In Case 112/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hessisches Finanzgericht [Finance Court, Hesse] (VIIth Senate) for a preliminary ruling in the action pending before that court between

FIRMA ANTON DÜRBECK, Frankfurt am Main,

and

HAUPTZOLLAMT FRANKFURT AM MAIN-FLUGHAFEN [Principal Customs Office, Frankfurt am Main Airport]

on the validity of Commission Regulation (EEC) No 687/79 of 5 April 1979 (Official Journal 1979, L 86, p. 18), in conjunction with amending Regulations (EEC) No 797/79 of 23 April 1979 (Official Journal 1979, L 101, p. 7) and No 1152/79 of 12 June 1979 (Official Journal 1979, L 144, p. 13),

THE COURT

composed of: J. Mertens de Wilmars, President, Lord Mackenzie Stuart and T. Koopmans (Presidents of Chambers), A. O'Keeffe, G. Bosco, A. Touffait, O. Due, U. Everling and A. Chloros, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

By Regulation No 687/79 of 5 April 1979 the Commission adopted protective measures under Article 29 of Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables (Official Journal, English Special Edition 1972 (II), p. 437).

The measures adopted consisted in suspending, during the period from 25 April to 15 August 1979, the placing in free circulation of fresh apples, other than cider apples, imported from Chile.

In view of certain circumstances the Commission subsequently twice postponed the commencement of the aforesaid period.

By Regulation No 797/79 of 23 April 1979 it was postponed until 5 May 1979 in respect of the apples referred to in Regulation No 687/79 which had left Chile not later than 12 April 1979 in vessels bound for a Community port.

By Regulation No 1152/79 of 12 June 1979 release into free circulation was suspended only as from 17 June 1979 provided that the ships transporting the apples from Chile had reached a Community port before 19 May 1979.

On 13 July 1979 Chile requested that consultations be held on the aforesaid protective measures pursuant to Article XIII (2) of the General Agreement on Tariffs and Trade (GATT). It considers that those measures are contrary to the provisions of GATT.

Firma Anton Dürbeck (hereinafter referred to as "Dürbeck"), the plaintiff in the main action, which operates in the Federal Republic of Germany as a wholesaler and importer of fruit and vegetables, applied to the German authorities on 25 July 1979 for release into free circulation of two boxes of dessert apples originating in Chile, with a weight of 45 kg, which had been transported to the Federal Republic of Germany by air. The German customs authorities rejected the application for customs clearance, basing their decision on Article 1 of Regulation No 687/79 and on the subsequent Regulations No 797/79 and No 1152/79, since they considered that the importation in question was covered by those provisions notwithstanding the fact that they dealt expressly with importations effected by sea and not by air. That decision was contested by the undertaking concerned before the Hessisches Finanzgericht on the ground that the legal provision on which it was based, namely Commission Regulation No 687/79, was contrary to Regulation No 1035/72 and to Regulation No 2707/72 of the Council of 19 December 1972 (Official Journal, English Special Edition 1972 (28-30 December), p. 3).

In order to settle that issue the Hessisches Finanzgericht submitted the following preliminary question to the Court by order of 24 March 1980:

"Is Commission Regulation (EEC) No 687/79 of 5 April 1979 (Official Journal L 86, p. 18), in conjunction with amending Regulations (EEC) No 797/79 of 23 April 1979 (Official Journal L 101, p. 7) and No 1152/79 of 12 June 1979 (Official Jounal L 144, p. 13), valid?"

The order marking the reference was received at the Court Registry on 18 April 1980.

Written observations were submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC by Dürbeck, represented by D. Ehle, U. C. Feldmann, V. Schiller and E. Eyl, of the Cologne Bar, and by the Commission of the European Communities, represented by Jörn Sack, a member of its Legal Department, acting as Agent.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any

preparatory inquiry. However, it invited the Commission to produce by 31 October 1980 an account of the trend of prices for dessert apples and the quantities produced in the Community in the years 1976/77, 1977/78 and 1978/79, and to provide further details at the hearing of the proceedings commenced by Chile against the Community before the appropriate GATT authorities and to inform the Court of the outcome of those proceedings if possible.

II — Observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

Dürbeck starts by analysing the situation which constitutes the background against which the facts of the case are set.

First, it explains that in November 1978 it had concluded a contract with a Chilean exporter for a total quantity of approximately 300 000 boxes of apples originating in Chile during the import period commencing at the end of March 1979.

Secondly, it recounts the history of the protective measures adopted by the Commission in April 1979.

At the end of 1978 and the beginning of 1979 the Commission already knew both the quantities of dessert apples which the five traditional supplier countries, of which Chile is one, intended to export to the Community and the approximate figures for the 1978 harvest in the Member States. Although in possession of that information, the Commission made no mention at that time of any protective measures against Chile or other exporting countries.

Under pressure from the producer organizations in the Community, which sought a restriction on imports from the southern hemisphere, the Commission was subsequently induced to negotiate agreements on voluntary restraint with the traditional supplier countries.

Chile, for which the Commission had fixed a quota of 42 000 tonnes, did not accept that quantity in the context of voluntary restraint, since firm contracts had already been concluded with Community importers in respect of 55 000 tonnes (including 5 000 tonnes in transit to Austria).

The situation existing on the market for dessert apples in the Community at the time when the protective measure was adopted was largely known to the Commission and was transparent.

It was foreseeable that South Africa and New Zealand would not totally exhaust the quantities which had been allocated to them in the context of the agreements on voluntary restraint, whilst they would attempt to retain their reference quotas in view of the possibility of future agreements on voluntary restraint.

