In Joined Cases 789 and 790/79

1. CALPAK S.P.A., Bologna;

2. SOCIETÀ EMILIANA LAVORAZIONE FRUTTA S.P.A., Ravenna, represented by J. Lever, Queen's Counsel of Gray's Inn, and U. Bourke, Solicitor of the Supreme Court, of Messrs Clifford-Turner, Brussels, with an address for service in Luxembourg at the Chambers of J. Hoss, 84 Grand'Rue,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES represented by R. Wainwright and H. Bronkhorst, members of its Legal Department, acting as Agents, assisted by A. Durand, Barrister of the Middle Temple, with an address for service in Luxembourg at the office of M. Cervino, Jean Monnet Building, Kirchberg,

defendant,

concerning, at this stage in the proceedings, the admissibility of the applications submitted by the applicants under the second paragraph of Article 173 of the EEC Treaty,

THE COURT

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait, Presidents of Chambers, J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

1. Council Regulation No 1152/78 of 30 May 1978, amending Regulation (EEC) No 516/77 on the common organization of the market in products processed from fruit and vegetables (Official Journal, L 144, p. 1) introduced a system of production aids for products processed from fruit and vegetables which did not, at first, include Williams pears preserved in syrup. Article 2 of that Regulation added a new article, Article 3a, to Regulation No 516/77, paragraph (5) of which empowered the Council to limit the aid "taking account of average production in the three years preceding the marketing year for which the aid is fixed" in order to avoid the risk of overproduction.

2. Council Regulation No 1639/79 of 24 July 1979 amending Regulation (EEC) No 516/77 (Official Journal, L 192, p. 3) extended the system of aid to Williams pears. At the same time, Article 1 of Council Regulation No 1640/79 of 24 July 1979 limiting the granting of production aid for Williams pears preserved in syrup (Official Journal, L 192, p. 4) limited the granting of aid "for each marketing year" to 57 100 tonnes, a quantity representing, according to the preamble to the Regulation, 83% of the average production for the 1976/77, 1977/78 and 1978/79 marketing years. According to the Commission, that quantity also represents 105% of the production for the 1978/79 marketing year which was declared by the French and Italian authorities.

3. Finally, on 6 August 1979 the Commission adopted a certain number of regulations designed further to extend the aid scheme, including Regulation No 1731/79 laying down detailed rules restricting the granting of production aid for Williams pears preserved in syrup (Official Journal, L 199, p. 21), Article 1 of which restricts the granting of aid for each undertaking to 105% of the quantity produced during the 1978/79 marketing year, and Regulation No 1732/79 amending Regulation No 1530/78 laying down rules for the application of the system of aid in respect of certain products processed from fruit and vegetables (Official Journal, L 199, p. 22), Article 1 (3) of which, as the new Article 6 (1) of Regulation No 1530/78, provides that the application for aid must be supported by a statement of the quantity produced by the processor during "the marketing year preceding the marketing year in

question". It is those two regulations of 6 August 1979 which are being challenged by the applicants. One of the regulations adopted by the Commission, moreover, is Regulation No 1730/79 of 6 August 1979, fixing for the 1979/80 marketing year the amount of production aid for ... tomatoes ... and Williams pears preserved in syrup, and the minimum price to be paid to producers (Official Journal, L 199, p. 19).

4. On 10 August 1979 the Italian Ministry for Agriculture and Forestry issued a ministerial decree entitled "Denuncia della produzione 1978 di pere Williams conservate allo sciroppo, da parte delle industrie di trasformazione" [Declarations by the processing industry concerning 1978 production of Williams pears preserved in syrup] (Gazzetta Ufficiale [Italian Official Gazette] No 224 of 16 August 1979), Article 1 of which provides that the aid "may not exceed, for each individual undertaking, the quantity of the product processed in 1978, plus 5%".

Article 2 of the Italian Ministerial Decree requires processors to declare the quantity of that type of product processed by them in 1978 in order to determine the amount of the aid.

The Associazione Italiana Industriali Prodotti Alimentari [Italian Association of Food-Processors] wrote two letters dated 13 September 1979 expressing doubt as to whether the provisions of that decree were compatible with, in particular, Regulation No 1731/79.

In a letter dated 26 September 1979 the Italian Ministry denied that there was any incompatibility, explaining that Italy received 64% of the aid fixed by the Council and no more; it referred on that point to the Commission's working document No VI.E.I/63/79 of 12 July 1979.

