports. The presence of such disturbance may, on the other hand,

'[depending] 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, [lead to] the limitation or suspension of imports on to the market of the Community as at present constituted or on to the Spanish market.'

Those measures, termed 'restrictive',

'may only be taken to the extent and for such time as is strictly necessary to put an end to the disturbance'.[21]

The Act of Accession therefore offers the Commission alternative measures, which may be put into effect if the Commission, in its discretion, decides that the two conditions for the triggering of the protective system underArticle 85 have been fulfilled. That article, however, rests entirely on 'the examination [by the Commission] of developments in intra-Community trade'.[22]

13. None the less, the STM should not be seen as a mere protective mechanism. Beyond the deterrent effect sought by its introduction, it endeavours to create favourable conditions for bringing the products in question within the ambit of the normal rules of Community law by the

18 — Article 85 (1).
19 — Article 83 (2), last sentence.
20 — Article 85 (3) (a).
21 — Article 85 (3) (b).
22 — Article 85 (1), cited above.

expiry of the transitional period. It thus regulates trade with a view to the *progressive integration* of the products subject to it. The indicative import ceilings must be reassessed annually in accordance with a definite 'rate of progress', so that

'The successive fixing of indicative ceilings [shall] 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*'.[23]

The 'indicative' character of the ceilings explains their relative flexibility: besides the annual reassessment they may be revised in advance, either upwards or if need be downwards, when a significant disturbance occurs.

14. Thus the indicative ceiling serves as a protective threshold for the market and sets the possible level of integration for imported products. In administering the STM, the Commission must therefore take account of that dual function. Where the respective interests of the acceding States and the Community of Ten coincide, the STM favours the 'acclimatization' of traders on both sides to competition from the products subject to it. The constant and close supervision of trade is thus crucial in ensuring that the STM is fully effective. In this connection the information must satisfy two requirements: it must be reliable and it must enable the Commission to act in good time. It is in the light of those considerations that the system set up by the disputed regulations must be appraised.

15. However restricting they may be for the traders concerned, these arrangements for the supervision of trade are dictated by the dual aim of the STM, discussed above. As the defendant institutions have rightly emphasized, in order to be fully effective the STM presupposes statistical data on developments in trade which are *as close as possible to the reality* of the situation and therefore *reliable,* but it also requires speedy information on the movements of goods. The Commission is thereby enabled to take action *in good time* and *in full knowledge of the facts.* The functioning of the mechanism, whether in normal times or in a period of crisis, relies entirely on the Commission's 'examination of developments' in trade, in the exercise of its discretion as described above. Indeed, the STM system assumes *permanent* supervision, because the measures implementing it cannot, contrary to what Spain appears to suggest, be confined to the definition of the conditions for the Commission's intervention by means of protective measures. It is only such constant vigilance which can both forestall the need for protective measures and, if need be, ensure their judicious introduction. Furthermore, as the Council has stressed, the 'automatic' triggering of the protective system, as soon as the dual condition regarding developments in trade is considered by the Commission to have been

23 — Article 83 (2); emphasis added.

fulfilled, demands that the Commission have statistics available to it which closely reflect the immediate reality of the situation. Similarly, apart from the gravity of some of the definitive measures, the Commission's choice between merely revising the ceiling and introducing 'restrictive measures' causing imports to be blocked altogether presupposes — unless it is to be meaningless — that the Commission can form an accurate impression of the degree of disturbance in prospect. The examination of trade must, in view of the inferences which the Commission may draw from it, be especially careful since the Commission enjoys a discretion in appraising import trends and the protective or definitive measures which it will adopt in response.

16. That is the scheme within which the administration of the STM must be viewed. By making the release of goods for consumption in a Member State subject to the issue of a licence, which may be deferred until the fifth working day following the application,[24] the system enables the Commission to keep abreast of trade flows. In this connection, the provision of a security is an indispensable concomitant of an STM licence. It ensures that the Commission is fully informed of the situation in each market of destination, since the quantities for which the licences were requested will normally have to be exported during their period of validity. At this stage of its investigation, the disputed system does not, in my opinion, warrant any of the objections raised by the applicant.

