accession by a national organization of the market quantitative restrictions and measures having equivalent effect until a common organization of the market is implemented for these products, constitutes a transitional measure the application of which shall terminate at the end of 1977. It cannot be regarded as "special provision" within the meaning of the reservation set out in Article 9 (2) of the Act of Accession, such a reservation relating only to special provisions which are clearly delimited and determined in time and not to a provision such as Article 60 (2) which refers to an uncertain future event.

In Case 231/78

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Richard Wainwright, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, represented by W. H. Godwin, Assistant Treasury Solicitor, acting as Agent, assisted by Leonard Bromley Q.C. and P. G. Langdon-Davies, Counsel, London, with an address for service in Luxembourg at the British Embassy,

defendant,

and

REPUBLIC OF FRANCE, represented by Guy Ladreit de Lacharrière, with an address for service in Luxembourg at the French Embassy,

intervener,

APPLICATION for a ruling that the United Kingdom of Great Britain and Northern Ireland has failed to fulfil an obligation under the EEC Treaty by not repealing or amending the provisions with regard to restrictions on the importation of main-crop potatoes,

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties put forward during the written procedure may be summarized as follows:

I — Facts and procedure

1. Potatoes are included amongst the agricultural products listed in Annex II to the EEC Treaty but are yet covered by a common organization of the market. In January 1976 the Commission submitted a proposal for a common organization of the market (Official Journal C 61, p. 76) but the proposal is still being considered by the Council. At the present time potatoes are subject to national legislation in the individual Member States.

2. In the United Kingdom there exists a system for regulating the market in potatoes which comprises, amongst other features, controls on the import and export of main-crop potatoes (also known as "ware" potatoes). These controls are implemented by a system of licences operated by the Department of Trade under powers derived ultimately from the Import, Export and Customs Powers (Defence) Act 1939. The Ministry of Agriculture keeps the public informed by regular press notices whether and in what circumstances such licences will be granted.

On 28 December 1977 the Ministry announced that the ban on imports of main-crop potatoes into the United Kingdom would continue until further notice.

3. This ban has already been the subject of correspondence between the United Kingdom and the Commission. As early as July 1975 the Commission notified all Member States of its view that, following the judgment delivered by

the Court of Justice in Case 48/74 *Charmasson* v *Minister for Economic Affairs and Finance* [1974] ECR 1383, the restrictions on trade where the new Member States are concerned must be abolished at the latest by 31 December 1977.

It maintained this view in the letters which it addressed on 16 August 1977 and 2 January 1978 to the Government of the United Kingdom. In accordance with the provisions of Article 169 of the EEC Treaty the Commission, in its last letter, requested the United Kingdom to submit its observations.

The Government of the United Kingdom replied in a letter dated 2 March 1978 that the restrictions on the importation of potatoes were based on the provisions of Article 60 (2) of the Act of Accession.

4. The relevant provisions of the Act of Accession are Articles 9, 42 and 60. Article 9 provides:

"(1) In order to facilitate the adjustment of the new Member States to the rules in force within the Communities, 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 that act.

(2) Subject to the dates, time-limits and special provisions provided for in this act, the application of the transitional measures shall terminate at the end of 1977".

Part Four of the Act of Accession, entitled "Transitional measures", contains, in Title I, entitled "Free movement of goods", Article 42 which provides:

"Quantitative restrictions on imports and exports shall, from the date of accession, be abolished between the Community as orginally constituted and the new Member States and between the new Member States themselves.

Measures having equivalent effect to such restrictions shall be abolished by 1 January 1975 at the latest".

Title II of Part Four, entitled "Agriculture", contains four chapters. Article 60, which occurs in Chapter 1 ("General provisions"), is worded as follows:

"(1) In respect of products covered, on the date of accession, by a common organization of the market, the system applicable in the Community as originally constituted in respect of customs duties and charges having equivalent effect and quantitative restrictions and measures having equivalent effect shall, subject to Articles 55 and 59, apply in the new Member States from 1 February 1973.

(2) In respect of products not covered, on the date of accession, by a common organization of the market, the provisions of Title I concerning the progressive abolition of charges having equivalent effect to customs duties and of quantitative restrictions and measures having equivalent effect shall not apply to those charges, restrictions and measures if they form part of a national market organization on the date of accession.

This provision shall apply only to the extent necessary to ensure the maintenance of the national organization and until the common organization of the market for these products is implemented".