5. In their applications the applicants each claim that the Court should:

I. Declare Regulations Nos 1731/79 and 1732/79 void in so far as they fail to confer upon the applicants a legal entitlement to a share of the production aid for Williams pears preserved in syrup (a) in 1979/80, and (b) in subsequent marketing years, on a quantity of production (otherwise eligible for aid)

   (a) equal to a percentage of the applicants' past production not less than the percentage similarly used in determining the entitlement to production aid of the applicants' French competitors;

   (b) equal to a percentage of the applicants' average annual production in the three years immediately preceding the marketing year for which the aid is fixed.

II. Further or alternatively

   1. Declare Article 1 (3) of Regulation No 1732/79 void in so far as it purports to repeal and replace Article 6 of Regulation No 1530/78.

   2. Declare Article 1 of Regulation No 1731/79 void.

   3. Alternatively, declare Article 1 of Regulation No 1731/79 void in so far as it purports to impose by reference to the quantity produced by the applicants in 1978/79 a restriction on the quantity of the applicants' production:

      (a) in 1979/80 and

(b) in subsequent marketing years

qualifying for production aid.

4. Alternatively, declare Article 1 of Regulation No 1731/79 void in so far as it leaves undetermined (provided only that it does not exceed 105%) the actual percentage of the quantity produced by a processor during the 1978/79 marketing year that is to be used in establishing the maximum production by that processor:

(i) in 1979/80 and

(ii) in subsequent marketing years

that is to be eligible for production aid.

III. Declare void the Commission's decision to give to, or set aside for, the applicants a share (based on the proportion that the applicants' production in 1978/79 bore to total Italian production) of 64%, and no more, of the total production aid for Williams pears preserved in syrup.

IV. In any event, order the Commission to pay the applicants' costs hereunder.

V. Order such further or other relief as may be lawful or equitable in all the circumstances.

The applicants claim that Article 1 of Regulation No 1731/79 and Article 1 (3) of Regulation No 1732/79 (replacing Article 6 (1) of Regulation No 1530/78) are no more nor less, in fact, than decisions adopted by the Commission, concerning the applicants directly and individually, as a result of a political agreement to divide the amount of aid fixed by the Council between French and Italian producers in the ratio of 36% to 64%, to the disadvantage of Italian producers.

The truth is, according to the applicants, that the provisions were conceived in such a manner as to enable the national authorities and the Commission to grant aid to French and Italian producers in the proportions mentioned above without taking into account the actual production during the reference year.

According to the applicants the Commission intends the Italian authorities to specify a percentage up to 105%, the application of which will result in the distribution of 64% of the total aid, and the French authorities to specify a different percentage, up to 105%, in order to ensure the distribution of 36% of the aid to French producers.

In addition, the replacement of the 1976/77, 1977/78 and 1978/79 marketing years as reference periods by the 1978/79 marketing year places Italian producers at a disadvantage owing to the fact that production was particularly low in Italy during the 1978/79 marketing year.

6. Further to that principal submission the applicants rely on the following:

(a) Failure to observe procedural requirements, in so far as since the measures at issue constitute, accord-

ing to the applicants, a decision for which reasons must be stated under Article 190 of the EEC Treaty, the general terms in which the preambles to the two Commission regulations are expressed do not, in their opinion, disclose the real reasons;

(b) Lack of competence and improper purpose, in so far as the adoption of the measures under attack was motivated by political considerations which are not contemplated by Article 39 of the Treaty;

(c) Unlawful discrimination against the applicants in contravention of Article 7 (nationality) and Article 40 (3) (discrimination between producers within the Community), as well as violation of the general principle of equal treatment;

(d) Misuse by the Commission of the powers conferred on it by the Council as regards the alleged agreement on the distribution of Community aid;

(e) Fundamental errors of fact and failure to obtain information, in so far as the Commission relied on demonstrably inaccurate assessments provided by the national authorities instead of seeking accurate information from national producers' organizations.

7. The Commission has submitted preliminary objections of inadmissibility under Article 91 of the Rules of Procedure and claims that the Court should:

— Dismiss the applications as inadmissible;

— Order the applicants to pay the costs.

