a risk of a serious disturbance which might endanger the objectives set out in Article 39 of the Treaty and where the measure is legally justified by provisions of Community law.

4. Since Community institutions enjoy a margin of discretion in the choice of the means needed to achieve their commercial policy, 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 245/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hessischer Verwaltungsgerichtshof [Higher Administrative Court, Hesse], for a preliminary ruling in the action under administrative law pending before that court between

EDEKA ZENTRALE AG, Hamburg,

and

FEDERAL REPUBLIC OF GERMANY, represented by the Bundesamt für Ernährung und Forstwirtschaft, Frankfurt am Main,

on the validity of Commission Regulation (EEC) No 1102/78 of 25 May 1978 adopting protective measures applicable to imports of preserved mushrooms (Official Journal 1978, L 139, p. 26),

THE COURT (Third Chamber)

composed of: A. Touffait, President of Chamber, Lord Mackenzie Stuart and U. Everling, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted in pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. Article 10 of 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) provides that imports into the Community of certain products, including preserved mushrooms, are to be subject to the production of an import certificate. Article 14 of that regulation provides *inter alia:*

"(1) If, by reason of imports or exports, the Community market in one or more of the products specified ... is or is likely to be exposed to serious disturbances which might endanger the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with non-member countries until such disturbances or the threat thereof has ceased.

The Council, acting by a qualified majority on a proposal from the Commission, shall adopt rules for the application of this paragraph and shall define the cases and the limits within which Member States may take protective measures.

(2) Should the situation envisaged in paragraph (1) arise, the Commission, acting either at the request of a Member State or on its own initiative, shall decide what measures are necessary and communicate them to the Member States; such measures shall be immediately applicable."

The rules referred to in the second subparagraph of Article 14 (1) were adopted by Council Regulation (EEC) No 521/77 of 14 March 1977 (Official Journal 1977, L 73, p. 28). That regulation lays down the factors to be taken into account in assessing whether there is a disturbance and sets out the protective measures which may be adopted. Under Article 2 (1) (a) of that regulation, in respect of products subject to the system of import certificates, those measures may consist in the discontinuation of the issue of certificates or in the rejection of the applications for the issue of certificates under examination. Under Article 2 (2) the protective measures referred to in Article 2 (1) may be taken only to such extent and for such length of time as is strictly necessary and may be restricted to products imported from or originating in particular countries or to exports to particular countries. Article 3 expressly provides that the application of the regulation is to respect the Community's obligations under international agreements.

In pursuance of Article 14 (2) of Council Regulation (EEC) No 516/77 the Commission adopted on 25 May 1978 Regulation (EEC) No 1102/78 adopting protective measures applicable to imports

of preserved mushrooms (Official Journal 1978, L 139, p. 26). Under Article 1 (1) of that regulation the issue of import licences for preserved mushrooms was suspended from 26 May 1978. Article 2 (1) provides however that the provisions of Article 1 (1) are not to apply to "import licences for 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 states hat the People's Republic of China is to benefit under the terms of Article 2.

In the recitals in the preamble to Regulation (EEC) No 1102/78 it is stated that the quantity of preserved mushrooms which have been imported under import licences issued or which by the end of July 1978 will have been imported under applications made for licences is greatly in excess of the quantity imported during the whole of 1977, that the trend of imports from non-member countries whose offer prices for a large quantity of such products are less than the cost price in the Community preserved mushroom industry, may aggravate the difficulties facing Community producers as regards production and marketing and that therefore those imports threaten the Community market with serious disturbances capable of jeopardizing the objectives of Article 39 of the EEC Treaty. In respect of the special provision in favour of the People's Republic of China it is stated that that country is able to ensure that its exports to the Community do not exceed a level acceptable to the Commission.

2. The plaintiff in the main action, Edeka Zentrale AG, hereinafter referred to as "Edeka", imports *inter alia*, preserved mushrooms from Taiwan and South Korea. On 25 September 1979 it applied to the Bundesamt für Ernährung und Forstwirtschaft [Federal Office for Nutrition and Forestry Management], hereinafter referred to as "the Bundesamt", for the issue of import licences for two part-consignments of mushrooms from Taiwan and Korea. The Bundesamt refused the applications on the ground that the issue of import licences for preserved mushrooms from Taiwan and Korea had been suspended by Commission Regulation (EEC) No 1102/78.

