OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 28 OCTOBER 1975

My Lords,

In this action the applicant, C.A.M. SA, which carries on business in Paris as a grain exporter, seeks a declaration that a particular Regulation of the Commission, namely Regulation (EEC) No 2546/74 of 4 October 1974, is void or, at all events, void in so far as it affects exporters. The applicant's actual grievance is as to the impact of that Regulation in relation to three shipments of barley which it effected on the 9, 11 and 15 October 1974.

The applicant originally brought its action against both the Council and the Commission, but, as against the Council, the action was dismissed by Order of the Court dated 12 May 1975 on the ground that it was inadmissible, no act of the Council being thereby challenged.

Commission Regulation No 2546/74 was one of a series of exceptional measures adopted by the Council and the Commission early in October 1974 in an endeavour to mitigate the effects on the farming community of the exceptional rise in production costs that had occurred that year, a rise that coincided with, among other things, very high prices for grain on world markets. In order to appreciate the scope and effect of the Regulation, so far as relevant to this case, it is necessary to have in mind some of the features of the common organization of the market in cereals as established by Council Regulation No 120/67/EEC of 13 June 1967, and in particular of that organization in so far as it affects barley.

An important feature of it is the fixing, in March each year, of the common prices for the following marketing year. These include in particular target prices, intervention prices and threshold prices. At the same time there are fixed the number and amounts of any increases in those prices, phased, on a month by month basis, over all or part of the marketing year, and designed, in the words of the preamble to Regulation No 120/67, 'to take account, among other things, of storage costs and interest charges for storing cereals in the Community and of the need to ensure that the disposal of stocks conforms to market requirements' (OJ No 2269/67 of 19. 6. 1967)

Other features of the organization with which Your Lordships are familiar are, on the one hand, the issue of import and export licences, accompanied in each case by the lodgement of a deposit guaranteeing that the transactions for which the licence is requested are effected, and, on the other hand, the system of import levies and export refunds designed, at a time when Community prices were higher than world prices, to cover the differences between them. Your Lordships will have in mind that Articles 15 and 16 of Regulation No 120/67 lay down the general principle that the amount of the levy or refund in a particular case shall be that applicable on the day of importation or exportation, but that, by way of derogation to that principle, they institute the system of 'advance fixing certificates'. In particular, Article 16 (4), as amended by Article 1 (3) of Council Regulation (EEC) No 2429/72 of 21 November 1972, provides that, in the case of certain products, including barley,

'the export refund applicable on the day on which the application for the licence is lodged, ajusted on the basis of the threshold price valid in the month of exportation shall be applied, if the party concerned so requests at the same time as the application for the licence is made (the request to made not later than 1300 hours), to exports effected during the

period of validity of the licence'. (OJ L 264 of 23. 11. 1972. The authentic English text has 'certificate' where 'licence' is meant. I have corrected this obvious mistake in quoting the provision.)

Lastly I must recall Article 26 of Regulation No 120/67 which lays down the procedure known as 'the Management Committee procedure' for the adoption of detailed rules implementing specific provisions of that Regulation. Under this procedure the Commission is empowered to adopt measures having immediate application, subject to review by the Council if they are not in accordance with the opinion of the Management Committee for Cereals.

My Lords, for a description of the events and considerations that led to the adoption in October 1974 of the Exceptional measures that I have mentioned, I cannot do better than to quote from the preamble to the first of those measures, Council Regulation (EEC) No 2496/74 of 2 October 1974:

'Whereas since the Council's Decisions taken in March 1974 on the common prices for the 1974/75 marketing year, events have occurred with serious economic implications for agriculture; whereas, on the one hand, the agricultural sector was faced with a sudden unprecedented increase in the prices of certain important means of production and whereas this sharp rise in production costs is worsening the effect of overall inflation on agriculture; whereas, on the other hand, the agricultural sector was not able to bring about an increase in market prices so as to cover the rise in production costs; whereas in the cattle and pig breeding sectors there has even been a marked fall in market prices; whereas for other products such as common wheat, feed grains and sugar, agricultural producers were unable to take advantage of the very high prices recorded on the world market; ...