8. In their answer to the objection of inadmissibility, lodged on 18 January 1980, the applicants contend that the Court should:

— Declare the applications admissible;

— Reserve its decision on admissibility and deal with the preliminary objection at the same time as the substance of the application;

— In any event, order the Commission to pay the costs of the objections of inadmissibility.

9. After hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure on the objection of inadmissibility. At the same time it requested the Commission to give its views in writing, before the sitting, on the applicants' argument which was also put forward in support of the admissibility of the application, and which was based on the alleged existence of an agreement to the effect that the amount of aid available must be divided between Italy and France in the ratio of 64% to 36% respectively, and to produce working document No VI.E.I/ 63/79 of 12 July 1979 and any other document which might refer to such an agreement.

By an order of 10 December 1979 the Court also decided, pursuant to Article 43 of the Rules of Procedure, to join the two cases for the purposes of the written and oral procedure and for judgment.

II — Submissions and arguments of the parties on the admissibility of the applications

1. The *Commission* maintains that the regulations under attack, which lay down rules of general application, are fundamentally regulations within the meaning of Article 189 of the Treaty and that, as a result, the applicants cannot

in this instance avail themselves of Article 173.

Because the complexity of the subject-matter compels the Council to confine itself to the "basic elements", and because the administration of the provisions in detail is entrusted to the different national authorities, the adoption of a political decision by the Council may require, in the opinion of the Commission, the adoption of a series of legislative measures by the Commission, but these do not constitute instructions to the national authorities from a hierarchical superior. Each enactment partakes of the legislative nature of the whole series, and it is not open to the applicants to pick out certain measures which form part of that legislation and to qualify them as being in the nature of decisions. In any case the onus is on the applicants to demonstrate that the measures are in fact decisions, that they concern the applicants individually and that they concern them directly, for each of these conditions must be fulfilled for the applications to be held admissible.

2. So far as Regulation No 1731/79 is concerned the Commission disputes the allegation that it has the power to make decisions on the distribution among processors. The assertion is not confirmed by the recitals to Regulations Nos 1530/78 and 1731/79, which are entirely normative in tone and effect. In reality the responsibility is shared by the Commission as rule-maker and the Member State as the implementer of the rules.

The Commission recalls that in its judgment of 5 May 1977 in Case 101/76 *Koninklijke Scholten Honig* v *Council and Commission* ([1977] ECR 797 at p. 808) the Court stated that "the nature of a measure as a regulation is not called in question by the possibility of determining more or less precisely the number or even the identity of the persons to whom it applies at a given moment . . .".

The Commission states that it did not seek information on the number or identity of processing firms, or on the production figures for individual firms, and that its information was limited to the overall production figure declared by the authorities and by the French and Italian trade associations. According to the Commission, Regulation No 1731/79 is in fact legislative in nature, since the rules which it contains are expressed in a general manner and apply to anyone who engages in the activity of processing Williams pears and were not determined by subjective considerations.

The Commission concedes that the applicants are directly concerned by Regulation No 1731/79 in so far as the amount of the aid is fixed at 105% of their production in 1978/79, but it is of the opinion that they are not concerned individually because the regulation concerns all processing undertakings without exception, that is to say, both existing undertakings and new undertakings which have no previous production.

3. As far as Regulation No 1732/79, amending Regulation No 1530/78, is concerned, the Commission states that its normative character can hardly be disputed by the applicants and that the amendments which it brings about have not changed the nature of the original measure.

In addition, the applicants are not concerned individually by that regu-

lation, nor are they concerned directly by most of its provisions.

4. The *applicants* first point out that they have not sought the annulment of Regulations Nos 1731 and 1732/79 in their entirety, and go on to observe that even when a measure may properly be called a regulation, it may nevertheless contain provisions having the character of decisions which concern persons directly and individually.

In its objections of inadmissibility the Commission has not, moreover, disputed the existence of a decision dividing the total amount of available aid in the ratio of 64% to 36%, which means that that separate and distinct part of the applications is admissible.

As regards Regulations Nos 1731/79 and 1732/79 the applicants contest the argument that the question whether measures or parts of them in fact constitute decisions and whether they concern the applicants directly and individually may be separated into three distinct conditions, as the Commission has done. In fact it is sufficient to show that the regulations concern the applicants not only directly (which the Commission has admitted with regard to Regulation No 1731/79) but also individually in order to establish thereby that they do in reality contain decisions within the meaning of the second paragraph of Article 173.

