



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

26 June 2012 *

(Appeal — Common organisation of the markets — Transitional measures adopted because of the accession of new Member States — Regulation (EC) No 1972/2003 on measures in respect of trade in agricultural products — Action for annulment — Period within which action must be brought — Point from which period starts to run — Lateness — Inadmissibility — Amendment of a provision of that regulation — Recommencement of period within which action must be brought — Partial admissibility — Grounds of appeal — Infringement of the principles underlying a community based on the rule of law and of the principle of effective judicial protection — Infringement of the principles of free movement of goods and of non-discrimination on grounds of nationality — Infringement of the principles of proportionality and protection of legitimate expectations — Infringement of the hierarchy of norms — Infringement of Article 41 of the 2003 Act of Accession — Erroneous interpretation of Article 3 of Regulation (EC) No 1972/2003 — Infringement of duty to state reasons)

In Case C-335/09 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 24 August 2009,

Republic of Poland, represented initially by M. Dowgielewicz, and subsequently by M. Szpunar, acting as Agents,

applicant,

the other party to the proceedings being:

European Commission, represented by H. Tserepa-Lacombe, A. Stobiecka-Kuik and A. Szmytkowska, and by T. van Rijn, acting as Agents,

defendant at first instance,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, M. Safjan, Presidents of Chambers, G. Arestis, A. Borg Barthet, M. Ilešič, C. Toader and J.-J. Kasel (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 1 March 2012,

gives the following

* Language of the case: Polish.

Judgment

- 1 By its appeal, the Republic of Poland seeks to have set aside the judgment of the Court of First Instance of the European Communities (now ‘the General Court’) of 10 June 2009 in Case T-257/04 *Poland v Commission* [2009] ECR II-1545 (‘the judgment under appeal’), by which the Court dismissed its action seeking annulment of Articles 3 and 4(3) and 4(5), eighth indent, of Commission Regulation (EC) No 1972/2003 of 10 November 2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2003 L 293, p. 3), as amended by Commission Regulation (EC) No 735/2004 of 20 April 2004 (OJ 2004 L 114, p. 13).

Legal context

The Accession Treaty and the 2003 Act of Accession

- 2 Article 2(3) of the Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union (OJ 2003 L 236, p. 17; ‘the Accession Treaty’), signed in Athens on 16 April 2003 and ratified by the Republic of Poland on 23 July 2003, provides:

‘Notwithstanding paragraph 2, the institutions of the Union may adopt before accession the measures referred to in [Article 41 of the Act concerning the conditions of accession to the European Union of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33; “the 2003 Act of Accession”), annexed to the Accession Treaty]. These measures shall enter into force only subject to and on the date of the entry into force of [the Accession Treaty].’

- 3 Article 41 of the 2003 Act of Accession provides:

‘If transitional measures are necessary to facilitate the transition from the existing regime in the new Member States to that resulting from the application of the common agricultural policy under the conditions set out in [the 2003 Act of Accession], such measures shall be adopted by the Commission in accordance with the procedure referred to in Article 42(2) of Council Regulation (EC) No 1260/2001 [of 19 June 2001] on the common organisation of the markets in the sugar sector [(OJ 2001 L 178, p. 1)] or, as appropriate, in the corresponding Articles of the other Regulations on the common organisation of agricultural markets or the relevant committee procedure as determined in the applicable legislation. The transitional measures referred to in this Article may be taken during a period of three years following the date of accession and their application shall be limited to that period. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend this period.

...’

- 4 Points 1 and 2 in Chapter 4 (headed ‘Agriculture’) of Annex IV to the Act of Accession which relates to the list referred to in Article 22 thereof provide:

‘1. Public stocks held at the date of accession by the new Member States and resulting from their market-support policy shall be taken over by the Community at the value resulting from the application of Article 8 of Council Regulation (EEC) No 1883/78 [of 2 August 1978] laying down general rules for the financing of interventions by the European Agricultural Guidance and Guarantee Fund, “Guarantee” Section [(OJ 1978 L 216, p. 1)]. The said stocks shall be taken over only on condition that public intervention for the products in question is provided for in the Community rules and that the stocks meet the Community intervention requirements.

2. Any stock of product, private as well as public, in free circulation at the date of accession within the territory of the new Member States exceeding the quantity which could be regarded as constituting a normal carryover of stock must be eliminated at the expense of the new Member States.’

- 5 Chapter 5 (headed ‘Customs union’) of that annex provides:

‘ ...

[Council] Regulation (EEC) No 2913/92 [of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1)] and [Commission] Regulation (EEC) No 2454/93 [of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92 (OJ 1993 L 253, p. 1)] shall apply to the new Member States subject to the following specific provisions:

1. Notwithstanding Article 20 of Regulation (EEC) No 2913/92, products which on the date of accession are in temporary storage or under one of the customs treatments and procedures referred to in Article 4(15)(b) and (16)(b) to (g) of that Regulation in the enlarged Community, or which are in transport within the enlarged Community after having been the subject of export formalities, shall be free of customs duties and other customs measures when entered for free circulation on condition that one of the following is presented:

...’.

Regulation No 1972/2003

- 6 On 10 November 2003, the Commission adopted Regulation No 1972/2003 which establishes, inter alia, in essence and with regard to the present dispute, a system of charges on certain agricultural products which derogates for a transitional period from the Community rules otherwise applicable.
- 7 Thus, Article 3 of Regulation No 1972/2003 provides as follows:

‘Suspensive regime

1. This Article shall apply by way of derogation from Annex IV, Chapter 5, to the [2003] Act of Accession and from Articles 20 and 214 of Council Regulation (EEC) No 2913/92

2. Products listed in Article 4(5), which before 1 May 2004 have been in free circulation in the Community of Fifteen or in a new Member State and on 1 May 2004 are in temporary storage or under one of the customs treatments or procedures referred to in Article 4(15)(b) and (16)(b) to (g) of Regulation (EEC) No 2913/92 in the enlarged Community, or which are in transport after having been the subject of export formalities within the enlarged Community shall be charged with the *erga omnes* import duty rate applicable on the date of release for free circulation.

The first subparagraph shall not apply to products exported from the Community of Fifteen if the importer gives evidence that no export refund has been sought for the products of the country of export. Upon the importer's request, the exporter shall arrange to obtain an endorsement by the competent authority on the export declaration that an export refund has not been sought for the products of the country of export.

...'

8 Article 4 of Regulation No 1972/2003 provides:

'Charges on products in free circulation

1. Without prejudice to Annex IV, Chapter 4, to the [2003] Act of Accession, and where stricter legislation does not apply at national level, the new Member States shall levy charges on holders of surplus stocks at 1 May 2004 of products in free circulation.

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

- (a) averages of stocks available in the years preceding accession;
- (b) the pattern of trade in the years preceding accession;
- (c) the circumstances in which stocks were built up.

The notion surplus stocks applies to products imported into the new Member States or originating from the new Member States. The notion surplus stocks applies also to products intended for the market of the new Member States.

...

3. The amount of the charge referred to in paragraph 1 shall be determined by the *erga omnes* import duty rate applicable on 1 May 2004. The revenue of the charge collected by national authorities shall be assigned to the national budget of the new Member State.

...

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

...

— in the case of Poland:

0201 30 00, 0202 30 90, 0203 11 10, 0203 21 10, 0204 30 00, 0204 43 10, 0206 29 91, 0402 10, 0402 21, 0405 10, 0405 90, 0406, 0703 20 00, 0711 51 00, 1001, 1002, 1003, 1004, 1005, 1006 10, 1006 20, 1006 30, 1006 40, 1007, 1008, 1101, 1102, 1103, 1104, 1107, 1108, 1509, 1510, 1517, 1702 30 [except for 1702 30 10], 1702 40 [except for 1702 40 10], 1702 90 [limited to 1702 90 10, 1702 90 50, 1702 90 75, 1702 90 79], 2003 10 20, 2003 10 30, 2008 20.

...

6. The Commission may add products to the list or remove products from the list set out in paragraph 5.'

9 Under Article 10 of Regulation No 1972/2003:

‘This Regulation shall enter into force subject to and on the date of the entry into force of the Treaty of Accession

It shall apply until 30 April 2007.’

10 Regulation No 735/2004 inter alia introduced, with regard to the Republic of Poland, in the list referred to in Article 4(5), eighth indent, of Regulation No 1972/2003, seven products falling within codes NC 0202 30 10, 0202 30 50, 0207 14 10, 0207 14 70, 1602 32 11, 2008 30 55 and 2008 30 75. Regulation No 735/2004 merely amended that list and not the terms of the other provisions of Regulation No 1972/2003 which are being challenged in the present action.

The action before the General Court and the judgment under appeal

11 By application lodged at the Registry of the General Court on 28 June 2004, the Republic of Poland brought, under Article 230 EC, an action seeking annulment of Articles 3 and 4(3) and (5), eighth indent, of Regulation No 1972/2003, as amended by Regulation No 735/2004.

12 In support of its action, which was divided into four parts, the Republic of Poland relied on 10 pleas in law, alleging the infringement of the principles of the free movement of goods, non-discrimination on grounds of nationality, the protection of legitimate expectations and proportionality and also alleging the lack of Commission powers, infringement of Articles 22 and 41 of the 2003 Act of Accession, lack of or insufficient reasoning and abuse of power.

13 In its defence, the Commission contended that that action had been brought out of time.

14 By the judgment under appeal, the General Court, sitting in extended composition, declared inadmissible the part of that action concerning Regulation No 1972/2003.

15 Having found that the period of two months for bringing an action, laid down in the fifth paragraph of Article 230 EC, had to be calculated from the date of publication of Regulation No 1972/2003 in the *Official Journal of the European Union*, that is, 11 November 2003, the General Court held, taking into account the various procedural time-limits, that the overall period for bringing an action for annulment against Regulation No 1972/2003 expired on 4 February 2004 at midnight.

16 Given that the action by the Republic of Poland was lodged on 28 June 2004, the General Court declared that it was late with regard to the part of the action seeking annulment of Regulation No 1972/2003.

17 By contrast, with regard to the part of the action brought by the Republic of Poland concerning Regulation No 735/2004, that was held admissible by the General Court, to the extent that it can be interpreted as an application for annulment of Regulation No 735/2004 in so far as, in relation to that Member State, that regulation makes seven additional products subject to the same measures as those initially introduced by Regulation No 1972/2003 for other products.

18 With regard to the substance, the General Court nevertheless dismissed all the pleas relied upon.

19 Consequently, the action was dismissed in its entirety.

Form of order sought by the parties

20 By its appeal, the Republic of Poland asks the Court to set aside the judgment under appeal and to annul Articles 3 and 4(3) and (5), eighth indent, of Regulation No 1972/2003, as amended by Regulation No 735/2004.