Whereas this situation has given rise to serious difficulties throughout the agricultural sector both because of its immediate effect on farmer's incomes and because of the lack of any favourable outlook for the near future; whereas in the current economic situation the agricultural sector is no longer able to pass on in market prices the considerable rise in production costs; whereas this situation calls for exceptional measures in the field of pricing policy;

Whereas it is necessary therefore, by way of exception, to reach a decision, in derogation from the principle of fixing prices annually, imposed by the basic Regulations on the common organization of the market for the products concerned, on a general increase in agricultural prices for the 1974/75 marketing year or for the remainder of that year; ...

Whereas, finally, bearing in mind the exceptional circumstances, it should be possible to adopt the alterations to be made as a result of this Regulation to other prices and amounts fixed within the context of the common agricultural policy in accordance with the procedure laid down in Article 26 of Council Regulation No 120/67/EEC ... on the common organization of the market in cereals ... or in the corresponding Articles of other Regulations on the common organization of the market in agriculture, whichever is the case; whereas it should be possible, where appropriate, to adopt the alterations by derogation from the rules for fixing contained in the Regulations concerned to the extent and for the duration strictly necessary to take into account this Regulation.' (OJ L 268 of 3. 10. 1974)

The operative part of that Regulation consisted of five Articles.

Article 1 contained a series of provisions, introduced by the words 'By way of derogation from the principle of the annual fixing of prices', of which the

effect was to raise certain common prices by 5 %. In the case of barley these were the target and intervention prices.

Articles 2 and 3 are not here directly in point.

Article 4 was, so far as material, in the following terms:

'Detailed rules for the application of Article 1 ... and the alterations to be made as a result of this Regulation to other prices and amounts fixed within the context of the common agricultural policy shall be adopted in accordance with the procedure laid down in Article 26 of Regulation No 120/67/EEC or in the corresponding Articles of other Regulations on the common organization of the markets in agriculture, whichever is the case, where appropriate by derogation from the rules for fixing contained in the Regulations concerned to the extent and for the duration strictly necessary to take into account this Regulation.' (OJ L 268 of 3. 10. 1974)

Having regard to an argument that was put forward on behalf of the applicant, I must also read Article 5:

'This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.* It shall apply from 7 October 1974. (OJ L 268 of 3. 10. 1974)

The Regulation was in fact published in the *Official Journal* on 3 October 1974.

In exercise or purported exercise of the powers conferred on it by Article 4 of the Regulation, the Commission on 4 October 1974 itself adopted a number of Regulations all expressed, in one way or another, to be consequential, and all expressed to enter into force on 7 October 1974. One of these was Regulation (EEC) No 2518/74 which, besides many other things, raised the threshold prices for cereals, including barley, in line with the increase in the intervention prices. Another was Regulation (EEC) No 2546/74, the Regulation that is under attack in this case. Article 1 of this Regulation provided:

'Where an import levy or an export refund on a product coming under Regulation No 120/67/EEC or under Regulation No 359/67/EEC has been fixed in advance and the day on which the licence was applied for ... is a day prior to 7 October 1974, such levy or refund shall not be adjusted as regards that part of the increase in the threshold price which results from the increase in agricultural prices taking effect on 7 October 1974.' (OJ L 271 of 5. 10. 1974)

Regulation No 359/67/EEC is, Your Lordships remember, the Regulation establishing the common organization of the market in rice.

The applicant had, on 19 July 1974, obtained an export licence for 10 000 tons of barley, expiring on 16 October 1974 and embodying an advance fixing certificate by which the amount of refund due was fixed at nil (Annex 8 to the Application). By 7 October 1974 the applicant had exported all but 3 978 tons of the barley covered by that licence. It exported the remaining 3 978 tons by the three shipments which, as I have mentioned, it effected on 9, 11 and 15 October 1974. A document put in by the applicant (Annex 8 to the Application) shows that, had it not been for Regulations Nos 2496/74 and 2518/74, the threshold price for barley in October 1974, as fixed in March of that year, would have been the same as that for July, with the result that the applicant would have been entitled to no refund in respect of those shipments.