According to the applicants, the Commission avoided naming the individual processors and giving them individual percentages, that is to say, it avoided making decisions having the form of such measures, by proceedings as follows:

(a) It abandoned the normal criterion of average production over several years and adopted instead a base reference period of a single year, when the fruit in question was a perishable seasonal crop;

(b) It chose as the sole reference year the year 1978/79, which was an atypical year for the production of Williams pears preserved in syrup because production was extremely low, as the Commission knew;

(c) It effectively limited the granting of aid to undertakings which had processed Williams pears during the single reference year, that is to say, to a group which did not include all the existing processors.

In the applicants' view the regulations therefore have a dual character, with aspects both of a decision and of legislation. The function and object of the regulations are, *inter alia*, to limit the amount of aid for each processor and the essential point, according to the applicants, is that the number and identity of the processors may be determined. The fact that the Commission, owing to its own bad faith, lacked that knowledge does not alter the "closed" nature of the group of individuals to whom the measures were addressed. The maximum aid to which each producer was entitled was fixed by Regulation No 1731/79 and it remained only for the national authorities to calculate and allocate the aid.

The applicants point out that the quotation from the judgment in Case 101/76 *Koninklijke Scholten Honig* referred to by the Commission is incomplete and that the passage in question reads in full as follows:

"Moreover, the nature of a measure as a regulation is not called in question by the possibility of determining more or less precisely the number or even the identity of the persons to whom it applies at a given moment *as long as* it is established that it is applied by virtue of an objective legal or factual situation defined by the measure in relation to the objective of the latter".

To demonstrate the individual effect, the applicants reiterate the arguments set out above, emphasizing in particular the fact that since the grant of aid depends on production in the 1978/79 marketing year, "existing" undertakings (which produced during that year) are certainly individually concerned by the first article of Regulation No 1731/79.

As far as the procedural aspects of the case are concerned the applicants consider that the Court should postpone a decision on the issue of admissibility until judgment is given on the substance of the applications, principally because the Commission's objections of inadmissibility relate to only a part of the applications, namely the request for the partial annulment of the regulations, and it has submitted no argument as to the other part, relating to the alleged existence of a decision that Italian producers should be allotted 64%, and no more, of the total aid available for Williams pears preserved in syrup.

III — Questions asked by the Court

1. In a letter dated 7 March 1980 the Commission lodged at the Registry at the request of the Court working document VI.E.I/63/79 of 12 July 1979, together with two other working documents. The Commission pointed out that the documents have no bearing whatsoever on the question of the restriction on the quantity of Williams Pears eligible for aid. They were drawn up for the purpose of calculating the weighted average used to determine the minimum price, and although they refer to 64% and 36% that is because those percentages represent the proportions between the quantities produced in 1978/79 as declared by the French and Italian authorities. There is no agreement in existence, and certainly no decision, restricting the grant of aid to Italy to a particular percentage, as indeed there exists no *a priori* restriction anywhere regarding any of the Member States. The Commision has made known its views on this point to the Italian authorities.

In reply to the questions asked by the Court the Commission stated in the course of the oral procedure that the production figures for the marketing years 1973 to 1978 show, apart from the year 1976, a continuing decrease in Community production, and that the purpose of the rules, especially the adoption of 1978 as the reference year, was to maintain production at that low level and not to stimulate it. It is possible, but certainly not indefensible, that such a restriction has a greater incidence upon marginal producers, that is to say those who do not have a stable production rate, than upon co-operatives, which have a regular production rate.

If, however, the quantities which were declared by the Italian authorities for the year 1978 are too low and if the 57 100 tonnes do not, as a result, entitle Italian

undertakings to be granted aid corresponding to 105% of their production in 1978, then, according to the Commission, a proposal must be made to the Council to modify Regulation No 1640/79, which restricts the granting of aid to 57 100 tonnes.

2. At the sitting on 20 March 1980 the applicants lodged a document containing observations on the explanations appearing above, the submission of which was accepted by the Commission. They claim, in particular, that

(i) according to the Commission's figures, except during 1978 Italian producers were responsible for more than 75% of the total Community production of Williams pears preserved in syrup;

(ii) the Commission's figure for 1978, that is, 64%, was particularly low; and

(iii) the abnormal figure for 1978 is due to the fact that, according to the Commission's figures, Italian production for 1978 was more than 40% lower than the average for Italy during the preceding years, whereas, still according to the Commission's figures, French production for 1978 was actually 13% higher than the average for France during the two preceding years.

