OPINION OF ADVOCATE GENERAL LÉGER
delivered on 17 October 1996 *

1. The Queen's Bench Division of the High Court of Justice, London, has referred to the Court for a preliminary ruling a number of questions concerning the validity of two provisions of Regulation (EC) No 214/94. [1]

The relevant legislation

2. In accordance with the Community's undertakings in the context of the General Agreement on Tariffs and Trade (GATT), the Council opened a 1994 Community tariff quota of 53 000 tonnes for certain categories of frozen beef by means of Regulation (EC) No 130/94, [2] leaving detailed rules for the application of the regulation to be adopted by the Commission in accordance with the procedure laid down in Article 27 of Regulation (EEC) No 805/68, [3] which involves consultation of the Beef Management Committee.

3. Products imported into the Community under this tariff quota qualify for a Common Customs Tariff duty reduced to 20% and an import levy of 0%. [4]

4. The tariff quota is divided into two parts (referred to hereinafter as the 'traditional quota' and the 'non-traditional quota'):

— 42 400 tonnes (80%) for 'traditional operators' and

— 10 600 tonnes (20%) for 'other operators'. [5]

5. Traditional operators are defined in Article 2(a) of Regulation No 130/94 as those who have effected imports into the Community within the tariff quota over the

* Original language: French.

1 — Commission Regulation (EC) No 214/94 of 31 January 1994 laying down detailed rules for the application of Council Regulation (EC) No 130/94 with regard to the import arrangements for frozen beef falling within CN code 0202 and products falling within CN code 0206 29 91 (OJ 1994 L 27, p. 46).

2 — Council Regulation (EC) No 130/94 of 24 January 1994 opening and providing for the administration of a Community tariff quota for frozen meat of bovine animals falling within CN code 0202 and products falling within CN code 0206 29 91 (1994) (OJ 1994 L 22, p. 3).

3 — Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187).

4 — Article 1(3) of Regulation No 130/94.

5 — Article 2(a) and (b) of Regulation No 130/94.

last three years, whilst other operators are defined in Article 2(b) as those who can prove that they have engaged in trade with third countries, involving a minimum quantity and for a period to be determined, in beef and veal other than that to which the import arrangements apply and excluding meat which is the subject of inward or outward processing traffic.

6. Nothing in the rules prevents a traditional importer from participating in the quota reserved for other operators, provided that he fulfils the conditions of eligibility regarding the latter.

7. The Commission is required by Article 4 of Regulation No 130/94 to adopt detailed rules for the application of the regulation by determining, in particular, the minimum quantity and the reference period referred to in Article 2(b) of Regulation No 130/94.

8. This was done by means of Commission Regulation No 214/94, Article 1(2) of which lays down the conditions of eligibility for other operators. The conditions are couched in the alternative, each applicant being required to prove either that he imported at least 50 tonnes of beef in 1992 and 80 tonnes in 1993, or that he exported at least 110 tonnes in 1992 and 150 tonnes in 1993; the beef imported or exported to third countries must not be subject to quotas.

9. The allocation of the traditional quota and the other operators' quota is governed by Article 1(3) and Article 1(4) respectively of Regulation No 214/94. The traditional quota is allocated among traditional operators in proportion to the level of imports during the reference years whereas the quota for other operators is allocated in proportion to the quantities applied for by eligible operators. In practice, however, eligible operators apply for the maximum amount of 50 tonnes (referred to in Article 3(3), third indent, of Regulation No 214/94). In such a case, allocation by quantity applied for and allocation by application are the same. [6]

10. Article 2(2) of Regulation No 214/94 provides that companies arising from mergers where each part has rights pursuant to Article 1(1) [7] shall enjoy the same rights as the companies from which they are formed. The provision does not apply to applications by other operators, as explained by the Commission in an information note addressed on 5 February 1992 to all the Member States regarding the corresponding article in Commission Regulation (EEC)

6 Commission observations, point 16

7 — That is to say, those accorded to traditional operators.