5. On 7 June 1978 the Commission delivered its reasoned opinion to the effect that the United Kingdom, by its prohibition on the importation of potatoes from other Member States after

1 January 1978, had failed to fulfil an obligation under Article 30 of the EEC Treaty. It requested the United Kingdom to take the action required to comply with its reasoned opinion within a period of one month.

When the Commission agreed to extend this period for a further month the Government of the United Kingdom informed it, by a letter of 7 August 1978 that it did not accept the conclusions drawn in the reasoned opinion and that it intended to continue its regulation of imports of main-crop potatoes to the extent necessary to ensure the maintenance of the national organization of the United Kingdom market until a common organization of the market was implemented.

By an application lodged at the Court Registry on 19 October 1978 the Commission instituted the present proceedings. The Commission, having considered the defence of the Government of the United Kingdom, waived its right to submit a reply.

By an order of 15 December 1978 the Court allowed the intervention of the French Government in support of the defendant.

Having heard the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preliminary inquiry.

II — Conclusions of the parties

The Commission claims that the Court should:

(1) Declare that failing to repeal or amend the disputed provisions with regard to restrictions on the importation of main crop potatoes, the Government of the United Kingdom of Great Britain and Northern Ireland has failed to fulfil an obligation under the EEC Treaty;

(2) Order the Government of the United Kingdom of Great Britain and Northern Ireland to pay the costs of the proceedings.

The Government of the United Kingdom contends that the Court should:

(1) Rule that the control of imports is necessary to ensure the maintenance of the national organization of the market in potatoes in the United Kingdom, that the United Kingdom is entitled to continue such control which forms an integral part of that organization until the common organization of the market in potatoes is implemented, and that the United Kingdom has not, by exercising such control, failed to fulfil an obligation under the EEC Treaty;

(2) Order the Commission to pay the costs.

The French Government contends that the Court should:

— Dismiss the application made by the Commission.

III — Submissions and arguments of the parties

First of all the *Commission* summarizes the organization of the market in potatoes in the United Kingdom:

— Each year the Ministry of Agriculture calculates the probable consumption and yield of potatoes in the United Kingdom, based on recent trends, and fixes a target acreage which is intended to provide enough potatoes

for home demand with a slight surplus.

— Producers who grow more than one acre of potatoes for sale must be registered with the Potato Marketing Board (hereinafter referred to as "the Board").

— The Board, which is a statutory body established under the Potato Marketing Scheme (Approval) Order 1955, notifies each registered producer how many acres he should plant (the "quota") in order that the target acreage may be achieved.

— Each registered producer must pay to the Board a contribution on each acre planted. Producers who wish to plant more than their quota are required to pay an additional contribution.

— In order to provide a minimum guaranteed price for the producer, the Board may, with the approval of the Ministry of Agriculture, institute a buying-in programme for main-crop potatoes conforming to standards under which any registered producer may offer his potatoes for sale to the Board at a price designed to cover his costs of production and storage. This price is increased as the season advances. Potatoes bought by the Board are sold as stock feed, the price difference being largely made up by the government.

— If at the end of the crop season the average potato market price is shown to have fallen below this guaranteed price despite buying-in by the Board, the government makes a deficiency payment which is paid to the Board to be used for recouping the costs of the present or future buying-in programmes.

— The Board regulates the sales of potatoes for human consumption by prescribing the minimum size and quality of potatoes which may be sold by producers and by requiring sales normally to be made only to licensed merchants.

— Imports and exports of main-crop potatoes are controlled by the Department of Trade under powers derived from the Import of Goods (Control) Order 1954. In order to keep the United Kingdom market in balance, exports are banned in times of shortage and imports are banned in times of surplus.

— Since the accession of the United Kingdom on 1 January 1973, it seems that there have been export bans on main-crop potatoes in 1973 (30 March to 31 May), 1974 (20 February to 31 May) and 1975 (16 October to 7 August 1977). At all other times, save from September to October 1975, the "normal ban" on imports applied.

Within the Community there are considerable differences between the prices quoted on the markets of the different Member States. The Commission attaches as an annex to its application a paper giving the wholesale prices of main-crop potatoes during the crop seasons 1973/1974 to 1976/1977 and also for the crop season 1977/1978.

The figures show that the continuance of the ban on imports of main-crop

potatoes into the United Kingdom after the end of 1977 helped to maintain prices on the London market at the beginning of 1978 whilst it depressed prices on the Rotterdam and particularly the Arras markets.