The applicant's case, in a nutshell, is that the threshold price for barley had however, by the time those shipments were effected, been increased by Regulation No 2518/74; that it (the applicant) was therefore entitled by virtue of Article 16 (4) of Regulation No 120/67

to a refund equal to the difference between the July threshold price and the increased threshold price; and that the Commission was not entitled to seek, by Regulation No 2546/74, to deprive it of that right. The applicant states that the difference in question amounts in all to FF 122 647.

The Commission submits that the appellant's claim is unmeritorious.

It points out in the first place that the object of the system of advance fixing of import levies and export refunds is to enable traders to know for certain, for a limited period, what levy they will be liable to, or what refund they will be entitled to, as the case may be, on their transactions, so that, so far at all events as regards the incidence of levies and refunds, they can safely enter into forward contracts. It is no part of the object of that system to enable traders to make fortuitous profits. Nor, if instead of entering into forward contracts they choose to 'play the market', as they are of course perfectly entitled to do, is it part of the object of the system to insure them against the risks inherent in that process.

Then the Commission supplies figures to show how, in 1974, prices for barley in the world market soared above Community prices, particularly in the months of July, August, September and October, so that it would have been extraordinary for an exporter of barley from the Community at that time to fail to make a profit, quite apart from any refund.

In fact the situation was such that, in that year, until 26 July, the refunds were fixed at nil. Thereafter no refunds were fixed at all. On the contrary export levies were imposed. These were introduced on 26 July at the rate of 8 u.a. per ton, and gradually increased so that, between 7 and 17 October, the period during which the Applicant's three shipments were effected, the rate was 40 u.a. per ton. The view was apparently taken by the Commission that exporters who had obtained advance fixing certificates before the introduction of the levies should be held immune from them. It was accepted by Counsel for the applicant at the hearing that his client (whose export licence and advance fixing certificate were, Your Lordships remember, dated 19 July 1974) had not been required to pay any levy. It would be monstrous, submits the Commission, at least implicitly, that, in addition to that benefit, the applicant should receive an adventitious benefit from the general increase in Community prices decided upon by the Council in October 1974 in order to safeguard, as far as possible, the interests of Community farmers.

All in all, says the Commission, the circumstances in which that general increase was decided upon were such that it would have made the reverse of economic sense for it to lead to greater levies on Community imports and greater refunds for Community exports. That, in essence, was the justification for the measure that the Applicant attacks.

Those, my Lords, are impressive arguments. But they go to the merits rather than to the legal issues in the case. To the latter I now turn.

The first, and I think the most difficult, is the question whether the action is admissible at all.

Your Lordships will have it in mind that Article 173 of the EEC Treaty, after conferring on the Court jurisdiction 'in actions brought by a Member State, the Council or the Commission' to review the legality of acts of the Council and the Commission on the various grounds there mentioned, goes on to provide, in its second paragraph, that:

'Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which,

although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.'

The interpretation of that paragraph has been the subject of a great number of cases before this Court. Some learned writers have suggested that the way in which, in those cases, the Court has interpreted the paragraph is unduly restrictive. I do not think it is. As has been pointed out more than once, and not least by Mr Advocate-General Lagrange in Cases 16 and 17/62 and 19 to 22/62 *Confédération Nationale des Producteurs de fruits et légumes and Others* v *Council* [1962] ECR 486-487 (Rec. 1962, pp. 933-934), the duty of this Court is loyally to give effect to the intentions of the authors of the Treaty as expressed in the language they used, and not to strain that language in an endeavour to widen the rights of action of private persons in the Community, even if that process would bring the system of the Treaty more into line with the systems prevailing under the national laws of some Member States or indeed with the system of the ECSC Treaty.

From the cases decided by the Court, the following general propositions, I think, emerge.