As for the Community harvest of dessert apples, it was approximately 6·5 million tonnes in 1978, but it should be noted that that absolute figure, taken in isolation, does not mean a great deal. In fact, for an appraisal of the situation on the apple market in April 1979 it is necessary to know:

(a) what proportion of the produce qualified for intervention buying;

(b) what quantity of produce qualifying for intervention buying was still in cold storage on 1 April 1979;

(c) whether, supposing that it was necessary, the quantity in storage could have been disposed of more quickly under normal market conditions.

According to the opinions of experts, no more than 25 to 30 % of the stocks from the 1978 apple harvest qualified for intervention buying, as approximately 70 % of the goods in stock did not comply with the quality standards laid down in the common organization of the market and therefore could not be bought at the withdrawal price or withdrawn from the market for other reasons.

Moreover, at the time when the protective measures were adopted only a part of the produce qualifying for intervention buying remained in warehouses. In fact, the apples stored in ordinary warehouses could not remain there, for purely technical reasons, beyond the middle or end of February.

Finally, it may be supposed that if the market had behaved normally until the beginning of 1979 a much larger quantity of apples would have been sold. That was not the case by reason of the fact that apples were deliberately withheld from sale from October 1978 in order to obtain higher prices, to conceal the poor quality of the produce which would have been revealed by recourse to premature intervention, and to support the demand for an extension of the intervention period.

There was a constant trend towards higher selling prices at the wholesale stage on the Community representative markets.

All the above-mentioned statements could, in Dürbeck's opinion, be confirmed by the Commission on the basis of information in its possession, if the Court were to request such confirmation.

In those circumstances the protective measures adopted by the Commission could in reality have been directed only against a further importation of approximately 8 000 tonnes. The regulation whereby those measures were adopted made no reference to Regulation No 2707/72 "laying down the conditions for applying protective measures for fruit and vegetables"; nor did it give any indication of "the stocks still available". Further, according to available estimates, only 35 000 tonnes of apples had been imported from Chile at the time when the protective measures were adopted.

Dürbeck had protested without delay, on 10 and 12 April 1979, against the introduction of the protective measure and had requested a derogation for approximately 2 000 tonnes of dessert apples, but the Commission had refused to agree to transitional arrangements for the quantity in question.

Later, however, by Regulations No 797/79 of 23 April 1979 and No 1152/79 of 12 June 1979, the Commission did adopt transitional provisions, observing in the one case that the capacity of the Community market would not be saturated by imports carried out before 25 April 1979, and in the other case that it had not been saturated either by imports carried out before 5 May 1979.

Dürbeck did not benefit from those transitional provisions because, after the Commission had left it with no hope of the adoption of transitional measures, in spite of its repeated requests, it had

cancelled the contract for the purchase of apples from the Chilean exporter and the charter-party for the ship which was to have carried the goods.

In 1980 the Commission did not conclude further agreements on voluntary restraint with the supplier countries and did not adopt protective measures although the apple harvest in the EEC exceeded 7 million tonnes.

In this context it is possible, according to Dürbeck, to identify several vitiating factors in respect of Regulations No 687/79, No 797/79 and No 1152/79 of such a kind as to render the said regulations void. In particular, it points to:

(1) the infringement of Article 29 of Regulation (EEC) No 1035/72 in conjunction with Articles 1, 2 and 3 of Regulation (EEC) No 2707/72;

(2) the breach of the principle of the protection of legitimate expectation;

(3) the infringement of Article 37 of Regulation (EEC) No 1035/72 and of Articles 39 and 110 of the EEC Treaty;

(4) the breach of the prohibition on discrimination laid down by Article 40 (3) of the EEC Treaty.

(1) Infringement of Article 29 of Regulation (EEC) No 1035/72 in conjunction with Articles 1, 2 and 3 of Regulation (EEC) No 2707/72

The above-mentioned infringement results from the fact that the conditions required for the adoption of a protective measure, with regard to dessert apples, were clearly not satisfied either as a matter of fact or as a matter of law.

In the first place, it is necessary to bear in mind that Regulation No 687/79 is based solely on Regulation No 1035/72 and that it does not make any reference to Regulation No 2707/72 which in fact lays down the conditions for applying protective measures for fruit and vegetables. Thus it cannot be certain that the Commission took the latter regulation into account, in general, and that formal defect could of itself lead to the nullity of Regulation No 687/79.

Under Article 29 (1) of Regulation No 1035/72 protective measures may be adopted only if three conditions are satisfied:

— The market must experience or be threatened with serious disturbances;

— Those disturbances must be caused by imports of the products concerned; and

— The objectives set out in Article 39 of the EEC Treaty must be endangered.

In order to determine whether the first condition is fulfilled, three factors in particular must be taken into account, namely:

— The actual or probable volume of imports;

— The availability of products on the Community market; and

— The prices of domestic products recorded on the Community market, or the probable trend of those prices.

As regards the actual or probable volume of imports, the difference between the import quota proposed by the Commission and that which Chile was ready to accept was only 13 000 tonnes, of which 5 000 were merely to pass through the Community on their way to Austria. Thus the difference involved was

really 8 000 tonnes, which in relation to a Community production of 6 661 000 tonnes is such an insignificant quantity that in the light of the probable volume of imports there would be no cause to apprehend disturbances, still less "serious disturbances". Moreover, on 25 April 1979 no more than approximately 36 000 tonnes had been imported from Chile.

Nor was the Commission able to establish in Regulation No 687/79 that the "availability of products on the Community market" was going to cause serious disturbances for the particular reason that the dessert apples imported from Chile would make it necessary to withdraw further stocks from the market.

The comparison which the Commission makes between Community production of apples in the marketing year 1978/79 and production in the marketing year 1977/78 is in fact irrelevant to an assessment of the availability of products on the Community market at the time when the safeguard clause was applied. The only relevant quantity is in fact the quantity, generally qualifiying for intervention buying, which was being held in CA (controlled atmosphere) warehouses, where it was technically possible to prolong storage beyond the month of February, and which had not been withheld from the market for the purpose of speculation.