III — Objections of the applicant

17. Basically, the submissions put forward to contest the legality of the supervisory system assume that it is in some degree distinct from the STM to which it gives effect. In the light of the foregoing observations, the applicant's objections to the system of licences and securities may in fact be answered by reference to the actual provisions governing the STM. There are two sets of factors for assessing whether the system is in conformity with the Act of Accession.

18. First, the STM's status as a general derogation from the principle of freedom of trade within the Community demands, as the applicant has observed, a restrictive interpretation of the transitional exception thus created. In its judgment in Case 231/78, the Court emphasized that an act of accession, whatever its derogating provisions may be, none the less has to be interpreted

'having regard to the foundations and the system of the Community, as established by the Treaty'.

With reference precisely to the elimination of quantitative restrictions envisaged by Articles 30 *et seq.* of the EEC Treaty, the Court held that:

'the importance of that prohibition for the achievement of freedom of trade between Member States precludes any broad interpretation of the reservations or derogations in that connection provided for in the Act of Accession'.[25]

24 — Period allowed under Article 6 (2) of Regulation No 574/86, adopted pursuant to Article 4 (2) of the basic regulation.

25 — Case 231/78, quoted above, at paragraphs 12 and 13.

The same considerations must dictate the interpretation of the Act of Accession of Spain and Portugal, in so far as the STM constitutes an instrument for regulating and monitoring trade, and derogates from the principle established in that regard by the combined provisions of Articles 30 and 38 (2) of the EEC Treaty. In this instance, the objections derived from that principle necessitate an inquiry into whether the supervisory system established by the contested regulations goes *beyond* the derogating mechanism provided for by the Act of Accession.

19. Since the issue here is what measures are suitable for giving full effect to arrangements set up by the Act of Accession, account must then be taken of the extent of the implementing powers conferred on the institutions. Under the first subparagraph of Article 89 (1) of the Act of Accession:

'Except where otherwise provided for in specific cases, the Council . . . shall adopt the provisions necessary for implementing'

all the provisions concerned with agriculture. The Court has consistently held that

'the institutions of the Community must be recognized as having *a broad discretionary power* over the common agricultural policy, on account of the responsibilities which are laid on them by the Treaty'. [26]

20. Such, in my opinion, is the context in which one must view the objections alleging infringement of the principles of the free movement of goods and of proportionality: the question is whether the rules adopted by the Council and the Commission bear a necessary, objective relationship to the aims of the STM which they seek to attain. [27] This approach will serve to concentrate the major part of the discussion on the question of proportionality. The submissions alleging infringement of the principle of Community preference and an insufficient statement of reasons will be examined last, in the light of the response to the earlier objections.

(a) *Infringement of the principle of the free movement of goods*

21. As a full Member State, Spain claims the untrammelled application of the principle of the free movement of goods. Accordingly, it sets out three objections, alleging restrictions on trade, infringement of the principle of legal certainty and contravention of the standstill clause contained in Articles 31 and 32 of the EEC Treaty. To my mind, all of those objections are lacking in foundation.

22. Whilst it is true that Article 42 of the Act of Accession provides that as soon as it enters into force, the principle of the abolition of *quantitative restrictions on trade* and of *measures having equivalent effect* is to be applied, Article 67 (2) — a general provision introducing the chapter on agriculture — stipulates that the rules laid down in the Act of Accession are to govern agricultural products 'save as otherwise provided for in this Chapter'. Similarly,

26 — Judgment of 11 March 1987 in Case 27/85 *Vandemoortele NV* v *Commission* [1987] ECR 1129, at paragraph 31; emphasis added.

27 — See first and second recitals of the preamble to Regulation No 569/86 and the first recital of Regulation No 574/86.