No 3701/91 of 18 December 1991 laying down detailed rules for the application of the import arrangements provided for in Council Regulation (EEC) No 3667/91 for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91. [8]

Facts

11. These proceedings concern a case brought by 27 companies belonging to the Slinger family against the agricultural intervention agency in the United Kingdom, the Intervention Board for Agricultural Produce ('the Intervention Board'). All but one are members of a group ('the Slinger group' or 'the group'), the other company remaining outside the group but still under the control of the Slinger family.

12. The companies are meat producers, wholesalers and traders based in Lancashire. The Slinger Group had an annual turnover in 1993 of approximately UK £35 000 000 and is thus a medium-sized company as far as the meat trade is concerned.

13. When the first company in the group was established in 1952, its activities were those of retail and contract butchers. Since then the group has expanded both its range of activities and their geographical scope: today the Slinger group comprises slaughtermen and meat wholesalers serving butchers throughout Lancashire and is engaged in meat trading and boning contracting as well as the preparation and processing of meat. The group now has various plants and cold stores. The group expanded in the late 1980s through the acquisition of several production and trading companies. It also extended its operations, notably by engaging in trade in frozen beef with third countries. The bulk of this trade is made up of exports but the group is also involved in imports. In 1993 the group received the Queen's Award for Export.

14. Of the 27 applicant companies, eight first registered as traders with the Intervention Board in 1988, and 19 in 1991.

15. None met the eligibility criteria for the GATT quota until 1993, when 13 of them became eligible for the quota reserved for other operators.

8 — OJ 1991 L 350, p. 34.

16. In 1994, those 13 companies qualified for traditional quota on the basis of the fact that they had imported beef into the Community within the quotas (in this case the quota for other operators) over the preceding three years, in accordance with Article 2(a) of Regulation No 130/94.

17. In 1994 those 13 companies, together with the other 14, applied for non-traditional quota in order to increase their quota allocation.

18. Rejecting their applications, the Intervention Board communicated two decisions to them: in the first, their application for non-traditional quota was rejected on the ground that they had been unable to show that they had exported 150 tonnes of meat in 1993, while in the second, they were informed that they could not rely on Article 2(2) of Regulation No 214/94 because that provision did not entitle them to combine their performances in order to qualify as other operators.

19. The national court states that in 1992 three of the companies exported less than 110 tonnes, and that a further four companies exported less than that amount in 1993, so that the conditions required in 1994 for obtaining other operators' quota would not have been met by those seven companies even if the export threshold had not been raised. That is acknowledged by the applicants in the main proceedings when they state that had they been authorized to rely on Article 2(2) of Regulation No 214/94, as requested in their earlier application to the Intervention Board, they would have reached the eligibility threshold.

20. The companies have asked the High Court of Justice, Queen's Bench Division, to quash the two decisions of the Intervention Board, and they challenge the validity of the legal basis on which the Community import quota for 1994 for certain categories of frozen beef and for certain categories of frozen beef products, as provided for by Regulation No 214/94, was allocated among Community traders. In particular, they claim that the Commission exceeded its powers under Regulation No 130/94 by fixing the amount of beef to have been exported during the previous year at 150 tonnes in Article 1(2) of Regulation No 214/94, an act which also infringes various principles of Community law. They also claim that the omission of the provision permitting companies to combine their performances in order to meet the eligibility criteria for other operators breaches the principle of non-discrimination and runs counter to the aim of the Community legislature.

21. They claim that the damage they have suffered as a result of the application of the regulations amounts to UK £200 000.

The questions referred for a preliminary ruling

22. In order to assist it in ruling on the parties' claims, the national court has referred the following two questions to the Court of Justice for a preliminary ruling:

'1. Is Article 1(2) of Commission Regulation (EC) No 214/94 invalid and contrary to EC law to the extent that it required operators seeking to qualify for 1994 quota referred to in that subarticle on the basis of their past beef exports to have exported at least 150 tonnes in the previous year, rather than 110 tonnes as had been required in 1993? In particular, is Article 1(2) invalid and contrary to EC law as:

(a) exceeding the powers conferred upon the Commission by Council Regulation No 130/94;

(b) infringing the principle of proportionality;

(c) infringing the principle of legitimate expectations;

(d) infringing the duty to give adequate reasons pursuant to Article 190 of the EC Treaty; and/or

(e) having been adopted without proper consultation of the Beef Management Committee, contrary to Article 4 of Regulation No 130/94 and Article 27 of Regulation No 805/68?