According to Dürbeck, no more than 25 to 30% of the apples produced in 1978 and held in warehouses qualified for intervention buying.

Further, as regards the stocks existing at the time when the protective measures were adopted, the Commission stated that they were "substantially higher than those at the same period in the two previous years", but it omitted to mention that in 1976/77 the apple crop was normal and that in 1977/78 it was exceptionally low, with the result that State intervention did not take place in those years.

The Commission took the view that the apples in storage could not be disposed of in the normal way before the end of the marketing year. But as regards apples stored in ordinary warehouses, intervention should already have taken place for technical reasons by the end of February 1979. As regards apples stored in CA warehouses, the sale thereof is normally facilitated by imports of fresh apples from the southern hemisphere, which have the effect of assisting the marketing of stored apples.

Quite apart from that, the existence of relatively large stocks is due, according to Dürbeck, to speculative operations carried out by the Community's apple producers.

The third factor which has to be taken into consideration is the tendency for the prices of domestic produce to fall or rise excessively in relation to the basis prices.

In order to demonstrate that price levels were particularly low the Commission made a comparison with prices in the marketing year 1977/78. That comparison is incomplete and misleading: in 1977/78 prices were abnormally high on account of the bad harvest. If prices in 1978/79 were also lower than in 1976/77, that is an indication of the poor quality of the produce in 1978/79, to which Dürbeck has already referred.

Further, the Commission did not mention the foreseeable trend of prices and the marketing effect, already referred to, which imports of fresh apples have on produce in storage.

Therefore the first condition laid down in Article 29 of Regulation No 1035/72 for the adoption of protective measures is not satisfied.

Further, Article 29 requires, as the second condition, that the serious disturbances of the market arise "by reason of imports". That means that imports must constitute the principal cause of the serious disturbance or threat of disturbance.

The Commission has not explained this causal link. Moreover, on the basis of the considerations set out in the previous paragraphs it may be argued that the imports of apples originating in Chile to which protective measures were applied were by no stretch of the imagination capable of causing a serious disturbance on the common market in apples.

Finally, Article 29 provides that protective measures may be taken only if the threat of serious disturbances is such as to "endanger the objectives set out in Article 39 of the Treaty". Of those objectives only three are relevant to the present case, namely:

— To ensure a fair standard of living for persons engaged in agriculture;

— To stabilize markets;

— To assure the availability of supplies, in particular to consumers.

The attainment of those objectives was not threatened, but on the contrary promoted, by the import of Chilean apples.

The protective measures adopted by the Commission are therefore unlawful in the light of the aforesaid Article 29. They are also unlawful having regard to the principle of proportionality, because they are neither appropriate nor necessary.

(2) Breach of the principle of the protection of legitimate expectation

The principle that legitimate expectation must be protected, generally recognized by Community law, is particularly evident in Article 3 (3) of Regulation (EEC) No 2707/72, which provides that protective measures "shall take account of the special position of products in transit to the Community".

The Commission is perfectly aware of the situation of the market for dessert apples. By the end of the year preceding the imports it knew, at least approximately, the figures for the Community harvest and for the probable exports of non-member countries which supply apples. Further, it knew at that time that the importers had already concluded their supply contracts and, as regards Chile, their contracts of affreightment also. Therefore it might have been expected to announce, by the end of the year at the latest, whether protective measure were envisaged or not. As regards the measure with which this case is concerned, the Commission gave absolutely no indication, even in January or February 1979, that it was considering such a measure.

Assuming that the protective measure was lawful, the Commission was obliged, in view of its consistent conduct, to allow Dürbeck a transitional period.

Subsequently the Commission did indeed grant two transitional periods (of which Dürbeck could no longer take advantage) and thus basically admitted the principle of the protection of legitimate expectation in the particular case.

(3) Infringement of Article 37 of Regulation (EEC) No 1035/72 and of Articles 39 and 110 of the EEC Treaty

Dürbeck points out that by virtue of Article 37 of Regulation No 1035/72 in setting up the common organization of the market in fruit and vegetables appropriate account must be taken, at the same time, of the objectives set out in Articles 39 and 110 of the EEC Treaty.

The Commission not only infringed Article 39, but was also in breach, even more flagrantly, of the first paragraph of Article 110 whereby the Member States and the organs of the Community are required to contribute *inter alia* to the progressive abolition of restrictions on international trade, and of the second paragraph of that article, which implies in substance an undertaking to open the common market to non-member countries on conditions according with the laws of competition.

It had in fact rendered impossible the importation of 13 000 (8 000) tonnes of apples originating in Chile by the adoption of protective measures for which there was no basis either in fact or in law. It is possible that in so doing the Commission's primary objective was to show the countries which for the sake of contracts already concluded were not able to accept agreements on voluntary restraint that there were "limits" to what they could do. That is a clear infringement of Article 110.

(4) Breach of the prohibition on discrimination

It is argued that the prohibition on discrimination laid down by Article 40 of the EEC Treaty extends to importers, who must in effect be regarded as Community "consumers" within the meaning of that provision.

Regulations No 797/79 of 23 April 1979 and No 1152/79 of 12 June 1979 introduced transitional schemes for certain importations, but Dürbeck, which is also an importer, was excluded from them as it had cancelled its supply contract and charter-party after the Commission had informed it in reply to two telex messages of 10 and 12 April that it did not intend to adopt transitional measures.

Assuming that the protective measure was valid, the Commission should at least have ensured that the Chilean dessert apples imported after 25 April 1979 were shared out equitably between the importers concerned in accordance with standard procedure (Referenzverfahren).

