JUDGMENT OF THE COURT
7 December 1989 *

In Case C-136/88

French Republic, represented by Edwige Belliard, Deputy Director of Legal Affairs at the Ministry of Foreign Affairs, acting as Agent, and Marc Giacomini, Secretary of Foreign Affairs at the same ministry, acting as Deputy Agent, with an address for service in Luxembourg at the French Embassy, 9 boulevard Prince-Henri,

applicant,

v

Commission of the European Communities, represented by Patrick Hetsch, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

supported by

Kingdom of Spain, represented by Javier Conde de Saro, Director-General for Legal and Institutional Coordination in Community Affairs, and Rafael Garcia-Valdecasas y Fernandez, Head of the Department for the Representation of the Spanish Government before the Court of Justice, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4 and 6 boulevard E. Servais,

intervener,

APPLICATION for the annulment of Commission Regulation (EEC) No 530/88 of 26 February 1988 withdrawing new potatoes from the list of products covered by the supplementary trade mechanism (Official Journal 1985, L 53, p. 71),

* Language of the case: French

THE COURT

composed of: O. Due, President, C. N. Kakouris, F. A. Schockweiler and M. Zuleeg (Presidents of Chambers), T. Koopmans, G. F. Mancini, J. C. Moitinho de Almeida, F. Grévisse and M. Díez de Velasco, Judges,

Advocate General: G. Tesauro
Registrar: H. A. Rühl, Principal Administrator

having regard to the Report for the Hearing and further to the hearing on 21 September 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 14 November 1989,

gives the following

Judgment

1 By application lodged at the Court Registry on 17 May 1988, the French Republic brought an action under the first paragraph of Article 173 of the EEC Treaty for the annulment of Commission Regulation (EEC) No 530/88 of 26 February 1988 withdrawing new potatoes from the list of products covered by the supplementary trade mechanism (Official Journal 1985, L 53, p. 71).

2 The supplementary trade mechanism (hereinafter referred to as 'the STM') was set up by Article 81 of the Act concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic and the Adjustments to the Treaties (hereinafter referred to as 'the Act of Accession'). The purpose of the STM is to ensure an harmonious and gradual opening up of the market between the two new Member States and the other 10 by monitoring trade developments and, if necessary, adopting measures dealing with trade. With regard to imports into the Community of Ten of products originating in Spain, the STM applies to products in the wine sector, new potatoes and, from 1 January 1990, fruit and vegetables.

Products in the wine sector and new potatoes may be withdrawn from the list of products covered by the STM at the start of the second year following accession and at the start of each of the following years. The last subparagraph of Article 81(3) of the Act of Accession provides that with regard to those products account will be taken in particular of the situation at the level of the production and marketing structure of the products in question.

The decision to withdraw products is to be made in accordance with the procedure set out in Article 82 of the Act of Accession. The Commission may adopt such a decision if it is in accordance with the opinion of an *ad hoc* committee consisting of representatives of the Member States and presided over by a representative of the Commission; the committee votes by qualified majority with the votes of the Member States weighted in accordance with Article 148(2) of the EEC Treaty.

Regulation No 530/88, which is the subject of these proceedings, withdrew new potatoes from the list of products covered by the STM. According to the fourth recital in the preamble, the measures therein adopted are in accordance with the opinion of the *ad hoc* STM Committee.

Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The French Government puts forward four submissions alleging lack of power on the part of the Commission, a breach of essential procedural requirements, misuse of procedure and, in the alternative, a manifest error of assessment. The first submission is based on the Commission's lack of power to adopt the contested regulation without obtaining the opinion of a duly constituted *ad hoc* committee; the three others are based on the allegation that the Commission in fact consulted a management committee for the sector in which the product at issue falls rather

than an *ad hoc* committee meeting the criteria laid down in the Act of Accession. The latter allegation should be considered first.

(a) The substitution of a management committee for the *ad hoc* Committee

8 The French Government points out, *in limine*, that the sole but general purpose of the *ad hoc* Committee, set up by the Act of Accession to permit a progressive and balanced transition to full free movement of agricultural products, is to rule on draft Commission decisions concerning all products covered by the STM. Unlike the management committees set up by the regulations establishing common market organizations for various agricultural products or groups of products, the *ad hoc* Committee is a single committee dealing with all the products at issue and is thus horizontal in nature.

9 The French Government also argues that before adopting Regulation No 530/88 the Commission consulted the Management Committee for Fruit and Vegetables and not the *ad hoc* Committee provided for in the Act of Accession. In any event, the Commission persistently confused the two committees, both in the notices convening the meetings and in the Minutes. By so doing it prevented the representatives of the Member States from forming a general view as to the products to be withdrawn from the list of products covered by the STM.