- 21 The European Commission asks the Court to dismiss the appeal and to order the Republic of Poland to bear the costs.

The appeal

Preliminary considerations

- 22 While responding to each of the grounds of appeal relied upon by the Republic of Poland in support of its appeal, the Commission contends, as a preliminary point, that some of those grounds are inadmissible, to the extent that they are based on the same arguments as those put forward in the initial application and that they do not clearly state in what way the General Court erred in its judgment.
- 23 It must be borne in mind that, under Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal is limited to points of law and must be based on the grounds of lack of competence of the General Court, breach of procedure before it which adversely affects the interests of the appellant, or infringement of European Union law by the General Court (see, to that effect, Case C-136/92 P *Commission v Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 47).
- 24 Thus, the General Court has exclusive jurisdiction to establish the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and to assess those facts. The establishment of those facts and the evaluation of that evidence do not, save where they are distorted, constitute a point of law which is subject as such to review by the Court of Justice (see, in particular, Case C-449/99 P *EIB v Hautem* [2001] ECR I-6733, paragraph 44, and Case C-105/04 P *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission* [2006] ECR I-8725, paragraphs 69 and 70).
- 25 Furthermore, it follows from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice and also from Article 112(1)(c) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (see, in particular, Case C-352/98 P *Bergaderm and Goupil v Commission* [2000] ECR I-5291, paragraph 34; Case C-41/00 P *Interporc v Commission* [2003] ECR I-2125, paragraph 15; and Case C-131/03 P *Reynolds Tobacco and Others v Commission* [2006] ECR I-7795, paragraph 49).
- 26 Thus, where an appeal merely repeats or reproduces verbatim the pleas in law and arguments submitted to the General Court, including those based on facts expressly rejected by that Court (see, in particular, *Interporc v Commission*, paragraph 16), it fails to satisfy the requirement to state reasons under those provisions. In reality, such an appeal amounts to no more than a request for a re-examination of the application submitted to the General Court, a matter which falls outside the jurisdiction of the Court of Justice (see, inter alia, *Reynolds Tobacco and Others v Commission*, paragraph 50).
- 27 However, provided that an appellant challenges the interpretation or application of European Union law by the General Court, the points of law examined at first instance may be discussed again in the course of an appeal (Case C-210/98 P *Salzgitter v Commission* [2000] ECR I-5843, paragraph 43). Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose (see, inter alia, *Interporc v Commission*, paragraph 17).
- 28 In the present case, the appeal aims, in essence, to call into question the General Court's position on a number of questions of law submitted to it at first instance concerning, first, the admissibility of the action brought by the Republic of Poland taking into account, inter alia, the right to effective judicial

protection and, second, the lawfulness of certain transitional agricultural measures, in particular in the light of Article 41 of the 2003 Act of Accession and of the various general principles of European Union law. Thus, in so far as that appeal contains precise indications with regard to the contested points of the judgment under appeal and the grounds and arguments upon which it is based, it cannot be declared inadmissible in its entirety.

- 29 It is in the light of the abovementioned criteria that the admissibility of the specific arguments put forward in support of the various grounds of appeal should be assessed.

Admissibility of the action at first instance in so far as it sought the annulment of Regulation No 1972/2003

- 30 In challenging the judgment under appeal to the extent that it declared inadmissible its pleas seeking annulment of Regulation No 1972/2003 for the reason that its action had been brought out of time, the Republic of Poland relies on five grounds. Those grounds allege, first, incomplete publication of Regulation No 1972/2003, second, the erroneous interpretation of the fourth paragraph of Article 230 EC, third, an infringement of the principles of a community based on the rule of law and of the principle of effective judicial protection, fourth, infringement of the principles of solidarity and good faith and the rules of procedure and, fifth, lack of reasoning.
- 31 At the outset it is necessary to examine the third ground, alleging infringement of the principles of a community governed by the rule of law and of the principle of effective judicial protection.

The third ground

– Arguments of the parties

- 32 The Republic of Poland claims that the General Court, by declaring partially inadmissible its action for annulment, deprived the new Member States of their right to submit for judicial review, pursuant to the second paragraph of Article 230 EC, the provisions of Regulation No 1972/2003, despite the fact that the regulation was addressed to them in their capacity as Member States.
- 33 While noting that the strict application of Community rules on procedural time-limits meets the requirement of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice, the Republic of Poland considers that such application cannot however justify the inequality in judicial protection which would result from the new Member States being unable to challenge the lawfulness of Regulation No 1972/2003 in their capacity as Member States, even if they are specifically affected by that regulation.
- 34 In order to substantiate its ground of appeal, the Republic of Poland, first, relies on Case 294/83 *Les Verts v Parliament* [1986] ECR 1339, paragraph 23, according to which the European Economic Community is a community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the EC Treaty. Second, the Republic of Poland refers to the Opinion of Advocate General Poiras Maduro in the case which led to the judgment in Case C-273/04 *Poland v Council* [2007] ECR I-8925, paragraph 50, in order to conclude that the General Court flagrantly infringed the principles underlying a community governed by the rule of law and the principle of effective judicial protection.
- 35 The Commission contends that the General Court, by dismissing as inadmissible an action brought late, did not infringe either the principle of effective judicial protection or the principles underlying a community governed by the rule of law. In addition, contrary to the arguments of the Republic of

Poland, the fact that it passed from being an applicant to a privileged applicant by reason of the entry into force of the Accession Treaty and of the 2003 Act of Accession does not provide a ground for derogating from the principle that procedural time-limits should be strictly applied.

– Findings of the Court

- 36 By that ground, the Republic of Poland complains that the General Court rejected its argument that Regulation No 1972/2003 was addressed to all the Member States, including the Republic of Poland, meaning that it should also be allowed to challenge it as an applicant under the second paragraph of Article 230 EC.
- 37 In that regard, the General Court, first, pointed out in paragraph 46 of the judgment under appeal that, while the 2003 Act of Accession specifically provides for the possibility for the Community institutions to adopt certain measures between the date on which that Act was signed and the date on which the new Member States acceded, that Act does not however provide for any derogation from the system of review of the lawfulness of Community measures.
- 38 Second, in paragraph 47 of that judgment, the General Court, with reference to Case 152/85 *Misset v Council* [1987] ECR 223, paragraph 11, reiterated that the Community rules concerning procedural time-limits are to be strictly applied.
- 39 Finally, the General Court held, in paragraph 48 of that judgment, that ‘if the Republic of Poland’s argument is to be understood as meaning that it considered that it had to wait until it became a Member State before it could bring its action, it must be pointed out that the period laid down in Article 230 EC within which proceedings must be brought is of general application’ and that ‘[i]t did not require the Republic of Poland to have the status of a Member State’. The General Court added that ‘[t]hat period [was] applicable to it in any event as a legal person’.
- 40 In order to address the question whether the Republic of Poland may validly challenge Regulation No 1972/2003 as an applicant under the second paragraph of Article 230 EC, it must be noted that Article 2(3) of the Accession Treaty expressly provides for the possibility for the European Union institutions to adopt certain measures before accession.
- 41 Among those measures is Article 41 of the 2003 Act of Accession, according to which the Commission is entitled to adopt all the transitional measures necessary to facilitate the transition from the existing regime in the new Member States to that resulting from the application of the common agricultural policy.
- 42 Regulation No 1972/2003 was adopted on the basis of that article and is, as the Advocate General stated in point 27 of his Opinion in the case which gave rise to the judgment in Case C-336/09 P *Poland v Commission* which is being delivered today, one of the measures the adoption of which is conditional upon accession.
- 43 Having been adopted between the date when the Accession Treaty and the 2003 Act of Accession were signed and the date of their entry into force, Regulation No 1972/2003 can thus be distinguished from the other provisions of the *acquis communautaire* which were already in force when the Accession Treaty and the Act of Accession were signed.
- 44 Furthermore, despite the fact that Regulation No 1972/2003 was published in the *Official Journal of the European Union* before the accession of the new Member States, it is common ground that the measures put in place by that regulation were designed to apply primarily to those new Member States from the date of their accession to the European Union. Thus, in conformity with Article 10 of Regulation No 1972/2003, that regulation took effect only subject to and on the date of the entry into force of the Accession Treaty.

- 45 It follows from the foregoing, as the Advocate General also stated in points 39 and 40 of his Opinion in Case C-336/09 P *Poland v Commission*, the judgment in which is being delivered on today's date, that it was only from the time of their accession that the new Member States were affected by the provisions of Regulation No 1972/2003 in their capacity as Member States and that it is in that capacity that they should be able to challenge those provisions.
- 46 In the present case it is apparent that, as a result of the date of publication of Regulation No 1972/2003 in the *Official Journal of the European Union*, namely 11 November 2003, the period of two months for instituting proceedings, laid down in Article 230 EC, had already expired before the Republic of Poland acquired, on the date of its accession to the European Union, that is, 1 May 2004, the status of a Member State.
- 47 The new Member States were therefore unable to bring within the prescribed period, as applicants on the basis of the second paragraph of Article 230 EC, proceedings against the measures adopted on the basis of Article 2(3) of the Treaty of Accession.
- 48 The European Union is a union based on the rule of law, its institutions being subject to review of the conformity of their acts, inter alia, with the Treaty and the general principles of law (see Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351, paragraph 281, and Case C-550/09 *E and F* [2010] ECR I-6213, paragraph 44).
- 49 Those principles are the very foundation of that union and compliance with them means, as is now provided for expressly in Article 4(2) EU, that the new Member States are to be treated on the basis of equality with the old Member States.
- 50 Therefore, the new Member States must enjoy, in relation to all measures which, like the act at issue in the present case, were adopted on the basis of Article 2(3) of the Accession Treaty and which affect them in their capacity as Member States, a right of action as applicants pursuant to the second paragraph of Article 230 EC.
- 51 Given that that status was acquired by the new Member States only on the date of entry into force of the Accession Treaty and of the 2003 Act of Accession, it must be held that, in relation to those States, the period laid down in the fifth paragraph of Article 230 EC began to run, in relation to acts of the kind at issue in the present case, only as from that date, that is, in the present case, 1 May 2004.
- 52 The General Court was therefore wrong to hold, notwithstanding the specific context of the present case, that it was not necessary for the Republic of Poland to enjoy the status of Member State in order to bring an action under Article 230 EC, the General Court also being mistaken to infer from that finding that the action introduced by that Member State on 28 June 2004 against Regulation No 1972/2003 was late and, therefore, inadmissible.
- 53 It follows from the foregoing that the third ground must be rejected as unfounded.
- 54 Therefore, it must be held that the judgment under appeal, in so far as it declares inadmissible the action for annulment brought by the Republic of Poland as it relates to Regulation No 1972/2003, is vitiated by an error of law.
- 55 However, given that the General Court, by virtue of its analysis of the arguments employed to challenge Regulation No 735/2004, also examined the substantive pleas formulated in order to contest Regulation No 1972/2003, the error of law established in the preceding paragraph of this judgment cannot lead to the setting aside of the judgment appealed against.
- 56 It is common ground that the arguments brought in the initial application against Regulation No 735/2004 were identical to those formulated in order to contest Regulation No 1972/2003 and that, in the judgment under appeal, the General Court analysed all of the arguments relied upon.