The wording of the second paragraph of Article 173 evinces that it may apply in three different kinds of situation:

1. where a decision has been addressed to the person bringing the proceedings;
2. where a decision in the form of a decision addressed to another person is of direct and individual concern to the person bringing the proceedings; and
3. where a decision in the form of a regulation is of direct and individual concern to that person.

In the first kind of situation, no particular problem arises.

In the second kind of situation, which, as the cases show, is usually where a decision has been addressed to a Member State, two questions arise: first, whether the decision is of 'direct' concern to the person bringing the proceedings and, second, whether it is of 'individual' concern to him.

The answer to the question whether such a decision is of 'direct concern' to that person depends upon whether or not the decision is the direct cause of an effect on that person. This means that, in general, the answer depends upon whether the decision leaves a discretion to the Member State to which it is addressed. If the action to be taken by the Member State on the decision is automatic or is, at all events, a foregone conclusion, then the decision is of direct concern to any person affected by that action. If, on the other hand, the decision leaves it to the Member State whether to act or not to act, it is the action, or inaction, of the Member State that is of direct concern to the person affected, not the decision itself. This test was first suggested by Mr Advocate-General Roemer in Case 25/62 *Plaumann and Co.* v *Commission* [1963] ECR 114-115 (Rec. 1963, pp. 238-239) and in Case 1/64 *Glucoseries Réunies* v *Commission* [1964] ECR 419-421 (Rec. 1964, pp. 832-835). It was adopted by Mr Advocate-General Gand in Case 38/64 *Getreide-Import Gesellschaft mbH* v *Commission* [1965] ECR 211-212 (Rec. 1965, pp. 274-275). In none of those three cases did the Court find it necessary to pronounce upon the matter in its Judgment, because in each of them it held the action inadmissible on the ground that the decision in issue was not of 'individual' concern to the applicant. But in Cases 106 & 107/63 *Toepfer and Another* v *Commission* [1965] ECR 411 (Red. 1965, pp. 532-533) I think the Court implicitly accepted the test, suggested there again by Mr Advocate-General Roemer and in Case 69/69 *SA Alcan Aluminium Raeren and Others* v *Commission* (Rec. 1970, pp.

393-395) the Court accepted that test explicitly, this time at the suggestion of Mr Advocate-General Gand. Two subsequent Judgments of the Court confirm that it is indeed the correct test. Of these the first, the Judgment in Cases 41 to 44/70 *NV International Fruit Co. and Others* v *Commission* (Rec. 1971, pp. 422-423), is of particular interest because it shows that the test is the same where the act that is challenged is a decision in the form of a regulation; and the second, the Judgment in Case 62/70 *Bock* v *Commission* (Rec. 1971, p. 908), is of interest because it assimilates a case where the Member State concerned has already decided how it will exercise such discretion as the decision of the Commission may leave to it to a case where the Member State has no discretion: in either situation it is the decision of the Commission that has direct effect on the private person concerned.

As regards the test to be applied in answering the question whether a decision is of 'individual' concern to a person to whom it is not addressed, the authorities are both copious and clear. Such a person may claim that the decision is of individual concern to him only if the decision affects him by reason of certain attributes peculiar to him or by reason of factual circumstances that set him apart, so that he is singled out by the decision in the same sort of way as the person to whom it is addressed. It is not enough that the person in question belongs to a category of persons, for instance those carrying on a particular trade, whom the decision affects — see the *Plaumann* case [1963] ECR 107 (Rec. 1963 pp. 223-224), the *Glucoseries Réunies* case [1964] ECR 417 (Rec. 1964, pp. 823-824), the *Getreide-Import* case [1965] ECR 208 (Rec. 1965, pp. 270-271), the *Toepfer* case [1965] ECR 411 (REc. 1965 p. 533) and the *Bock* case (Rec. 1971, pp. 908-909).