The *Commission of the European Communities* also considers it helpful to describe the market conditions at the time when the protective measures were adopted. It stresses the following factors in particular:

— The very high production of apples in the Community for the 1978/79 marketing year (approximately 6.5 million tonnes);

— The abnormally high level reached by stocks at 1 March 1979 (approximately 1.5 million tonnes);

— The large quantities withdrawn from the market (90 000 tonnes) resulting in intervention measures in several States on the same date;

— The fall in apple prices on the market well below the basis prices;

— The considerable quantity of apples (380 000 tonnes) originating in non-member countries which were expected to be imported into the Community between March and August 1979.

In order to restrain the dangerous trend of the apple market and to avoid, so far as possible, costly withdrawals from the market, the Commission invited the traditional supplier countries to sign agreements on voluntary restraint in respect of their exports to the Community.

As Chile did not accept the quota of 42 000 tonnes proposed by the Commission, the latter was obliged to adopt protective measures with regard to Chilean exports.

When it subsequently ascertained that the total amount of apples imported from Chile had not attained the quota of 42 000 tonnes, the Commission, by Regulations No 797/79 and No 1152/79, authorized further imports (in respect of cargoes already in transit towards the Community) up to the limit fixed by that quota.

Having thus described the context in which the present case is situated, the Commission examines the arguments recorded in the order making the reference in support of the invalidity of the protective measures (arguments which were repeated by Dürbeck in its observations submitted subsequently to those of the Commission).

According to the Commission, the conditions defined in the first indent of Article 29 (1) of Regulation No 1035/72 were satisfied in April and May 1979.

In view of, on the one hand, the abnormally high imports expected from countries in the southern hemisphere in the marketing year 1978/79 and, on the other hand, the large stocks resulting from Community production, the Community market for dessert apples was threatened with serious disturbances in April and May 1979 which were capable of endangering the attainment of the objectives of Article 39 of the EEC Treaty, in particular the stability of the market and a fair income for producers. Indeed, there was reason to fear that if very large imports took place prices, which were already low to begin with, might collapse completely and that it would be quite impossible to absorb, even partially, the enormous stocks. Those considerations, together with the description of market conditions at the beginning of the observations, show that in applying the first indent of Article 29 (1) the Commission had sufficient regard to the criteria mentioned in Article 1 of Regulation No 2707/72 (in particular the probable volume of imports, the availability of products on the market and the prices recorded). Therefore it made proper use of the power of appraisal which it possessed.

By the terms of the second subparagraph of Article 29 (1) the protective measures taken thereunder may be applied only "until .. the disturbance or threatened disturbance disappears".

The Commission believes that the figures which it gave at the beginning of its observations show very clearly that the threat of disturbance existed until the end of the marketing year 1978/79. Large quantities continued to be with-

drawn from the market: during that year more than 365 000 tonnes of apples had to be withdrawn.

The Commission also denies that it was in breach of the principle of proportionality. In fact, it adopted protective measures only where they were necessary, that is to say against imports from Chile, and it twice amended Regulation No 687/79 when it appeared that it was still possible to adopt transitional measures for the sake of goods which were already in transit towards the Community or which had already reached it but had not been released into free circulation in the Community.

Moreover, before adopting the protective measures the Commission studied the facts in detail and made a correct appraisal thereof, weighing up all the economic and political interests involved.

With regard to the alleged breach of the principle that legitimate expectation must be protected, the Commission does not deny that the protective measures especially affected contracts of sale already concluded. But any protective measure is of necessity taken in the light of the available data on probable exports to the Community, data which include the quantities covered by contracts already concluded. If such contracts had to be excluded from the scope of such a measure, the safeguard clauses provided for in the common organizations of the markets or in international agreements would be rendered entirely nugatory. Therefore there cannot exist a principle regarding the protection of legitimate expectation which lays down a general rule to the effect that contracts already concluded may not be affected when protective measures are ordered.

Nor do the undertakings concerned require such extensive protection. In fact, any trader ought normally to know that protective measures may be adopted and he could therefore take the precaution of inserting into his contract a clause for its cancellation in such an event. Often he could in any case invoke the doctrine of *force majeure* in order to withdraw from a contract.

It therefore only remains to consider whether the circumstances of the present case show that Dürbeck's situation was particularly worthy of protection and that the Commission should have had particular regard to it when adopting its measures. However, that is not the case.

In fact, the attempted importation of two boxes of apples by air in July 1979 is a transaction which is particularly unworthy of protection: it concerned minimal quantities, took place at a time when the protective measures had already been in force for some time and it was carried out in an entirely unusual way.

The Commission considers that in the context of a reference for a preliminary ruling under Article 177 of the Treaty the Court should have regard solely to the circumstances of the specific dispute, even if one of the parties were to attempt, as Dürbeck might on this occasion, to concern the Court with the effects of the protective measures in completely different cases.

However, purely as a precaution, the Commission submits certain general considerations with regard to the protection of the legitimate expectation of the importers of Chilean apples concerned. In the Commission's opinion an importer of agricultural products

should in principle be fully acquainted with the safeguard clause in a common organization of the market and should therefore be extremely cautious when entering into a contract, if at that time he does not yet possess sufficient information on the possible application of the said clause. If he fails to take precautions against that eventuality he runs a commercial risk and cannot invoke the protection of legitimate expectation.

The only thing of which he may be certain is that import restrictions are not ordered unless all the legal and factual conditions justifying their adoption are satisfied. In this case the aforesaid conditions were fully satisfied.

With regard to the breach of the prohibition on discrimination, the Commission submits in the first place that the conclusion of agreements on voluntary restraint with other countries did not mean that Chilean products were treated less favourably than products originating in those countries since the reductions applied were the same as in the case of the other exporting countries. Secondly, no discrimination lay in the fact that certain imports were still permitted, whilst others, which were to have taken place after the acceptable volume of imports had been reached, were refused. In fact, that is a necessary consequence of observing the principle of proportionality.

Further, in this regard the Commission adhered strictly to the terms of Article 3 (3) of Regulation No 2707/72, which provides that account must be taken of the special position of products in transit to the Community. Finally, the exclusion from consideration of imports by air did not involve any discrimination, since that mode of transport was never used for apples.