2. Is Article 2(2) of Commission Regulation (EC) No 214/94 invalid and contrary to EC law, to the extent that it excludes companies arising from mergers where each part has rights pursuant to Article 1(2) of that regulation from the opportunity to cumulate their past trading performance? In particular, does Article 2(2) violate:

(a) the principle of non-discrimination, in so far as companies deriving their rights from Article 1(1) of that regu-

lation can merge and cumulate their past trading performance for the purpose of obtaining quota, whereas companies deriving their rights from Article 1(2) cannot; and/or

(b) the guarantee referred to in the second recital to Council Regulation (EC) No 130/94 of continuing access to quota by all interested operators within the Community?'

A — *Admissibility of the reference*

23. The United Kingdom queries (without adopting a position on it, however) the admissibility of the questions, referring to the judgment of the Court of Justice in *TWD Textilwerke Deggendorf*, [9] in which it was held that it would be incompatible with the principle of legal certainty to permit the addressee of a decision individually and directly affected thereby to challenge the validity of the decision before the national courts after he has failed to bring an action under Article 173 of the Treaty within the proper time-limit. [10]

24. The Court has consistently held that for an individual to be able to challenge a Community regulation on the basis of Article 173 of the Treaty he must be able to show that the contested provisions in the regulation are of direct and individual concern to him and that his position is distinguishable from that of any other economic operator. [11]

25. In the case before us today there is no indication in the documents in the file that the contested provisions of Regulation No 214/94 constitute a disguised decision against the members of the Slinger group directly and individually. On the contrary, they are addressed, in abstract and general terms, to unidentified persons, they apply in situations which are objectively defined and they concern the applicants in the main proceedings only in their objective capacity as traders in the relevant sector in the same way as any other economic operator in the same situation. In the light of the information before the Court I consider that any action brought by the applicants in the main proceedings under Article 173 of the Treaty would have been declared inadmissible. [12]

26. My view is therefore that the case-law cited is not applicable here and that the reference is admissible.

9 — Case C-188/92 [1994] ECR I-833.

10 Paragraphs 25 and 26.

11 — See *inter alia* Case C-354/87 *Weddel* v *Commission* [1990] ECR I-3847, paragraphs 18 to 23, and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraphs 19 to 22.

12 — Joined Cases 16/62 and 17/62 *Confédération Nationale des Producteurs de Fruits et Légumes and Others* v *Council* [1962] ECR 471 and Case C-213/91 *Abertal and Others* v *Commission* [1993] ECR I 3177, paragraphs 19 and 20.

B — *Reply to the first question*

27. This question seeks a ruling on the validity of Article 1(2) of Regulation No 214/94 in so far as it reserves the non-traditional quota to applicants able to show that their exports of beef to third countries amounted to at least 110 tonnes in 1992 and 150 tonnes in 1993.

28. The applicants in the main proceedings complain that the Commission raised the previous threshold by 30% and in so doing:

(a) exceeded the powers conferred on it by the Council;

(b) breached essential procedural requirements (failure to give reasons or to consult the Beef Management Committee);

(c) violated various general principles of Community law (the principles of proportionality and legitimate expectation).

The plea that the Commission exceeded its powers

29. The applicants in the main proceedings allege that the Commission abused its powers by substituting in Regulation No 214/94 aims contrary to those duly fixed by the Council in Regulation No 130/94.

30. They ascribe to the Commission two aims. In the first place, it sought to restrict the number of applications for non-traditional quota in order to avoid having recourse to balloting, despite the fact that it is provided for by the Community regulations, [13] and in the second place it wished to avoid the creation of 'paper companies', that is to say companies created solely in order to enable the group to which they belong to make the most of the scheme for allocating the non-traditional quota.