- 57 It is therefore for the Court of Justice to examine, at the appeal stage, the grounds relied upon by the Republic of Poland to contest the substantive findings as to substance in the judgment under appeal.

The judgment under appeal in so far as it rejects in substance the form of order in the action seeking the annulment of Regulation No 735/2004

- 58 The appeal brought against the judgment under appeal in so far as it rejected in substance the form of order in the action seeking the annulment of Regulation No 735/2004 can be divided into three parts and contains eight grounds.
- 59 The first part concerns the judgment under appeal in so far as it rejected the application for annulment of Regulation No 735/2004 to the extent that the regulation makes seven categories of products from Poland subject to the measure referred to in Article 4(3) of Regulation No 1972/2003. In that part of the appeal, the Republic of Poland relies on two grounds (first and second grounds).
- 60 The second part of the appeal concerns the judgment under appeal in so far as it rejected the application for annulment of Regulation No 735/2004 in so far as it adds seven categories of products from Poland to the list of products in the eighth indent of Article 4(5) of Regulation No 1972/2003. In that part of the appeal, the Republic of Poland relies on a single ground (third ground).
- 61 The third part of the appeal concerns the judgment under appeal in so far as it rejected the application for annulment of Regulation No 735/2004 to the extent that it makes seven categories of products subject to the measure provided for in Article 3 of Regulation No 1972/2003. In that part of the appeal, the Republic of Poland relies on five grounds (fourth to eighth grounds).

The first ground

– Arguments of the parties

- 62 By the first ground of appeal, alleging infringement of Article 41 of the 2003 Act of Accession and of the proportionality principle, the Republic of Poland criticises the General Court for having held that the amount of the charge on the surplus stocks provided for in Article 4(3) of Regulation No 1972/2003 was appropriate and essential in order to achieve the objectives of the transitional measure at issue.
- 63 The Republic of Poland, submits, first, that a charge corresponding to the difference between the various customs duties would have been sufficient to achieve the objectives of Regulation No 1972/2003. The amount of the charge on the surplus stocks provided for in Article 4(3) of Regulation No 1972/2003 exceeded the maximum stated by Advocate General Mischo in point 58 of his Opinion in the case which gave rise to the judgment in Case C-179/00 *Weidacher* [2002] ECR I-501, according to which compliance with the principle of proportionality is ensured where the charge neutralises speculative advantages and places the holder of surplus stocks on an equal footing with the other operators. In the present case, the charge contains an additional punitive element and has the effect of placing that holder in a position where he is less competitive than traders of the old Member States. According to the Republic of Poland, the General Court, without any justification, altered the criterion upheld in *Weidacher* with regard to the application of the proportionality principle.
- 64 Second, the Republic of Poland claims that the amount of the charge provided for in Article 4(3) of Regulation No 1972/2003 could not, taking into account the date when it was introduced, concerning the products added by Regulation No 735/2004, that is, 11 days before accession to the European Union, contribute to the achievement of the prevention objectives. It states that, with regard to the amount of the charge at issue, the General Court held the principal justification to be the need to

prevent and deter the build-up of surplus stocks from national production. However, in the light of the date when Regulation No 735/2004 was adopted and because of the long cycle of agricultural production, the need to prevent and deter the build-up of surplus stocks could not justify the amount of that tax. In any case, according to the Republic of Poland, the General Court's reasoning is illogical since the objectives of prevention and dissuasion can be achieved only for the future and could not apply to stocks already produced and built up.

- 65 Finally, the Republic of Poland considers that the General Court erred by not finding that there was clearly no link between the amount of the charge on the surplus stocks, provided for in Article 4(3) of Regulation No 1972/2003, and the objectives of that regulation. Even supposing that that charge could be dissuasive, the Republic of Poland submits that there is no link between the amount of the charge and the risk of speculation. The latter corresponds, with regard to the products imported into Poland before accession, not to the Community import duty but to the difference between Community import duties and Polish import duties. The Republic of Poland notes that it was precisely that approach which was followed for the later enlargement of the European Union to the Republic of Bulgaria and to Romania. In addition, with regard to national production, the speculative profit corresponds, contrary to what was held by the General Court in paragraph 115 of the judgment under appeal, to the difference between the Community import duty and the costs of additional national production, which could vary significantly depending on the product.
- 66 The Commission claims that the first ground of appeal is inadmissible because the Republic of Poland confines itself, in essence, to repeating what was already argued at first instance.
- 67 In the alternative, with regard to the maximum amount of the charge at issue, the Commission considers that the General Court pointed out, correctly, that Advocate General Mischo, in his Opinion in *Weidacher*, confined himself to analysing the measures introduced with a view to the enlargement of the European Union which took place in 1995 and that that judgment does not lay down, with regard to the principle of proportionality, any ceiling for the amount of the charges on the surplus stocks.
- 68 With regard to the date when the charge was introduced, the Commission considers, having noted that the possibility of extending the list of products because of market developments is expressly provided for by Regulation No 1972/2003, that the products covered by Regulation No 735/2004 were added within the prescribed period.
- 69 With regard to the link between the amount of that tax and the risk of speculation, the Commission contends that the General Court was right to hold that the neutralisation of speculative profits was not the only objective pursued by the regulations at issue and that a charge corresponding to the difference between the Community customs duties and those in force in Poland would not have deterred the build-up of surplus stocks from national production.

– Findings of the Court

- 70 As a preliminary point, it must be held that, contrary to what the Commission would seem to claim, the first substantive ground relied on by the Republic of Poland does not merely repeat the arguments made at first instance. On the contrary, the Republic of Poland invites the Court to review the criteria according to which the General Court interpreted and applied the proportionality principle.
- 71 In that regard, in conformity with the case-law of the Court of Justice and as noted by the General Court, rightly, in paragraph 106 of the judgment under appeal, the Commission may exercise a wide discretion when exercising the powers conferred on it by the Council, or indeed those who drafted the Act of Accession, in regard to the common agricultural policy for the implementation of the rules which it lays down, with the result that the lawfulness of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate in terms of the objective which the competent institution is seeking to pursue (see *Weidacher*, paragraph 26 and case-law cited).

- 72 It follows from the above that, in relation to the proportionality principle, the General Court has to establish only whether the fixing of the amount of the charge on the surplus stocks provided for under Article 4(3) of Regulation No 1972/2003, that is the *erga omnes* import duty rate applicable on 1 May 2004, does not manifestly exceed what is required in order to achieve the objectives the Commission is seeking to pursue.
- 73 With regard, first, to the Republic of Poland's argument concerning the maximum amount of the charge on the surplus stocks, derived from the judgment in *Weidacher*, the General Court held as follows:
- '108 The Republic of Poland relies on *Weidacher*, ... in support of its argument. That judgment, it argues, confirmed Advocate General Mischo's view in [point 58 of] his Opinion in that case ..., that the taxation at issue did not infringe the principle of proportionality as it did no more than cause an unjustified advantage to disappear, but without penalising the holder of the stock
- 109 It must be pointed out that, unlike what was provided in regard to the contested charge here, the amount of the charge at issue in *Weidacher*, ..., corresponded to the difference between the Community customs duties and those in force in the new Member States at that time. That is why Advocate General Mischo could confine himself to taking the view that that charge was intended to deprive traders in those States of any interest in speculating on the enlargement of the European Union in 1995 by buying, before that date, agricultural products subject to a lower import duty than the Community import duty and selling them later within the enlarged Community.
- 110 However, the foregoing does not prejudice the question whether a charge of a higher amount could also be regarded as being proportionate in regard to the objective pursued.
- 111 It must be pointed out in this regard that, contrary to what the Republic of Poland argues, the objective which the Commission was pursuing by means of the contested charge was not solely to prevent the build-up of stocks of the products at issue for speculative purposes arising from trade, but quite simply to prevent the build-up of surplus stocks, that is to say, stocks which were not part of the usual reserves found in the new Member States. That is clear from recital 3 in the preamble to Regulation No 1972/2003. That recital states that, although trade deflections liable to disrupt the market organisations often involve products moved artificially with a view to enlargement, the surplus stocks which the measures laid down in Regulation No 1972/2003 are intended to prevent may also result from national production.
- 112 It must also be observed that the approach adopted by the Commission is consistent with the idea which those who drafted the [2003] Act of Accession had of surplus stocks to be eliminated at the expense of the new Member States. It is clear from Annex IV, Chapter 4, paragraphs 1 and 2, to the [2003] Act of Accession that the existence of surplus stocks resulting from national production in the new Member States disturbed the common organisation of agricultural markets. Those who drafted the [2003] Act of Accession in no way limited the abovementioned obligation solely to stocks arising from trade.'
- 74 The General Court did not err in law by holding, in paragraph 110 of the judgment under appeal, that the Court's decision in *Weidacher* could not prejudice the question whether a charge of a higher amount could also be regarded as being proportionate in regard to the objective pursued.
- 75 After observing, in paragraph 109 of that judgment, that the introduction of the charge corresponding to the difference between the Community customs duties and those in force in the new Member States which was at issue in the case which gave rise to the judgment in *Weidacher*, was intended to prevent speculation arising from trade in the products at issue by traders in the new Member States, the General Court made clear, in paragraph 111 of the judgment under appeal, that the objective pursued

by Regulation No 1972/2003 was not solely prevention of the build-up of stocks of the products at issue for speculative purposes arising from trade, but prevention of the build-up of surplus stocks as such, concerning not only products moved artificially but also those resulting from national production.