Finally, Article 110 of the EEC Treaty is only a declaration of intent which does not establish any specific right or duty which individuals could rely on in a court of law. Similarly, according to the case-law of the Court of Justice a trader cannot derive from the provisions of the General Agreement on Tariffs and Trade any right which he could rely on in a national court.

Further, it is not true that the protective measures adopted are contrary to the aforesaid provisions. It is in fact a question of measures in regular use at the international level, adopted for a limited period and applied only to certain agricultural products. In adopting those measures the Commission fully complied with its obligations under GATT.

On the basis of the foregoing considerations, the Commission therefore proposes the following reply to the question submitted to the Court of Justice by the court requesting a preliminary ruling:

"Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Commission Regulations (EEC) No 687/79, No 797/79 or No 1153/79".

III — Oral procedure

At the sitting on 22 January 1981 Dürbeck, represented by Dietrich Ehle, of the Cologne Bar, and the Commission of the European Communities, represented by Jörn Sack, a member of its Legal Department, acting as Agent, presented oral argument. At that sitting the Commission informed the Court that

the special GATT group which, at the request of Chile and following a decision of the GATT Council, had considered whether the Community measures were in accord with the provisions of GATT found that there was one single infringement of marginal importance in the selection of reference years which had to be taken into account in order to fix the voluntary restriction quotas.

The Advocate General delivered his opinion at the sitting on 24 February 1981.

Decision

1 By order dated 24 March 1980 which was received at the Court on 18 April 1980 the Hessisches Finanzgericht referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question as to the validity of Commission Regulation No 687/79 of 5 April 1979 (Official Journal L 86, p. 18) and of amending Regulations No 797/79 of 23 April 1979 (Official Journal L 101, p. 7) and No 1152/79 of 12 June 1979 (Official Journal L 144, p. 13) providing for the temporary suspension of the release into free circulation in the Community of dessert apples originating in Chile.

2 That question was raised during an action between a German importer of fresh fruit originating in non-member countries and the German customs authorities regarding the refusal by those authorities to allow certain quantities of dessert apples originating in Chile to be released into free circulation in the Federal Republic of Germany on the ground that the entry into free circulation of those quantities was prohibited by the regulations cited above.

I — Preliminary considerations

3 It is apparent from the information contained in the order making the reference for a preliminary ruling that the prohibition in question comes under the Community rules on the common organization of the market in fruit and vegetables provided for by Regulation No 1035/72 of the Council of 18 May 1972 (Official Journal, English Special Edition 1972 (II), p. 437).

4 The first subparagraph of Article 29 (1) of that regulation, as amended by Regulation No 2454/72 of the Council of 21 November 1972 (Official Journal, English Special Edition 1972 (November), p. 60), is worded as follows:

"(1) Appropriate measures may be applied in trade with third countries if:

— By reason of imports or exports, the Community market in one or more of the products referred to in Article 1 experiences or is threatened with serious disturbances which may endanger the objectives set out in Article 39 of the Treaty; or

— For the products listed in Annex III a, the withdrawal or buying-in operations effected pursuant to Articles 18 and 19 concern significant quantities".

Article 39 (2) further provides that if the situation mentioned in paragraph (1) arises "the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the measures shall be communicated to the Member States and shall be immediately applicable".

5 In order to implement those provisions on 19 December 1972 the Council adopted Regulation No 2707/72 "laying down the conditions for applying protective measures for fruit and vegetables" (Official Journal, English Special Edition 1972 (28-30 December), p. 3). Article 1 of that regulation provides that:

"In order to determine whether the situation referred to in the first indent of Article 29 (1) of Regulation (EEC) No 1035/72 exists, account shall be taken in particular of:

(a) the actual or probable volume of imports or exports,

(b) the availability of products on the Community market,

(c) the prices of domestic products recorded on the Community market, or the probable trend of those prices, and in particular their tendency to fall or rise excessively in relation to basic prices or, with regard to products which do not have basic prices, in relation to the prices of preceding years,

(d) If the situation referred to in the first part exists by reason of imports:

— The prices on the Community market of products exported from third countries and in particular their tendency to fall excessively,

— Quantities for which withdrawals are or may be effected."

Article 3 of the same regulation provides *inter alia* as follows:

"(1) The measures which may be taken pursuant to Article 29 (2) and (3) of Regulation (EEC) No 1035/72 are:

— When the situation covered by the firt indent of paragraph (1) of that article exists, the suspension of imports or exports or the levying of export taxes;

. . .

(2) Such measures may only be taken in so far, and for as long, as they are strictly necessary.

(3) The measures provided for in paragraph (1) shall take account of the the special position of products in transit to the Community. They shall apply only to products exported from, or intended for, third countries. They may be limited to products exported from, originating in, . . . certain countries, or to certain qualities, size grades or groups.

. . ."

6 In spring 1979 the Commission found that the situation on the dessert apple market in the Community at that time was particularly critical and might be aggravated by the probable importation from non-member countries, in particular from countries in the southern hemisphere, of dessert apples estimated to be 380 000 tonnes. In the belief that that situation fulfilled the conditions laid down in the first indent of Article 29 (1) of Regulation No 1035/72 of the Council and Article 1 of Regulation No 2707/72 of the Council, it considered that it was able to act on the basis of those provisions and adopt under Article 29 (2) of Regulation No 1035/72 and Article 3 of Regulation No 2707/72 the protective measures provided for by those regulations.