Article 76 (1) provides in respect of products covered by a common organization of the market that the rule under Article 42 is to take effect 'subject to any provision to the contrary in this Chapter'. The scope of the derogation under those provisions and examination of the STM disclose that the mechanism does have the effect of hindering trade in the products concerned. However, as seen earlier, it is only a *relative* and *transitional* derogation. It was therefore subject to that qualification that the principles of Community law were binding on the institutions when they decided on suitable means for giving full effect to the STM. Those findings are sufficient to demonstrate that the introduction of a system for the supervision of imports, and the obstacles to trade which it necessarily entails, are not only not in themselves contrary to the relevant provisions of the Act of Accession but are indeed *dictated* by those provisions, since the STM system cannot work except on the basis of reliable and up-to-date information. Thus Spain"s reference to previous judgments of this Court prohibiting the maintenance of any system of licences for trade even as a formality, and *a fortiori* those requiring the provision of a security, is beside the point. The measures at issue are not a *national* system contrary to Community agreements but a *reciprocal* system incorporating a temporary derogation and adopted in pursuance of a Community mechanism.

23. As far as breach of the *principle of legal certainty* is concerned, the STM is by nature a source of uncertainty for traders. The import ceilings are merely 'indicative', and the list of products covered may be amended in accordance with the conditions laid down in Article 81 (3) of the Act of Accession. Furthermore, all that is needed to trigger the system of protective measures is the finding of a 'significant' increase in imports. With regard to the breach of the principle of legal certainty caused specifically by some of the detailed rules of the system, the following observations may be made. Whilst the release of the security may, as Spain has maintained, depend on the diligence of the trading partner holding the STM licence, it must also be noted that 'Proof of entry for home use may *also* take the form of producing the customs document of entry for home use, or of a copy or photocopy of it certified [by the national authorities] as being authentic'.[28]

As for the argument that the rights attaching to the STM licences may be withdrawn at any time in respect of one or more Member States, it should be observed that Article 5 (2) of Regulation No 569/86 as supplemented by Article 15 of Regulation No 574/86 makes no provision for limiting the validity of such licences except in cases of the 'regional application' of measures suspending or limiting licences. In such cases the licence system is merely used to give effect to the provisions of the last subparagraph of Article 85 (3) of the Act of Accession, under which restrictive trade measures 'may be limited to imports intended for certain of [the] regions' of the Community of Ten, provided that 'they include appropriate provisions to avoid deflections of trade'. Legal certainty is allegedly undermined by two other provisions. Article 4 (1) of Regulation No 569/86 enables the issuing of STM licences

28 — Second subparagraph of Article 8 (2) of Regulation No 574/86; emphasis added.

to be limited to certain products or spread out over a period of time. The staggering of licences originates in the Act of Accession itself, under which, 'within the framework of the overall indicative ceiling, ceilings may be fixed corresponding to the different periods of the marketing year in question'.[29] The resultant uncertainty may not therefore be attributed to the Council regulation itself. As for the limitation of licences, even assuming that it may give rise to doubts amongst traders regarding the products covered by the system of supervision, it would only be unlawful if it proved to be disproportionate to the aim pursued in the context of the aforesaid derogations. It is therefore from the viewpoint of proportionality that it must be assessed. The same applies to the waiting period for the licence, under Article 6 (2) of Regulation No 574/86, which is also referred to by the applicant.

24. The objection alleging infringement of the *'standstill' rule* cannot be upheld either. The observation that two of the three products exported from Spain to the Community which are subject to the STM were not, prior to accession, subject to restrictions similar to those in the contested rules certainly cannot *per se* affect the legality of those rules. How, indeed, is it possible — in view of the *change* undergone by relations between Spain and the Community of Ten — to compare the pre-accession rules on trade between Spain, as a non-member country at that time, and the EEC to the rules which since 1 March 1986 have applied to trade between Spain, as a newly-admitted Member State, and the Community of Ten, when the Act of Accession, in the mutual interests of the Contracting States, established new, specific rules which provisionally derogate from immediate freedom of trade in certain agricultural products?

25. The applicant further asserted that even if an exporter makes an error in applying for a licence, that licence still cannot be revoked. For the sake of completeness, and although the point has not been discussed, I shall merely point out that Article 12 of Commission Regulation No 3183/80 of 3 December 1980 laying down detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products,[30] to which express reference is made in Article 3 (1) of Regulation No 574/86, does not make provision for the revocation of an application for a licence and sets out the relevant conditions.