In summarizing the case-law of the Court in the matter the Commission states that the *Charmasson* judgment is confirmed by the judgments given in Case 68/76 *Commission* v *French Republic* [1977] ECR 515 and in Joined Cases 80 and 81/77 *Commissionnaires Réunis and Les Fils de Henri Ramel* v *Receveur des Douanes* [1978] ECR 927.

Article 60 (2) of the Act of Accession must be read in the context of the whole act and in particular of Articles 2 and 9. Article 2 enunciates the principle, which is fundamental to the Act of Accesion, of acceptance of the "acquis communautaire". An exception is made to this principle by a system of transitional measures (Article 9).

The Commission does not accept that the phrase "until the common organization of the market . . . is implemented" (Article 60 (2)) is a "special provision" to which the time-limit provided by Article 9 is subject. The drafting of Article 60 (2) does not permit such an interpretation since the placing of the phrase indicates that it is intended to be a limitation to an exception to the general rule, as is the other part of the sentence.

On the other hand the provisions of the Act of Accession which might be interpreted as being "special provisions" in the sense of Article 9, entailing an extension of transitional measures beyond 31 December 1977 are quite explicit in this regard.

In fact Article 60 (2) of the Act of Accession must be placed in its proper context. At the time of its drafting the prevailing interpretation of the Treaty was to the effect that, in the absence of a common organization of the market in a product, the original Member States still possessed the power to retain certain barriers to free movement of goods within the Community, a power which was an integral part of a national organization. The system in the Act of Accession was therefore assimilated to that thought to pertain under the Treaty, on the understanding that if at 31 December 1977 there were still no common organization, the position regarding trade restrictions in the new Member States would be exactly the same as in the original Member States. In this sense Article 60 (2) was not to be regarded as a "transitional measure" at all, any more than was Article 60 (1).

In its judgment in the *Charmasson* case the Court declared that as regards the original Member States the derogations which a national organization of the market could effect from the general rules of the Treaty were only permissible during the "transitional period". In the light of that judgment Article 60 (2) has taken on the character of a transitional measure permitting, for trade involving the new Member States, a system different from that applicable to trade involving merely the original Member States.

A contrary interpretation of Article 60 (2) would mean an extension beyond the time-limit fixed by Article 9 of two different sets of rules. This would manifestly be contrary to the intent of that article as it was originally envisaged.

Finally the Commission recalls that the Council is at present considering proposals regarding other common organizations of the market for products in which trade involving the new Member States is an important factor in the Community market. A decision by the Court to the effect that restrictions on trade with the new Member States in these products are still permissible might have the effect of postponing yet further a decision by the Council to establish common organizations.

The *Government of the United Kingdom* contends, as regards the facts, that the restrictions on the importation of potatoes form part of the national organization of the United Kingdom potato market and that they are necessary to ensure the maintenance of that organization.

The Government of the United Kingdom contends, as regards the law, that it is authorized to make use of the derogation provided for agricultural products in Article 60 (2) of the Act of Accession.

The question how long the derogation is to last must be answered by reference to Article 9 (2) of the Act of Accession. The "special provision" of Article 60 (2) is that the derogation is to last "until the common organization of the market for these products is implemented".

In order to give the article the meaning which the applicant desires to attribute to it it would be necessary to add at the end the words "or at the end of 1977 whichever is the earlier". No rule of interpretation can properly allow such words to be added.

In referring to the reasons for the derogation the British Government states that when the new Member States acceded it was necessary for them to change from the national market organization for each product to the common organization of the market where there was one. Where was no common organization of the market, in the view of the British Government it would have been inconceivable for the new Member States to agree to abandon their own market organizations with nothing to put in their place. Accordingly Article 60 (2) of the Act of Accession enabled the new Member States to retain in respect of products which at the moment of accession were subject to a national organization of the market quantitative restrictions and measures having equivalent effect until the common organization of the market for those products was implemented.

Under the EEC Treaty there should have been by the end of the transitional period in 1969 a common organization of the market for every agricultural product. The Act of Accession did not alter the obligations of the original Member States to establish a common organization of the market for agricultural products or extend the transitional period applicable.

It is against this background that the *Charmasson* case must be interpreted.

In the present case on the other hand the new Member States joined a Community in which the original Member States were already in default as regards their obligations to establish the common agricultural policy within the period fixed by Article 40 (1) of the EEC Treaty. The situation which arose was accordingly expressly provided for in the Act of Accession.

In replying to some of the arguments put forward by the Commission the Government of the United Kingdom observes first of all that the "acquis communautaire" is, under Article 2 of the Act of Accession expressly subject to the conditions laid down in that Act.

