Accession, a national organization of the market must no longer operate in such a way as to prevent the Treaty provisions relating to the elimination of restrictions on intra-Community trade from having full force and effect. The expiration of the time-limits for the transition implies therefore that those matters and sectors specifically assigned to the Community are the responsibility of the Community so that, although it is still necessary to take special measures, a decision to adopt them can no longer be made unilaterally by the Member States concerned; they must be adopted within the Community system which is designed to guarantee that the general public interest of the Community is protected.

The fact that after the expiration of the periods referred to above the Community has not yet adopted measures intended to regulate the market in an agricultural product is not a sufficient justification for the maintenance by a Member State of a national organization of the market which includes features which are incompatible with the requirements of the Treaty relating to the free movement of goods.

4. A Member State cannot under any circumstances unilaterally adopt, on its own authority, corrective measures or measures to protect trade designed to prevent any failure on the part of another Member State to comply with the rules laid down by the Treaty.

In Case 232/78

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Advisers, R. Béraud and P. Kalbe, acting as Agents, with an address for service in Luxembourg at the office of Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

FRENCH REPUBLIC, represented by N. Museux, acting as Agent, with an address for service at the French Embassy, Luxembourg,

defendant,

APPLICATION for a declaration that the French Republic has failed to fulfil its obligations under Articles 12 and 30 of the EEC Treaty,

THE COURT

composed of: H. Kutscher, President, Lord Mackenzie Stuart (President of Chamber), P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

I — Facts and procedure

1. Since there is no common organization of the market in mutton and lamb regulatory measures for this market are adopted in France on a national level.

In the first place a number of aids are granted to groups of sheep rearers as part of the "plan for the rationalization of sheep rearing".

In the second place, having regard to the appreciable influence exerted by imports on the formation of market prices in France, efforts are made to stabilize domestic prices by means of a system of restrictions on the importation of meat coming from non-member countries and also from new Member States including the United Kingdom. This system is administered by the Office National Interprofessionnel du Bétail et des Viandes [National Cattle and Meat Trades Board] (hereinafter referred to as "the Board").

Complaints from British trade circles and two notes from the Permanent Representative of the United Kingdom accredited to the European Communities dated 10 January and 28 February 1978 addressed to the Commission (Annexes I and II to the application) indicate that France has continued to apply these national import arrangements after the end of 1977 to the importation of mutton and lamb from the United Kingdom.

2. The Commission, by a letter bearing the reference SG(78) D/1245 dated 2 February 1978, which the Permanent Representation of France to the European Communities received on 3 February 1978, invited the French Government to give its observations on this matter within a period of one month from the date of receipt of that letter.

France, by a letter from its Permanent Representation to the European Communities dated 18 April 1978, which was received by the Commission on 19 April 1978, referred to the serious economic effects which the abolition of the national protective measures in question would have on its market if there was no Community system which offered appropriate guarantees.

The Commission delivered a reasoned opinion dated 22 May 1978 to the effect that France, by applying its national system to the importation of mutton and lamb from the United Kingdom after 31 December 1977, had failed to fulfil its obligations under Articles 12 and 30 of the EEC Treaty.

The French Government in its reply dated 12 June 1978, which the Commission received on 15 June 1978, repeated the economic reasons causing it to continue to apply its system in its entirety to imports from the United Kingdom.

3. Since the Commission was of the opinion that the measures retained in force by the French Republic did not comply with the provisions of the EEC Treaty, it brought an action on 23 October 1978 against the French Republic in respect of its failure to fulfil its obligations under Articles 12 and 30 of the EEC Treaty.

The application was lodged in the Court Registry on 25 October 1978.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — The conclusions of the parties

The *Commission* in its originating application claims that the Court should:

"1. Declare that the French Republic, by continuing after 1 January 1978 to apply its restrictive national system to the importation of mutton and lamb from the United Kingdom, has failed to fulfil its obligations under Articles 12 and 30 of the EEC Treaty;

2. Order the French Republic to pay the costs."

The *Government of the French Republic* in its defence contends that the Court should dismiss the Commission's application.