26. In brief, none of the objections considered above appears *per se* to cast doubt on the consistency of the disputed system with Community law as provisionally modified by the Act of Accession. It remains to be established — and this is the fundamental question — whether or not the detailed rules which it lays down are in breach of the principle of proportionality, regard being had to the aim pursued.

29 — Article 83 (2), last sentence.

30 — Official Journal 1980, L 338, p. 1.

(b) *Infringement of the principle of proportionality*

27. As far as the principle of proportionality is concerned, the Court has consistently held that:

'in order to establish whether a provision of Community law is in conformity with the principle of proportionality, it is important to ascertain whether the *means* which it employs are *suited to achieving the desired aim*, and whether they do not exceed *what is necessary* for attaining it'. [31]

It is with regard to that requirement that it will be necessary to determine whether the components of the system set up by the disputed regulations are appropriate and necessary, [32] that is, on the one hand whether the means employed 'correspond to the importance' of the aims pursued by the STM, and on the other hand whether 'they are necessary for [their] achievement'. [33]

28. Spain maintains that a system for the supervision of trade based on the issue of licences requiring the provision of securities constitutes a disproportionate burden on the traders concerned. Furthermore, being unrelated to the level of imports and the actual risk of disturbances, the system also serves no useful purpose, because the Commission can obtain information in ways which are less coercive and (more importantly) less aleatory; the disputed system does not disclose either actual import levels or the time at which importation is carried out.

29. Unlike the applicant, I take the view that, far from being a pointless adjunct to the system of protection under the STM, the system set up by the disputed legislation fits logically within it, by ensuring that it is fully effective. The *sensitivity* of the agricultural products involved, which is not denied, and the seriousness of some of the protective measures which might be envisaged call for the establishment of a system for monitoring developments in trade which is *reliable* and operates in *advance* of exportation. It must be reiterated here that this dual requirement arises under Article 85 of the Act of Accession itself. It is only by receiving accurate information that the Commission can assess whether:

the increase in imports is significant;

the rate of increase suggests that the indicative ceiling will be reached or exceeded;

the disturbance thereby revealed is significant or not; and

mere revision therefore of the ceiling is called for or whether restrictive measures should be introduced.

Only *advance* information will enable the Commission to take action on the basis of forthcoming imports even before the ceiling is reached — that is, in time to prevent the irreversible consequences which massive imports would have on the balance of a market in sensitive products. In its principles the contested supervisory system seems fully to meet those requirements.

30. By making the entry of goods for home use on the market of destination conditional

31 — Case 27/85, quoted above, at paragraph 31; emphasis supplied. See also the judgment of 18 March 1987 in Case 56/86 *Société pour l'exportation des sucres* v *OBEA* ECR 1423, at paragraph 28.

32 — Case 122/78 *Buitoni* v *Fonds d'orientation* [1979] ECR 677 at paragraph 16.

33 — Case 66/82 *Fromançais* v *Fonds d'orientation* [1983] ECR 395 at paragraph 8.

on the prior issue of licences, the basic regulation enables the Commission to be informed about forecast imports. As for the likelihood of their actually being carried out, this is guaranteed by the constraint of providing a security whose release is subject to proof that the products have been entered for home use.[34] The Commission is thus able to follow closely the trends in trade, the monitoring of which determines whether or not the protective system is to be triggered. Although the data communicated by the Spanish authorities twice a week[35] deal with the quantities for which licences have been requested, they are none the less reliable on account of the security provided. The element of uncertainty pointed out by the applicant as arising out of possible discrepancies between licence applications and quantities actually imported, apart from being thereby reduced, in any event originates in the Act of Accession, which authorizes the Commission to act even before importation has taken place and the ceiling has been reached. The Commission is thus permitted to form its assessment of developments in trade without regard to the time of importation. The very existence of a waiting period of five working days, which applies to the issue of licences generally, further strengthens this forecasting ability. The administrative and financial formalities involved are all the more necessary for being the only factors liable to prevent, or to reduce to what is strictly necessary, the use of far more coercive measures whereby imports are limited, suspended or regionalized, entailing the closure of frontiers if need be. Moreover, as the Council has explained, the disputed arrangements are not permanent because they are open to modification 'in the light of experience', particularly with a view to their extension to fruit and vegetables in 1990.[36]

34 — Article 8 (2) of Regulation No 574/86.