Edeka lodged an objection against that refusal, which was unsuccessful, and Edeka then brought an action before the competent Verwaltungsgericht [Administrative Court]. It argued that the ban on imports imposed by the regulation at issue was in breach of the prohibition of discrimination contained in Article 40 (3) of the EEC Treaty and contravened the principles of freedom of external trade, proportionality and equal competition.

The Hessischer Verwaltungsgerichtshof, before which the case came on appeal, was of the opinion that a decision in the matter depended upon a determination of the validity of Regulation (EEC) No 1102/78. It therefore stayed the proceedings and pursuant to Article 177 of the EEC Treaty referred the following question to the Court of Justice:

"Was Commission Regulation (EEC) No 1102/78 of 25 May 1978 adopting protective measures applicable to imports of preserved mushrooms (Official Journal L 139 of 26. 5. 1978, p. 26) valid, or was it in breach of the prohibition of discrimination because, as the plaintiff believes, certain importers were in practice generally debarred thereby from effecting imports from non-member countries?"

It is clear from the grounds upon which the order for reference was based that the national court considered that clarification was required above all in order to ascertain whether the protective measure adopted by the regulation at issue was wholly appropriate and necessary in

order to deal with market disturbances or whether it was in breach of the prohibition of discrimination contained in Article 40 (3) of the EEC Treaty, because it introduced a general ban on imports of preserved mushrooms, without taking into consideration the traditional trading relations of individual importers.

3. The order for reference was lodged at the Court Registry on 9 September 1981.

In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on behalf of Edeka by Dietrich Ehle, Rechtsanwalt, Cologne, and by the Commission of the European Communities, represented by Meinhard Hilf, a member of its Legal Department.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court, by order of 3 February 1982, decided to open the oral procedure without any preparatory inquiry and, pursuant to Article 95 of the Rules of Procedure, to assign the case to the Third Chamber. In addition the Commission of the European Communities at the request of the Court reported on the progress of negotiations with the relevant non-member countries for the voluntary restriction of exports from those countries to the Community.

II — Written observations

1. *Edeka* submits that Regulation (EEC) No 1102/78 is in breach of the prohibition of discrimination contained in Article 40 (3) of the EEC Treaty which is a specific illustration of the principle of equal treatment in the sphere of the law relating to the organization of the markets.

In so far as it suspends the issue of import licences in respect of preserved mushrooms originating in all non-member countries except the People's Republic of China, the regulation also offends against the precept laid down in Article 40 (3) according to which the common organization of the markets is to be limited to the pursuit of the objectives set out in Article 39 of the EEC Treaty. Inherent in that precept is that, within the context of its legislative practice, the Commission may adopt no measure which belongs exclusively to the realm of external trade policy.

Edeka states that the prohibited discrimination stems from the fact that Edeka was placed at a disadvantage in relation to other importers who, during the period in question, maintained trading relations with the People's Republic of China and on the basis of the regulation were able to effect direct imports of preserved mushrooms. On the other hand Edeka had to purchase its supplies at second-hand from other direct importers at a price increased by the importing margin which resulted in an imbalance in competitive conditions. The discriminatory treatment of traders established within the Community is therefore indirectly attributable to the discriminatory treatment accorded to non-member supplier countries.

In its judgment of 2 July 1974 in Case 153/73 *Holtz & Willemsen GmbH* v *Council and Commission of the European Communities* [1974] ECR 675 the Court of Justice declared that the various factors involved in the common organization of the markets such as protective measures and the like may be treated differently only in terms of objective criteria which ensure a proportionate distribution of advantages and disadvantages for those concerned.

In the light of that judgment the different treatment brought about by the regulation in question cannot be

regarded as being justified on objective grounds. By exempting merely the People's Republic of China, but not South Korea and Taiwan, from the suspension of the issue of licences the regulation failed to discriminate on the basis of objective criteria. In that connection Edeka denies that the People's Republic of China gave an assurance that they would voluntarily restrict exports in 1979 to a predetermined level and alleges further that Korea and Taiwan were not likewise requested by the Commission to give an assurance of voluntary restraint.