It emphasizes that Article 60 of the Act of Accession must be considered as a whole and that the phrase "until the common organization of the market is implemented" constitutes a "special provision" within the meaning of Article 9 (2). In this connexion it refers to the wording of the German version of Article 60.

The Government of the United Kingdom considers that in the opinion of the Commission the prevailing interpretation of the EEC Treaty at the time when the Act of Accession was drafted was the exact opposite to what the Court of Justice later held in the above-mentioned *Charmasson* case (48/74).

The authors of the Act of Accession intended that the new Member States were to be given the same rights after 1977 as it was thought the original Member States would have, namely the right inherent in a national organization to retain quantitative restrictions for products for which there was no common organization.

The difference between the original Member States and the new Member States on the entry into force of the Treaty of Accession was this:

The original Member States, according to the Commission, felt on a mistaken interpretation of the EEC Treaty, that they had this right. The new Member States acquired the right not on an erroneous interpretation of the EEC Treaty but on the clear wording of the Act of Accession.

If, as the Commission maintains, the wording of Article 60 (2) when it came into force gave new Member States the right which the United Kingdom now claims, its meaning cannot possibly have been changed *ex post facto* by the decision of the Court of Justice in the *Charmasson* case.

The *French Government* observes that the Act of Accession, unlike the provisions of the Treaty of Rome, did not prescribe a "transitional period". Consequently the case-law of the Court of Justice as established in the *Charmasson* case cannot be applied to the very different situation which arises from the Act of Accession.

Article 60 (2) of the Act of Accession constitutes an instance of an application of the notion of "special provision" covered by the reservation in Article 9.

In view of the fundamental structural differences between British agriculture and that in the original Member States the latter recognized in the negotiations leading up to accession that it was impossible to apply in their entirety the rules on freedom of trade to agricultural systems presenting such fundamental differences. It was accordingly logical that they should prescribe a specific transitional arrangement whereby the national organizations of the market could continue in being until the Community replaced them with common organizations. This was not to renounce the transitional nature of these provisions but to accept that it was necessary to provide special solutions for exceptional situations.

In reply to the observations of the French Government, the *Commission* emphasizes that it expressly stated that the Act of Accession provides not for a single transitional period but rather for a "system of transitional measures intended to facilitate the adjustment of the new Member States to the rules in force within the Communities". The Commission referred to Case 48/74, *Charmasson*, in its examination of the effects of the Act of Accession only in support of its argument to the effect that, at the time when it was drafted, Article 60 (2) was not to be regarded as a transitional measure at all, any more than was Article 60 (1).

The Commission maintains that Article 60 (2) does not constitute a "special provision". The special provisions which entail an extension beyond 31 December 1977 are quite explicit in this regard. The absence of a time-limit in the second subparagraph of Article 60 (2) is explained by the fact that the draftsmen in no way considered that paragraph as a transitional measure and even less as a transitional measure capable of extending any derogation from the rules of the Treaty beyond 31 December 1977. The phrase "until the common organization of the market ... is implemented" is inserted *ex abundanti cautela* so that there can be no question of continuing the special system of trade after the entry into force of the common organization of the market.

Finally, the Commission claims that the Court should dismiss the French Governement's conclusions and, at all events, order the French Government to bear its own costs incurred as a result of its intervention.

IV — Oral procedure

The parties submitted oral argument at the hearing on 20 February 1979.

The Advocate General delivered his opinion at the hearing on 6 March 1979.

Decision

1 By an application lodged on 19 October 1978, the Commission of the European Communities sought a declaration under Article 169 of the EEC Treaty that the United Kingdom of Great Britain and Northern Ireland had failed to fulfil an obligation under the Treaty by not repealing or amending the provisions of its national law which have the effect of restricting imports of main-crop potatoes before the end of 1977, the time-limit laid down in Article 9 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties, annexed to the Treaty of 22 January 1972 concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community (hereinafter referred to as the Act of Accession).

2 The Commission states that, before its accession to the Community, there existed in the United Kingdom a national organization of the market in potatoes comprising *inter alia* a control on imports and exports of main-crop potatoes. In 1977, the Commission notified the Government of the United Kingdom that under Article 9 (2) of the Act of Accession the restrictions on the importation of the said product hat to be brought to an end. Nevertheless, on 28 December 1977, the British Ministry of Agriculture announced that the ban on imports of potatoes into the United Kingdom would continue until further notice.