III — Submissions and arguments of the parties

The *Commission* in its application describes the system set up by the French Republic to restrict the importation of mutton and lamb in the following words:

"1. Imports of frozen mutton and lamb are in principle prohibited subject to certain exceptions.

2. The system applied to imports of live animals and also to fresh and refrigerated mutton and lamb is based on a 'threshold' price protected by a system of bans on imports and of 'surcharges' ('reversements'). It is implemented by the grant or refusal of domestic import licences. Although no maximum limit is imposed the Board issue importers only with 'allocation certificates' ('certificats d'imputation') drawn on

an 'Inclusive import licence' ('licence globale d'importation') which are allotted to them and limited as to quantity and the duration of their validity. The Board issues such import permits only when a certain reference price quotation in France reaches or exceeds the threshold price. If the national reference price quotation stays below that price for one week the issue of import licences is suspended and is resumed if the threshold price is reached during the following week. Imports are banned if the threshold price is not reached for two consecutive weeks, the frontier being opened only if that price has been exceeded for two weeks in succession.

3. In addition the Board imposes a 'surcharge' ('reversement') on imports of live animals for slaughter and of fresh or refrigerated mutton and lamb carcases the amount of which varies according to the domestic quoted reference price of sheep on the French market. The surcharge is fixed at six different flat rates according to the weekly level of the quoted price.

4. The level of the threshold price as well as the amounts of the surcharges are periodically adjusted to the trend of rearers' production costs. The increase in the level of the surcharges paid by importers has been greater than that of the threshold prices, because it has taken into account part of the fall in the value of the currencies of the countries exporting sheep in relation to the French franc so as to lessen the effects of the absence of any specific system of monetary compensation in the French organization of the market."

The Commission points out that the application by a Member State in intra-Community trade:

— Of charges having an effect equivalent to customs duties such as the French "surcharges" on imports of mutton and lamb;

— Of quantitative restrictions on imports such as closing the French frontier to Community mutton and lamb; and

— Of measures having equivalent effect to quantitative restrictions such as the national system of import licences,

is incompatible with the provisions of the EEC Treaty on the free movement of goods, namely with Articles 12 and 30 thereof.

After the transitional period provided for by the EEC Treaty the application of national measures derogating from the rules on the free movement of goods can no longer be justified — in trade with any Member State — either by the absence of any common organization of the market (cf. Case 68/76, *Commission of the European Communities* v *French Republic* [1977] 1 ECR 515) or by their incorporation in a national market organization in the products in question (cf. Case 48/74, *Charmasson* v *Minister for Economic Affairs and Finance* (Paris) [1974] 2 ECR 1383).

According to the Commission, restrictions on imports of mutton and lamb from the United Kingdom could no longer be justified under Article 60 (2) of the Act of Accession after the end of 1977.

The *Government of the French Republic* submits in its defence that in relation to the United Kingdom the provisions of the Treaty of Rome must be construed in the light of the special wording of the Act of Accession.

Contrary to what the Treaty of Rome has provided the Act of Accession has not laid down any principle that there is a "transitional period". The Act of Accession contains "derogations" or "transitional measures", which were to terminate at the end of 1977, subject to "the dates, time-limits and special provisions" provided for in that Act (Article 9 (2)), but no transitional period. Consequently the case-law of the Court of Justice as laid down in the *Charmasson* case cannot be applied to the very different situation resulting from the Act of Accession.

Article 60 (2) of the Act of Accession is an example of the application of the concept of the "special provision" to which Article 9 is subject. Having regard to the fundamentally different patterns of British agriculture and of farming in the old Member States the latter recognized at the time of the accession negotiations that it was impossible to apply the rules laid down by the Treaty of Rome relating to freedom of movement in their entirety to such fundamentally dissimilar economies. In conformity with the logic of the situation they therefore adopted a specific transitional formula which enabled the national organizations of the market to continue until the Community should have replaced them with a common organization. This was not a waiver of the transitional nature of those provisions but an acknowledgement that it was necessary to find specific solutions to exceptional situations.