IV — Oral procedure

At the sitting on 20 March 1980 oral observations were presented by the applicants, represented by J. Lever, Queen's Counsel of Gray's Inn, and the Commission, represented by A. Durand, Barrister of the Middle Temple, and by R. Wainwright and H. Bronkhorst, members of the Commission's Legal Department.

The Advocate General delivered his opinion at the sitting on 7 May 1980.

Decision

1 Applications were submitted on 2 November 1979 by the Italian companies Calpak S.p.A., Bologna, and Società Emiliana Lavorazione Frutta S.p.A., Ravenna, for a declaration under the second paragraph of Article 173 of the EEC Treaty that certain measures adopted by the Commission regarding production aids for Williams pears preserved in syrup are void. The Commission submitted a preliminary objection of inadmissibility under Article 91 (1) of the Rules of Procedure and the Court has decided to give a ruling on the admissibility of the applications for annulment without going into the substance of the applications.

2 As amplified in the course of the oral procedure, the applications concern in the main Article 1 of Commission Regulation No 1731/79 of 6 August 1979 laying down detailed rules restricting the granting of production aid for

Williams pears preserved in syrup (Official Journal L 199, p. 21), and Article 1 (3) of Commission Regulation No 1732/79 of 6 August 1979 amending Regulation No 1530/78 laying down rules for the application of the system of aid in respect of certain products processed from fruit and vegetables (Official Journal L 199, p. 22). The first of those provisions, both of which took effect from the beginning of the marketing year 1979/80, restricts the aid granted to each processing undertaking to 105% of the amount produced during the 1978/79 marketing year. The second provision provides that all applications for aid must be supported by a statement of the quantity produced by the processor during the marketing year preceding the marketing year in question.

3 The system of production aid for products processed from fruit and vegetables was introduced by Council Regulation No 1152/78 of 30 May 1978, amending Regulation No 516/77 on the common organization of the market in that sector (Official Journal L 144, p. 1). Article 2 of that regulation added a new Article 3a to Regulation No 516/77, paragraph (5) of which empowered the Council to limit the aid "taking account of average production in the three years preceding the marketing year for which the aid is "fixed" in order to avoid the risk of overproduction.

4 It was in application of the last-mentioned provision that the Council, having extended the system of aid to the product in question, adopted Regulation No 1640/79 of 24 July 1979 limiting the granting of production aid for Williams pears preserved in syrup (Official Journal L 192, p. 4), thereby limiting the granting of aid for each marketing year to 57 100 tonnes. The preamble to the regulation shows that that quantity represents 83% of the average production for the marketing years 1976/77, 1977/78 and 1978/79, but it has been established that it also represents 105% of production during the 1978/79 marketing year alone as declared at the time by the French and Italian authorities, those two Member States accounting for the entire Community production.

5 The applicants complain, *inter alia,* that the Commission abandoned the normal criterion of average production over several years applied by the

Council in its regulations, adopting instead as the sole reference year the 1978/79 marketing year, which was atypical for the product in question because production in Italy was unusually low. That is especially true in the case of the applicants and the other processors in the private sector, whose production, unlike that of public undertakings and co-operatives, is extremely variable. When crops are plentiful, as, for example, during the 1976/77 marketing year, undertakings such as the applicants help to absorb the surplus by buying up large quantities of fruit. When basic supplies are less plentiful, however, as in the case of the 1978/79 marketing year, such undertakings purchase much less, and as a result the quantity they process into preserves is small. The Commission is well aware of those facts. There is only a very limited number of Williams pears processors in the Community. The undertakings which processed that fruit during the 1978/79 marketing year, and which are therefore concerned by the contested provisions, constitute not merely a closed and definable group but equally a group the members of which were either known to or at least identifiable by the Commission at the time when it adopted the disputed provisions. The purpose of such provisions moreover, can only have been to prejudice undertakings, such as the applicants, whose production had been extremely low for the single marketing year selected as a point of reference by the Commission. Thus the applicants claim to have fulfilled the requirements for being directly and individually concerned by the provisions, which is sufficient, in their opinion, to entitle them to request the annulment thereof under the second paragraph of Article 173 of the Treaty.