35 — Second subparagraph of Article 6 (2) of Regulation No 574/86.

36 — Articles 8 and 9 (2) of Regulation No 569/86.

31. Support for that view is to be found, as the institutions have pointed out, in the judgment of the Court in Case 11/70 *Internationale Handelsgesellschaft*, cited above. The Court held with regard to Regulation No 120/67 on the common organization of the market in cereals that the system of securities required for the issuance of import and export licences is intended to afford both the Community and the Member States:

'precise knowledge of the intended transactions . . . , [which] is essential . . . [for the] judicious use of instruments of intervention, . . . such as . . . applying protective measures . . . '.[37]

The Court concluded that:

'It is necessary . . . for the competent authorities to have available not only statistical information on the state of the market but also precise forecasts on future imports and exports'

and that, in view of the national authorities' obligation to issue licences, not only

37 — Case 11/70 [1970] ECR 1125, paragraphs 6 and 7.

'[would] a forecast . . . lose all significance if the licences did not involve the recipients in an undertaking to act on them'

but also

'the undertaking [itself] would be *ineffectual* if observance of it were not ensured by appropriate means'.

To that end, emphasizing

'the dual advantage . . . of simplicity and efficacy'

afforded by the system of securities, the Court held:

'a system of mere declaration of exports effected and of unused licences . . . would, by reason of its retrospective nature and lack of any guarantee of application, be incapable of providing the competent authorities with sure data on trends on the movement of goods'.[38]

The Court concluded that, regard being had to the aim pursued — namely to 'enable the competent authorities to determine in the most effective manner their interventions on the market in cereals' — such a system

'constitutes a method which is both necessary and appropriate'.[39]

Admittedly, that decision belongs to a different context from the present one. The Court's approach and its ruling none the less seem perfectly transposable for the purpose of assessing the system of supervision at issue. Besides the similarity of the principal means used, the end they serve is largely comparable, namely to give full effect to a protective arrangement by keeping the Commission as closely informed as possible of actual trade flows.

32. The arguments against that conclusion do not carry conviction. It is not possible to subscribe to the argument that the communication of customs declarations by the national authorities would be more appropriate and less coercive in character. As the Court has noted in its decision in Case 11/70, customs statistics would reach the Commission only after the event, and thus sometimes too late for it to take effective action.

33. The argument that the disputed system of supervision is more restrictive than the system which can be applied to imports from non-member countries pursuant to Article 115 of the EEC Treaty must also be rejected. The question whether or not the contested monitoring system is appropriate must be considered in its rightful context, namely the implementation of a *sui generis* mechanism provided for by an act of accession. The specific function of the STM, which aims to integrate markets in sensitive agricultural products by establishing progressive import ceilings while using a protective system administered by the Commission for preventing sudden fluctuations likely to destabilize them, invalidates any analogy drawn from a comparison with the systems of trade controls which apply exceptionally to products imported from non-member countries and brought into free circulation within the Community. The same applies to existing systems of supervision for agricultural products. In any case, it has been

38 — Case 11/70, cited above, at paragraphs 8, 9 and 10.

39 — Case 11/70, cited above, at paragraph 12; see also Case 117/83 *Könecke* v *BALM* [1984] ECR 3291, paragraph 14.

seen above that the normal functioning of the STM licence system requiring the provision of a security is designed precisely to avoid the adoption of restrictive protective measures. Its mandatory detailed rules are strictly necessary to the aim pursued — that of monitoring developments in trade as closely as possible — and their efficacy is a prerequisite of the STM's having a deterrent effect. Compared with the consequences which would result from the application of restrictive measures adopted *ex post facto*, it is certainly the lesser of two evils.