The fact that that is the proper interpretation to be given to Article 60 (2) of the Act of Accession is confirmed by a comparison between that provision and Article 45 of the Treaty of Rome, which is the corresponding provision. Unlike Article 45 of the Treaty of Rome, Article 60 (2) of the Act of Accession does not provide for any transitional arrangements and does not refer to any concept of time-limits. Article 60 (2), in the literal sense of its wording, provides that there may be derogations from the provisions of Title I and that the national organization may be maintained "until the common organization of the market for these products is implemented". A comparison between Article 60 (2), which is a "special provision", and the other special provisions provided for by the Act of Accession, especially Articles 54 and 64 and Protocol No 18 on the import of New Zealand butter and cheese, confirm that what has just been said is well founded. This comparison in fact makes it clear that if the special provision is intended to continue without being subject to any condition other than the one which it stipulates itself, there is no mention of the period within which it is to be implemented. *A contrario*, if, notwithstanding the special provision, the end of 1977 has been adopted as the irrevocable time-limit, such a provision has been formally written in following the special provision.

The Government of the French Republic in an annex to its defence briefly describes the main features of the French market in mutton and lamb which justify maintaining in force the measures challenged by the Commission. They are as follows:

(a) The home production of mutton and lamb is not sufficient to meet home demand;

(b) The regions where sheep are reared in France are mountains and foothills which are less-favoured areas;

(c) The price level in France, compared with that of other producing countries, is accounted for by high production costs and a difference of approach in the arrangements for guaranteeing farmers'earnings;

(d) The stable production of home-reared mutton and lamb in France presents a contrast to the wide seasonal variations found on the markets of the other producers.

The system set up by the French authorities, which is operated by reckoning from the threshold price, makes it possible to avoid serious disturbances of the market by sudden seasonal fluctuations adversely affecting producers' earnings and stable consumer prices. In all respects this system is comparable to the mechanisms provided for by the rules in respect of agricultural products of which there is a shortage in the EEC.

Taking into account the mechanisms of the organization of the market in mutton and lamb in France the existing provisions relating to imports form the principal part without which that organization would cease to serve any useful purpose for maintaining the standard of living of producers who for the most part are located in less-favoured areas. The abrupt disappearance of this organization of the market without any safeguards would inflict on them irreversible damage and many farmers would be forced out of business.

The *Commission* in its reply decided not to submit a detailed analysis of the French Government's arguments in its defence and referred to the observations which it submitted in Case 118/78, *C. J. Meijer B.V.* v *The Department of Trade* in Case 231/78, *Commission of the European Communities* v *United Kingdom of Great Britain and Northern Ireland*, in which the Republic of France intervened ([1979] ECR). The question whether under Article 9 of the Act of Accession the applicability of Article 60 (2) of that Act is limited temporally to 31 December 1977 or whether on the other hand the provision allows Member States to maintain, without any fixed temporal limitation, obstacles to the free movement of certain agricultural products, which is the central issue in this case, is posed in exactly the same terms as in the two cases mentioned above.

The *Government of the French Republic* decided not to deliver a rejoinder.

IV — Oral procedure

At the hearing on 14 June 1979 the Commission, represented by R. Béraud, and the Government of the French Republic, represented by N. Museux, presented oral argument.

During the hearing the Commission amended its conclusions and, having regard to the time-limits laid down in Articles 35, 36 and 42 of the Act of Accession, requested the Court to declare that the French Republic had failed to fulfil its obligations under Articles 12 and 30 of the EEC Treaty, first, since the date of accession, as far as concerns quantitative restrictions on imports as for example the closing of the French frontier to mutton and lamb from the new Member States — secondly, as

from 1 January 1975, as far as concerns measures having an effect equivalent to such quantitative restrictions — as for example the domestic import arrangements — and, finally, as from 1 July 1977, as far as concerns charges having an effect equivalent to customs duties — as for example the surcharges on imports of mutton and lamb. In order to justify this amendment of the wording of its application the Commission has explained that its application was based on the premise that Article 60 (2) of the Act of Accession could be relied on not only by the new Member States but also by the original Member States and that this provision thus enabled the latter to ban imports of products from the new Member States during the period from the date of accession to 31 December 1977. Now it is the Commission's view that the effect of the judgment delivered during the proceedings in this case by the Court on 29 March 1979 in Case 231/78, *Commission of the European Communities* v *United Kingdom of Great Britain and Northern Ireland* ([1979] ECR) was that the Court intended to rule out the possibility of the original Member States' availing themselves of Article 60 (2) of the Act of Accession. For that reason the Commission took the view that it must amend the dates as from which the relevant failures by the defendant to fulfil its obligations occurred.

