3. Since Community institutions enjoy a margin of discretion in the choice of the means needed to achieve their commercial policies, traders are unable to claim that they have a legitimate expectation that an existing situation which is capable of being altered by decisions taken by those institutions within the limits of their discretionary power will be maintained.

In Case 52/81

OFFENE HANDELSGESELLSCHAFT IN FIRMA WERNER FAUST, Hamburg, represented by H. W. Samuel, G. Horeis, D. Mankowski, K.-D. Quack and J. D. Hisam, Rechtsanwälte in Hamburg, with an address for service in Luxembourg at the Chambers of E. Arendt, 34B Rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by M. Hilf, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of O. Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for damages under the second paragraph of Article 215 of the EEC Treaty,

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

The *Offene Handelsgesellschaft in Firma Werner Faust* [commercial partnership, trading as Werner Faust] (hereinafter referred to as "Faust") is an undertaking which carries on business in the Federal Republic of Germany as an import agency on cif terms. A substantial part of its business consists in importing preserved mushrooms from Taiwan for the account of principals.

Preserved mushrooms come within the common organization of the market in products processed from fruit and vegetables established by Regulation (EEC) No 865/68 of the Council (Official Journal, English Special Edition 1968 (I), p. 225). That regulation authorized the Commission to adopt, *inter alia,* protective measures where imports of products from non-member countries threatened to disrupt the Community market.

Such measures were adopted for the first time in 1974 by means of Regulation No 2107/74 of the Commission of 8 August 1974 (Official Journal, 1974, L 218, p. 54) which made all imports of preserved mushrooms from non-member countries subject to the submission of an import licence. That licence was issued to the party applying therefor for a quantity which was calculated by reference to the quantity of products which that party had imported in the corresponding month of the preceding year or by reference to the average quantity imported during the three preceding years. Article 1 (4) of that regulation expressly excluded from that reference system imports from non-member countries which stated their willingness to give certain guarantees, in particular that they would observe a certain minimum level of prices and that they would prevent any deflection of trade.

Towards the end of 1976, the Commission, considering that the pressure from imports had eased, adopted Regulation (EEC) No 3096/76 of 17 December 1976 (Official Journal 1976, L 348, p. 26) relaxing those protective measures.

On 14 March 1977 the Council adopted Regulation (EEC) No 516/77 which codified and supplemented the basic provisions on the common organization of the market in products processed from fruit and vegetables (Official Journal 1977, L 73, p. 1). Article 14 (2) of that regulation authorizes the Commission to adopt, *inter alia,* the necessary measures in a case where the market is threatened by serious disturbances. The detailed rules for the application of those measures were adopted by Council Regulation (EEC) No 521/77 of 14 March 1977 (Official Journal 1977, L 73, p. 28) Article 2 whereof enumerates the protective measures applicable with regard to imports from non-member countries, providing in particular that those measures may "be restricted to products imported from or originating in particular countries, to exports to particular countries or to particular qualities or types of presentation". Article 3 of that regulation provides that its application is to respect the Community's obligations under international agreements.

Pursuant to Regulation No 516/77, the Commission adopted on 25 May 1978, by means of Regulation (EEC) No 1102/78 (Official Journal 1978, L 139, p. 26), fresh protective measures consisting in the immediate suspension of the issue of import licences for mushrooms. Under the terms of Article 2 (1) of that regulation the import ban was not to apply to "preserved mushrooms originating in third countries which the Commission accepts as being able to ensure that their exports to the Community do not exceed a level agreed by the Commission". Article 3 stated that the People's Republic of China was to benefit under the terms of Article 2.

By Regulation (EEC) No 1213/78 of 5 June 1978 (Official Journal 1978, L 150, p. 5) the Commission also excluded Taiwan from the application of the protective measures. That regulation was, however, almost immediately repealed by Commission Regulation (EEC) No 1449/78 of 28 June 1978 (Official Journal 1978, L 173, p. 25). The Commission argues that it was once again obliged to extend the protective measures to apply to Taiwan on account of a substantial and unforeseen increase in applications for import certificates in respect of preserved mushrooms from that country.

In 1979, import certificates were issued solely to the People's Republic of China, which had undertaken to restrict its exports to the Common Market to 20 000 tonnes and, towards the end of the year, to South Korea which had agreed to restrict its exports to the Community to 1 500 tonnes. Taiwan, which had refused to accept a quota of 1 000 tonnes, was only able to place on the common market 400 tonnes which were already in German customs authorities' warehouses.