34. Whilst the system of licences and securities thus appears to be appropriate and necessary, the task remains of ascertaining whether some of its detailed rules meet the same requirements. The obligation of applying to the Spanish authorities for licences, besides relieving importers of the need to apply for them in the various States of importation, ensures that information is concentrated, thereby facilitating its processing and its communication to the Commission. The waiting period between the application for the licence and its issue may, as noted above, be justified in terms of the need to allow the Commission to take action in time on the basis of the quantities applied for and already covered by a security. In challenging that formality, neither the perishable nature of the products in question nor the rapid fluctuations in the market in some of them may be pleaded. In view of the importance of the aim pursued, traders must adapt themselves to the administrative rules helping to make it effective and must therefore take account of that necessary constraint when carrying out their export operations. It may also be observed that the Commission has abolished the waiting period for the issue of licences for potatoes,[40] while the problem has not yet arisen in respect of fruit and vegetables, to which the STM will not apply until 1990. As for the option of limiting licences to certain products, it is not, in fact, restrictive at all. As the Council explained at the hearing, it limits the scope of the system of supervision by excluding some products altogether. Indeed, the examples given by the Council — piquette and vinegar — are significant: products the trading of which is not liable to create disturbances must remain outside the system of supervision. That confirms indeed that the legislation at issue refrains from applying the mechanism set up except in cases of necessity. The staggered issue of licences enables surges in trade to be spread out over aperiod of time, where necessary, and allows trade to be more accurately monitored and massive imports prevented. Lastly, the rule that a licence holder's rights may not be transferred to more than one assignee[41] seems to be dictated by a concern to avoid the dispersal of the licences issued and to obtain, with some degree of flexibility, information reflecting transactions actually carried out, the reality of the transactions, which in turn is essential to reliable forecasting.

40 — Article 2 (3) of Regulation No 624/86, cited above.
41 — Article 2 (2) of Regulation No 574/86.

35. In short, the drawbacks due to the administrative formalities under the contested rules and to the financial charges they entail — which are moreover recoverable — are outweighed by the ensuing advantages. For traders, the system represents a necessary evil. What is more, it promotes fluidity of trade, subject to the mandatory but transitional conditions laid down by the STM. Through the efficacy of the protective system which it implements it guarantees traders, in exchange for the constraints which it imposes on them, a steady progression of exports within the limits of the reassessed indicative ceilings, reserving recourse to measures more restrictive of trade for exceptional situations, as assessed by the Commission on the basis of reliable and up-to-date statistical information. The strictness of the system is therefore a determining factor in the realization of the free movement of goods which is intended to have been achieved in full by the expiry of the transitional period. Being necessary to ensure that the STM is fully effective, the conditions laid down by the contested Community legislation are thus justified by the dual concern to protect both the interests of traders in the Community of Ten in the face of destabilizing imports and also those of traders in the two acceding States who wish to see particularly sensitive products progressively integrated into the common agricultural market.

(c) *Infringement of the principle of Community preference*

36. According to the applicant the system places Spanish products, at best, in the same situation as products imported from non-member countries, thereby contravening the principle of Community preference. Furthermore, it claims that the previous arrangements were less stringent for either fruit and vegetables or for potatoes, since no security was demanded.

37. That argument cannot be upheld. It is not a question of comparing the successive systems applicable to Spain, first as a non-member country and then as a Member State, but of ascertaining whether, since accession, Spanish products have enjoyed Community preference by comparison with products from non-member countries. Observance of that principle is enshrined in Article 85 (4) of the Act of Accession, under which 'The application of the STM may in no event lead to products [subjected thereto] ... being treated in a less favourable manner' than those coming from the most privileged third countries. In other words, at the very least they must be given equal treatment. To that end the basic regulation, of which the third recital reiterates the principle of Community preference, provided that 'the trend in exports from third countries should be monitored *in the same way* as the trend in Community imports'.[42] Article 3 thereof, together with Article 10 of Regulation No 574/86, extends to products from non-member countries put into free circulation within the Community the same system of licences requiring the provision of a security as is applied to Community products. As far as protective measures to deal with imports from non-member countries are concerned, the joint declaration on the subject states that, when a 'deterioration of the Community market or that of one of its regions' is attributable to such imports,

42 — Fourth recital of the preamble to Regulation No 569/86, emphasis supplied.

protective 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 organizations of the market and in compliance with the provisions referring to the international commitments of the Community'. [43] It is therefore clear from the arrangements made by the regulations at issue that, in keeping with the principle laid down by the Act of Accession, imports of Spanish products are not put at a *disadvantage* in comparison with those from non-member countries. With regard to new potatoes, the applicant has not demonstrated how the system applicable to products from non-member countries, which are subject to quantitative restrictions and hence do not need an STM import licence, can be more favourable than the system governing Spanish potatoes.

