# JUDGMENT OF THE COURT (Fourth Chamber)
11 October 1990 *

In Case C-46/89,

**Société d'initiatives et de coopération agricoles,** Kérisnel en Saint-Pol-de-Léon (France),

and

**Société d'interêt professionnel des producteurs et expéditeurs de fruits, légumes, bulbes et fleurs d'Ille-et-Vilaine,** Saint-Meloir-les-Ondes (France),

represented by Nicole Coutrelis, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Marc Loesch, 8 rue Zithe,

applicants,

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 Guido Berardis, also a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

supported by

**Kingdom of Spain,** represented by Javier Conde de Saro, Director-General for Community Legal and Institutional Coordination, and by Rosario Silva de Lapuerta, abagado del Estado, of the Department for Community Litigation,

* Language of the case: French.

acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 boulevard Émmanuel Servais,

intervener,

APPLICATION for compensation, pursuant to Article 178 and the second paragraph of Article 215 of the EEC Treaty, for the damage caused by the allegedly unlawful adoption 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 1988 L 53, p. 71),

THE COURT (Fourth Chamber),

composed of: M. Díez de Velasco, President of Chamber, C. N. Kakouris and P. J. G. Kapteyn, Judges,

Advocate General: G. Tesauro
Registrar: D. Louterman, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument presented by the parties at the hearing on 7 June 1990, at which the Kingdom of Spain was represented by Mr Hierro Hernández-Mira, abogado del Estado,

after hearing the Opinion of the Advocate General, delivered at the sitting on 12 July 1990,

gives the following

## Judgment

1 By application received at the Court Registry on 21 February 1989, the Société d'initiatives et de coopération agricoles (SICA) and the Société d'interêt professionnel des producteurs et expéditeurs de fruits, légumes, bulbes et fleurs d'Ille-et-Vilaine (Sipefel), French associations of new-potato growers (hereinafter referred to as 'the applicants') brought an action under Article 178 and the second paragraph of Article 215 of the EEC Treaty for compensation for the damage caused by the allegedly unlawful adoption 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 1988 L 53, p. 71).

2 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 (Official Journal 1985 L 302, p. 23, hereinafter referred to as the 'Act of Accession') introduced a supplementary mechanism applicable to trade in certain products ('STM') between the Community as constituted on 31 December 1985 ('the Community of Ten') and Spain. The STM incorporates a supervisory system intended to prevent excessive imports which might upset the markets. Its purpose is to ensure a harmonious and gradual opening up of the market with a view to the full realization of free movement within the Community at the end of the transitional period (Article 83(2) of the Act of Accession).

3 According to Articles 81, 83 and 85 of the Act of Accession, the STM comprises three elements, namely the determination of indicative ceilings for imports, monitoring of trends in trade between the acceding States and the Community of Ten and, if necessary, the adoption of protective or definitive measures on trade.

4 Pursuant to Article 81(3) of the Act of Accession, a decision may be made to withdraw certain products, including new potatoes, from the list of products subject to the STM. Before the adoption of any such decision, account is to be taken, in particular, of the situation at the level of the production and marketing structure of the products in question.

5 According to Article 85(4) of the Act of Accession, the application of the STM may in no event lead to products coming from Spain or from the Community of Ten being treated in a less favourable manner than those coming from non-member countries.

6 Council Regulation (EEC) No 569/86 of 25 February 1986 (Official Journal 1986 L 55, p. 106) lays down general rules for the application of the STM. A system of STM certificates or licences and securities is established to enable patterns of trade to be monitored.

7 Article 5(1) provides that, where the situation on the market calls for limitation or suspension of imports on the market of the Member State concerned, the issuing of STM certificates or licences may be limited or suspended. Article 6 provides that, in order to assess the market situation of a Member State subject to the STM, account is to be taken in particular of the trend in domestic prices in the Member State concerned, the trend in domestic demand in that State and the quantities of products forming the subject of trade without further processing or after processing between the Member State concerned and the other Member States and third countries.

8 As regards the impact of the accession of Spain and Portugal on the Community's trade with non-member countries, the Commission has undertaken negotiations with certain non-member Mediterranean countries. Those negotiations led to the adoption of additional protocols to the cooperation and association agreements concluded between the EEC and those non-member countries (hereinafter referred to as 'the Protocols'). The Protocols are intended to facilitate maintenance of the traditional patterns of exports from non-member Mediterranean countries to the Community after accession. To that end, they provide for a system of dismantling of tariffs in trade between the EEC and the non-member countries concerned (see, *inter alia*, the Additional Protocol to the Cooperation Agreement between the European Economic Community and the Arab Republic of Egypt (Official Journal 1987 L 297, p. 11).

9 Council Regulations (EEC) Nos 451/89 and 452/89 of 20 February 1989 (Official Journal 1989 L 52, p. 7 and p. 15) established a system of surveillance following the opening of Community tariff quotas for new potatoes from Egypt and Morocco at the end of 1988. Those regulations are applicable as from 1 January 1989.

10 As from 1 January 1988 new potatoes were withdrawn from the list of products subject to the STM by Regulation No 530/88. According to the third recital in the preamble to that regulation, the application of the STM over the previous two years showed that trade in new potatoes had followed a normal pattern and surveillance of trends in trade by means of the STM was accordingly no longer necessary.

11 The applicants maintain that they have suffered damage as a result of that withdrawal, claiming that it led to an increase in imports of new potatoes from non-member Mediterranean countries to the Community and consequently to a fall in prices.

12 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 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.

13 The applicants claim first that the Commission adopted Regulation No 530/88 on the basis of Article 81(3) of the Act of Accession without respecting the three requirements laid down in Article 6 of Regulation No 569/86. They state that the third recital in the preamble to Regulation No 530/88 merely indicates that trade in new potatoes in 1986 and 1987 followed a normal pattern and that, accordingly, surveillance of trends in trade was no longer necessary.