Similarly, in 1980, the protective measures remained applicable to all non-member countries with the exception of the People's Republic of China and South Korea, until 4 March 1980, when, by the adoption of Regulation (EEC) No 547/80 of that date (Official Journal 1980, L 60, p. 16) the Commission relaxed those protective measures and, in respect of countries which in 1977 and 1978 had exported small tonnages to the Community, authorized the issue of import licences up to a limit of 10% of the total quantities imported in 1977 and 1978. That scheme was not however applied to Taiwan. Taiwan eventually agreed to restrict to 1 000 tonnes its deliveries of preserved mushrooms in the Community in 1980 and, as a result, import licences were finally issued up to that quantity in respect of products from that country.

More recent Community legislation then reduced imports of preserved mushrooms from Taiwan from 14 727.2 tonnes, the figure for 1978, to a negligible quantity (55.3 tonnes) in 1979 and 1 000 tonnes in 1980.

Faust, which in 1978 had received commission of DM 117 593 in respect of imports of 396 128 cartons of Taiwanese mushrooms, imported none in 1979. The quantity of imports in 1980 is not stated but it may be supposed that the same situation occurred in that year.

It claims to have suffered substantial damage (which it specifies in its conclusions) and to have been unable to mitigate that damage by participating in the new patterns of trade established with the People's Republic of China since that country deals exclusively with two or three large importers and, moreover, refuses for political reasons to enter into business relations with under-

takings which also market products from Taiwan.

Faust is of the opinion that the losses which it suffered in 1979 and 1980 are the result of Community regulations on the importation of mushrooms, in particular Commission Regulation (EEC) No 3096/76 of 17 December 1976, Commission Regulation (EEC) No 1102/78 of 25 May 1978 and Commission Regulation (EEC) No 1449/78 of 28 June 1978.

Since those regulations are in its view unlawful it considered that it was entitled to bring an action for damages against the Community under the second paragraph of Article 215 of the EEC Treaty and it did so by application lodged at the Court Registry on 10 March 1980.

On 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. However, it requested Faust to produce certain telex messages which Faust had mentioned in its reply.

By order of 26 October 1981 the Court decided, pursuant to Article 95 (1) and (2) of the Rules of Procedure, to assign the case to the First Chamber.

II — Conclusions of the parties

Faust claims that the Court should:

Order the defendant to pay to the applicant the sum of USD 114 930 plus interest at the rate of 4% from the date of lodging of the application;

Order the defendant to pay the costs.

The *Commission* contends that the Court should:

Dismiss the application;

Order the applicant to pay the costs.

III — Submissions and arguments of the parties

Faust, in assessing the damages which it is claiming, argues that if the trend of imports had continued normally, and in particular if the reference system had been maintained in force, it might have expected its share of imports of preserved mushrooms from Taiwan to reach 19.12%. For each of the two years 1979 and 1980 that would have amounted to 292 380 cartons, that is to say 2 600 tonnes, for which it would have received in each year commission amounting to USD 57 465, making at total of USD 114 930.

Faust then sets out the reasons for its view that the new regulations relating to the grant of import certificates are illegal. It observes that, in adopting Regulation No 3096/76, the Commission abandoned the former reference system which had applied until then without exception and was based on Article 3 of Regulation (EEC) No 2107/74. Faust says that the abandonment of the reference system contravenes the legal principles embodied in Community law requiring equality of treatment and the prohibition of discrimination. The area covered by the prohibition of discrimination, which stems from the general principle of equality, likewise extends to the various industrial and commercial sectors and thus also to the applicant import agency.

In Faust's view, there was no objective reason justifying the abandonment of the reference system mentioned above which was based on the principle of equal

treatment. A substantial proportion of the total imports of mushrooms came from the People's Republic of China during the years 1974, 1975 and 1976 and therefore an adequate basis of reference existed, which could also be used in the future, in order to enable all the traditional supplier countries to have a reasonable and equitable share in the remaining imports into the European Economic Community. However, instead of bringing about a proportionate reduction in imports from the various non-member countries, the Commission entirely excluded Taiwan from the issue of export certificates. The overriding reason for the change in the regulations, which favoured imports from the People's Republic of China, was to establish commercial relations on a larger scale with that country. Faust considers nevertheless that such a reason cannot justify regulations which are incompatible with superior rules of Community law such as the prohibition of discrimination. It adds that the nullity of Regulation No 3096/76 necessarily entails the nullity of all the successive measures which refer to that regulation.