31. Conversely, they maintain that the objectives pursued by the Council originally were three. In the first place, the Community quota had to be allocated among genuine operators. The Commission's task was therefore to make arrangements to ensure that the activities of the operators were

13 — Article 4(2), second indent, of Regulation No 214/94.

genuine. [14] Secondly, the Council itself defined 'genuine operators' as being those with a representative level of trade with third countries. [15] The applicants in the main proceedings conclude that raising the minimum exports to third countries which must be achieved in order to qualify for non-traditional quota would be justified only if there was found to be a significant increase in exports of beef from the European Union to third countries. Lastly, the Council sought to ensure equal and continuing access to quotas for all interested operators.

32. I cannot subscribe to that analysis.

33. It should be remembered that by Article 4 of Regulation No 130/94 the Council has entrusted to the Commission the task of determining the eligibility criteria for the quota reserved for other operators (that is to say, the minimum quantities and the reference period provided for in Article 2(b) of Regulation No 130/94). The same provision requires those rules to be adopted in accordance with the procedure laid down in Article 27 of Regulation No 805/68, known as the 'management committee' procedure, which enables the Council to reserve its right to intervene.

34. It is therefore clear that the Commission has the power to adopt the measures at issue — *a point which has not been challenged by the applicants in the main action.*

35. I would add that the Court has acknowledged that the Commission enjoys a wide discretion in such matters. It has stated that '... since in the sphere of the common agricultural policy [16] the Commission alone is able to monitor continually and closely trends on the agricultural markets and to act with urgency if the situation requires, the Council may find it necessary to confer on the Commission wide implementing powers (see, in particular, Case 23/75 *Rey Soda* v *Cassa Conguaglio Zucchero* [1975] ECR 1279, paragraph 11). Wide powers of implementation are all the more justified in the present case in that they must be exercised in accordance with the "management committee" procedure, which allows the Council to reserve its right to intervene (*Rey Soda*, paragraph 13)'. [17]

36. It is necessary, nevertheless, to consider whether the measures adopted by the Commission reflect the purpose of the regulation.

37. The purpose of Regulation No 130/94 is defined in the second recital in the preamble. It is 'to guarantee ... equal and continuing

14 - Third recital in the preamble to Regulation No 130/94.

15 - Ibid.

16 - The case concerned likewise the common organization of the markets in beef and veal.

17 Joined Cases C 296/93 and C 307/93 *French Republic and Ireland* v *Commission* [1996] ECR I 795, paragraph 22

access by all interested operators within the Community to the quota'. The third recital describes the means to be used to achieve that purpose and states that 'the arrangements consist of the allocation by the Commission of the quantities available to traditional operators and to operators engaging in trade in beef and veal; ... in order to ensure that the activities of the latter operators are genuine, only quantities of a certain size representative of trade with third countries should be considered'. The statement of purpose in the second recital in the preamble to Regulation 214/94 likewise indicates that the aim of the regulation is to be achieved by restricting access to the quotas to those 'who can demonstrate the genuine nature of their business and who apply for quantities of some significance'.

38. In *Weddel* [18] the Court confirmed that the aim of the import arrangements for beef in the context of the GATT tariff quotas was to guarantee equal and continuing access to the quota for all interested operators, and criticized actions likely to disturb the operation of the scheme and to undermine its purpose.

39. The Commission's arguments must be upheld. By artificially fragmenting the economic structure of their group in order to claim the largest possible share of the non-traditional quota, these operators are adopting an approach which is liable to disturb the proper functioning of the scheme, to evade the application of the rule laid down in Article 3 of Regulation No 214/94 and to undermine the principle that all interested operators must have equal and continuing access to quotas.

40. Contrary to the assertions of the applicants in the main action, the Council does not appear to have sought to establish a link between the amounts or quantities determined by the Commission and trends in exports or imports with third countries. The third recital in the preamble to Regulation No 130/94 states merely that '... in order to ensure that the activities of the latter operators (that is to say, other than traditional ones) are genuine, only quantities of a certain size representative of trade with third countries should be considered', which means that operators which have imported or exported significant amounts will qualify for a quota (that is to say, will have the right to import). Raising the threshold for exports to third countries appears to be an effective method of achieving the purpose set by the Council.

41. I must therefore conclude that the plea of excess or abuse of powers must be rejected.

18 — Paragraph 35.