14 It should be noted that the withdrawal of a product from the list of products subject to the STM is governed by Article 81(3) of the Act of Accession and that compliance with the three requirements laid down in Article 6 of Regulation No 569/86 is prescribed only in cases where protective measures of the kind referred to in Article 5 of that regulation are applied in relation to products not withdrawn from the list.

15 Articles 5 and 6 of Regulation No 569/86 relate to a situation entirely different from that covered by Article 81(3). A decision to withdraw a product from the STM list is inspired by the principle of freedom of trade. By contrast, Articles 5 and 6 of Regulation No 569/86 empower the Commission, pursuant to Article 85 of the Act of Accession, to restrict imports of products on the list, thus allowing a temporary exception to the abovementioned principle.

16 The first submission must therefore be dismissed as unfounded.

17 The applicants then allege that the Commission's finding that trade in new potatoes during the years 1986/87 and 1987/88 followed a normal pattern (third recital in the preamble to Regulation No 530/88) was based on a manifestly incorrect assessment.

18 In support of that second submission, the applicants rely in particular on the following circumstances:

(i) the pattern of exports of new potatoes from Spain to the Community of Ten in 1986/87 and 1987/88 displayed considerable irregularities;

(ii) the level of Spanish exports of new potatoes to France in 1987/88 was much higher than that of such exports in the 10 previous years.

19 The Commission has stated that, in describing the pattern of trade in new potatoes in 1986/87 and 1987/88 as normal, it took account of the trade between Spain and the Community of Ten as a whole and compared the trend with the trend prevailing in the years prior to accession, whilst at the same time taking into consideration developments in the production of ware potatoes in the Community of Ten.

20 It must be remembered first that the market in new potatoes is closely linked to that of ware potatoes, as the Court has already stated on several occasions (see Case 114/83 *Société d'initiatives et de coopération agricoles* v *Commission* [1984] ECR 2589, and Case 289/83 *GAARM* v *Commission* [1984] ECR 4295).

21 In the present case, it is apparent from the table produced by the Commission in its defence, which gives data for potatoes for the 1982/83 to 1987/88 marketing years, that the drop in the level of imports of new potatoes from Spain into the Community of Ten, from 94 676 tonnes in 1986/87 to 59 964 tonnes in 1987/88, was accompanied by a corresponding increase in the production of ware potatoes in 1987/88. Moreover, the abovementioned data do not show any significant variation by comparison with the years prior to accession.

22 Consequently, it does not appear that the Commission's conclusion that trade in new potatoes between Spain and the Community of Ten followed a normal pattern after accession is based on manifestly incorrect findings of fact.

23 The high level of Spanish exports of new potatoes to France in 1987/88 does not lead to a different conclusion.

24 Under the Act of Accession, in particular Article 81(1) thereof, the STM is applicable to trade between, on the one hand, the Community of Ten and, on the other, Spain. It follows from the objective of the STM system, namely full realization of free movement within the Community by the end of the transitional period, that the decision as to whether it is appropriate to apply the STM system must take account of all trade between Spain and the Community of Ten, not trade between Spain and an individual Member State.

25 The second submission must therefore be dismissed as unfounded.

26 The applicants claim in the third place that Regulation No 530/88 is illegal because it was adopted before the introduction of a system of surveillance of imports of new potatoes from non-member Mediterranean countries under the Protocols. Moreover, in the alternative, they claim that the Commission committed a wrongful act whereby it incurred liability by adopting Regulation No 530/88 without introducing such a mechanism with effect from the entry into force of that regulation on 1 January 1988.

27 At the hearing, the applicants expressly withdrew that alternative claim as such. However, they maintained their criticism of the Commission for failing to keep new potatoes on the list pending the entry into force on 1 January 1989 of the surveillance mechanism adopted by Regulations Nos 451/89 and 452/89.

28 A distinction must be drawn between the STM system and the system of surveillance introduced under the Protocols. The two systems reflect different objectives and circumstances.

29 The STM system is intended to facilitate complete realization of free movement of goods within the Community on expiry of the transitional period. By means of Article 3 of Regulation No 569/86, which applies a system of certificates and licences to trade with non-member countries, the STM is designed to ensure respect for Community preference, in accordance with Article 85(4) of the Act of Accession, and, in particular, to ensure that disturbances of the markets caused by imports from non-member countries are not attributed to imports from Spain.

30 On the other hand, the purpose of the Protocols is to maintain traditional patterns of exports from non-member countries to the Community after accession, by

means of the dismantling of tariffs for trade between the EEC and the non-member countries concerned. The surveillance system introduced under the Protocols is confined to statistical monitoring of the pattern of imports from non-member countries, in pursuance of the aim of dismantling tariffs.

31 It follows that no relationship exists between the STM system and the Protocols of such a kind as to lead to the conclusion that the Commission is under any obligation to continue to apply the STM system to new potatoes until appropriate surveillance measures are adopted under the Protocols in respect of products imported from non-member countries.

32 The last submission is therefore unfounded.

33 The applicants have put forward no argument establishing the illegality of Regulation No 530/88, and it is therefore unnecessary to consider whether the other conditions for liability on the part of the Community have been fulfilled. Accordingly, the application must be dismissed as unfounded.

## Costs

34 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicants have failed in their submissions, they must be ordered to pay the costs, including those of the intervener.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

**(1) Dismisses the application;**

**(2) Orders the applicants to pay the costs, including those of the intervener.**

Díez de Velasco Kakouris Kapteyn

Delivered in open court in Luxembourg on 11 October 1990.

J.-G. Giraud
Registrar

M. Díez de Velasco
President of the Fourth Chamber