Faust then observes that Regulation No 1213/78 of 5 June 1978, in which the Commission stated that Taiwan was also able to ensure that its exports to the Community would not exceed the level agreed by the Commission, was repealed very shortly afterwards by Regulation No 1449/78 of 28 June 1978. The very short lapse of time between the two regulations alone demonstrates that the Commission did not act on the basis of a detailed consideration of the situation but that political considerations alone prompted the decision which once again banned all imports from Taiwan.

Faust points out further that in 1979 the People's Republic of China emerged as the sole supplier of preserved mushrooms and that in 1980, of a total of 29 000 tonnes of mushrooms to be imported into the Community, merely 1 000 tonnes from Taiwan were allowed, that is to say about 3% of the total, whilst in the years 1975 to 1978 exports from Taiwan had reached an average level of almost 13 000 tonnes per annum. Under those circumstances, the quantities allocated to Taiwan in 1979 and 1980 amount very clearly to discrimination against Community traders marketing Taiwanese preserved mushrooms.

Whilst recognizing that Community law does not necessarily protect all commercial relationships, all "know-how" or in general terms all the goodwill of an undertaking, Faust considers nevertheless that it does protect the assets of an established undertaking which have been built up over the years. Amongst those assets must also be included commercial relationships of long standing such as those entered into by Faust with Taiwan.

Faust considers finally that the Commission has also contravened the principle of proportionality, since it could have avoided disturbances of the market simply by applying quantitative restrictions calculated on the basis of the reference system established by Regulation No 2107/74, and is also in breach of the principle of the protection of legitimate expectation since the unjustified abandonment of the reference system was entirely unforeseeable by the applicant.

The *Commission of the European Communities* states that, using the powers delegated to it by the Council, it has sought, as the development of Community law between 1974 and 1980 clearly shows, to tackle the problem posed by the pressure exerted on the market by constantly fluctuating imports and also to eliminate the disturbances brought about by that phenomenon. If the result has been a deflection in patterns of trade in favour of the People's Republic of China, that is due, on the one hand, to that country's decision to agree, at an early stage, to take the necessary measures of voluntary restraint and, on the other hand, to a change in the commercial policy of the Council with regard to the People's Republic of China.

According to the Commission, the applicant's claim is unfounded in the absence of any breach of a superior rule of law. The rules of law falling to be considered in this case are certain principles of international law and certain general principles contained in Community law.

As far as principles of international law are concerned, it is hard to see which rule of law could have been broken. No treaty exists between the Community and Taiwan. Taiwan is not a party to GATT and could thus not rely on any provisions of that agreement. Finally, international law contains no general prohibition of discrimination in relations between those to whom it applies. It should also be added that none of those principles of international law can confer on individuals rights on which they may rely before national courts or the Court of Justice.

Nor are the protective measures adopted by the Commission in breach of superior rules of Community law. The Council regulations, which constitute the legal foundation for those measures, permit them to be applied selectively provided that the Community's international commitments are respected. Moreover, the EEC Treaty contains "no general principle obliging the Community, in its external relations, to accord to third countries equal treatment in all respects".

It is stated in the penultimate recital in the preamble to the basic regulation, Regulation No 516/77 mentioned above, that "the common organization of the market in products processed from fruit and vegetables must take appropriate account, at the same time, of the objectives set out in Articles 39 and 110 of the Treaty". The need to take into account the commercial policy mentioned in Article 110 is moreover confirmed, by implication, in Article 39 (2) which states that "in the Member States agriculture constitutes a sector closely linked with the economy as a whole", with the result that the common agriculture policy cannot be viewed independently of external commercial policy. The applicant is certainly justified in taking the view that the best reference system is one which distorts competition the least but it should not be forgotten that the Treaty gives the institutions the margin of discretion which they need to adapt decisions of commercial agricultural policy to the changing circumstances of general policy. If Community institutions enjoy a large measure of discretion in the decisions of economic policy which they are required to take, it stands to reason that they should enjoy such discretion in the sphere of external trade the development of which does not unilaterally depend on the Community authorities.

In adopting protective measures, which do not concern merely Taiwan, the Commission contravened neither the prohibition of discrimination laid down by Community law which rests on the principle of equality, nor the principle of the protection of legitimate expectation nor the principle of proportionality.