On no account ought South Korea and Taiwan to have been entirely excluded from supplying preserved mushrooms in disregard of existing trading and supply relations with undertakings established in the Community. It would have been more appropriate to allocate to those countries automatically a quantity corresponding to the quantities supplied up to that time. That is implied by the principles of freedom of external trade and proportionality and by the principle that traditional trading relations are to be maintained. The latter principle found recognition *inter alia* in Article 12 (2) of Council Regulation (EEC) No 926/79 of 8 May 1979 on common rules for imports (Official Journal 1979, L 131, p. 15) and in Article XIII (2) of the General Agreement on Tariffs and Trade (GATT).

In the alternative Edeka submits that the Commission, in accordance with the principle of equal and countinuing access to quotas, first ought to have ensured that undertakings importing from Taiwan and South Korea were able to have access to the imports from non-member countries which remained, namely those from the People's Republic of China. The principle of equal treatment of all Community citizens in the allocation of a Community tariff quota has been recognized by the Court of Justice in judgments of 12 December 1973 in Case 131/73 *Grossoli* [1973] ECR 1555, 23 January 1980 in Case 35/79 *Grossoli* [1980] ECR 177 and 13 March 1980 in Case 124/79 *Van Walsum* [1980] ECR 813.

2. *The Commission* submits that the protective measure adopted by Regulation (EEC) No 1102/78 is one of a series of legal measures adopted by the Council and the Commission which since 1974 have pursued the objective of ensuring a regulated common market within the framework of existing basic regulations whenever serious disturbances have arisen in the market for preserved mushrooms. It sets forth in detail the measures adopted by the Council and the Commission between 1978 and 1981 and the reasons for them.

As to the alleged discrimination it states that under the case-law of the Court a finding of discrimination will only be made where similar cases have been treated differently without objective justification. That is not the case here since the unequal allocation of delivery quotas among the various traditional supplier countries stems not from an arbitrary exercise of judgment but is consistent with the external policy of the Community, laid down by the Council, which takes account of the willingness of individual supplier countries to restrict their exports to the Community market.

According to the Commission it is clear from Article 39 (2) (c) of the EEC Treaty that the Commission, in adopting protective measures, must have regard to all aspects of commercial policy. The recitals in the preamble to the relevant basic Council Regulation (EEC) No 516/77 state that the common organization of the market in products processed from fruit and vegetables must take account at the same time of the

objectives set out in Articles 39 and 110 of the EEC Treaty. Finally Article 3 of Council Regulation (EEC) No 521/77, which is binding on the Commission, expressly stipulates that the Community's obligations under international agreements are to be respected. It is plain from the aforementioned provisions that, in the sphere of external trade, in particular as regards protective measures — where Community institutions enjoy wide discretion — Community law does not allow the only guiding principle for action to be considerations arising out of the organization of markets but also attributes due importance to considerations of general commercial policy.

By approving, under Article 2 (1) of Regulation (EEC) No 1102/78 an assurance by the People's Republic of China that it would voluntarily restrict its exports to a predetermined annual level, the Commission did not make arbitrary use of the discretion which it has in matters of commercial policy but was acting in furtherance of the trade agreement entered into by the Community with the People's Republic of China on 3 April 1978, under which both parties undertake to use their best endeavours to promote the harmonious development of mutual trade. There were no comparable contractural relationships or obligations with Taiwan and South Korea.

In the context of the discretion conferred on the Commission in determining commercial policy the fact that traditional trading relations may be affected must be accepted as being objectively necessary. Individual importers may not therefore rely on the prohibition of discrimination or claim an inalienable right to the maintenance of existing trading relations.

The Commission therefore concludes that consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Regulation No 1102/78.

III — Oral Procedure

At the sitting on 29 April 1982, Dietrich Ehle, Rechtsanwalt, Cologne, on behalf of Edeka Zentrale AG and Meinhard Hilf, a member of the Legal Department, on behalf of the Commission of the European Communities, presented oral argument and their replies to questions raised by the Court.