7 Before adopting those measures, however, involving the temporary suspension of imports from non-member countries, at the beginning of March 1979 the Commission tried to secure the agreement of the main exporting countries in the southern hemisphere to a voluntary limitation of their own exports to the Community with a view to obtaining a total

reduction of probable exports from 380 000 tonnes to 310 000 tonnes. That figure represented a reduction of roughly 18% in relation to the imports which were envisaged in that financial year and a reduction of roughly 5% in relation to the average volume of imports during the three previous years. In the case of Chile, whose planned exports to the Community were estimated to be 75 000 tonnes, a reduction in proportion to exports in the three previous years would have resulted in a restriction of those exports to 42 000 tonnes.

8 It was possible for an agreement to be reached with South Africa, Argentina, Australia and New Zealand. Chile, however, which contended that export contracts had already been concluded for much larger quantities of apples, insisted on being able to export 55 000 tonnes instead of the 42 000 tonnes proposed.

9 When it saw that an agreement with Chile was not possible and in view of the information which it had about the goods in the course of transit from that country, the Commission adopted, by Regulation No 687/79 of 5 April 1979, "protective measures in respect of imports of dessert apples originating in Chile" (Official Journal L 86, p. 18) so as to limit those imports to 42 000 tonnes.

10 Article 1 of that regulation provides that:

"The placing in free circulation in the Community of apples falling under subheading 08.06 A II of the Common Customs Tariff originating in Chile shall be suspended during the period 25 April to 15 August 1979".

On 6 April 1979 the Commission informed the Chilean Government that it was prepared to reconsider the measures in question in the event of its appearing that the quota of 42 000 tonnes allocated to Chile was not attained on 25 April.

11 The Chilean mission subsequently informed the Commission on 17 April 1979 that three ships having on that date a cargo of 6 400 tonnes on board which had been taken into account in the earlier estimates could not reach a Community port before 25 April 1979. In view of that information on 23 April 1979 the Commission adopted Regulation (EEC) No 797/79 amending the protective measures provided for by Regulation No 687/79 and adding a second paragraph to Article 1 thereof stating that in the case of

apples which left Chile not later than 12 April 1979 in vessels bound for a Community port placing in free circulation in the Community was to be suspended only as from 5 May 1979.

12 On 5 May 1979 the Commission ascertained that certain cargoes referred to in the list drawn up by the Chilean authorities were not bound for the Community market and that only 38 600 tonnes of the quantities allocated to Chile had been imported. It also knew that two vessels carrying cargoes of some 3 800 tonnes had reached Community ports between 5 and 19 May 1979 and that the goods had been placed in a customs warehouse. On 12 June 1979, therefore, the Commission adopted Regulation No 1152/79 "amending for the second time Regulation No 687/79 laying down protective measures in respect of imports of dessert apples originating in Chile" which replaced the second paragraph of Article 1 of Regulation No 687/79 by a new provision which, in the case of apples shipped in vessels which had reached a Community port before 19 May 1979, postponed the date from which release into free circulation in the Community was suspended to 17 June 1979.

13 The plaintiff in the main action, the undertaking Anton Dürbeck, an importer and wholesaler of fruit and vegetables, had made contracts for the importation of some 300 000 boxes of Chilean dessert apples. Of that quantity 180 000 boxes had been imported at the time of the adoption of Commission Regulation No 687/79, that is to say on 5 April 1979. The ship carrying the remaining quantities was due to leave Chile between 18 and 20 April 1979 but in view of the measures adopted by the Commission and its refusal to grant a request for an exemption for 2 000 tonnes sent to it by telex messages of 10 and 12 April 1979, the plaintiff in the main action cancelled the purchase contract and contract of affreightment for those quantities.

14 On 25 July 1979 it imported by air into the Federal Republic of Germany two boxes of Chilean dessert apples weighing 45 kilograms and applied to the German authorities for the release into free circulation of those goods. The competent customs office rejected that application on the ground of the protective measures adopted by the Community in Commission Regulations Nos 687/79, 797/79 and 1152/79 in regard to imports of dessert apples originating in Chile.

15 The plaintiff in the main action challenged that decision before the Hessisches Finanzgericht contending amongst other things that the legal basis for that decision, namely the regulations cited above, was void since those regulations had been adopted in breach of Regulations Nos 1035/72 and 2707/72 of the Council, Article 110 of the Treaty and the provisions of the General Agreement on Tariffs and Trade (GATT), and the principles of the protection of legitimate expectation and non-discrimination. With a view to settling the issue thereby raised the Finanzgericht referred the following question to the Court for a preliminary ruling:

"Is Commission Regulation (EEC) No 687/79 of 5 April 1979 (Official Journal L 86, p. 18), in conjunction with amending Regulations (EEC) No 797/79 of 23 April 1979 (Official Journal L 101, p. 7) and No 1152/79 of 12 June 1979 (Official Journal L 144, p. 13), valid?"

16 On 13 July 1979 the Chilean Government sought, pursuant to the General Agreement, the opening of consultations with the EEC in application of Article XXIII of that Agreement on which the plaintiff in the main action and the Commission gave their views during the oral procedure before the Court.

II — Consideration of the question submitted

17 From the statement of the reasons upon which the order making the reference is based and the background information provided during the proceedings before the Court it appears that the Court is called upon in this case to decide as to the validity under Community law of Regulations Nos 687/79, 797/79 and 1152/79 and to consider in particular whether they involve:

— An infringement of Article 190 of the Treaty in so far as the statement of the reasons on which they are based, as required by that provision, is insufficient;

— An infringement of Article 29 (1) of Regulation No 1035/72 of the Council and Articles 1 to 3 of Regulation No 2707/72 of the Council;

— An infringement of Article 110 of the Treaty and the provisions of the General Agreement on Tariffs and Trade;

— Failure to observe the general principle of the protection of legitimate expectation and the principle prohibiting discrimination.

(a) The statement of the reasons on which Regulations Nos 687/79, 797/79 and 1152/79 are based

18 The question has been raised in relation to the reasons given as the basis for the regulations in question whether the fact that the preamble to Regulation No 687/79 mentions Regulation No 1035/72 only and makes no reference to Regulation No 2707/72 constitutes a defect of form which by virtue of Article 190 of the Treaty affects the validity of that regulation and consequently that of the amending Regulations Nos 797/79 and 1152/79 also.