No finding of discriminatory treatment affecting the applicant's freedom of manoeuvre in its commercial transactions with non-member countries is possible in this case. The inconvenience suffered by the applicant stems not from an arbitrary measure adopted by the Commission but is an inevitable consequence, amongst other factors, of the change of direction in the Community's commercial policy made by the Council with regard to the People's Republic of China and Taiwan.

Nor is there a breach of the principle of the protection of legitimate expectation. The contested protective measures would only frustrate the performance of contracts already entered into if those measures were in contradiction with an attitude on the part of the Commission which led the applicant to infer what the future policy of the Community would be in the sphere of external trade. However, the applicant, as a prudent and informed import agent, ought not to have ignored a trend in Community policies the signs of which had been apparent for some time. Every trader operating in the market must constantly expect sudden repercussions from decisions of commercial policy taken by the Community. Traders may not in principle place reliance upon the maintenance of commercial opportunities which their participation in external trade has made available to them. The Community institutions have no obligation to ensure the maintenance of those opportunities.

For the same reasons, it is not possible to see how a breach of the principle of proportionality can be made out. Any change in Community policy in the sphere of external trade inevitably has repercussions on the trade prospects of traders in the sector affected.

In conclusion the Commission considers that its conduct was not unlawful and that it therefore serves no purpose to examine whether its conduct might constitute a sufficiently serious breach of a rule of Community law. Whatever the case may be, in a field partly affected by external relations and possibly by external trade, to establish that such a breach has occurred must be more difficult than in any other field, regard being had to the particularly wide measure of discretion enjoyed by Community institutions.

As regards finally the question whether the applicant has suffered injury in the legal sense of the term, the Commission observes that:

Interference with long-standing trade relations does not necessarily found a right to compensation for the damage suffered;

Even if it is acknowledged that there is an obligation to protect importers when a protective measure is adopted, that obligation is at least reduced when the persons concerned, such as import agents, are engaged only indirectly in the trade in question;

The extent of the damage suffered cannot be calculated by reference to the commission which the trader concerned received in the past, in view of the uncertainties and particular characteristics which are inherent in external trade.

In its *reply Faust* disputes the accuracy of the factors to which the Commission refers in order to justify the contested regulations.

First it observes that the average delivery price of all quantities of preserved mushrooms imported in 1978 into the Federal Republic of Germany (where 95% of imports of that product into the Community are directed) exceeded the sale price of Community producers by 14.4%.

It then states that the Commission cannot say that Taiwan was not prepared to agree to a restriction of its exports to the Community. In fact the Commission never offered Taiwan any possibility of reaching an agreement on voluntary restraint on any tolerably acceptable basis.

As regards the increase in the applications for import certificates which led the Commission to reinstate on 28 June 1978 the protective measure previously adopted against Taiwan, Faust emphasizes that under the system for the issue of certificates applicable in 1978, the quantities shown in the certificates issued in respect of a given non-member country provided no guarantee that those quantities would actually be imported from that country since the supplier country could subsequently be altered.

Finally, it points out that the Commission resorted to protective measures in May 1978 after promising South Korea import certificates for quantities which exceeded by 350% imports originating in that country in the three preceding years and after authorizing the People's Republic of China to supply a quantity which exceeded by 20% the quantity supplied in 1977. However, imports from Taiwan constituted only a small portion (no more than approximately 13%) of total imports in 1978.

On the basis of those considerations Faust maintains that the objective pursued by the Commission's policy was manifestly not to eliminate disturbances of the market but to ensure that the People's Republic of China became the almost exclusive supplier of preserved mushrooms in the common market. That is demonstrated by the very accommodating treatment that the Commission accorded the People's Republic of China in 1979. In fact, although the agreement on voluntary restraint entered into between the Community and China concerned a quantity of 20 000 tonnes, the Commission permitted during 1979 imports of Chinese mushrooms into the Community amounting in total to approximately 29 600 tonnes.

In Faust's view, the Commission thus knowingly used for a purpose other than that for which it was intended a political instrument of market organization which it had created for itself by combining a reference system and agreements on voluntary restraint and, although purporting to adopt a measure for the organization of the market, it operated an external trade policy. Its conduct clearly demonstrates that it has abused its discretionary power. From that point of view also, the measures adopted by it with the declared intention of eliminating alleged disturbances of the market are thus unlawful.