The alleged breach of the principle of proportionality

42. Having recalled the purpose set by the Council, I shall now consider whether the Commission went beyond what was appropriate and necessary to achieve it. [19]

43. The Court has held that 'where the evaluation of a complex economic situation is involved, the Commission and the Management Committee enjoy a wide measure of discretion. In reviewing the legality of the exercise of such discretion, the Court must confine itself to examining whether it discloses manifest error or constitutes misuse of power or a clear disregard of the limits of its discretion on the part of that institution'. [20]

44. The Court's task is therefore to determine whether there was a manifest error in the evaluation of the situation on the relevant market, whether the Commission selected a measure which was manifestly inappropriate for the purpose and whether the measure chosen was necessary in order to achieve those purposes.

45. I shall start with the first of those points.

46. I have recalled that the purpose of Regulation No 130/94 is to guarantee equal and continuing access to the quota for all interested operators in the Community.

47. The Commission has ensured such continuity of access to the quotas by allocating the largest part of the quota to traditional operators. In their case, regardless of the volume of trade with third countries and provided that they prove that they have qualified for quotas during the last three years, they are assured the allocation of a quota. Equal access to quotas is guaranteed by opening part of the quotas to new operators and by the rule that no more than one application may be made by each applicant. [21]

48. The figures produced by the Commission indicating the proliferation in applications (which increased by approximately 78% between 1992 and 1993) have not been challenged, any more than its analysis of the reasons for the increase. Conditions on the Community market do not appear to have been such as to warrant a large increase in

19 — *France and Ireland* v *Commission*, paragraph 30.

20 Ibid., paragraph 31.

21 Article 3 of Regulation No 214/94.

the number of traders taking up trade in frozen beef. It must therefore be taken to be the result of the artificial creation of companies with a view to qualifying for quotas, that is to say, the fragmentation of a large economic unit into small ones which are not really independent of the main one and which have been created solely in order to obtain a large quota.

49. Furthermore, it is not disputed that the applicants adopted the strategy described by the Commission in order to obtain the largest possible share of the non-traditional quota. Their second application to the Intervention Board (to be permitted to achieve the threshold by means of merger) removes any doubt as to that. Such conduct is incompatible with the purpose which the Council sought to achieve. [22]

50. It must therefore be held that it has not been shown that the Commission committed a manifest error in its evaluation of the market.

51. Let us see, next, whether, as the applicants in the main action maintain, the measure is manifestly inappropriate to the purpose and recourse to a ballot would have been better suited to the market conditions.

52. I share the Commission's views on this point. Balloting would merely have aggravated the phenomenon. It would encourage the fragmentation of economic units into multiple companies for the sole purpose of obtaining the best possible chance of qualifying for and obtaining a share of that quota.

53. On the contrary, raising the threshold as much as the Commission did was the only adequate solution to the problem and was, moreover, in accordance with the aim to be achieved. This case illustrates perfectly the efficacy of that measure, and likewise its necessity.

54. I must conclude, therefore, that the measure adopted by the Commission does not breach the principle of proportionality and that this plea must be rejected.

22 — See paragraph 39 of this Opinion.

The alleged breach of the principle of protection of legitimate expectations

55. The applicants in the main action claim that the Commission could not raise the threshold for exports of beef to third countries in the way in which it did without breaching the legitimate expectations of the traders concerned. The Commission ought to have consulted them and to have informed them in good time that the Community legislation was to be changed so that they could manage their finances effectively.

56. The Commission observes that the tariff quota is administered on an annual basis. There was nothing in Regulations Nos 214/94 and 130/94 to suggest that the eligibility criteria would remain unchanged. The criteria are always fixed after the relevant reference period is closed and before applications are lodged for the current year, in order to preclude speculative applications and to ensure the smooth running of the scheme. The documents in the case-file, and the admissions of the applicants in the main action themselves, indicate that they speculated on the absence of an increase in the export thresholds. In so doing they ran a risk, a risk which they accepted. As the Commission has pointed out, moreover, the threshold has been raised by much larger amounts in the past: in 1992, for instance, it was increased by 120%.