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

Decision

1 By order dated 17 August 1981, which was received at the Court on 9 September 1981, the Hessischer Verwaltungsgerichtshof [Higher Administrative Court, Hesse] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question relating to the validity of Commission Regulation No 1102/78 of 25 May 1978 adopting protective measures applicable to the importation of preserved mushrooms (Official Journal 1978, L 139, p. 26).

2 That question was raised in the context of administrative proceedings between Edeka Zentrale AG, Hamburg, (hereinafter referred to as "Edeka") and the Federal Republic of Germany, represented by the Bundesamt für Ernährung und Forstwirtschaft [Federal Office for Nutrition and Forestry Management] (hereinafter referred to as the "Bundesamt"). Edeka, an importer of preserved mushrooms from Taiwan and South Korea, applied on 25 September 1979 to the Bundesamt for the issue of import licences for two consignments of mushrooms originating in those countries. The applications were refused on the ground that the issue of import licences in respect of preserved mushrooms originating in Taiwan and South Korea had been suspended in pursuance of Commission Regulation No 1102/78.

3 That regulation, which was adopted following a commercial agreement entered into on 3 April 1978 between the European Economic Community and the People's Republic of China (Official Journal, 1978, L 123, p. 2), states in Article 1 that the issue of import licences for preserved mushrooms is suspended from 26 May 1978. Article 2 (1) however exempts from the application of that measure products from non-member 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 lays down that the People's Republic of China is to benefit under the terms of Article 2.

4 The benefit of that exemption was extended to products originating in Taiwan by Commission Regulation No 1213/78 of 5 June 1978 on the non-application of protective measures applicable to preserved mushrooms (Official Journal 1978, L 150, p. 5), but that measure was repealed by Commission Regulation No 1449/78 of 28 June 1978 (Official Journal 1978, L 173, p. 25).

5 Regulation No 1102/78 is based on 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). Article 14 of that regulation authorizes the Commission to take the necessary measures where, within the Community, the market in one or more of the products covered by the common organization of the market in products processed from fruit and vegetables is or is likely to be exposed to serious disturbances, from imports or exports, which might endanger the objectives

set out in Article 39 of the Treaty. Those measures may be taken only to such extent and for such length of time as is strictly necessary, as is stated in Article 2 (2) 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).

6 Edeka took the view that Regulation No 1102/78 contravened principles of Community law and in particular that it was in breach of the prohibition of discrimination contained in the second subparagraph of Article 40 (3) of the EEC Treaty and was therefore invalid, and accordingly brought an action in the administrative court seeking a declaration that the Bundesamt was obliged to issue to it the import certificates applied for.

7 In order to enable it to adjudicate upon that application, the Hessischer Verwaltungsgerichtshof, before which the case came on appeal, referred the following question to the Court of Justice:

"Was Commission Regulation (EEC) No 1102/78 of 25 May 1978 adopting protective measures applicable to imports of preserved mushrooms (Official Journal L 139 of 26. 5. 1978, p. 26) valid, or was it in breach of the prohibition of discrimination because, as the plaintiff believes, certain importers were in practice generally debarred thereby from effecting imports from non-member countries?"

8 It is clear from the documents before the Court that the appellant in the main proceedings does not deny that the adoption and maintenance of protective measures in respect of the years 1978 and 1979 were necessary to deal with the likelihood of serious disturbances on the market, which might have endangered the objectives set out in Article 39 of the Treaty. Moreover, although it claimed during the written procedure that the Commission was not entitled to have regard to considerations of commercial policy when adopting measures relating to agricultural policy, the appellant did not maintain that argument at the sitting.

9 The appellant alleges however that Regulation No 1102/78 discriminates between importers contrary to the second subparagraph of Article 40 (3) of the Treaty and that it offends against the principles of proportionality and

the protection of legitimate expectation. In fact, owing to the sudden change in policy applied until then, that regulation prevents it from obtaining supplies of preserved mushrooms originating in Taiwan and South Korea thus placing it at a disadvantage in relation to competitors who were accustomed to import preserved mushrooms from the People's Republic of China.

10 The Court must therefore consider whether the policy pursued by the Commission as regards the importation of the products in question is in conformity with the principles mentioned above.