19 From the preamble to Regulation No 687/79 and in particular from the first recital therein it may be seen that that regulation defines its legal basis by reference to Article 29 of Regulation No 1035/72 paragraph (1) of which describes, in the first subparagraph, the type of situation requiring intervention by the Commission which may involve the adoption of protective measures, whilst the second subparagraph states that the Council, acting on a proposal from the Commission, "shall adopt rules for the application of this paragraph".

20 Since the very object of Regulation No 2707/72 is to determine the conditions for the application of Regulation No 1035/72, it follows in this case that the reference to Article 29 of Regulation No 1035/72 contained in Commission Regulation No 687/79 is a sufficient statement of the reasons on which Regulation No 687/79 is based as it enables those concerned to identify the factors which the Commission took into account when adopting the protective measures in issue.

(b) Infringement of Article 29 (1) of Regulation No 1035/72 and Articles 1 to 3 of Regulation No 2707/72

21 It is common ground that the protective measures adopted by the Commission in this case are of the type which under Article 3 (1) of Regulation No 2707/72 may be adopted in application of Article 29 of Regulation No 1035/72 if the situation referred to in the first indent of paragraph (1) thereof arises, that is to say if "the Community market in one or more of the products referred to in Article 1 experiences or is threatened with serious disturbances which may endanger the objectives set out in Article 39 of the Treaty".

22 Article 1 of Regulation No 2707/72 expressly defines the factors which the Commission must take into account in order to determine whether such a situation exists. Article 2 of that regulation, which concerns a situation different from that obtaining here, is not relevant to the present case. By Article 1 aforesaid, when adopting the protective measures in issue, the Commission was required to assess the situation on the market in question by taking account of

(a) the actual or probable volume of imports or exports,

(b) the availability of products on the Community market,

(c) the prices of domestic products and the probable trend of those prices, in particular their tendency to fall or rise excessively in relation to basic prices, and

(d) the prices on the Community market of products exported from third countries and in particular their tendency to fall excessively, and quantities for which withdrawals were or might be effected.

23 Regulations Nos 687/79, 797/79 and 1152/79 should therefore be examined in the light of those factors to determine whether they comply with the provisions of the first indent of Article 29 (1) of Regulation No 1035/72 and Articles 1 and 3 of Regulation No 2707/72.

24 With that in view consideration should be given first of all to whether the Commission exercised its discretion correctly at the time when the aforesaid measures were decided upon when assessing the situation on the market in question as regards the available quantities of the products involved.

25 The parties agree that in spring 1979 the quantities available were considerable. The amounts involved reflected both the quantities resulting from the 1978/79 harvest compared to those resulting from harvests in previous seasons and the quantities of products which had been the subject

of intervention measures and were held in stock at the time under consideration. The figures for the harvest for the 1978/79 season indicate first that, instead of decreasing, the volume of that harvest, estimated to be 6 661 000 tonnes, was roughly 30% in excess of the harvest for the 1977/78 season.

26 There is no doubt that for the purpose of assessing the situation on the market only products which meet the quality standards of the common organization of the markets can enter into consideration since those products are the only capable of being marketed and being the subject of intervention measures; however, it has not been demonstrated that the quantities of apples not meeting those quality standards differed appreciably in 1978/79 from those in earlier years, or that producers or traders used most of their storage capacity to store products which could neither be marketed nor be the subject of intervention measures or, finally, that there were abuses or major errors in the application of Community storage measures.

27 In order to determine the size of the quantities of dessert apples available on the Community market in spring 1979 the Commission had further to consider, in addition to quantities harvested in the year in question, quantities held in cold stores, both those which had been the subject of intervention measures and those held in private stocks. The relevant figures supplied during the proceedings reveal that the quantities of dessert apples held in storage had reached some 1 500 000 tonnes on 1 March 1979, which represents an increase in the region of 18 % and 40 % compared to the same periods in 1977 and 1978 respectively. Irrespective of whether such figures take account only of the products contained in cold stores and those meeting the quality standards, it is incontestable that when considered also in relation to the trend in domestic production, the figures relating to the stocks existing in spring 1979 disclosed increasingly serious difficulties for the disposal of domestic dessert apples on the Community market.

28 Those difficulties might moreover have been aggravated appreciably first by the trend of domestic prices at the time under consideration and secondly by

the extent of the withdrawal measures taken in spring 1979 and probable thereafter.

29 As regards the first point, it appears from the information supplied to the Court during the course of the oral procedure that in February to April 1979 market prices on most of the national markets in the Community were under the basic price, fixed at 21.26 European units of account in accordance with Article 16 of Regulation No 1035/72 on the basis of the average of the prices noted on the representative markets of the Community during the three previous years. Furthermore, a comparison between the prices in each of those three years shows that in March 1979 prices charged on most of the national markets in the Community had not reached the price level prevailing in the previous years but revealed a clear downward trend likely to aggravate conditions for the disposal of the products in question and to increase severely the already extremely heavy burden of storage arrangements.

30 As regards the second point, the aforesaid information further reveals that on 1 March 1979 the quantities in respect of which withdrawal measures had been taken had reached 90 000 tonnes and on 1 April had increased to 143 512 tonnes, thus indicating a rapid rate of increase whilst withdrawal measures had not exceeded 2 450 tonnes in 1978 and 115 000 tonnes in 1977. From forecasts based on previous years it was therefore reasonable to expect withdrawal measures to be effected in respect of still larger quantities and consequently a disturbing aggravation of the critical situation on the market in question.

