On those grounds,

THE COURT,

in answer to the question referred to it by the Tribunal Administratif de Paris, by a judgment of 17 June 1980, hereby rules:

Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Article 2 (1) of Regulation No 1608/74 of the Commission of 26 June 1974.

Pescatore Mackenzie Stuart Koopmans O'Keeffe Bosco

Touffait Due Everling Chloros

Delivered in open court in Luxembourg on 20 May 1981.

A. Van Houtte
Registrar

P. Pescatore
President of the Second Chamber
Acting as President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 9 APRIL 1981 [1]

Mr President,
Members of the Court,

Debayser, Sucre-Union and Jean Lion brought actions against the Commission before the Court of Justice in January and February 1977 for damages for the loss suffered through the Commission's, in their opinion unlawful, failure or refusal to apply the clause providing for discretionary relief in Article 1 of its Regulation No 1608/74 of 26 June 1974 on special provisions in respect of monetary compensatory amounts (Official Journal L 170 of 27 June 1974, p. 38) to sugar exports carried out on the

1 — Translated from the German.

basis of binding contracts concluded after 15 March 1976.

In its judgment of 2 March 1978 ([1978] ECR 553) the Court dismissed those applications as inadmissible.

The same companies then brought actions in May 1978 before the Tribunal Administratif, Paris, directed against the implied refusal of the Fonds d'Intervention et de Régularisation du Marché du Sucre [Fund for intervention in, and stabilization of, the market in sugar] ("the FIRS") to grant their request for the refund of increases in the monetary compensatory amounts which were applied from 23 July 1976 to sugar exported by them from France to non-member countries under binding contracts which were concluded *after* 15 March 1976 — the date on which the French Government decided to allow the French franc to float outside the "monetary snake" — and performed after 25 July 1976.

That court referred to the Court of Justice by a judgment of 17 June 1980 for a preliminary ruling the question whether Article 2 (1) of Regulation No 1608/74, which restricts the application of the discretionary relief provided for in Article 1 to imports and exports carried out "pursuant to binding contracts concluded before the [relevant] monetary measure" is valid.

That question has already been raised in Joined Cases 12, 18 and 21/77, mentioned above. In its judgment of 2 March 1978 the Court confined itself to dismissing the applications as inadmissible, stating, *inter alia*, that Regulation No 1608/74 has "given the Member States a margin of discretion which permits them to judge the application to each individual case of the discretionary measure, including the circumstances such as to justify the grant or the refusal of the exemption referred to in Article 1 of the Regulation" ([1978] ECR 553, at p. 569).

In order not to occupy the Court's time unduly perhaps I may be permitted to refer first to the further opinion delivered by Mr Advocate General Mayras on 1 February 1978 ([1978] ECR 553, at p. 577) after this Court had decided on 1 July 1977 to reserve final judgment on the objection of inadmissibility raised by the Commission.

As you know he dealt in that opinion with the extent of the Commission's discretion in formulating transitional provisions and he examined in particular the question whether Regulation No 1608/74 might be considered unlawful in the light of the complaints raised by the applicants concerning breach of the prohibition of discrimination and failure to observe the principle that legitimate expectations must be protected. The conclusions he reached, which were not in favour of the applicants, appear to me to be wholly convincing. As a result I do not consider that the substantially unchanged submissions of the applicants in the present proceedings require any new discussion of the aspects of their argument concerning the validity of Regulation No 1608/74.

The only submission of the plaintiffs in the main action which is in any way new is based on the option which was later introduced by means of Commission Regulation No 243/78 of 1 February 1978 of fixing the monetary compensatory amounts in advance, provided that the amount of the refund has also been fixed in advance in the export licence, because "the monetary compensatory amount does not always correspond to

the rate on which commercial contracts are based".

Since that regulation did not come into force until 3 April 1978 and is not retroactive the plaintiffs conclude that for the period prior to its publication Article 2 (1) of Regulation No 1608/74 was unlawful in so far as it was not applied to them as they desired.

Even if the increase in the monetary compensatory amounts has brought about a new economic situation which requires a corresponding alteration in the rules, it does not follow that this change in economic conditions necessarily placed on the Commission an obligation to adjust the application of the discretionary provision in the manner desired by the plaintiffs in the main action.

Nor, contrary to those submissions, is the position comparable with the case where a new regulation has direct effect through its direct application to legal relationships established subject to earlier rules.

In his opinion of 1 February 1978, referred to above, Mr Advocate General Mayras conceded that from the point of view of expediency it would seem very desirable for Regulation No 1608/74 to be amended; however he stated that the Commission was under no obligation in that respect ([1978] ECR 577, at p. 579) and added:

"The principle of 'compliance with old contracts' claimed by the applicants would, in the present circumstances, amount to giving contracts which had been entered into a guarantee equivalent to that which they would normally receive by the advance fixing of the compensatory amount. However such advance fixing is not possible in the present state of the Community rules and that impossibility itself constitutes a warning to traders. ... moreover, advance fixing of those amounts which was not subject to certain precautions might be accompanied by great speculation on the expenditure of the Community budget ...". ([1978] ECR 577, at p. 583.)

The plaintiffs' conviction in their dealings that the sphere of application of the discretionary measure should have been extended in the light of its purpose in order to include excessive increases in monetary compensatory amounts which might be brought about by reason of the withdrawal of the French franc from the "monetary snake" cannot justify interpreting that clause in accordance with the desires of the plaintiffs so as to avoid its being unlawful.

I therefore propose that the Court declare that consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Article 2 (1) of Regulation No 1608/74 of the Commission of the European Communities of 26 June 1974.