In the third kind of situation that I have described, that is where a private person brings proceedings to challenge what is in form a regulation on the ground that it is a decision of direct and individual concern to him, not only does he have to show that it is both of direct and of individual concern to him, but he has first to show that it is, by its nature, a decision and not a regulation. The distinction between a regulation and a decision made in Article 189 of the Treaty is here in point. In determining whether a particular measure that is in the form of a regulation is indeed a regulation or is really a decision, the Court looks at its contents and effects. If the measure is of a legislative character, i.e. is general in its scope, affecting everyone, or categories of persons impersonally defined, it is a regulation. If on the other hand it is of an administrative character, determining what is to happen in a particular person's case, or in a limited and identifiable number of cases, it is a decision. The test here is analogous to, but not always the same as, that for determining whether a measure is of individual concern to a particular person. Those propositions seem to me to emerge from a consideration of the Judgments, and also of the Opinions of the Advocates-General, in the first case I mentioned, *Confédération Nationale des producteurs de fruits et légumes and Others* v *Council*, in Case 40/64 *Sgarlata and Others* v *Commission* [1965] ECR 215 (Rec. 1965, p. 279), in Case 30/67 *Industria Molitoria Imolese and Others* v *Council* [1968] ECR 115 (Rec. 1968, p. 171), in Case 6/68 *Zuckerfabrik Watenstedt GmbH* v *Council* [1968] ECR 409 (Rec. 1968, p. 595), in Cases 63/69, 64/69 and 65/69 *La Compagnie française commerciale et financière SA and Another* v Commission (Rec. 1970, pp. 205, 221 and 229), in the *International Fruit Co.* case (already cited) and in Case 42/71 *Nordgetreide GmbH and Co. KG* v *Commission* (Rec. 1972, p. 105).

There are, I think, only three cases where private persons have succeeded in

showing that they satisfied the conditions for bringing an action under Article 173 to challenge acts other than decisions addressed to them. Of those three cases, two, namely the *Toepfer* case and the *Bock* case, were concerned with decisions addressed to a Member State, whilst one, the *International Fruit Co.* case, was concerned with what was in form a regulation.

The *Toepfer* case arose under the old Regulation No 19, the precursor of Regulation No 120/67. The applicants in that case were German importers of maize who had on 1 October 1963 applied for import licences with advance fixing of the levies. They were denied these licences in reliance on protective measures taken by the German Government under Regulation No 19 on the same day, the reason for the adoption of those measures being that a mistake had been made by the Commission in determining the free-at-frontier prices on the basis of which the levies were to be calculated. On 3 October 1963 the Commission addressed a Decision to the Federal Republic of Germany retrospectively authorizing those protective measures. The circumstances (which I need not detail) were such that the only persons who could be affected by that Decision were those who had applied for licences of that particular kind on 1 October 1963. The number and identity of those persons were thus fixed and ascertainable before the Decision was taken, and the Court held that the Decision individually concerned them, as well as concerning them directly.

The *Bock* case was also about a Decision of the Commission authorizing protective measures by the Federal Republic of Germany, this time under Article 115 of the Treaty. The applicant was a German importer of foodstuffs who had, on 4 September 1970, applied to the appropriate German authorities for a licence to import a consignment of Chinese mushrooms which were in free circulation in the Netherlands. It being the policy at the time of the Federal German Government to exclude imports of Chinese mushrooms, the German authorities held up the application while they sought authorization from the Commission to exclude such imports. The applicant was informed by the German authorities that his application would be rejected as soon as that authorization was forthcoming. It came in a Decision of the Commission dated 15 September 1970, which contained a rider expressly applying it to applications for licences then pending before the German authorities. It was that rider of which the validity was challenged by the applicant in the proceedings before this Court. The Court held that, the number and identity of the persons whom the rider would affect being fixed and ascertainable at the time the Decision was made, and the Commission being necessarily aware that the rider could affect only those persons, it concerned them individually as well as, in the circumstances, directly.