- 76 The General Court added that the amount of the tax at issue is consistent with the idea which those who drafted the [2003] Act of Accession had of surplus stocks, because Chapter 4 of Annex IV to that Act identifies the existence of surplus stocks resulting from national production in the new Member States as a factor which disturbed the common organisation of agricultural markets.
- 77 In so far as the Republic of Poland argues that the General Court altered without good reason the criterion applied by the Court of Justice in *Weidacher*, whereas the Court of Justice stated in detail, in paragraphs 109 to 112 of the judgment under appeal, how the objective pursued by Regulation No 1972/2003 differs from that pursued by the legislation at issue in the case giving rise to the judgment in *Weidacher*, that argument must be rejected as unfounded.

- 78 With regard, second, to the Republic of Poland's argument that a build-up of surplus stocks from national production was not possible because of the long agricultural production cycle, the General Court held as follows:

'118 None the less, and without there being any need to rule on whether or not the latter claim is well founded, it must be pointed out that the Republic of Poland has not established that the surplus stocks could not have been built up before Regulation No 735/2004 was adopted. However, with regard to agricultural products in respect of which the price in the new Member States was lower than the price in the Community, traders established in those States had an obvious interest, from the date at which they considered it probable that enlargement would take place on 1 May 2004, which could already have occurred during the year preceding enlargement or even earlier, in limiting their sales in their respective States of origin in order to build up reserves which they could later place on the enlarged Community market.

119 The abovementioned traders also had every interest in focusing their agricultural operations on products in respect of which the price difference was greatest and on products which could best be stored, to the detriment of the products at issue for which the prices at Community and national levels were closest. The latter operation could also, by reason of an increase in production capacity available before enlargement, have generated an abnormal quantity of stocks of the products at issue.'

- 79 It follows from the foregoing, inter alia from the expression 'without there being any need to rule on whether or not the latter claim is well founded', used at the beginning of the first sentence of paragraph 118 of the judgment under appeal, that the General Court regarded the Republic of Poland's argument concerning the length of the agricultural production cycle as irrelevant, since the Republic of Poland failed to adduce any proof that the surplus stocks could not have been built up before adoption of Regulation No 735/2004.
- 80 It must be noted that, in the present appeal, the Republic of Poland has no intention of calling into question the reasoning based on the lack of proof which led the General Court to reject that argument, but confines itself to repeating the same argument, meaning that the present ground must, for the reasons stated in paragraph 26 of the present judgment, be rejected as inadmissible.
- 81 In any case, the General Court explained in detail, in paragraphs 118 and 119 of the judgment under appeal, how producers in the new Member States could, in the course of the agricultural year preceding enlargement, have limited their sales in order to build up reserves of products or increase their production capacity with regard to certain products in order to build up stocks in view of accession to the European Union.

- 82 In that regard, the Republic of Poland submits that the General Court's reasoning is contradictory since the objective of prevention or dissuasion cannot be realised in relation to surplus stocks which have already been built up.
- 83 It suffices to hold that the examination carried out by the General Court in paragraphs 118 and 119 of the judgment under appeal falls within the assessment of the facts which, as is evident from the case-law cited in paragraphs 23 and 24 of the present judgment, does not constitute, except where there is a distortion of the facts or evidence submitted to the General Court, a question of law subject, as such, to review by the Court.
- 84 Since the Republic of Poland does not claim that such a distortion has taken place, that argument must also be rejected as inadmissible.
- 85 Regarding, third, the Republic of Poland's argument alleging the lack of a link between the amount of the charge on surplus stocks and the risk of speculation, the General Court held as follows:
- '114 ... the Republic of Poland, argues ... that a charge the amount of which was fixed on the basis of a duty corresponding to the difference between Polish and Community import duties on 30 April 2004 would have been sufficient to avoid the risk of surplus stocks being built up. However, although such a charge could have been useful in preventing the build-up of surplus stocks from imports, it is far from clear that it would also have been sufficient to prevent the build-up of surplus stocks from national production.
- 115 If importation of the products at issue was subject, before 1 May 2004, to a Polish import duty equal to, or higher than, the Community import duty or if the difference between their price in Poland and their price in the Community was such that a duty equal to the difference between Community and Polish customs duties could not have offset it, fixing the amount of the contested charge on the basis of a duty equivalent to that difference would have had no dissuasive effect on the build-up of surplus stocks from national production, as the Republic of Poland itself acknowledged at the hearing. Such stocks could, however, have been built up by traders established in the new Member States with a view to the enlargement of the European Union on 1 May 2004, in particular if, before that date, the price of the products at issue had been higher in the Community than in Poland or if production thereof in the Community had been subject to restrictions laid down within the framework of the common agricultural policy intended to fix a given total quantity of production.
- 116 Those surplus stocks built up from national production would not have been subject to any charge and could therefore have disturbed the Community market from 1 May 2004. In addition, the Republic of Poland would have been obliged to eliminate them pursuant to Annex IV, Chapter 4, to the [2003] Act of Accession and, consequently, Polish traders would not necessarily have been in a better position if the contested charge on surplus stocks of the products at issue had not existed, whereas the Republic of Poland would have lost the revenue from that tax and would have been obliged to finance the elimination of the stocks.'
- 86 With regard to the build-up of surplus stocks from imports, the Republic of Poland's argument concerning the lack of a link between the amount of the charge on those stocks and the objectives pursued by Regulation No 1972/2003 and the parallel drawn in that regard in relation to enlargement in 2007 must be rejected from the outset.
- 87 According to paragraph 114 of the judgment under appeal, the General Court acknowledged, in relation to the objective of preventing the build-up of surplus stocks from imports, the usefulness of a charge the amount of which was fixed on the basis of the difference between Polish and Community import duties.
- 88 However, with regard to the build-up of surplus stocks from national production, it considered it far from clear that such a charge would be useful.

- 89 In that regard, it should be recalled that the Republic of Poland itself admitted before the General Court, as is evident from paragraph 115 of the judgment under appeal, that the fixing of the amount of the charge on the basis of the difference between Community and Polish import duties would have had no dissuasive effect on the build-up of surplus stocks from national production.
- 90 Thus, by advocating, in the present appeal, the introduction of a tax the amount of which is determined on the basis of the difference between the Community import duty and the variable costs of national production, the Republic of Poland not only contradicts the position it adopted at first instance but also fails to show how the General Court erred in law by holding that the introduction of a tax the amount of which is determined by the *erga omnes* import duty rate applicable on 1 May 2004 does not appear to clearly go beyond what is necessary in order to prevent the build-up of surplus stocks from national production.
- 91 The argument of the Republic of Poland must therefore be rejected as unfounded.
- 92 It follows from the foregoing that the first ground of appeal must be rejected as in part inadmissible and in part unfounded.

The second ground

– Arguments of the parties

- 93 By the second ground of appeal, alleging infringement of the principle of non-discrimination, the Republic of Poland complains that the General Court held that the charge introduced under Article 4(3) of Regulation No 1972/2003 had been fixed on the basis of objective criteria of differentiation.
- 94 While the Republic of Poland accepts that, as pointed out by the General Court, the agricultural situation in the new Member States was radically different from that in the old Member States, it nevertheless considers that such a general statement cannot suffice to exempt the Commission from the obligation to adopt measures in conformity with the non-discrimination principle. In paragraph 129 of the judgment under appeal, the General Court confined itself to confirming the possibility, not disputed by the Republic of Poland, of taxing the surplus stocks rather than examining in substance the plea alleging the infringement of the non-discrimination principle concerning the amount of the charges on the surplus stocks.
- 95 According to the Republic of Poland, the General Court's finding in paragraph 134 of the judgment under appeal was also erroneous, to the extent that the factors stated by the Commission should have had an influence not only on the list of products subject to the charge on surplus stocks but also on the amount thereof.
- 96 The Commission considers that the ground of appeal based on infringement of the non-discrimination principle is not clearly formulated, in so far as the Republic of Poland seems to confuse the non-discrimination principle and the proportionality principle. According to it, that ground is, in any case, unfounded.

– Findings of the Court

- 97 As a preliminary point, it must be held that it is not clear from the formulation of the second ground of appeal whether the Republic of Poland intends to criticise the measures taken by the Commission or the analysis carried out in that regard by the General Court.
- 98 To the extent that, by the present appeal, the Republic of Poland criticises the Commission for infringing the non-discrimination principle, it must be held that that argument cannot be brought before the Court since it reproduces arguments already relied upon in support of the second plea of

the second part of the action brought before the General Court and that that Member State is attempting, in fact, to obtain a re-examination of its application by the General Court. In accordance with the case-law cited in paragraph 26 above, such arguments are inadmissible.

99 Concerning the Republic of Poland's argument that the General Court failed to analyse in substance the argument alleging infringement of the principle of non-discrimination with regard to the amount of the charges in dispute, it should be recalled that the passage of the judgment under appeal which is criticised appears in the part of the reasoning in which the General Court stated its position on the alleged discrimination resulting from the difference in treatment between Polish traders and traders established in the Community before 1 May 2004.

100 In that part of the judgment under appeal, the General Court held:

'128 It must be recalled in that regard that the principle of non-discrimination between producers or consumers in the Community, laid down in regard to the common organisation of agricultural markets in the second subparagraph of Article 34(2) EC, requires that comparable situations should not be treated in a different manner, or different situations treated in the same manner, unless such treatment is objectively justified. Measures taken under the common organisation of the market must therefore not be differentiated according to regions and other conditions relating to production or consumption except on the basis of objective criteria which ensure that the advantages and disadvantages are distributed proportionately among those concerned, without any distinction being made between the territories of the Member States (Case 203/86 *Spain v Council* [1988] ECR 4563, paragraph 25).

129 However, the agricultural situation in the new Member States was radically different from that in the old Member States (*Poland v Council*, [cited above], paragraph 87). Before enlargement of the European Union in 2004, those two categories of traders were subject to different rules, quotas and production support mechanisms. Moreover, although the Community institutions could prevent the build-up of surplus stocks within the Community by methods specific to the common organisation of agricultural markets, they could not prevent the build-up of surplus stocks in the territory of the future Member States. It is for that reason that Annex IV, Chapter 4, paragraphs 1 to 4, to the [2003] Act of Accession imposed an obligation on the new Member States to eliminate their surplus stocks at their own expense without imposing a parallel obligation on the old Member States, a situation which the Republic of Poland accepted when it signed the Act of Accession.

130 Consequently, it must be held that the situation of Polish traders and that of traders established in the Community before 1 May 2004 cannot be regarded as comparable.'

101 Thus, by referring, inter alia, to the finding already arrived at by the Court of Justice, in that regard, in paragraph 87 of *Poland v Council*, the General Court explained how the situation of the traders in the new Member States was to be regarded as radically different from that of traders in the old Member States. Given that the two situations were not comparable, the introduction of a charge on surplus stocks only on traders in the new Member States did not constitute discrimination on grounds of nationality.