The principle of non-discrimination

11 As the Court held in its judgments of 19 October 1977 in Joined Cases 117/76 and 16/77 *Ruckdeschel* v *Hauptzollamt Hamburg-St. Annen* [1977] ECR 1753 and in Joined Cases 124/76 and 20/77 *Moulins et Huileries de Pont-à-Mousson* [1977] ECR 1795, the prohibition of discrimination contained in the second subparagraph of Article 40 (3) of the Treaty is merely a specific enunciation of the general principle of equality which is one of the fundamental principles of Community law. That principle means that like situations should not be treated differently unless such different treatment is objectively justified.

12 Since the discriminatory treatment alleged as between importers results from the different treatment which Regulation No 1102/78 applies as between the supplier countries concerned and which is based on the fact that only the People's Republic of China and not Taiwan or South Korea agreed voluntarily to restrict its exports to the Community the allegation made against the regulation in question is in truth directed at the policy, pursued by the Commission at the time of its negotiations with those countries, with a view to obtaining from them an assurance of voluntary restraint.

13 The Court must therefore consider whether that policy is arbitrary in nature, in particular whether the quantities of imports proposed by the Commission to the non-member countries concerned as the basis for an agreement of voluntary restraint were in accordance with the needs of the Community market.

14 With regard, first of all, to the year 1978 it is clear from the information supplied by the Commission that both the quantities of preserved mushrooms offered to each of the three countries in question and the quantities actually exported by each of those countries to the Community were fixed on the basis of the average annual tonnage exported during the preceding years and that no preferential treatment was granted to any of those countries. Therefore, as far as 1978 is concerned, Regulation No 1102/78 is not of such a nature as to provide the appellant in the main proceedings with grounds for complaint.

15 That conclusion is not affected by the fact that the regulation in question concerns only imports originating in Taiwan and South Korea to the exclusion of those originating in the People's Republic of China. In fact, the reason why that regulation exempted from its sphere of application only the People's Republic of China was that only that country had actually restricted its exports to the Community on the basis of the quantities offered.

16 As far as Taiwan is concerned, the Commission, in adopting the regulation on 25 May 1978, cannot be criticized for not having taken account of a telex message from the Taiwan authorities on 23 May 1978 in which the latter stated their readiness to restrict exports to an amount closely corresponding to that offered. In view of the urgency of the measures to be taken the Commission was entitled to conclude the procedure initiated and then within a reasonable period of time to carry out the investigations necessary before also exempting Taiwan from the application of the protective measures, which it did by means of Regulation No 1213/78 of 5 June 1978. The Commission later discovered that Taiwan had already sold and was continuing to sell preserved mushrooms in excess of the quantities agreed and was therefore justified in putting an end to that exemption by Regulation No 1449/78 of 28 June 1978.

17 On the other hand, as far as the year 1979 is concerned, a comparison between the quantities offered to each of the three countries in question and those imported from those countries reveals preferential treatment in favour of the People's Republic of China at the expense of Taiwan and South Korea such as to provide the appellant in the main proceedings with grounds for complaint.

18 However, it is clear from the explanations given by the Commission that it maintained Regulation No 1102/78 in force unchanged for 1979, that is to say, by excluding from its sphere of application merely the People's Republic of China and not Taiwan and South Korea since initially only the People's Republic of China had accepted an agreement of voluntary restraint whilst South Korea agreed to restrict its exports to the Community only as late as September 1979, but, in actual fact, did not avail itself of the quota allocated, and negotiations with Taiwan did not result in an agreement of voluntary restraint before February 1980. The Commission increased the quota initially fixed for the people's Republic of China in July and August 1979, having regard to the state of negotiations with those three countries and after it had found that the Community market was capable of absorbing supplementary quantities.

19 It is well established that Community institutions enjoy discretion in the sphere of commercial policy and, as the Court stated in its judgment of 22 January 1976 in Case 55/75 *Balkan-Import-Export GmbH* v *Hauptzollamt Berlin-Packhof* [1976] ECR 19, the Treaty contains no general principle which may be relied upon by traders, compelling the Community in its external relations to accord equal treatment in all respects to non-member countries. Therefore the fact that the Commission's regulations give rise to a deflection in the flow of imports from Taiwan and South Korea towards the People's Republic of China does not provide any ground for criticism.