The *International Fruit Co.* case was about measures taken by the Community to safeguard its fruit growers from the effects of excessive imports of apples from third countries. Among those measures was a Commission Regulation, No 459/70, which established, for the period from 1 April 1970 to 30 June 1970, a system of import licensing, under which, at the end of each week, the Member States were to inform the Commission by telex of the quantities for which they had received applications for licences in that week and the Commission was to 'decide as to the issue of licences'. The Regulation that was actually challenged by the applicant in the proceedings before the Court was Commission Regulation No 893/70 of 28 May 1970. This was the instrument chosen by the Commission to exercise its power of decision as to the issue of licences on the basis of the applications received in the previous week. It prescribed a formula according to which the Member States were to grant, or

withhold, licences. The formula was such that the Member States had no discretion in the matter. The Court pointed out that the number of applications for licences that would be affected by that Regulation, and the quantities applied for, were fixed at the time it was adopted. What the Commission was really doing was to decide upon the fate of each application for a licence. The Regulation was not therefore a measure of general scope but, in the correct analysis, a series of individual decisions taken by the Commission under the power conferred on it by Regulation No 459/70, each decision affecting the legal position of one of the applicants for a licence.

The applicant in the present case, in reliance on those three authorities, submits that there is a general principle that, where an act of a Community Institution affects only the interests of a class of persons who, at the time when the act is adopted, are ascertainable, that act, whether it is in the form of a regulation or of a decision addressed to some other person, is to be regarded as a series of individual decisions affecting those persons, which they are entitled to challenge under Article 173. Here, says the applicant, the persons who would be affected by Article 1 of Regulation No 2546/74 were ascertainable at the date when the Regulation came into force, so that principle applies.

It seemed to me at one time that a short answer to that submission would be that, for any such principle to apply in this case, the class of affected persons must have been ascertainable, not on 7 October 1974, when Regulation No 2546/74 came into force, but on 4 October 1974, when it was adopted, because it was implicit in the submission that what the Commission should have adopted was not a regulation but a series of individual decisions. On the face of the Regulation it was to apply to licences granted up to 7 October and, since no one could say on 4 October who would apply for licences on the 5 and 6, the principle contended for by the applicant, even if it existed, could not be invoked here. The Commission did not however take this point and I understand the reason to be that, in fact, the issue of licences with certificates of advance fixing had, in the relevant fields, been suspended long before 4 October.

I think, nonetheless, that the submission of the applicant must be rejected, because I do not think it is possible to cut straight through from the premise that the class of persons whom a measure may affect is closed on the date of its adoption to the conclusion that the measure constitutes a series of individual decisions affecting the members of that class. In the case at all events of a measure adopted in the form of a regulation, the question must first be considered whether it is by its nature a regulation or not. There is, after all, such a thing as legislation affecting a closed class.

In so far as the outcome of this case turns on that question, as, in the end, I think it does, the *Toepfer* and *Bock* cases, concerned as they were with what were in form Decisions, are of course of no assistance. The *International Fruit Co.* case seems to me distinguishable because, as was pointed out in the Judgment of the Court in that case, the Commission was there exercising an express power, conferred on it by earlier legislation, to decide the fate of specific applications for licences lodged during a specific period. There was nothing 'general', in the relevant sense, about the scope of such a decision.

I agree with the submission of the Commission that the authority most closely in point here is the second *Compagnie française commerciale et financière* case (Case 64/69), to which I have already referred. That case, Your Lordships remember, formed part of a group of three cases (Cases 63/69, 64/69 and 65/69) that arose as a result of the adoption by the Council and the

Commission, in August 1969, of a series of measures designed to cope with the devaluation of the French franc. The background of that case has a marked similarity to that of this, in that there, as here, one sees the Community Institutions reacting urgently, with a series of Regulations, to a situation unprovided for by, and disruptive of, the common organization of the agricultural markets.