57. The United Kingdom has observed that the way in which the applicants in the main action arranged their affairs was clearly inspired by a speculative approach and that the Slinger group clearly set out to take maximum advantage of the arrangements, an attitude which is not unlawful, any more than was the Commission's concern to employ effective means of combating that type of speculation. However, the Slinger group should not minimize the risk inherent in any speculative endeavour.

58. I consider the views of the United Kingdom and the Commission correct.

59. As the Court has consistently held, '... traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of the discretionary powers will be maintained; this is particularly true in an area such as the common organization of markets which involve constant adjustments to meet changes in the economic situation (see, in particular, *Crispoltoni* [Joined Cases C-133/93, C-300/93 and C-362/93 [1994] ECR I-4863] ... paragraph 57)'. [23]

23 — *France and Ireland* v *Commission*, paragraph 59.

60. The Court has also stated that the principle of the protection of legitimate expectations does not mean that an existing situation cannot be changed by a regulation, provided that the adoption of such measures is foreseeable and notified in good time. [24]

61. As the Commission stated in the observations to which I have already referred, those conditions were satisfied in this case.

62. Premature announcement, especially before the end of the reference period, of the new eligibility criteria would have deprived the regulations of any useful effect. In such a case the 'speculating' group would merely redistribute the export certificates among the companies specially constituted for the purpose before the end of the reference period, taking care to abide by the new thresholds. Any prudent operator, in particular one who participates regularly in the allocation of quotas, is perfectly acquainted with the way in which the rules are drawn up. It is apparent both from the documents in the case [25] and the hearing that the Slinger group must be regarded as a particularly astute and diligent operator. Its management was aware not only that the threshold might be changed but also when that was likely to occur. The applicants in the main proceedings cannot therefore reasonably claim that the Commission violated the principle of the protection of legitimate expectations in their case, especially since their conduct was liable to disturb the proper functioning of the Council's scheme.

63. This plea must therefore be dismissed.

Inadequate statement of reasons

64. The applicants consider that the Commission failed to fulfil its obligation to state reasons under Article 190 of the Treaty.

65. However, the Court has invariably held that 'the statement of the reasons on which regulations are based is not required to specify the often very numerous and complex matters of fact or of law dealt with in the regulations, provided that the latter fall within the general scheme of the body of measures of which they form part' [26] and that in order to satisfy the requirements of Article 190 of the Treaty it is sufficient that the statement of reasons is 'appropriate to the nature of the measure in question. The reasoning of the institution which adopted the measure must be stated clearly and unequivocally, so as to inform persons con-

24 — See for example Case C-368/89 *Crispoltoni* [1991] ECR I-3695, paragraph 21.

25 — In particular paragraphs 29, 30 and 34 of the observations submitted by the applicants in the main proceedings.

26 — Particularly in agricultural affairs: see in particular Case 55/87 *Moksel* [1988] ECR 3845, paragraph 23, and Case 250/84 *Eridania and Others* v *Cassa Conguaglio Zucchero* [1986] ECR 117, paragraph 38.

cerned of the justification of the measure adopted and to enable the Court to exercise its powers of review.' [27]

66. Regulation No 214/94 satisfies those requirements as regards the explanation of the reasons for raising the export threshold. *Inter alia*, the regulation refers expressly to Regulation No 130/94, which states the purpose of the scheme and the general principles on which the tariff quota is to be administered. The second recital in the preamble to Regulation No 214/94 underlines the need to ensure a smooth transition from the arrangements based on national administration to those administered by the Community, bearing in mind the special aspects of trade in the products in question; it also states that access to the second part should be restricted to operators able to demonstrate the genuine nature of their business and who apply for quantities of some significance. The fifth recital refers to the need for effective management and the prevention of fraud. Consequently, we must conclude that the reasons which led the Commission to change the eligibility criteria for operators seeking a share of the second part of the Community quota were stated clearly and unequivocally.

67. The plea of lack of an adequate statement of reasons must therefore be dismissed.

27 — Most recently, *France and Ireland* v *Commission*, paragraph 72.