38. The above considerations indicate that the specific objections raised to the provisions of Article 6 (2) of Commission Regulation No 574/86 must also be rejected. As the Commission has made clear, in so far as it involves on the one hand a delay in the issue of the licence and on the other the periodic notification by the Member States of the quantities covered by the licence applications, the regulation, far from imposing on Community products subject to the STM more stringent rules than those applicable to products imported from non-member countries, extends identical rules to them by way of Article 10 (6) and (8). The alignment of the system of supervision for non-Community products on the system to which Spanish products are subject ensures the observance of the principle of Community preference. It need hardly be added that, in broader terms, Spanish products falling under the STM, besides becoming fully eligible for the free movement of agricultural products once the transitional period has ended, are already gradually enjoying the benefit of integration into the common market entailed by accession, in particular through the progressive dismantling of customs duties on imports.

43 — Official Journal 1985, L 302, cited above, p. 481; see also the fifth recital of the preamble to Regulation No 569/86.

(d) *Insufficient statement of reasons*

39. According to Spain, the reference in the second recital of the preamble to the Council regulation to 'the additional guidelines agreed on' during the negotiations for accession, and containing 'directions relating to the way in which the [supplementary trade] mechanism is to operate', including the issue of licences and the provision of security, affects the very legality of the regulation, given that the negotiations on this point closed with an agreement to differ: on those grounds, Spain claims that the statement of the reasons on which the regulation is based is defective.

40. There is no doubt that the reference to 'agreed' guidelines does not reflect the reality of the situation. It is evident from the minutes of the negotiation sessions that Spain's opposition to the detailed rules on this point prevented the insertion of a joint declaration in the Act of Accession. In the event, the 'guidelines' appear only in the minutes of the 32nd session of the conference, conducted at deputy level, in the form of a simple unilateral declaration by the Community of Ten. The institutions do not deny this account of events.

41. None the less, such a mistake in the reference is not so substantial as to affect the legality of the Council regulation. As has been shown, the system of supervision established by that regulation fits within the

logical scheme of the STM, which it serves to make fully effective. Pursuant to Article 89 (1) of the Act of Accession, the Council is responsible for adopting 'the provisions necessary for implementing [its provisions]'. Empowered to establish the system of supervision, the Council — as was demonstrated earlier — explained its introduction adequately, referring to the needs underlying the STM itself, namely to monitor the development of trade and to apply protective measures.[44] Those considerations afford an adequate statement of reasons. With reference to acts of such general application as regulations, the Court has consistently held that it is sufficient, for the purposes of satisfying the requirement to state reasons under Article 190 of the EEC Treaty, for the measure clearly to disclose the essential objective pursued by the institution and for the matters of fact or of law dealt with therein to 'fall within the general scheme of the body of measures of which they form part'.[45] That is indeed the case in this instance, as I have demonstrated above. It follows that the reference at issue is not a crucial element in the statement of reasons and that the error contained in it has no effect on the validity of the regulation. Moreover, the Act of Accession does not include any declaration by the acceding States expressing a reservation on this issue.

IV — Conclusion

42. Consequently, after consideration of the various objections set out by the applicant, I am led to conclude that:

The application of the Kingdom of Spain for the annulment of Council Regulation No 569/86 and of Commission Regulations Nos 574, 624, 641, 643 and 647/86 should be dismissed;

The costs should be borne by the applicant.

44 — First recital of the preamble to Regulation No 569/86.

45 — Judgment of 22 January 1986 in Case 250/84 *Eridania* v *Cassa Conguaglio* [1986] ECR 117, paragraph 38.