The particular provisions that were challenged in Case 64/69 were Articles 2 and 3 of Commission Regulation No 1660/69, which was adopted on 22 August 1969. Article 2 of that Regulation was concerned with the incidence of the new monetary compensatory amounts instituted by a Regulation of the Council dated 11 August 1969 (Regulation No 1586/69) on export contracts made before that date in which the price was expressed in French francs. The Article distinguished in this respect between cases where the exporter had, and where he had not, availed himself of the right to have the refund fixed in advance. The applicant had not availed itself of that right and felt aggrieved by the discrimination. Article 3, for its part, provided that the Regulation (that is Regulation No 1660/69) should come into force on 25 August 1969, but that the provisions of, among others, Article 2 should take effect as from 11 August. It was thus clearly retroactive.

The Court pointed out that Regulation No 1660/69, formed part of a complex of measures designed to adapt the common organization of agricultural markets to the situation created by the devaluation of the French franc and held that its legislative nature was not detracted from by the circumstance that the persons that it affected might be more or less readily ascertainable.

The only distinction I can see between that case and this is that, here, the applicant belongs to a class of persons who did avail themselves of a right conferred by Community law, namely the right to have an export refund fixed in advance, whereas, there, the applicant belonged to the converse class, namely the class of those who chose not to avail themselves of that right. To my mind that is a distinction without a difference, because it goes only to the degree of difficulty, in practice, in ascertaining the composition of the class. In both cases the class was factually closed at the time of the adoption of the contested measure.

In the result, I am of the opinion that this action should be held inadmissible.

That being so, I can deal more briefly with the issues of substance that have been raised in it.

First the applicant contends that the Commission had no power to adopt Regulation No 2546/74, and does so on two grounds.

Of these, one is that Council Regulation No 2496/74 was expressed, by Article 5 thereof, not to apply until 7 October 1974. Thus, says the applicant, the Commission could not, as early as 4 October 1974, exercise the legislative power conferred on it by Article 4 of that Regulation. This seems to me to be a bad point, because Article 5 of Council Regulation No 2496/74 provided that that Regulation should enter into force on the day of its publication in the *Official Journal* and such publication took place, as I have mentioned, on 3 October 1974. It follows that, at the date when the Commission adopted Regulation No 2546/74, Council Regulation No 2496/74, containing the Commission's enabling power, was in force. The reason why Article 5 of Council Regulation No 2496/74 contained a provision stating that that Regulation was to 'apply' only from 7 October 1974 is quite clear when one reads the Regulation as a whole. It meant that the alterations in prices thereby provided for were to take effect on that day.

The other ground on which the applicant challenges the Commission's power to adopt Regulation No 2546/74 is that the adoption of such a Regulation was not authorized by the terms of Article 4 of Council Regulation No 2496/74. I would reject this point too. I have already quoted the material parts of Article 4 of the Council Regulation and I need not repeat them. They were clearly designed to confer on the Commission wide powers to deal with the consequences of the decision embodied in the Council Regulation, and to derogate, in so doing, from the normal rules about prices applicable under the common organizations of agricultural markets. One of the things the Commission was called upon to do, in exercise of those powers, was to fix new threshold prices, but its power to derogate from the normal rules clearly extended to saying that those new threshold prices should not be used where it would be inappropriate for them to be used.

Then the applicant contends that the adoption by the Commission of Regulation No 2546/74 involved a breach of two familiar principles of Community Law: first, the principle that vested rights should be respected and, second, the principle that legitimate expectations should be respected.

In my opinion, my Lords, neither of these principles can have the slightest application in this case. At the time when the applicant obtained its export licence and advance fixing certificate — and, no doubt, as its Councel underlined, lodged the appropriate deposit — that is to say on 19 July 1974, it had no vested right to, and no legitimate expectation of, anything more than a nil refund. No event occurred between that date and 7 October 1974 which could confer on the applicant either a right to, or an expectation of, more. Of course there came into force on 7 October 1974 Commission Regulation No 2518/74 raising the threshold prices. But Regulation No 2546/74 came into force at the same time. So there was never any instant during which the applicant could have said that it had acquired a right, or even an expectation, by virtue of the former Regulation, that was not cancelled out by the latter.

In those circumstances, I am of the opinion that, on any view, this action should be dismissed; and that the Commission, having asked for costs, is entitled to them.