The Advocate General delivered his opinion at the hearing on 4 July 1979.

Decision

1 The Commission, by an application lodged at the Registry on 25 October 1978, brought before the Court of Justice, pursuant to Article 169 of the EEC Treaty, an action for a declaration that "the French Republic, by continuing after 1 January 1978 to apply its restrictive national system to the importation of mutton and lamb from the United Kingdom, has failed to fulfil its obligations under Article 12 and under Article 30 of the EEC Treaty". The French Government's principal defence has been the contention that it is entitled, by virtue of Article 60 (2) of the Act of Accession, to maintain the import restrictions referred to as long as mutton and lamb are not covered by a common organization of the markets.

2 The Commission, with reference to the judgment delivered by the Court on 29 March 1979 in Case 231/78, *Commission of the European Communities* v *United Kingdom of Great Britain and Northern Ireland*, [1979] ECR, during the proceedings in this case, amended its conclusions during the oral procedure and requested the Court, with due regard to the idea underlying the judgment, to declare that the national system for imports of mutton and lamb maintained by the French authorities was incompatible with Articles 12 and 30 of the Treaty, in certain respects as from 1 July 1977, in other respects as from 1 January 1975 and finally, in yet other respects, from the date of accession. In the opinion of the Commission it follows from the

above-mentioned judgment that only the new Member States were entitled to rely on the provisions of Article 60 (2) of the Act of Accession and that consequently, as far as the original Member States are concerned, it is with reference to the dates laid down in Articles 35, 36 and 42 of the Act of Accession that the compliance with the Treaty of restrictions on imports applicable to products coming from a new Member State should be determined.

3 The amended conclusions submitted by the Commission during the hearing are inadmissible inasmuch as they do not comply with the provisions of Article 38 of the Rules of Procedure. As provided for in that provision the parties are to state the subject-matter of the dispute in the document instituting the proceedings. Even though Article 42 of the Rules of Procedure allows fresh issues to be raised in certain circumstances a party may not alter the actual subject-matter of the dispute during the proceedings. Consequently the substance of the application must be examined solely with reference to the conclusions contained in the application instituting the proceedings, that is to say to those claims relating to the period subsequent to 1 January 1978.

4 It follows from the reasoning on which the judgment of 29 March 1979 in the above-mentioned Case 231/78 *(Commission of the European Communities* v *United Kingdom of Great Britain and Northern Ireland)* [1979] ECR is based that Article 60 (2) of the Act of Accession ceased to have effect at the end of 1977. Consequently that provision does not apply to the period in respect of which the Commission has requested the Court to confirm the failure of the French Republic to fulfil its obligations. It must not therefore be taken into consideration when determining the present dispute, which must be resolved on the basis of the provisions of the EEC Treaty alone, namely Articles 12 and 30 thereof. The French Government's arguments based on the Act of Accession must therefore be excluded from the consideration of the dispute.

The substance

5 It is common ground that imports of mutton and lamb into France are subject to rules restricting importation thereof based on a "threshold price" which is protected by a system of import bans and "surcharges" ("reversements"). Imports of mutton and lamb into France are permitted only if a certain quoted reference price reaches or exceeds the threshold price level. In addition a "surcharge", the amount whereof varies according to the national quoted reference price of mutton and lamb on the French market, is levied on imports of live animals for slaughter and of fresh or refrigerated mutton and lamb carcases.