Consultation of the Beef Management Committee

68. The applicants claim that the adoption of Regulation No 214/94 did not comply with the procedure laid down by the Council because, they maintain, the Management Committee was consulted too late.

69. The United Kingdom and the Commission maintain that that argument is unfounded inasmuch as the applicants acknowledge elsewhere that the consultation took place and that the result is reflected in the seventh recital in the preamble to Regulation No 214/94.

70. I consider that this plea must indeed be rejected.

71. Regulation No 805/68 does not require the observance of any time-limit between the day on which the matter is referred to the Management Committee and the day on which it must deliver its opinion. Article 27(2) states merely that it is to deliver its opinion within a time-limit to be set by the Chairman.

72. The Court has had occasion to rule on the tasks, the powers and the scope of decisions taken by the Commission under the so-called Management Committee procedure.

73. In *Köster* [28] the Court defined the tasks of the Management Committee as 'to give opinions on draft measures proposed by the Commission ... to ensure permanent consultation in order to guide the Commission in the exercise of the powers conferred on it by the Council and to enable the latter to substitute its own action for that of the Commission', although the Management Committee may never 'take a decision in place of the Commission or the Council'. The Court also stated that the Commission 'may adopt immediately applicable measures whatever the opinion of the Management Committee' and that 'where the Committee issues a contrary opinion, the only obligation on the Commission is to communicate to the Council the measures taken.' The Court concluded that 'consequently, without distorting the Community structure and the institutional balance, the Management Committee machinery enables the Council to delegate to the Commission an implementing power of appreciable scope, subject to its power to take the decision itself if necessary'. [29]

74. Moreover, a study of the decisions of the Court of Justice on the effect of opinions of the Management Committee reveals that such effect is very limited.

75. The Court has held that applicants may not rely on a discrepancy between the measures adopted and the preparatory documents, reflecting the proposals which were submitted to the Management Committee, in order to challenge the lawfulness of a Commission regulation, [30] stating that 'the information contained in preliminary documents may not be elevated to the status of a rule of law on the basis of which criticism may be directed at the decision which was ultimately adopted by the Commission in consultation with the Management Committee. No regard may therefore be had to the conclusions which the applicants have drawn, as a means of quantifying the damage suffered by them, from a comparison of the proposals originally put to the Management Committee with regard to the minimum price for the raw material and the processing costs'. [31]

76. Similarly, it has held [32] that the absence of an opinion from the Management Committee has no effect on the validity of the measures adopted by the Commission because, in the words of the Court, 'it is only if the Commission adopts measures which are not in accordance with the opinion of the Committee that those measures must be communicated to the Council. Accordingly, the absence of an opinion by

28 — Case 25/70 *Einfuhr-und Vorratsstelle für Getreide und Futtermittel* v *Köster, Berodt & Co.* [1970] ECR 1161.

29 — Paragraph 9.

30 — Joined Cases 194/83 to 206/83 *Asteris* v *Commission* [1985] ECR 2815.

31 — Paragraph 17.

32 — Case 35/78 *Schouten* v *Hoofdproduktschap voor Akkerbouwprodukten* [1978] ECR 2543.

the Committee in no way affects the validity of the measures adopted by the Commission'. [33]

77. In this instance the Committee was not only consulted but delivered a favourable opinion. We must therefore conclude that the contested measure cannot be declared invalid.

C — *Reply to the second question*

78. The second question seeks a ruling on the validity of Article 2(2) of Commission Regulation (EC) No 214/94 to the extent that it precludes companies arising from mergers where each part has rights pursuant to Article 1(2) of the regulation from combining their past trading performance.

79. The applicants in the main proceedings claim that by depriving them of that option, which is open to companies deriving rights from Article 1(1) of the regulation, the Commission has violated the principle of non-discrimination and disregarded the objective pursued by the Community legislature, set out in the second recital in the preamble to Regulation No 130/94, of guaranteeing continued access to the quota for all interested Community operators.

80. The United Kingdom and the Commission observe that the reply to that question is irrelevant to the facts before the national court. They argue that Article 1(1) of Regulation No 214/94 does not apply to the facts set out in the order for reference. The applicants in the main action complain that they were excluded from the non-traditional quota and they challenge one of the rules determining the eligibility criteria. However, the provision in question determines one of the rules for allocating the quota for traditional operators. It therefore governs situations created prior to the applicants' one and can be of no use in determining the outcome of the dispute.