102 In those circumstances, the Republic of Poland's argument that the General Court failed to apply the non-discrimination principle with regard to the amount of the charges in dispute must be rejected as unfounded.

103 Since traders in the new Member States were subject to charges on surplus stocks whereas traders in the old Member States were not, the General Court cannot be criticised for not having carried out a comparison of the amount of those charges.

¹⁰⁴ With regard to the Republic of Poland's argument contesting paragraph 134 of the judgment under appeal, that paragraph, it should be recalled, appears in the part of the reasoning by which the General Court adopted a position on the alleged difference in treatment of the Republic of Poland compared to the States which acceded to the European Union in 1995. The General Court held in its reasoning as follows:

'132 Suffice it to point out in that regard that the transitional measures to be adopted in regard to agriculture at the time of each enlargement of the European Union must be adapted to the actual risks of disturbance of the agricultural markets which that enlargement may involve. Consequently, the institutions are not required to apply equivalent transitional measures during two successive enlargements.

133 In particular, the Commission was entitled to take account, among the differences between the enlargements of the European Union in 1995 and 2004, of the fact that the goal of avoiding disruption on the Community market by reason of the build-up of surplus stocks was more difficult to achieve in 2004 by reason of the size of the markets of the new Member States in 2004 and their much greater production capacity, to which the Commission refers in its pleadings, without being challenged on that point by the Republic of Poland. Moreover, the price differences between the Community and the new Member States were also greater. The combination of those two factors made the risk of agricultural market destabilisation substantially greater and therefore justified the adoption of more severe transitional measures.

134 The Republic of Poland argues in this regard that, if the Commission had really taken account of those factors for the purpose of fixing the amount of the contested charge, that amount ought to have been different for each new Member State. However, it is clear that account was taken of the circumstances of each new Member State when the products to be subject to the contested charge were being designated since, under Article 4(5) of Regulation No 1972/2003, the list is different for each new Member State, a fact which invalidates the Republic of Poland's argument.'

¹⁰⁵ Thus, by considering paragraph 134 of the judgment under appeal to be 'erroneous', the Republic of Poland merely, in fact, reproduces the argument already relied upon by it before the General Court, without adopting any position on the reasoning of the General Court, with the result that that argument must be rejected, on the grounds set out in paragraph 26 above, as inadmissible.

¹⁰⁶ It follows from the foregoing that the second ground of appeal must be rejected as inadmissible in part and unfounded in part.

The third ground

– Arguments of the parties

¹⁰⁷ By its third ground of appeal, alleging infringement of Article 41 of the 2003 Act of Accession and of the proportionality principle, the Republic of Poland criticises the General Court for having held that it was essential, in order to achieve the objectives of the measures laid down in Regulation No 1972/2003, to subject the products in respect of which the customs duties applicable in Poland before accession of that Member State to the European Union were higher or equal to the customs duties applicable in the Community to the charge provided for in Article 4 of that regulation.

¹⁰⁸ The General Court, in paragraph 158 of the judgment under appeal, required the Republic of Poland to provide a relevant reason which would justify the conclusion that the principal cause of the reason for the speculative stocking of agricultural products was the possibility that there might be a difference in import duties between the Community of Fifteen and the new Member States. According to the Republic of Poland, the fact that the risk of speculation depends on hoped-for profit which corresponds to the difference between the customs duties is an uncontested economic truth which does not require any specific proof.

109 Relying on the fact that Regulation No 735/2004 was adopted 11 days before the date of accession to the European Union, the Republic of Poland also contests the conclusion reached by the General Court in paragraph 159 of the judgment under appeal, according to which the objective of preventing the build-up of surplus stocks from national production could not have been carried out fully if the eighth indent of Article 4(5) of Regulation No 1972/2003 had confined itself to imposing the contested charge on those products in respect of which Polish import duties were lower than the Community import duties.

110 According to the Commission, the Republic of Poland only repeats the arguments which it relied on at first instance and fails to provide any example of a product in respect of which the duties applied in the new Member States were higher than the Community duties. The Commission states that it is aware of only one, that is cereals, which do not however appear on the list of products in the eighth indent of Article 4(5) of Regulation No 1972/2003.

– Findings of the Court

111 By the third ground of appeal, the Republic of Poland seeks to criticise in particular the answer given by the General Court to its third argument, concerning the lawfulness of the amendment to the list of products in the eighth indent of Article 4(5) of Regulation No 1972/2003. The Republic of Poland had claimed that, while the speculative stocking of agricultural products could be explained by the difference in import duties applicable in the Community of Fifteen and those in force in the new Member States, the same did not however apply to products in relation to which the customs duties in force in Poland on 30 April 2004 were higher than the Community import duties.

112 The General Court held as follows in paragraphs 158 and 159 of the judgment under appeal:

‘158 The Republic of Poland puts forward no reason to justify the conclusion that the principal cause of the speculative stocking of agricultural products was the possibility that there might be a difference between the import duties between the Community of Fifteen and the new Member States.

159 In any event, even if that claim were correct, the fact remains that the objectives of the measures provided for in Regulation No 1972/2003 include not only the prevention of a build-up of stocks for speculative purposes connected either with a difference between the import duties applicable to the same product in the Community and those in the new Member States respectively or with the existence, in those States, of duty-free import quotas, in addition to the prevention of a build-up of surplus stocks from national production The latter objective, which flows directly from Annex IV, Chapter 4, to the [2003] Act of Accession, could not have been carried out fully if the eighth indent of Article 4(5) of Regulation No 1972/2003 had confined itself to imposing the contested charge on those products in respect of which Polish import duties were lower than the Community import duties ...’

113 The Republic of Poland confines itself, by its argument concerning paragraph 158 of the judgment under appeal, to stating that the General Court was wrong to require an explanation of the cause of the speculative stocking of the agricultural products, without indicating how the General Court had infringed Article 41 of the 2003 Act of Accession or the principle of proportionality. Thus, it is calling upon the Court to re-examine an argument already relied upon in support of the single plea in the third part of its action brought before the General Court. In the light of the case-law cited in paragraph 26 above, the argument thus submitted to the Court is inadmissible.

114 With regard to the argument concerning paragraph 159 of the judgment under appeal, it is clear from the use of the introductory words ‘[i]n any event, even if that claim were correct’, that it amounted to reasoning added only for the sake of completeness to the reasoning of the General Court.

- 115 It is settled case-law that complaints directed against grounds included in a judgment of the General Court purely for the sake of completeness cannot lead to the judgment being set aside and are therefore nugatory (see, in particular, Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others v Commission* [2005] ECR I-5425, paragraph 148).
- 116 Given that the argument formulated by the Republic of Poland is not capable of calling into question the solution arrived at by the General Court in paragraph 158 of the judgment under appeal, it must be dismissed as nugatory.
- 117 It follows from the foregoing that the third ground of appeal must be rejected.

The fourth ground

– Arguments of the parties

- 118 By its fourth ground of appeal, alleging infringement of Community law and an erroneous interpretation of Article 3 of Regulation No 1972/2003, the Republic of Poland complains that the General Court held that Article 3 was essential in order to maintain the effectiveness of Article 4 of that regulation and that it could be adopted on the basis of Article 41 of the 2003 Act of Accession as a derogation from the provisions of that Act.
- 119 As a preliminary point, the Republic of Poland maintains that the General Court's finding in paragraph 194 of the judgment under appeal that it is challenging only the Commission's powers and not the detailed arrangements for or the proportionate nature of the charge at issue, is manifestly contrary to the actual content of the plea submitted by it at first instance, in so far as, by that plea, the Republic of Poland relied not only on the Commission's alleged lack of powers but also the infringement of Article 41 of the 2003 Act of Accession and, accordingly, implicitly, the infringement of the proportionality principle. While the Republic of Poland accepts that the General Court analysed, in paragraphs 189 to 193 of that judgment, the condition relating to the necessity of the measures at issue provided for under Article 3 of Regulation No 1972/2003, it nevertheless considers that its analysis was carried out incorrectly. In that regard, it refers to two arguments.
- 120 First, the Republic of Poland claims that, notwithstanding the extensive powers enjoyed by the Commission with regard to the common agricultural policy, there always has to be a logical connection between the measures adopted and the objective pursued by those measures. The General Court failed to reply to the Republic of Poland's argument that, by subjecting to the customs duties provided for in Article 3 of Regulation No 1972/2003 all quantities of agricultural products referred to in that provision, and not only the surplus quantities of those products, the traders who carry out their activities lawfully on the market would, without justification, all be penalised. The Republic of Poland considers that the General Court should have found, in paragraph 191 of the judgment under appeal, that an artificial reduction of the surplus stocks in free circulation would have had the effect of artificially increasing the surplus stocks subject to the suspensive regime and it would have been sufficient to subject those artificially increased stocks to the duties provided for under Article 3 of Regulation No 1972/2003.
- 121 Second, the Republic of Poland criticises paragraph 186 of the judgment under appeal since the General Court infringed the principle of the hierarchy of norms, which establishes a distinction between a basic regulation and an implementing regulation and, all the more so, between the 2003 Act of Accession and a regulation implementing that Act. According to the Republic of Poland, while Article 41 of that Act authorises the Commission to adopt any measures necessary to facilitate the transition, that institution cannot however modify the content of that Act of Accession. Given that Article 3(1) of Regulation No 1972/2003 explicitly provides that the measures provided for in that article apply by way of derogation from Annex IV, Chapter 5, to that Act of Accession, the General Court should have held that the Commission was not authorised to make such derogations.

¹²² The Commission considers that the General Court, correctly, acknowledged the logical link that exists between the measures implemented in Article 3 of Regulation No 1972/2003 and the objective pursued by the regulation. The Commission notes that it would have been technically impossible to establish in advance which quantities of products would have constituted ‘surplus’ quantities and, consequently, which quantities of products subject to the suspensive regime would have constituted ‘speculative’ quantities. With regard to the alleged infringement of the hierarchy of norms, the Commission claims that the General Court’s reasoning is not in any way erroneous in that regard.

– Findings of the Court

¹²³ By the fourth ground of appeal, alleging infringement of Community law and the erroneous interpretation of Article 3 of Regulation No 1972/2003, the Republic of Poland directs its complaint in particular at paragraphs 186 to 193 of the judgment under appeal, by which the General Court held as follows:

‘186 It is indeed true that the Commission could amend the terms of the [2003] Act of Accession outside of the legal framework laid down in that regard by the Accession Treaty and the [2003] Act of Accession. However, as the Commission has correctly pointed out, the fact remains that Article 41 of the Act of Accession authorised it to adopt any measure necessary to facilitate the transition from the existing regime in the new Member States to that resulting from the application of the common agricultural policy.