In its *rejoinder*, the *Commission* seeks to show that, contrary to the applicant's assertion, the protective measure of 25 May 1978 was adopted on the basis of a

correct assessment of the information in the possession of the competent authority.

The factors to be taken into consideration for the assessment of the need for a protective measure are as follows:

the volume of imports effected or foreseeable;

the availability of products on the Community market;

the trend of market prices of Community products;

the price of products coming from non-member countries.

As regards the volume of imports the Commission foresaw, from the applications for import certificates which had been lodged by 23 May 1978, that imports of mushrooms coming from non-member countries would reach, by the end of July, a total of 40 941 tonnes, that is to say, a quantity greatly in excess of the total for the preceding year. Official statistics drawn up after the end of 1978, which give a figure of 45 951, prove that the Commission's estimate was correct. Moreover, there is no doubt that that figure would have been greatly exceeded if no protective measures had been adopted.

That finding is in no way altered by the fact that during 1978, in relation to total imports, slight differences appeared between the figures relating to import certificates issued and the figures relating to quantities actually imported.

As far as the level of stocks is concerned, the Commission observes that there is no dispute on this point between it and the applicant.

That is not the case with regard to the development of market prices for Community products.

The Commission in fact stated in the third recital in the preamble to Regulation No 1102/78 adopting protective measures that, for a large quantity of the non-member country products "the offer prices ... are 20 to 30% less than the cost price in the Community preserved-mushroom industry".

Official statistics from the Federal German Office for Statistics, produced by the applicant, show on the other hand for 1978 an average sale price of DM 3.916 per kg for all the quantities imported into the Federal Republic of Germany from non-member countries and an average sale price of DM 3.423 per kg for quantities coming from other Member States.

Challenging those figures, the Commission states that:

The prices recorded in 1978 result from the massive and constant pressure which goods produced in the Community have suffered since 1977 following an increase of imports from non-member countries;

The cost price of French mushrooms, calculated by the Commission on the basis of information in its possession, was approximately DM 1.90 to 2.0 per half kilogram for goods of top quality, whereas the offer price for mushrooms from outside the Community was from DM 1.40 to 1.60 per half kilogram box for goods of top quality;

Annual statistics take into account all the products for the whole of the year whereas the Commission based its figures solely on the prices of a significant part

of the products at a given date (end of May 1978);

Annual statistics take account of customs duties (23%), whereas the Commission bases its figures on offer prices in non-member countries, excluding customs duties;

Sale prices may sometimes be lower than the cost price particularly in cases such as this where production in the Community had to compete with offers of large quantities of low-priced mushrooms from non-member countries.

Finally the Commission disputes two secondary arguments put forward by the applicant.

As regards the argument that the information relating to the market in question is not reliable owing to the system of import certificates in force in 1978, the Commission considers that the decisive fact is that even if the uncertainties as to the volume of imports could be resolved completely in favour of the applicant that would not alter the position in such a way that the Commission could be criticized for having taken a decision which was not justified by the situation on the market.

As to the argument relating to the different treatment which was accorded to the People's Republic of China on the one hand and Taiwan on the other, the Commission considers that it was in no way bound to offer every non-member country, within the framework of the negotiations leading to voluntary restraint, a quota calculated by reference to the imports from that country in the preceding years. On the contrary it was obliged to respect the international commitments entered into by the Council. In that respect it quotas the commercial agreement entered into on 3 April 1978 between the Community and the People's Republic of China under which the contracting parties undertook to make every effort "to foster the harmonious expansion of their reciprocal trade".

The Commission admits that imports from the People's Republic of China in 1979 exceeded by 7 000 tonnes the ceiling of 22 500 tonnes fixed for that country. That is, however, due solely to the fact that when the new protective measures were adopted, on 20 July 1979, 7 000 tonnes more than the quantities provided for had already been shipped from the People's Republic of China and it was therefore necessary to take them into consideration.

IV — Oral procedure

Faust, represented by D. Mankowski, and the Commission of the European Communities, represented by M. Hilf, a member of its Legal Department, acting as Agent, presented oral argument at the sitting on 14 January 1982.

The parties expressed differing opinions *inter alia* on the question whether negotiations leading to an agreement on voluntary restraint took place between the Community and Taiwan in 1978.

In addition, the Commission raised certain questions as to the admissibility of the application inasmuch as it was not certain whether Faust could have brought the matter before a national court in the first instance.

The Advocate General delivered his opinion at the sitting on 27 May 1982.