6 The Commission's main contention is that as the disputed provisions were adopted in the form of regulations their annulment may only be sought if their content shows them to be, in fact, decisions. But in the Commission's view the provisions in question, which lay down rules of general application, are truly in the nature of regulations within the meaning of Article 189 of the Treaty. By selecting the 1978/79 marketing year as the reference period the Commission's intention was to limit and stabilize production at a level as low as that of that year. It is said to be possible, but certainly not indefensible that such a restriction has a greater incidence upon marginal producers such as the applicants than, for example, upon co-operatives, but that does not mean that the applicants are individually concerned within the meaning of the second paragraph of Article 173, which hypothesis the Commission denies in any case.

7 The second paragraph of Article 173 empowers individuals to contest, *inter alia*, any decision which, although in the form of a regulation, is of direct and individual concern to them. The objective of that provision is in particular to prevent the Community institutions from being in a position, merely by choosing the form of a regulation, to exclude an application by an individual against a decision which concerns him directly and individually; it therefore stipulates that the choice of form cannot change the nature of the measure.

8 By virtue of the second paragraph of Article 189 of the Treaty the criterion for distinguishing between a regulation and a decision is whether the measure at issue is of general application or not.

As the amendment to Regulation No 1530/78 made by Article 1 (3) of Regulation No 1732/79 concerning the information to be submitted in support of the application for aid is merely the natural consequence of the limitation imposed by Article 1 of Regulation No 1731/79, consideration need only be given to the nature of the latter provision.

9 A provision which limits the granting of production aid for all producers in respect of a particular product to a uniform percentage of the quantity produced by them during a uniform preceding period is by nature a measure of general application within the meaning of Article 189 of the Treaty. In fact the measure applies to objectively determined situations and produces legal effects with regard to categories of persons described in a generalized and abstract manner. The nature of the measure as a regulation is not called in question by the mere fact that it is possible to determine the number or even the identity of the producers to be granted the aid which is limited thereby.

10 Nor is the fact that the choice of reference period is particularly important for the applicants, whose production is subject to considerable variation from one marketing year to another as a result of their own programme of production, sufficient to entitle them to an individual remedy. Moreover, the applicants have not established the existence of circumstances such as to justify describing that choice — the conformity of which with the Council's regulations, and especially with the basic regulation, is only relevant to the substantive issues of the case — as a decision adopted specifically in relation to them and, as such, entitling them to institute proceedings under the second paragraph of Article 173.

11 It follows that the objection raised by the Commission must be accepted as regards the applications for the annulment of the provisions in the two regulations in question.

12 In the alternative, the applicants claim the annulment of any measure adopted by the Commission with a view to allocating the total production aid for Williams pears preserved in syrup between French and Italian producers in the proportion 36% to 64%. They maintain that the provisions which form the principal subject-matter of their applications are in all probability designed to give effect to such a measure intended to limit the aid granted to Italian producers. The Commission contends that although the percentages referred to by the applicants do indeed correspond to the proportion between the quantities produced during the reference period as declared at the time by the French and Italian authorities, there exists no measure of the Commission which limits the granting of aid to Italy to a fixed percentage of total production during the marketing years for which the aid is granted.

13 In fact there is no reference, in either the provisions of or the preamble to the regulations concerning production aid for Williams pears, to an apportionment of the aid between French and Italian producers, and the proceedings have not brought to light any other measure of the Commission such as to entail a flat-rate distribution which does not correspond to actual production during the reference period. It follows that the applications for annulment are devoid of object and that this part of the applications must therefore also be dismissed as inadmissible.

14 Under Article 69 (2) of the Rules of Procedure the unsuccessful parties shall be ordered to pay the costs. As the applicants have failed in their applications, they must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the applications as inadmissible;**

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

Kutscher O'Keeffe Touffait Mertens de Wilmars Pescatore

Mackenzie Stuart Bosco Koopmans Due

Delivered in open court in Luxembourg on 17 June 1980

A. Van Houtte
Registrar

H.Kutscher
President

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 7 MAY 1980

My Lords,

This is an application by the Commission under Article 91 of the Rules of Procedure of the Court for a decision on a preliminary objection as to the admissibility of two actions brought against the Commission under Article 173 of the EEC Treaty. The applicants in those actions (which have been joined by order of the Court) are two Italian companies, Calpak S.p.A., of Bologna, and the Società Emiliana Lavorazione Frutta S.p.A. of Ravenna. Both are