10 The Commission accepts that the *ad hoc* Committee provided for under the Act of Accession is a single, horizontal committee. However, it denies confusing the *ad hoc* Committee with the management committees. Although it is true that a joint meeting of the *ad hoc* Committee and certain management committees was called on two occasions to consider the question of new potatoes, the Commission always drew a clear distinction between the two types of committee both in the notices convening the meetings and in the Minutes.

11 The Commission also contends that it was obliged to call simultaneous meetings of the *ad hoc* Committee and the management committees responsible for new potatoes since it was not possible to determine in advance whether a proposal to withdraw new potatoes from the list of products covered by the STM would

obtain the necessary qualified majority in the *ad hoc* Committee. If it had not, it would have been necessary to adopt other measures in the framework of the STM, such as the fixing of an indicative import ceiling, which would have required consultation of the management committee.

12 It should be observed in that regard that Regulation No 530/88 was adopted on 26 February 1988 following a favourable opinion adopted at a meeting on 8 January 1988. That meeting was called by the Commission as the '2nd Joint Committee — *ad hoc* Committee (Article 82 of the Act of Accession) — Management Committee for Seeds and Management Committee for Fruit and Vegetables'. The first 'joint committee' meeting took place on 17 December 1987. It is apparent from the documents before the Court that the agendas and Minutes of the two meetings distinguish between the work of the management committees and that of the *ad hoc* STM Committee. The Minutes of the meeting of the *ad hoc* Committee of 8 January 1988 show that the committee adopted a favourable opinion on the regulation withdrawing new potatoes from the list of products covered by the STM by 61 votes to 15, the French and Greek delegations having voted against it. It is common ground that the Minutes were not contested by any of the delegations present at the meeting.

13 It follows from those facts that the applicant's argument that the *ad hoc* Committee was not consulted, or that there was confusion in the consultation between that committee's mandate and that of the management committees, is without foundation.

14 In so far as the French Government seeks to criticize the Commission's practice of considering the possibility of withdrawing products from the STM list, and consulting the *ad hoc* Committee for that purpose, with specific reference to each individual sector, it should be pointed out that the Act of Accession imposes no obligation on the Community institutions to consider simultaneously the possibility of withdrawing from the list all products covered by the STM.

15 Moreover, since the *ad hoc* Committee consists of representatives of the Member States, each Member State could send to the meetings of the committee experts in

the sector under consideration or representatives qualified to have a general view of the situation regarding the products covered by the STM, or both.

16 It follows from the foregoing that the submissions alleging that a management committee was substituted for the *ad hoc* Committee must be rejected.

(b) The lack of a duly constituted *ad hoc* committee

17 In its first submission, the French Government claims that any opinion adopted by the *ad hoc* Committee is irregular because the committee operates under an internal regulation which is itself manifestly contrary to Article 82 of the Act of Accession.

18 According to the French Government, the unlawfulness of the internal regulation results first from the fact that it was adopted on 15 December 1987 by an '*ad hoc* Committee for the wine sector' which was in fact the management committee for that sector. The confusion between a sectoral committee and a single, horizontal committee was maintained by the second sentence of Article 1 of the internal regulation, which provides that 'joint meetings of two or more *ad hoc* Committees may be convened on matters of common responsibility'.

19 The Commission contends that the *ad hoc* Committee's internal regulation was adopted at the constituent meeting of that committee on 15 December 1987. It does not deny that the second sentence of Article 1 of the internal regulation is incorrect; its presence is due to a mistake.

20 It should be observed in that regard that the notice convening the meeting of 15 December 1987 referred to a meeting of the Management Committee for Wine 'preceded by a meeting of the *ad hoc* Committee (Article 82 of the Act of Accession)'. Separate agendas and Minutes were drawn up. The Minutes of the *ad hoc* Committee speak of the adoption of a favourable opinion on the internal regulation of the *ad hoc* STM Committee 'for Wine'.

21 The latter expression, along with the terms of Article 1 of the internal regulation, suggest that the adoption of that regulation took place under some confusion as to the exact nature of the *ad hoc* Committee. That confusion, regrettable though it may be, it is not of such a nature as to affect the validity of Regulation No 530/88, which is at issue in these proceedings.

22 It is common ground that Regulation No 530/88 was adopted by the Commission following the adoption by a qualified majority in accordance with the voting arrangements laid down in Article 148(2) of the EEC Treaty of an opinion favourable to it by the *ad hoc* Committee set up under Article 82 of the Act of Accession.

23 The French Government's first submission must thus be rejected. Consequently, the application must be dismissed in its entirety.

Costs

24 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the French Republic has failed in its submissions, it must be ordered to pay the costs, including those of the intervener.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the French Republic to pay the costs, including those of the intervener.

Due Kakouris Schockweiler Zuleeg Koopmans

Mancini Moitinho de Almeida Grévisse Díez de Velasco

Delivered in open court in Luxembourg on 7 December 1989.

J.-G. Giraud
Registrar

O. Due
President