20 In those circumstances and in the light of the factors mentioned above, Regulation No 1102/78 answered the needs of the Community market in respect of both 1978 and 1979 and thus the different treatment which it acords to the supplier countries in question and consequently to the traders importing from those countries must be considered to be objectively justified so that the submission relating to an infringement of the second subparagraph of Article 40 (3) of our Treaty must be rejected.

The principle of proportionality

21 The appellant in the main proceedings further claims that, even if the discriminatory treatment accorded by the regulation in question may be considered justified, the regulation contravenes the principle of proportion-

ality underlying the Community legal order since it amounts to an almost total ban on imports from Taiwan and South Korea, thus making importers bear an excessive proportion of the consequences of that prohibition.

22 As the Court acknowledged in its judgment of 5 May 1981 in Case 112/80 *Dürbeck* v *Hauptzollamt Frankfurt am Main* [1981] ECR 1095, the Commission's attempt, before adopting coercive measures, to obtain the agreement of supplier countries on a voluntary restriction of their exports to the Community cannot be regarded as being unacceptable from the point of view of Community law since it demonstrates the Community's effort to refrain from adopting coercive measures unless all else fails. That attempt was all the more acceptable in the present case since both the basic Regulation No 516/77 adopted by the Council on 14 March 1977 and the implementing Regulation No 521/77 adopted by the Council on the same date state that the protective measures must be limited to that which is strictly necessary.

23 It follows that the Commission is justified, when adopting protective measures, in taking account of whether or not a non-member country is ready to accept a voluntary restriciton of its exports to the Community. It cannot therefore be said that it exceeded the limits of its discretionary power by almost totally prohibiting imports from Taiwan and South Korea, countries which did not agree to such a voluntary restraint, in favour of imports originating in the People's Republic of China, which did accept an agreement of voluntary restraint, even though such a prohibition is capable of bringing about a deflection in the flow of imports from Taiwan and South Korea to the People's Republic of China.

24 In that connection the appellant in the main proceedings refers to Article 110 of the Treaty which is also relied on as precluding a total prohibition of imports from Taiwan and South Korea. However, in this respect it is necessary merely to call to mind the judgment of the Court of 5 May 1981 in the previously-mentioned *Dürbeck* case, in which it was held that Article 110 of the Treaty could not be interpreted as prohibiting the Community from enacting, upon pain of committing an infringement of the Treaty, any measure liable to affect trade with non-member countries in particular where, as in the present case, the adoption of such a measure is made necessary by the risk of a serious disturbance which might endanger the objectives set out in Article 39 of the Treaty and where the measure is legally justified by provisions of Community law.

25 Therefore the argument relating to a breach of the principle of proportionality must also be rejected.

The principle of the protection of legitimate expectation

26 The appellant in the main proceedings finally claims that the almost total prohibition of imports from Taiwan and South Korea was contrary to the principle of the protection of legitimate expectation which, in the present case, required traditional trading relations to be maintained. That requirement found recognition in Article 12(2) of Council Regulation No 926/79 of 8 May 1979 on common rules for imports (Official Journal 1979, L 131, p. 15) and in Article XIII (2) of the General Agreement on Tariffs and Trade.

27 That argument 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.

28 For all those reasons, the reply to be given to the Hessischer Verwaltungsgerichtshof should be that consideration of the question submitted by it has disclosed no factor of such a kind as to affect the validity of Commission Regulation No 1102/78 of 25 May 1978.

Costs

29 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. As the proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Hessischer Verwaltungsgerichtshof by order of 17 August 1981, hereby rules:

Consideration of the question raised has disclosed no factor of such kind as to affect the validity of Commission Regulation No 1102/78 of 25 May 1978.

Touffait Mackenzie Stuart Everling

Delivered in open court in Luxembourg on 15 July 1982.

J. A. Pompe
Deputy Registrar

A. Touffait
President of the Third Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 27 MAY 1982

My Lords,

This is a reference for a preliminary ruling from the Hessischer Verwaltungsgerichtshof. The proceedings before it were commenced by a German undertaking which I shall call "Edeka". Edeka is a large German food retailer and, among its other commercial activities, it imports preserved mushrooms from Taiwan and South Korea. The dispute