Decision

1 By application lodged at the Court Registry on 10 March 1981 Offene Handelsgesellschaft in Firma Werner Faust [commercial partnership, trading as Werner Faust] (hereinafter referred to as "Faust"), Hamburg, brought an action under the second paragraph of Article 215 of the EEC Treaty seeking compensation from the European Economic Community for the damage which it claims to have suffered as a result of certain Commission regulations adopting or relaxing protective measures relating to imports into the territory of the Community of preserved mushrooms from non-member countries.

2 Faust is an undertaking established in the Federal Republic of Germany whose business activity consisted some years ago to a large extent in importing on behalf of principals preserved mushrooms from Taiwan.

3 Imports into the Community of preserved mushrooms from non-member countries were subjected for the first time to protective measures with effect from 26 August 1974 by Regulation (EEC) No 2107/74 of the Commission of 8 August 1974 (Official Journal 1974, L 218, p. 54), which made all imports subject to submission of an import licence issued to each party applying therefor in respect of a quantity calculated by reference to the quantities imported in a preceding period. Taiwan, which in 1973 had sent to the Community 25 544.6 tonnes of preserved mushrooms, was still able, under the system of reference quantities, to export to the Community 15 808.5 tonnes in 1974, 18 174 tonnes in 1975 and 7 830.8 tonnes in 1976.

4 The protective measures were relaxed with effect from 1 January 1977 by Commission Regulation (EEC) No 3096/76 of 17 December 1976 (Official Journal 1976, L 348, p. 26). Following the relaxation of those measures, Taiwan was able to export to the Community in 1977 10 353.9 tonnes of preserved mushrooms.

5 On 25 May 1978 the Commission, using the powers delegated to it by Council Regulation (EEC) No 516/77 of 14 March 1977 on the common organization of the market in products processed from fruit and vegetables (Official Journal 1977, L 73, p. 1), adopted Regulation (EEC) No 1102/78 (Official Journal 1978, L 139, p. 26) laying down fresh protective measures consisting in the immediate suspension of the issue of import licences for

preserved mushrooms. Article 2 (1) of Regulation No 1102/78 provided that the prohibition of imports was not to apply to "preserved mushrooms originating in third countries which the Commission accepts as being able to ensure that their exports to the Community do not exceed a level agreed by the Commission". Commission Regulation (EEC) No 1213/78 of 5 June 1978 (Official Journal 1978, L 150, p. 5), by which the Commission acknowledged that Taiwan satisfied the aforementioned condition, was repealed almost immediately by Commission Regulation (EEC) No 1449/78 of 28 June 1978 (Official Journal 1978, L 173, p. 25). During 1978 Taiwan was able to export to the Community 14 727.2 tonnes of preserved mushrooms.

6 In 1979, in the absence of a agreement on voluntary restraint between the Commission and Taiwan, imports of mushrooms from that country were much reduced (to 55.3 tonnes), since the protective measures continued to apply to non-member countries which were not prepared voluntarily to restrict their exports to the Community. In 1980, after finding that the Commission did not intend to allow it to export to the Community more than 1 000 tonnes of preserved mushrooms, Taiwan agreed to restrict its exports to the Community to that quantity.

7 Faust argues that if patterns of trade had continued to develop normally and, in particular, if the system of reference quantities had been maintained in force, it might have expected its market share to reach 19.12% of the imports of preserved mushrooms from Taiwan and that, in the result, the draconian reduction in those imports inflicted on it in 1979 and 1980 a loss of foreseeable commission amounting to USD 114 930. Faust claims that it suffered that damage as a result of Commission Regulations Nos 3096/76, 1102/78 and 1449/78 mentioned above, which it says are contrary to Community law and therefore render the Community liable under the second paragraph of Article 215 of the EEC Treaty.

8 Faust disputes first of all the validity of Regulation No 3096/76, stating that the abandonment of the system of reference quantities contravenes the principles of equality and non-discrimination which, in its opinion, are applicable even to the external relations of the Community and thus oblige the latter to accord to non-member countries equal treatment in all respects. In Faust's view, the invalidity of Regulation No 3096/76 entails the invalidity of the subsequent regulations which refer to it.

9 The Commission replies with justification that the measures which it adopted do not contravene superior rules of Community law. In fact, the Council regulations pursuant to which those measures were adopted expressly permitted a selective application in favour or to the detriment of certain non-member countries, thus leaving to the Commission a wide measure of discretion. Furthermore, it must be emphasized that Faust has adduced no evidence to show that, in adopting Regulation No 3096/76 relaxing the protective measures adopted by Regulation No 2107/74, the Commission manifestly and gravely exceeded the limits of the discretion which it enjoys with respect to the appraisal of economic information.