The alleged breach of the principle of non-discrimination

81. I may say straightaway that I do not consider that the principle of non-discrimination was breached in this case. Article 2(2) of Regulation No 214/94 is a special provision the purpose of which is to lay down the practical means by which the quota for traditional operators is to be allocated. The actual wording is as follows: 'Companies arising from mergers where *each part has rights* pursuant to Article 1(1) shall enjoy the same rights as the companies from which they are formed'. [34]

82. It is clear that on the facts of this case the situation of the companies party to the dispute is quite different. None of them

33 — Paragraphs 45 and 46.

34 — My emphasis.

fulfils the criteria of eligibility for a share in the quota, in whatever capacity. [35]

83. However, there is a line of decisions to the effect that 'the prohibition of discrimination laid down in Article 40(3) of the EEC Treaty is only a specific expression of the general principle of equality in Community law, which requires that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified (see, *inter alia*, Case C-56/94 *SCAC* v *ASIPO* [1995] ECR I-1769, paragraph 27)'. [36]

84. Since they were not in a situation comparable to that provided for by Article 2(2) of Regulation No 214/94, they cannot validly claim to have been the subject of discriminatory treatment by having a different rule applied to them.

85. The plea that there was some form of discrimination therefore cannot stand.

Failure to observe the objective pursued by the Council in Regulation No 130/94

86. The applicants in the main action claim that the Commission has failed to guarantee equal and continuing access for all interested operators to the GATT quota by depriving them of the opportunity to combine their previous performances.

87. I consider, on the contrary, that the omission of a provision in the regulation permitting them to combine previous performances in order to obtain a share of the quota is not contrary to the objective pursued by the Community legislature. As to the nature of that objective, I refer the Court to my earlier observations. [37]

88. I consider that it would be contrary to the objective pursued by the Community legislature to uphold the claim of the applicants in the main action. To adopt their line of argument would encourage the proliferation of 'paper companies' (to use the word employed by the Commission), especially as it would enable merger to be used as a ploy in the event of a 'miscalculation' in allocating export certificates among such companies. As I have just shown, that would run

35 — Paragraph 13 of the order for reference.

36 — See, *inter alia*, *France and Ireland* v *Commission*, paragraph 49.

37 — Paragraph 37 of this Opinion.

counter to the Council's objective. [38] The calculation made by this type of 'speculative' operator is well illustrated in this case.

89. However, it is true that the rule contained in Article 2(2) of Regulation No 214/94 applies only to traditional operators. I consider that there are objective reasons for that apparent difference in treatment. The statement in that article was necessary because the rules governing the allocation of quotas differ depending on whether the operator is being allocated a traditional or a non-traditional quota. As the Commission has pointed out, [39] 'the equivalent provision to Article 2(2) in relation to other operators would in fact be one addressing a merger to companies which had already qualified as other operators in the current quota year. In the context of managing the quota, such a possibility is of no practical significance, since any subsequent allocation would be made by reference not to past trading performance, but by reference to the application subsequently made by the merged company. By contrast, in the case of traditional importers, where the fact of the merger may have legal effects up to four years afterwards, the situation foreseen by Article 2(2) is likely to occur, and is therefore of real practical significance, at least from the point of view of administrative clarity. This is why Regulation No 214/94 contains an express provision addressing the issue in the case of traditional importers but not in the case of other operators.'

Conclusion

90. For the reasons that I have set out I suggest that the reply to the questions referred by the national court should be as follows:

Consideration, in the light of the grounds stated in the order for reference, of Articles 1(2) and 2(2) of Commission Regulation (EC) No 214/94 of 31 January 1994 laying down detailed rules for the application of Council Regulation (EC) No 130/94 with regard to the import arrangements for frozen beef falling within CN code 0202 and products falling within CN code 0206 29 91 has disclosed no factor capable of affecting their validity.

38 — See paragraph 39 of this Opinion.

39 — Commission observations, paragraph 36.