187 It is also necessary to point out that, as is clear from what has been stated earlier in the present judgment, the system of levying charges on surplus stocks of products in free circulation in the new Member States on 1 May 2004, provided for in Article 4 of Regulation No 1972/2003, which included the levying of charges on surplus stocks held by individual traders, was one of the transitional measures which could be adopted by the Commission under the first paragraph of Article 41 of the [2003] Act of Accession.

188 Consequently, the measures necessary to safeguard the effectiveness of that system of charges must also be covered by the latter provision since, otherwise, the objectives on the Community market which the system at issue sought to attain, and which were nonetheless necessary to facilitate the transition from the existing rules in the new Member States to those resulting from the application of the common agricultural policy, could not have been achieved.

189 It is for that reason necessary to examine whether ... the fact of levying, on products subject to a suspensive regime or in transport in the enlarged Community after completing export formalities, the *erga omnes* import duty applicable on the day on which they were placed in free circulation pursuant to Article 3 of Regulation No 1972/2003 was essential to ensure the effectiveness of Article 4 of that regulation.

190 In this regard, the Commission has wide powers to adopt measures in matters concerning the common agricultural policy (Case 265/87 *Schröder HS Kraftfutter* [1989] ECR 2237, paragraph 22, and Case C-445/00 *Austria v Council* [2003] ECR I-8549, paragraph 82). Article 3 of Regulation No 1972/2003 may therefore be found to be unlawful only if it is concluded that the measure provided for under Article 3 was manifestly unnecessary to safeguard the effectiveness of Article 4 thereof.

191 As the Commission points out, had it not been for the measures referred to in Article 3 of Regulation No 1972/2003, traders established in the new Member States could have artificially reduced their surplus stocks of the products at issue by placing them under a suspensive regime in one or more Member States, old or new, prior to 1 May 2004. In so doing, those traders would not have been required to pay the charge laid down in Article 4 of Regulation No 1972/2003 in their country of origin in so far as they were not in possession thereof of surplus stocks on 1 May 2004.

192 The products placed under a suspensive regime would still have been available to them in other Member States and the traders concerned could have placed them in free circulation in the enlarged Community after 1 May 2004 without having to pay the contested charge, something which would have deprived Article 4 of Regulation No 1972/2003 of all effect.

193 It must therefore be concluded that measures such as those provided for in Article 3 of Regulation No 1972/2003 were necessary in order to safeguard the effectiveness of Article 4 of that regulation.'

124 As the General Court noted, the first paragraph of Article 41 of the 2003 Act of Accession confers on the Commission the power to adopt, during a transitional period of three years, all the measures necessary to facilitate the transition from the existing regime in the new Member States to that resulting from the application of the common agricultural policy under the conditions set out in that Act of Accession.

125 With regard to the rules applicable to the common organisation of the markets, points 1 to 4 of Annex IV to the 2003 Act of Accession fix as their objectives the prevention of the build-up of surplus stocks and their elimination.

126 By virtue of the powers provided for in Article 41 of the 2003 Act of Accession, the Commission is therefore authorised to adopt, on a transitional basis, special measures in relation to the provisions rendered applicable by that Act of Accession to the new Member States, such as those provided for in Annex IV to that Act and including measures which may derogate from them, in so far as the conditions set out in Article 41 are complied with.

127 Consequently, the argument concerning the infringement of the hierarchy of norms can be upheld in relation to the measures adopted by the Commission only if it is held that they were not necessary to attain the objectives thus fixed in agricultural matters.

128 In that regard, the General Court was right to reiterate the case-law which confirms that the Commission enjoys wide discretion in regard to the common agricultural policy and that, therefore, judicial review must be limited to verifying that it has not manifestly exceeded the limits of its power of assessment (see, to that effect, Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 80). Therefore, there is no need to adjudicate on whether the measure adopted by the Commission is the most appropriate, the purpose of judicial review being rather to establish whether it is not manifestly inappropriate.

129 In the present case, the General Court set out in detail, in paragraphs 191 and 192 of the judgment under appeal, the reasons for which Article 4 of Regulation No 1972/2003 would be rendered ineffective if the Commission had not introduced the measures provided for under Article 3 of that regulation.

130 Thus, in accordance with that Article 4, the products referred to are subjected to an *erga omnes* import duty where the inventoried stocks in the new Member States are shown to be in surplus on 1 May 2004. In order to avoid payment of that charge, the traders could place all the products capable of being classified as in surplus under a suspensive regime, on the basis of which it would be possible for them to place the products concerned in free circulation without paying, in conformity with the provisions of Chapter 5 of Annex IV to the 2003 Act of Accession, that *erga omnes* import duty.

131 With regard specifically to those provisions, the Court has already held that they introduce preferential treatment the benefit of which can be obtained only if certain formalities are completed (see, to that effect, Case C-248/09 *Pakora Pluss* [2010] ECR I-7697, paragraphs 39 to 41).

132 Those preferential terms cannot however be used in order to avoid the obligation to pay the *erga omnes* import duty laid down in Article 4 of Regulation No 1972/2003 where it is established that there are surplus stocks.

- 133 Thus, by subjecting to an *erga omnes* import duty products coming from the new Member States which have been placed under one of the suspensive regimes listed by it, Article 3 of Regulation No 1972/2003 appears to be a measure which is essential in order to achieve the objectives expressed in Chapter 4, points 1 to 4 of Annex IV to the 2003 Act of Accession.
- 134 Since it has not been proved that the measures referred to in Article 3 of Regulation No 1972/2003 pursue an objective different from that which seeks to guarantee the effectiveness of Article 4 of that regulation or which lead to a substantial amendment of the 2003 Act of Accession, the General Court did not err in law when, in rejecting the Republic of Poland's argument alleging the infringement of the principle of the hierarchy of norms, it held that the Commission was entitled to take the measures necessary in order to protect the effectiveness of the system of taxation.
- 135 That conclusion also cannot be called into question by the Republic of Poland's argument alleging the lack of a causal link, which submits that it would have been sufficient to subject to the customs duties laid down in Article 3 of Regulation No 1972/2003 not all the products referred to, whatever the quantity thereof, but only the surplus quantities of those products.
- 136 While the Republic of Poland claims that the General Court failed to verify whether the measure advocated by it would have been more appropriate, in fact it is criticising it for not having exceeded the limits of judicial review which must be respected by it when assessing the powers enjoyed by the Commission when it adopts measures in the field of the common agricultural policy.
- 137 It follows from the foregoing that the fourth ground of appeal must be rejected as unfounded.

The fifth ground

– Arguments of the parties

- 138 By the fifth ground of appeal, alleging infringement of Article 253 EC, the Republic of Poland criticises the General Court for having found the statement of reasons given for Article 3 of Regulation No 1972/2003 insufficient.
- 139 According to the Republic of Poland, since the reasoning for Article 3 of Regulation No 1972/2003 does not emerge clearly from the recitals in the preamble to that regulation and can be extracted only by means of 'complex' judicial interpretation, it clearly does not fulfil the requirements set out in Article 253 EC. The General Court's reasoning, stating that Article 3 of the Regulation No 1972/2003 regulation is intended to supplement Article 4 thereof, and that therefore no separate reasoning is required, is clearly erroneous.
- 140 The Republic of Poland notes that the substantive scope of Article 3 of Regulation No 1972/2003 is broader than that of Article 4 of that Regulation, Article 4 referring only to surplus stocks of the products referred to whereas Article 3 applies to all quantities of the products referred to subject to the suspensive regime. It adds that the General Court's findings in paragraphs 235 and 236 of the judgment under appeal, concerning the process of adoption of Regulation No 1972/2003, also fail to satisfy the requirement to state reasons with regard to the traders concerned, who were, in the absence of a statement of reasons for Article 3 of the Regulation, deprived of the possibility of knowing whether there was a sufficient legal basis for imposing charges upon them.
- 141 The Commission claims that the absence, in the recitals in the preamble to Regulation No 1972/2003, of specific reasons for Article 3 of that regulation, does not make it possible to hold that there is no reasoning whatsoever to justify the measures set out in that article. According to the Commission, the General Court provided a correct and full analysis of the compatibility of the reasoning for that Article 3 with the requirements flowing from Article 253 EC.

– Findings of the Court

¹⁴² With regard to the duty to state reasons under Article 253 EC, the General Court pointed out the following:

‘214 According to settled case-law, the statement of reasons required by Article 253 EC must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review (Joined Cases C-138/03, C-324/03 and C-431/03 *Italy v Commission* [2005] ECR I-10043, paragraph 54 and the case-law cited).

215 That requirement must be appraised by reference to the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see *Italy v Commission*, ... paragraph 55 and the case-law cited).

216 In the case of a regulation, the statement of reasons may be limited to indicating the general situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other (Case 3/83 *Abrias and Others v Commission* [1985] ECR 1995, paragraph 30, and Case C-342/03 *Spain v Council* [2005] ECR I-1975, paragraph 55).

217 Moreover, the Court has repeatedly held that if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for the various technical choices made (see, inter alia, Case C-310/04 *Spain v Council* [2006] ECR I-7285, paragraph 59 and the case-law cited).’

¹⁴³ Since none of the recitals in the preamble to Regulation No 1972/2003 clearly mentions the specific reasons which led the Commission to adopt the measures referred to in Article 3 of Regulation No 1972/2003 in relation to products coming from the new Member States, the General Court put the measures in question in their context and held as follows:

‘229 ... It is clear from recital 3 in the preamble to Regulation No 1972/2003 that one of the essential objectives of that regulation was to avoid the risks of trade deflections, generated by the build-up of surplus stocks, which were liable to disrupt the market organisations.

230 In the logic of Regulation No 1972/2003, that objective was implemented by levying the charge referred to in Article 4 thereof on surplus stocks held in the new Member States, a reference to the fact that that charge was appropriate to attain the objective in question being expressly made in recital 3 in the preamble to the regulation at issue.

231 However, the role of Article 3 of Regulation No 1972/2003 in regard to products coming from the new Member States which were subject to a suspensive regime was merely to supplement the system of levying charges on surplus stocks introduced by Article 4 of that regulation and, more precisely, to safeguard the effectiveness of that provision.

232 With regard to the products at issue coming from the new Member States, the need for the measures referred to in Article 3 of Regulation No 1972/2003 to complete the system of charges is evident since, as has been pointed out in paragraphs 191 to 193 above, it is obvious that, if such measures had not been adopted, any trader holding products likely to be subject to the charge introduced by Article 4 of that regulation could have avoided paying it by placing the products in question under one of the customs arrangements mentioned in Article 3 of the regulation in another Member State.