3 According to the Commission, since the transitional measure for which provision is made in Article 60 (2) of the Act of Accession expired, by virtue of Article 9 (2) of that Act, at the end of 1977, the United Kingdom by continuing to prohibit imports of potatoes after that date has failed to fulfil its obligations under Article 30 of the Treaty.

4 In its defence, the Government of the United Kingdom, supported by the Government of the French Republic, intervening in the case, submits that under Article 60 (2) of the Act of Accession it is entitled to maintain the quantitative restrictions referred to until the implementation of a common organization of the market for potatoes. Since potatoes are not yet covered by any common organization of the market, the United Kingdom can maintain its national organization for that sector.

5 Article 60 of the Act of Accession provides:

"1. In respect of products covered, on the date of accession, by a common organization of the market, the system applicable in the Community as originally constituted in respect of customs duties and charges having equivalent effect and quantitative restrictions and measures having equivalent effect shall, subject to Articles 55 and 59, apply in the new Member States from 1 February 1973.

2. In respect of products not covered, on the date of accession, by a common organization of the market, the provisions of Title 1 concerning the progressive abolition of charges having equivalent effect to customs duties and of quantitative restrictions and measures having equivalent effect shall not apply to those charges, restrictions and measures if they form part of a national market organization on the date of accession.

   This provision shall apply only to the extent necessary to ensure the maintenance of the national organization and until the common organization of the market for these products is implemented.

3. ...".

6 That Article unquestionably constitutes a derogation from Article 42, which is worded as follows:

"Quantitative restrictions on imports and exports shall, from the date of accession, be abolished between the Community as originally constituted and the new Member States and between the new Member States themselves.

Measures having equivalent effect to such restrictions shall be abolished by 1 January 1975 at the latest".

7 The provisions of Articles 42 and 60 cited above are applications of the general rule laid down in Article 9 of the Act, which provides:

"1. In order to facilitate the adjustment of the new Member States to the rules in force within the Communities, 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.

2. Subject to the dates, time-limits and special provisions provided for in this Act, the application of the transitional measures shall terminate at the end of 1977".

8 The parties disagree over the interpretation of Articles 9 and 60. The Governments of the United Kingdom and the French Republic consider that Article 60 (2) constitutes a special provision within the meaning of Article 9 (2), so that the time-limit of the end of 1977 is inapplicable in this matter.

For its part, the Commission takes the view that, although Article 60 (2) constitutes a derogation from Article 42 of the Act, it cannot be designated as a "special provision" within the meaning of Article 9 (2), so that there can be no restriction on the applicability of the terminating date laid down in this last provision. Therefore it is necessary to examine this difference of opinion.

9 Although the wording of Article 60 (2) considered in isolation may appear to bear out the interpretation proposed by the Government of the United Kingdom, that interpretation cannot be upheld in the light of the general system of the Act of Accession and of its relationship with the provisions of the EEC Treaty. It would, moreover, lead to unacceptable consequences as regards the equality of the Member States in relation to certain rules essential for the proper functioning of the common market.

10 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 shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act".

11 This provision makes it clear that the integration of the new Member States into the Community is the fundamental objective of that Act. With this in view, Article 9 (1) of the Act provides that it is only "in order to facilitate the adjustment of the new Member States to the rules in force within the Communities" that "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". The transitional period laid down in the Treaty had expired before accession and the Treaty had already become fully operative: for the new Member States the Act of Accession laid down only clearly specified time-limits and conditions in order to facilitate their adjustment to the rules in force within the Community.

12 Therefore the provisions of the Act of Accession must be interpreted having regard to the foundations and the system of the Community, as established by the Treaty. In particular, the provisions of the Act of Accession relating to quantitative restrictions and measures having equivalent effect cannot be interpreted in isolation from the provisions of the Treaty relating to these matters. As Article 60 concerns agricultural products it must also be interpreted in the light of the provisions of the Treaty relating to the common agricultural policy, with the implementation of which that article is plainly concerned.

13 As regards the elimination of quantitative restrictions, the establishment of a common market must, according to Article 3 (a) of the Treaty, include first of all "the elimination, as between Member States, of customs duties and of quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect". Articles 30 *et seq.* provide for the complete elimination, during the transitional period, of quantitative restrictions and all measures having equivalent effect between Member States. 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 connexion provided for in the Act of Accession.