6 The French Government does not dispute the fact that this system is incompatible with the Treaty provisions relating to the elimination of obstacles to the free movement of goods within the Community. However, with a view to justifying the maintenance of this system and its application to imports of mutton and lamb from the United Kingdom it puts forward in substance three arguments. First it emphasizes the serious social and economic effects on the economy of certain economically less-favoured areas for which sheep-rearing is an important source of wealth, of discontinuing the national organization of the market. Secondly, it draws attention to the progress made in the work being carried out with a view to setting up a common organization of the market in mutton and lamb and stresses the harmful effects of interposing a phase of free trade between the discontinuance of the national organization and replacing it by a common organization. Finally it points to the inequality in the field of competition deriving from the fact that it would have to abolish its own organization of the market even though in the United Kingdom a national organization of the market based on the system of "deficiency payments", which results in subsidizing exports of mutton and lamb to France, would remain intact in the sector under consideration.

7 Although the Court is aware of the genuine problems which the French authorities have to solve in the sector under consideration and of the desirability of achieving the establishment, in the shortest possible time, of a common organization of the market in mutton and lamb, it must again draw attention to the fact that, as it has already stressed in its judgment of 2 December 1974 in Case 48/74, *(Charmasson* v *Minister for Economic Affairs and Finance (Paris)* [1974] 2 ECR 1383) and in its judgment of 29 March 1979 in Case 231/78 to which reference has already been made, after the expiration of the transitional period of the EEC Treaty, and, as far as the new Member States are concerned, after the expiration of the time-limits for the transition specifically provided for in the Act of Accession, a national organization of the market must no longer operate in such a way as to prevent the Treaty provisions relating to the elimination of restrictions on intra-Community trade from having full force and effect, since the Community institutions are henceforth responsible for the requirements of the markets concerned. The expiration of the time-limits for the transition implies therefore that those matters and sectors specifically assigned to the Community are the responsibility of the Community so that, although it is still necessary to take special measures, a decision to adopt them can no longer be made unilaterally by the Member States concerned; they must be adopted within the Community system which is designed to guarantee that the general public interest of the Community is protected.

8 Consequently it is for the competent institutions and for them alone to adopt within the appropriate periods the requisite measures with a view to finding, in a Community context, a comprehensive solution of the problem of the market in mutton and lamb and of the special difficulties which arise in this connexion in certain areas. Nevertheless, the fact that this work has not yet been successful is not a sufficient justification for the maintenance by a Member State of a national organization of the market which includes features which are incompatible with the requirements of the Treaty relating to the free movement of goods, such as bans on imports and levying dues on imported products, under any designation whatsoever.

9 The French Republic cannot justify the existence of such a system with the argument that the United Kingdom, for its part, has maintained a national organization of the market in the same sector. If the French Republic is of the opinion that that system contains features which are incompatible with Community law it has the opportunity to take action, either within the Council, or through the Commission, or finally by recourse to judicial remedies with a view to achieving the elimination of such incompatible features. A Member State cannot under any circumstances unilaterally adopt, on its own authority, corrective measures or measures to protect trade designed to prevent any failure on the part of another Member State to comply with the rules laid down by the Treaty.

10 The Court must therefore conclude that the national organization of the market in mutton and lamb maintained by the French authorities is incompatible with the Treaty inasmuch as it includes the fixing of a threshold price protected by a system of import bans and the levying of a due on imports of mutton and lamb coming from another Member State. It should be emphasized that this finding does not prevent the French authorities from adopting, until a common organization of the market is established, any measure granting aid for the benefit of the sector under consideration, of such a kind that it is compatible with the provisions of the Treaty.

11 Consequently it follows that by continuing after 1 January 1978 to apply its restrictive national system to the importation of mutton and lamb from the United Kingdom the French Republic has failed to fulfil its obligations under Articles 12 and 30 of the EEC Treaty.

Costs

12 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party shall be ordered to pay the costs. Since the defendant has failed in its submissions it must be ordered to pay the costs.

On those grounds

THE COURT

hereby:

1. **Declares that by continuing after 1 January 1978 to apply its restrictive national system to the importation of mutton and lamb from the United Kingdom the French Republic has failed to fulfil its obligations under Articles 12 and 30 of the EEC Treaty;**

2. **Orders the defendant to pay the costs.**

Kutscher Mackenzie Stuart Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 25 September 1979.

A. Van Houtte
Registrar

H. Kutscher
President