10 Faust then disputes the validity of Regulation No 1102/78, which laid down protective measures with effect from 25 May 1978, and Regulation No 1449/78, which re-instated those measures with regard to Taiwan only three weeks after the Commission, by adopting Regulation No 1213/78, had acknowledged that Taiwan might be excluded from the application of those measures by virtue of Article 2 (1) of Regulation No 1102/78.

11 As far as Regulation No 1449/78 is concerned, it should first be observed that the effects of that regulation are restricted to 1978, since it repeals Regulation No 1213/78, which had been adopted pursuant to an undertaking given by Taiwan not to effect any more exports in 1978 and referred therefore solely to 1978. Since Faust seeks compensation merely for the damage which it claims to have suffered in 1979 and 1980, an examination of the validity of that regulation is unnecessary.

12 In those circumstances, there merely remains to be examined Regulation No 1102/78, whose validity is contested by Faust primarily on the ground that the information at the Commission's disposal at the end of May 1978 did not justify the adoption of protective measures.

13 In disputing the accuracy of the reasons set forth by the Commission in the preamble to that regulation, Faust claims in particular that:

The applications for import certificates which, on 23 May 1978, covered a quantity of 40 914 tonnes, could not give any reliable indication of the quantity which would actually be imported and the Commission was therefore wrong to conclude from those applications that imports in 1978 would be greatly in excess of those in 1977, which amounted to 32 900 tonnes;

The offer prices for preserved mushrooms from non-member countries were not lower than the cost prices in the Community industry;

Stocks of preserved mushrooms produced in the Community were not in 1978 greatly in excess of those recorded in 1977.

14 As to the first argument, it should be pointed out that, whilst the applications for import certificates did not allow an accurate forecast to be made of the quantities which would actually be imported, since certain certificates might not subsequently be used, they did, however, reveal a clear tendency towards increasing imports which was capable of disturbing the market.

15 As far as the price levels are concerned, it should be borne in mind that the Commission compared the free-at-frontier offer prices of products from non-member countries with French cost prices (France being the largest producer of preserved mushrooms within the Community), whereas Faust compares the sale prices (including duty) of products from non-member countries with the sale price of Community products. The method adopted by the Commission appears to be justified *inter alia* by the fact that the comparison between sale prices made by Faust does not take into account the fall in sale prices suffered by Community products as an inevitable result of massive and prolonged pressure from cheaper imports. A somewhat high price for a Community product may in fact indicate the presence, rather than the absence, of a disturbance of the market. Moreover, it should be observed that the statistical information relied upon by Faust relates to a whole year, whereas the Commission was obliged to have regard to the situation of the market at the time when it contemplated adopting protective measures and at that time the sale prices of products from non-member countries were lower than the sale prices of Community products.

16 As far as the stocks are concerned, the Commission's statement that at the end of May 1978 the level of stocks of preserved mushrooms produced within the Community was 40 to 50% higher than the level in 1977 has not been conclusively challenged by Faust and must therefore be regarded as correct.

17 In view of the foregoing considerations, it must be stated that no factors have been disclosed which support the proposition that the information at the Commission's disposal in May 1978 did not justify the adoption of protective measures.

18 Faust has claimed, however, that even if the protective measures adopted by Regulation No 1102/78 were justified the regulation would nevertheless be vitiated by nullity on the grounds of misuse of powers, breach of the principles of proportionality, prohibition of discrimination and protection of legitimate expectation.

19 In the first place Faust says that the Commission misused its powers by structuring and applying the protective measures for the purpose not merely of avoiding a disturbance of the market but also of creating distinctly favourable conditions for the development of trade with certain non-member countries, in particular the People's Republic of China with which the Community entered into a trade agreement on 3 April 1978. Under Article 40 (3) of the Treaty, a common organization of the market is to be "limited to pursuit of the objectives set out in Article 39", which do not include objectives of external commercial policy.