14 As regards the relationship between that prohibition and the common agricultural policy, Article 38 (2) of the Treaty provides that the rules laid down for the establishment of the common market, and hence those relating to the elimination of quantitative restrictions, shall apply to agricultural products, save as otherwise provided in the title on agriculture. Article 40 fixed the end of the transitional period as the time-limit for the implementation of the common agricultural policy, but Articles 43 to 46 allowed the Member States to retain on a provisional basis the existing national organizations. Article 38 (4), which provides that "the operation and development of the common market for agricultural products must be accompanied by the establishment of a common agricultural policy among the Member States", makes clear the

intention to give priority to the operation and development of the common market by obliging the institutions and the Member States to establish a common agricultural policy at a corresponding rate of progress. Since Articles 40 and 41 of the Treaty prescribe different forms for the establishment of a common organization of agricultural markets and do not preclude even fundamental alterations of that organization after the expiry of the transitional period, the continuance of alleged deficiencies in the establishment of the common agricultural policy cannot, therefore, after the end of that period, prevent the application of the rules laid down for the establishment of the common market, and in particular the application of the rule prohibiting quantitative restrictions.

15 It follows, as the Court held in its judgment of 2 December 1974 in Case 48/74 *Charmasson* [1974] ECR 1383, that after the expiry of the transitional period the operation of a national market organization can no longer prevent full effect being given to the provisions of the Treaty relating to the elimination of quantitative restrictions and all measures having equivalent effect, the requirements of the markets concerned in this respect thenceforward becoming the responsibility of the Community institutions. The expiry of the transitional period laid down by the Treaty meant that, from that time, those matters and areas explicitly attributed to the Community came under Community jurisdiction, so that if it were still necessary to have recourse to special measures, these could no longer be determined unilaterally by the Member States concerned, but had to be adopted within the framework of the Community system designed to ensure that the general interest of the Community would be protected.

16 It follows from all these considerations that, although Article 60 (2) of the Act of Accession unquestionably constitutes a derogation from the rule laid down in Article 42, it cannot be regarded as being in addition a "special provision" within the meaning of Article 9 (2) of that Act. Since Article 9 (2) lays down as a principle of the Act of Accession that "the application of the transitional measures shall terminate at the end of 1977", the reservation

which it makes cannot be given a broad interpretation. On the contrary, that reservation is to be interpreted as relating only to special provisions which are clearly delimited and determined in time and not to a provision, such as Article 60 (2), which refers to an uncertain future event.

17 This conclusion is confirmed by a consideration of the consequences which would ensue from the alternative interpretation advocated by the United Kingdom. In a matter as essential for the proper functioning of the common market as the elimination of quantitative restrictions, the Act of Accession cannot be interpreted as having established for an indefinite period in favour of the new Member States a legal position different from that laid down by the Treaty for the original Member States. If Article 60 (2) were regarded as a "special provision" within the meaning of Article 9 (2) of the Act of Accession, it would in effect establish a persisting inequality between the original Member States and the new Member States, the latter being in a position to prevent or restrict the importation of certain agricultural products coming from the Community, whereas the former would be obliged under the Treaty to refrain from any restriction on imports of the same products, even if they came from a new Member State which was making use of Article 60 (2). Although it was justified for the original Member States provisionally to accept such inequalities, it would be contrary to the principle of the equality of the Member States before Community law to accept that such inequalities could continue indefinitely.

18 It follows that the United Kingdom of Great Britain and Northern Ireland has failed to fulfil an obligation under the Treaty, in particular Article 30 thereof, together with the Act of Accession, by not repealing or amending before the end of 1977 the provisions of its national law which have the effect of restricting imports of potatoes.

Costs

19 Article 69 (2) of the Rules of Porcedure provides that the unsuccessful party shall be ordered to pay the costs if they have been asked for in the successful party's pleading. Since the defendant has been unsuccessful, it should be

ordered to pay the costs. Since, as regards the intervention, the Commission asked only for the intervener to be ordered to bear its own costs, the parties should be ordered pursuant to the first subparagraph of Article 69 (2) of the Rules of Procedure to bear their own costs arising from the intervention.

On those grounds,

THE COURT

hereby:

1. **Declares that the United Kingdom of Great Britain and Northern Ireland has failed to fulfil an obligation under the Treaty, in particular Article 30 thereof, together with the Act of Accession, by not repealing or amending before the end of 1977 the provisions of its national law which have the effect of restricting imports of potatoes;**

2. **Orders the defendant to pay the costs, except those arising from the intervention;**

3. **Orders the parties to bear their own costs arising from the intervention.**

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 29 March 1979.

A. Van Houtte
Registrar

H. Kutscher
President