233 It follows that, with regard to the products at issue coming from the new Member States, the measures referred to in Article 3 of Regulation No 1972/2003 constituted merely a technical choice on the part of the Commission intended to give useful effect to Article 4 of the regulation, and the latter provision was, in turn, the Commission's principal technical choice for the purpose of achieving its objective, which was to prevent the build-up of surplus stocks in the new Member States.

234 Consequently, the conclusion must be drawn that the Commission was not required to provide a more specific statement of reasons for the measures referred to in Article 3 of Regulation No 1972/2003, regard being had to the case-law cited in paragraphs 216 and 217 above, since the reasons given for that regulation expressly identify the objective of preventing the build-up of surplus stocks and the need to introduce a system of charges on such stocks (recital 3) as well as the general situation which led to the adoption of that regulation (recitals 1 and 3, read together). The statement of reasons at issue must therefore be regarded as being sufficient in that regard.'

- 144 With regard to the Republic of Poland's argument alleging the supposedly 'complex' interpretation undertaken by the General Court, that statement, even if proved correct, could not lead to the annulment of the contested paragraphs of the judgment under appeal.
- 145 Having referred, correctly, to the settled case-law concerning the duty to state reasons under Article 253 EC, the General Court held that the principal reasoning of Regulation No 1972/2003 is contained in the first to third recitals in the preamble to that regulation.
- 146 Recital 1 in the preamble to Regulation No 1972/2003 states that the aim of transitional measures is to avoid the risk of deflection of trade, affecting the common organisation of agricultural markets due to the accession. While recitals 2 and 4 in the preamble refer to measures concerning export refunds, recital 3 refers more precisely to trade deflections liable to disrupt the common organisation of the markets and to products moved artificially so as no longer to form part of the surplus stocks stored in the new Member States.
- 147 In the present case, it should accordingly be held that the recitals in the preamble to Regulation No 1972//2003 are such as to permit the persons concerned to have sufficient knowledge of the reasons for those transitional measures to allow the court having jurisdiction to carry out its review.
- 148 That information, which inter alia enabled the General Court, in the context of the second plea alleging the Commission's supposed lack of powers, to carry out a review of the essential nature of the measures set out in Article 3 of Regulation No 1972/2003 in order to maintain the effectiveness of the regime established by that regulation, does not call for more detailed reasoning.
- 149 Furthermore, because one of the arguments of the Republic of Poland proceeds upon the erroneous premiss that the material scope of Article 3 of Regulation 1972/2003 is broader than that of Article 4 of the Regulation, whereas it is clear from the reasoning of the judgment under appeal, set out in the context of the examination of the fourth plea and contained in paragraphs 129 to 133 above, that the measures referred to in Article 3 of Regulation No 1972/2003 were essential in order to ensure the effectiveness of Article 4 of that Regulation, that argument must be rejected on the same grounds.
- 150 Regarding the second argument, relating to the obligation to state reasons with regard to the economic operators, according to the case-law cited in paragraphs 214 and 215 of the judgment under appeal, the interest of the persons concerned, and in particular of the economic operators concerned, constitutes one of the criteria employed in the assessment of the duty to state reasons.
- 151 It is not apparent from paragraphs 229 to 234 of the judgment under appeal that the General Court erred in law with regard to that case-law.

152 It should finally be recalled that, according to settled case-law, where the measure was adopted in a context with which the persons concerned were familiar, summary reasons may be given (see, to that effect, Cases C-301/96 *Germany v Commission* [2003] ECR I-9919, paragraphs 89 to 93, and C-42/01 *Portugal v Commission* [2004] ECR I-6079, paragraphs 69 and 70).

153 Thus, the General Court was right when, in paragraphs 235 and 236 of the judgment under appeal, it held as follows:

‘235 That conclusion is strengthened by the context within which Regulation No 1972/2003 was adopted. The Republic of Poland does not deny that it was closely associated with the process by which that regulation was adopted, since it took part as an observer in various meetings of the committee which discussed its adoption. Moreover, the Republic of Poland engaged in extensive correspondence with the Commission on this question. Finally, it is evident from the file that the Commission demonstrated its willingness to discuss the various issues concerning the regulation and to consider possible changes before the regulation was adopted.

236 It must also be emphasised that it is evident from the file that the Commission discussed specifically with the Republic of Poland, first, the question whether the adoption of the measures referred to in Article 3 of Regulation No 1972/2003 was within the powers of that institution under Article 41 of the Act of Accession and, second, the reasons which underlay the adoption of those measures.’

154 It follows from the foregoing that the fifth ground of appeal must be rejected as unfounded.

The sixth ground

– Arguments of the parties

155 By the sixth ground of appeal, alleging infringement of the principle of the free movement of goods, the Republic of Poland criticises the General Court’s finding that the measures provided for under Article 3 of Regulation No 1972/2003, adopted on the basis of Article 41 of the 2003 Act of Accession, cannot, in any case, be assessed in the light of their compliance with Article 25 EC. In so ruling, the General Court refused to examine the substance of the plea relied upon by the Republic of Poland.

156 The interpretation by the General Court of Case 136/77 *Racke* [1978] ECR 1245 was wrong in so far as the decisive factor to take into account in the assessment of the lawfulness of the measures at issue in that case was the nature of the levies at issue and not who adopted them. The General Court was wrong to consider that the transitional measures could constitute a derogation from the rules which would otherwise apply to a given legal situation, such as Article 25 EC, whereas Article 41 of the 2003 Act of Accession does not authorise such a derogation, and any attempt to assume the existence of such a derogation on the basis of a teleological approach would be bound to fail on account of the fact that the measures provided for under Article 3 of Regulation No 1972/2003 are not necessary to achieve the objectives of that regulation. The Republic of Poland adds that the reasoning of the General Court in Case 119/86 *Spain v Council and Commission* [1987] ECR 4121 cannot be applied in the present case, since the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23; ‘the 1985 Act of Accession’) contains an express authorisation for the adoption of a supplementary mechanism applicable to trade.

157 The Commission considers that the Republic of Poland’s interpretation of the judgment under appeal is wrong. With regard to the reference to the judgment in *Racke*, the Commission states that the examination undertaken by the General Court concerned, rightly, the nature of the measures and not

who adopted them. With regard to the reference made to the 1985 Act of Accession, the Commission does not accept that the concept of a ‘supplementary mechanism applicable to trade’ would allow derogations from the general principles of trade whereas that of ‘transitional measures’ would not.

– Findings of the Court

158 With regard to the alleged infringement of the principle of the free movement of goods, the General Court held as follows:

‘179 The argument put forward by the Republic of Poland cannot be accepted. Contrary to that argument, levying of the charge imposed by Article 3 of Regulation No 1972/2003 did not infringe the prohibition of customs duties and charges having equivalent effect laid down in Article 25 EC because that charge was not imposed unilaterally by a Member State but was a Community measure adopted, on a temporary basis, in order to address certain difficulties for the common agricultural policy arising from the accession of ten new Member States to the European Union (see, to that effect, ... *Racke* ..., paragraph 7).

180 Furthermore, it must be pointed out that the Commission adopted Regulation No 1972/2003, and, consequently, Article 3 thereof, on the basis of a provision which allowed it to adopt the transitional measures necessary to facilitate the transition from the rules existing in the new Member States to those resulting from the application of the common agricultural policy, that is to say, Article 41 of the [2003] Act of Accession. However, those transitional measures could constitute, inter alia, derogations from the rules which would otherwise apply to a given legal situation, such as Article 25 EC. Consequently, the Court’s review must simply deal with the question whether the measures introduced by Article 3 of Regulation No 1972/2003 were an integral part of the transitional measures which could be adopted under that provision of the [2003] Act of Accession. If so, the scheme cannot in principle be criticised as being contrary to the provisions contained in the Accession Treaty or the [2003] Act of Accession on the prohibition of customs duties (see, to that effect, ... *Spain v Council and Commission* ..., paragraph 15).

181 Consequently, the Republic of Poland cannot usefully invoke an infringement of the principle of free movement of goods and, in particular, of Article 25 EC in order to challenge the legality of the duties introduced by Article 3 of Regulation No 1972/2003 ...’

159 Contrary to what is argued by the Republic of Poland, it is not apparent from the abovementioned paragraphs of the judgment under appeal that measures such as those referred to in Article 3 of Regulation No 1972/2003 cannot be contested in the light of Community law.

160 The General Court held, in interpreting *Racke*, that the levying of the charges imposed by Article 3 of Regulation No 1972/2003 does not infringe the prohibition laid down in Article 25 EC since those charges constitute temporary Community measures adopted in order to enable the authorities concerned to respond to certain difficulties which may arise in the agricultural sector following the accession of ten new Member States. It was therefore not the status of the person adopting the measures, but the character of the charges at issue which was the decisive factor to take into account in the context of that assessment.

161 Moreover, the interpretation by the General Court of *Racke* did not preclude it from adding, correctly, referring to the judgment in *Spain v Council and Commission*, that the adoption of transitional measures may be criticised as being contrary to the provisions concerning the prohibition of customs duties where it is apparent that the measures put in place are not an integral part of the transitional measures which can be adopted under the relevant provision of the 2003 Act of Accession.

162 It follows that the Republic of Poland’s argument that the General Court interpreted the judgment in *Racke* in such a way as to rule out any possibility of criticising the measures provided for under Article 3 of Regulation No 1972/2003 is unfounded.

- 163 In addition, the General Court cannot be criticised for not having ruled on the substance. Regarding the question whether the measures put in place in Article 3 of Regulation No 1972/2003 are an integral part of the transitional measures which may be adopted under Article 41 of the 2003 Act of Accession, reference should be made to the General Court's assessment, in its examination of the fourth plea in paragraphs 189 to 193 of the judgment under appeal, referred to in paragraphs 129 to 133 of the present judgment, of the essential nature of the measures provided for in Article 3 of Regulation No 1972/2003 in order to ensure the effectiveness of those referred to in Article 4 of the Regulation.
- 164 Also to be rejected is the Republic of Poland's argument that the judgment in *Spain v Council and Commission* cannot be applied to the present case, on the ground that the 1985 Act of Accession contains an express authorisation to introduce a 'supplementary mechanism', whereas the 2003 Act of Accession does not provide such an authorisation, since the 2003 Act of Accession provides expressly, in its Article 41, for the introduction of all the transitional measures necessary to facilitate the transition from the regime applicable in the new Member States to the Community regime, it being possible — as is apparent from paragraphs 124 to 133 above — for those measures to contain derogations which are essential to attain the objectives pursued by that Act of Accession.
- 165 It follows from the foregoing that the sixth ground of appeal must be rejected as unfounded.