20 The applicant's assertion is, however, refuted by Article 39 (2) (c) of the Treaty, which states that "in the Member States agriculture constitutes a sector closely linked with the economy as a whole"; by the penultimate recital in the preamble to Council Regulation No 516/77 of 14 March 1977 on the common organization of the market in products processed from fruit and vegetables, which states that "the common organization of the market in products processed from fruit and vegetables must take appropriate account, at the same time, of the objectives set out in Articles 39 and 110 of the Treaty"; and by Article 3 of Council Regulation No 521/77 of 14 March 1977 laying down detailed rules for applying protective measures in the market in products processed from fruit and vegetables (Official Journal

1977, L 73, p. 28) according to which the application of protective measures must "respect the Community's obligations under international agreements".

21 As regards the complaint alleging a breach of the principle of proportionality, Faust maintains that the Commission could have achieved the objective pursued, that is to say avoidance of disturbances of the market, simply by means of quantitative restrictions, by retaining the reference system without the imposition of any limits, and that there was no reason for abandoning that system and excluding developing patterns of trade from the import quotas in an arbitrary and general manner.

22 In that respect it should be stated that the Commission could not in any event have "retained" the reference system since Regulation No 3096/76 had relaxed with effect from 1 January 1977 the protective measures on the basis of which that system was operated. The applicant's complaint must therefore be construed to the effect that the Commission ought to have pursued its objectives by proportionate means, for example by applying at the same time as the fresh protective measures adopted in 1978 a system of references to the imports effected in the preceding years from each of the non-member countries concerned.

23 In view of the fact that the Commission sought by means of the contested measures to achieve two equally legitimate objectives, namely stabilization of the market and implementation of a Community policy relating to external trade, the measures adopted cannot be considered to be disproportionate to the objectives pursued. It is an unavoidable fact that changes in Community policies relating to external trade have repercussions on the prospects of traders in the sector concerned.

24 As far as the complaint of discrimination is concerned, it must be stated that the lawfulness of the system of voluntary restraint provided for by Regulation No 1102/78 has not been called in question. In reality Faust is challenging the way in which the Commission operated that system, in particular the fact that the Commission arbitrarily fixed the import quota granted to each non-member country within the context of voluntary restraint, without any reference to the imports from those countries effected in the preceding years. An examination of the validity of Regulation No 1102/78 from the point of view of the principle of non-discrimination must

therefore take into account the way in which the Commission applied that regulation in the years 1978, 1979 and 1980. For the purposes of the present case, such an examination is however necessary only in respect of the years 1979 and 1980 since in its application Faust does not refer to any damage suffered by it in 1978.

25 Although Taiwan certainly appears to have been treated by the Commission less favourably than certain non-member countries, it should be remembered that there exists in the Treaty no general principle obliging the Community, in its external relations, to accord to non-member countries equal treatment in all respects. It is thus not necessary to examine on what basis Faust might seek to rely upon the prohibition of discrimination between producers or consumers within the Community contained in Article 40 of the Treaty. It need merely be observed that, if different treatment of non-member countries is compatible with Community law, different treatment accorded to traders within the Community must also be regarded as compatible with Community law, where that different treatment is merely an automatic consequence of the different treatment accorded to non-member countries with which such traders have entered into commercial relations.

26 The applicant finally claims that the almost total prohibition of imports from Taiwan contravened the principle of the protection of legitimate expectation which requires in the present case that traditional trading relations be maintained.

27 That complaint must also be rejected. Since Community institutions enjoy a margin of discretion in the choice of the means needed to achieve their policies, traders are unable to claim that they have a legitimate expectation that an existing situation which is capable of being altered by decisions taken by those institutions within the limits of their discretionary power will be maintained. In the present case, there can be no question of a breach of the principle of the protection of legitimate expectation, particularly since the commercial agreement entered into on 3 April 1978 between the Community and the People's Republic of China, published in the Official Journal of 11 May 1978 (Official Journal 1978, L 123, p. 2) was of such a nature as to alert traders to an imminent change of direction in the Community's

commercial policy and, in the absence of any obligation on the part of the Community to accord equal treatment to non-member countries, no informed trader was entitled to expect that patters of trade existing when the protective measures were adopted would be respected.

28 In the light of the foregoing considerations it must be concluded that the applicant has not been able to prove that the regulations which, in its view, gave rise to the damage for which it claims compensation are unlawful. The application must therefore be dismissed.

Costs

29 Under Article 69 (2) of the Rules of Procedure an unsuccessful party is to be ordered to pay the costs. Since the applicants has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application.**

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

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 28 October 1982.

For the Registrar

H. A. Rühl
Principal Administrator

A. O'Keeffe
President of the First Chamber