The seventh ground

– Arguments of the parties

- 166 By the seventh ground of appeal, alleging infringement of the principle of non-discrimination on grounds of nationality, the Republic of Poland criticises the General Court for having found that the difference in treatment of Polish traders and traders from other Member States was objectively justified. The Republic of Poland submits that the infringement of that principle of non-discrimination results not so much from the application of different norms as from the lack of a reason objectively justifying the application of those norms.
- 167 First, the Commission has not proved that the risk of speculation derived principally from the flow of goods coming from Poland, basing itself, arbitrarily, on the objective of preventing a risk of 'unilateral' disturbance, whereas the risk could, in reality, equally have resulted from movements of goods coming from the old Member States.
- 168 Second, even supposing that the risk of speculation derived mainly from the movement of goods coming from Poland, it would have been sufficient, according to the Republic of Poland, to maintain for a transitional period the import duties resulting from the preferential regime instead of introducing higher *erga omnes* duties. Thus, the General Court failed to rule on the Republic of Poland's argument that the need to prevent the risk of speculation arising from the flows of goods coming from Poland could not objectively justify the difference in treatment applied during the period provided for in Article 3 of Regulation No 1972/2003 to operators from the new Member States compared to those of the old Member States.
- 169 The Commission claims that the General Court examined the question of the difference in treatment of traders in the old Member States and those in the new Member States by ruling, with regard to the flow of goods coming from the new Member States, on the need to ensure the effectiveness of the charge introduced in Article 4 of Regulation No 1972/2003 and, with regard to the flow of goods coming from the old Member States, on the need to avoid double payment of export refunds. The Commission considers that, contrary to what was submitted by the Republic of Poland, the General Court took into account the risk of 'bilateral' disturbance. Regarding the amount of import duties, the Commission considers that that argument falls within the scope of the proportionality principle, the infringement of which was not however argued in relation to Article 3 of Regulation No 1972/2003.

– Findings of the Court

170 With regard to the alleged infringement of the non-discrimination principle, the General Court held as follows:

‘199 As has been pointed out in paragraphs 128 to 130 above, although the principle of non-discrimination between agricultural producers in the Community laid down in the second subparagraph of Article 34(2) EC requires that comparable situations should not be treated in a different manner, or different situations in the same manner, unless such treatment is objectively justified, the fact remains that, on 1 May 2004, the agricultural situation in the new Member States was radically different from that in the old Member States.

200 That means that no discrimination could result from the mere application of different rules to traders in the new Member States, on the one hand, and to traders in the old Member States, on the other.

201 In the present case, as the Commission has rightly pointed out, although the objective of the provisions referred to in Article 3(2) of Regulation No 1972/2003 in regard to products coming from the new Member States was to prevent traders from being able artificially to reduce the stocks built up before 1 May 2004 by using one of the suspensive regimes so as to place them in free circulation after that date as products not subject to import duties, those provisions clearly had a different objective in regard to products coming from the Community and which were subject to a suspensive regime or which were in transport within the enlarged Community after having been the subject of export formalities.

202 Since the latter products were not subject to the contested charge referred to in Article 4 of Regulation No 1972/2003, the objective of the provisions in Article 3(2) of that regulation could not be, in regard to them, to safeguard the effectiveness of the charge in question.

203 On the contrary, indeed, the objective of the provisions referred to in Article 3(2) of Regulation No 1972/2003 was, *inter alia*, to prevent agricultural products exported from the Community before 1 May 2004 in respect of which an export refund had been paid from being subsequently placed under a suspensive regime or being in transport after having been the subject of export formalities within the enlarged Community, and being in free circulation in the territory of the European Union without duty having been paid on them, since an export refund could once again be paid, unjustifiably, in respect of those products. That objective is set out in recital 4 in the preamble to Regulation No 1972/2003, which states the following:

“It is necessary to prevent products in respect of which export refunds were paid before 1 May 2004 from benefiting from a second refund when exported to third countries after 30 April 2004.”

204 It is for that reason alone that Article 3(2) of Regulation No 1972/2003 provided for an exemption only if the trader provided evidence that no export refund had previously been sought for those products.

205 Since the two objectives being pursued by the provisions contained in Article 3 of Regulation No 1972/2003 were necessarily attained by means of different rules for products placed under a suspensive regime which came, on the one hand, from the new Member States and, on the other, from the Community of Fifteen, the application of different rules to those two categories of products cannot be characterised as discriminatory.’

171 It follows from the foregoing that the General Court analysed in detail the regimes to which the imports from the new Member States and those from the old Member States were subject under the provisions of Article 3 of Regulation No 1972/2003. The General Court was correct to find that, as a result of the

different objectives pursued by those provisions concerning products coming from the new Member States and those coming from the old Member States, the application of different regimes in relation to those products cannot constitute an infringement of the non-discrimination principle.

172 First, regarding the argument raised by the Republic of Poland with regard to the Commission and alleging that, in Regulation No 1972/2003, that institution did not prove that the risk of speculation derived principally from the flows of goods coming from Poland, it should be recalled that the appeal is deemed to criticise the judgment under appeal, with the result that that argument must, in conformity with the reasoning already set out in paragraphs 97 and 98 above, be rejected as inadmissible.

173 Second, with regard to the criticism that the General Court should have considered that, in order to prevent the risk of speculation, it was sufficient to maintain, with regard to goods coming from Poland and during the transitional period, the import duties resulting from the preferential regime, the Republic of Poland merely repeats arguments made in the framework of the preceding grounds of appeal, concerning the non-essential character of the measures provided for in Article 3 of Regulation No 1972/2003 and does not expound any legal argument making it possible to hold that the General Court infringed the principle of non-discrimination on grounds of nationality.

174 That argument must also be rejected.

175 It follows from the foregoing that the seventh ground of appeal must be rejected as unfounded.

The eighth ground

– Arguments of the parties

176 By the eighth and final ground of appeal, alleging infringement of the principle of the protection of legitimate expectations, the Republic of Poland criticises the General Court for having held, in paragraph 246 of the judgment under appeal, that the Community had not created a situation capable of giving rise to a legitimate expectation on the part of that Member State or of Polish traders. According to the Republic of Poland, the provisions of the Accession Treaty are themselves a source of legitimate expectations and traders exercising a normal degree of diligence had not been able to assume that Article 41 of the 2003 Act of Accession could have been used to establish provisions derogating from Annex IV, chapter 5, of that Act of Accession.

177 The Commission claims that that Act of Accession, and in particular Article 41 thereof, authorised it to take any appropriate transitional measures. In so far as it is not specified in that provision by what means those measures are to be taken, that provision cannot establish a legitimate expectation.

– Findings of the Court

178 With regard to the principle of the protection of legitimate expectations, the General Court held as follows:

‘245 According to case-law, the principle of the protection of legitimate expectations may be invoked as against Community rules only to the extent to which the Community itself has previously created a situation which could give rise to a legitimate expectation (*Weidacher*, ... paragraph 31 and the case-law cited).

246 However, it must be pointed out that, in the present case, the Community did not create a situation which could have given rise to a legitimate expectation on the part of the Republic of Poland or Polish traders.

247 First of all, the Community did not in any way give the sectors concerned to understand, whether by act or omission, that transitional measures, in particular those ensuring the effectiveness of measures intended to prevent disturbances of the common market caused by the build-up of surplus stocks, would not be adopted when enlargement took place on 1 May 2004.

248 Next, it must be pointed out that any normally diligent trader who placed products under one of the arrangements referred to in Article 3 of Regulation No 1972/2003 before 1 May 2004 must have known, since the publication of the Act of Accession in the *Official Journal [of the European Union]*, that, under the first paragraph of Article 41 thereof, the Commission was empowered to adopt transitional measures in order to bring the rules existing in the new Member States into line with the common organisation of the markets, and that such measures might, in some circumstances, have repercussions on surplus stocks already built up when Regulation No 735/2004 was published and on products subject to a suspensive regime (see, to that effect, *Weidacher*, ..., paragraph 33). Moreover, the Commission communicated the measures envisaged in the present case to the Republic of Poland within the framework of the committee which discussed the adoption of Regulation No 1972/2003. The Republic of Poland cannot therefore argue that its legitimate expectations have been adversely affected.'

179 The General Court was right to hold that the principle of the protection of legitimate expectations had not been adversely affected.

180 According to the Court's settled case-law, any economic operator on whose part an institution has promoted reasonable expectations may rely on the principle of the protection of legitimate expectations. Furthermore, while the principle of the protection of legitimate expectations is one of the fundamental principles of the European Union, economic operators are not justified in having a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained, particularly in an area such as that of the common organisation of the markets, the objective of which involves constant adjustment to reflect changes in economic circumstances (see, to that effect, Joined Cases C-37/02 and C-38/02 *Di Lenardo and Dilexport* [2004] ECR I-6911, paragraph 70 and the case-law cited).

181 The same applies to an acceding Member State (see, to that effect, order of 23 March 2011 in Case C-535/09 P *Estonia v Commission*, paragraph 73).

182 Thus, neither the Republic of Poland nor Polish traders could have entertained a legitimate expectation in the continuance of the legislative situation as it resulted from the 2003 Act of Accession at the time of its signature, because the first paragraph of Article 41 of that Act expressly authorised the Commission to adopt any transitional measures necessary to avoid disturbances on the Community market arising from the pending enlargement.

183 In that regard, it follows from the arguments employed in responding to the fourth substantive ground of appeal relied on by the Republic of Poland that Article 41 of the 2003 Act of Accession allows the Commission to introduce provisions derogating from Chapter 5 of Annex IV to that Act of Accession, where such provisions are essential in order to facilitate the transition from the existing regime in the new Member States to that resulting from the application of the common agricultural policy and to ensure that that policy functions effectively.

184 The eighth and final ground of appeal set out by the Republic of Poland must therefore be rejected as unfounded.

185 It follows from all of the foregoing that none of the grounds of appeal relied on by the Republic of Poland can succeed.

186 The appeal must therefore be dismissed.

Costs

¹⁸⁷ Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings pursuant to Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

¹⁸⁸ Since the Commission has applied for costs to be awarded against the Republic of Poland and the latter has, in essence, been unsuccessful, the Republic of Poland must be ordered to pay the costs.

On those grounds, the Court (Grand Chamber) hereby rules:

- 1. The appeal is dismissed;**
- 2. The Republic of Poland is ordered to bear its own costs and to pay those of the European Commission.**

[Signatures]