31 Consequently, it is undeniable that the Commission had reason to assume that the situation on that market was likely to deteriorate seriously owing to the actual or probable volume of imports of the products in question from non-member countries and that such a deterioration might turn into a disturbance which might endanger the objectives set out in Article 39 of the Treaty.

32 As far as the probable volume of imports is concerned, the papers placed before the Court show that imports in the region of 380 000 tonnes were to be expected from the main countries in the southern hemisphere in the period March to August 1979, which would represent an increase in imports even in comparison to the previous year in which the harvest of domestic apples had been particularly poor.

33 Even if it assumed that the quality of imported apples was superior to that of domestic apples in that period, the fact still remains that the quality of domestic apples was not so inferior that the two categories of apples were not largely interchangeable.

34 Nor is the argument of the plaintiff in the main action that the supply of imported apples might have the effect of promoting the sale of domestic apples tenable. Such an effect, even if it exists, would only be temporary; in the long run imports from non-member countries would create a demand which, in the absence of imports, would be directed to domestic products.

35 In view, therefore, of the quantities of domestic dessert apples available on the Community market, both those from the 1978/79 harvest and those stored in Community and private cold stores, and the extent of probable intervention measures and price trends in the Community in particular, it does not appear that the Commission erred in assessing the true situation on the market in question by assuming that a volume of imports from countries in the southern hemisphere estimated to be 380 000 tonnes might substantially aggravate the difficulties on that market and were likely to create a serious disturbance, within the meaning of Article 29 of Regulation No 1035/72, on that market which might jeopardize the objectives set out in Article 39 of the Treaty, particularly those in subparagraphs (a), (b) and (c) thereof.

36 The fact that the protective measures in dispute, enacted by Regulation No 687/79, were amended twice by Regulations Nos 797/79 and 1152/79 may not be taken as signifying that the Commission's assessment of the

situation on the market in the spring of 1979 was incomplete or mistaken. As the preamble to those regulations shows, the explanation for those amendments is simply that more detailed knowledge was acquired of the true quantities in the course of transit and actually intended to be released into free circulation in the Community, which formed part of the import quota for Chile.

37 Nor can the fact that the Commission did not adopt any protective measure for 1979/80 despite a harvest still bigger than in 1978/79 be taken as crucial evidence that the Commission's appraisal was ill-founded; that appraisal related only to the situation on and the needs of the market as they existed in the spring of 1979 and cannot be judged by considerations arising from a market situation in a subsequent year.

38 When a situation such as that considered above arises, among the measures which may be adopted pursuant to Article 29 (2) and (3) of Regulation No 1035/72, Article 3 (1) of Regulation No 2707/72 makes express provision for the suspension of imports or exports or the levying of export taxes.

39 The Commission's attempt to secure the agreement of the exporting countries to a voluntary restriction of their exports to the Community before it decided on the temporary suspension of imports from Chile cannot, in view of Article 29, be regarded as unacceptable under Community law since that attempt reflects the Community's endeavour not to adopt except as a last resort coercive measures such as those in issue, in spite of the fact that it did have the power to enact them under Article 3 of Regulation No 2707/72.

40 Such an attempt is all the more legitimate since Regulation No 2707/72, Article 3 (2) of which provides that any protective measures decided upon by the Commission may be adopted only "in so far, and for as long, as they are strictly necessary", implies that when the Commission believes that the conditions requisite for the application of such measures are fulfilled, it must observe the principle of proportionality underlying the Community legal order.

41 The fact that when adopting Regulations Nos 797/79 and 1152/79 amending Regulation No 687/79 the Commission took into consideration only goods which had left Chile to the exclusion of those in the course of being loaded does not amount to a failure to observe the principle of proportionality with regard to the last-mentioned products. The first subparagraph of Article 3 (3) of Regulation No 2707/72 states in fact that any protective measures adopted are to take account of the special position of products "in transit". The fact that in Regulations No 797/79 and No 1152/79 the Commission took account only of goods already being transported by sea at the time when the protective measures in issue were adopted constitutes a proper application of Regulation No 2707/72 which the Commission could not interpret widely without putting at risk the efficacy of the protective measures decided upon.

(c) Infringement of Article 110 of the Treaty and of the provisions of the General Agreement on Tariffs and Trade

42 A further charge levelled against the protective measures in issue is that since they comprise a suspension of imports from non-member countries they are in breach of the guiding principle of the common commercial policy laid down in Article 110 of the Treaty to which Article 37 of Regulation No 1035/72 makes express reference.

43 It should be remembered in this regard that according to Article 37 of Regulation No 1035/72 that regulation "shall be so applied that appropriate account is taken, at the same time, of the objectives set out in Articles 39 and 110 of the Treaty". That reference to the two articles shows that the regulation is intended to maintain a reasonable balance between the objectives of the common agricultural policy and the interests of world trade to which reference is made in Article 110.

44 Article 110 of the Treaty, which states that Member States "aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers", cannot be interpreted as prohibiting the Community from enacting, upon pain of committing an infringement of the Treaty, any measure liable to affect trade with non-member countries even

where the adoption of such a measure is required, as in this case, by the risk of a serious disturbance which might endanger the objectives set out in Article 39 of the Treaty and where the measure is legally justified by the provisions of Community law.

45 Likewise, the argument advanced by the plaintiff in the main action that the protective measures in issue are contrary to the commitments entered into by the Community under GATT is not capable in this case of putting the validity of those measures in question.

46 According to the uncontested information on this matter supplied by the Commission during the oral procedure the special GATT group charged with examining the conformity of Community measures with the General Agreement found that in adopting the protective measures in issue the Commission did not infringe either Article I or Article II of that agreement. The group in question criticized the Community only for making 1976 the third reference year instead of 1975 when adopting the aforesaid measures. Criticism of that kind cannot be regarded as a factor such as to make the measures in question void. Besides, the explanations given by the Commission show that the taking into consideration of 1975 would not have substantially altered the import quotas allocated to Chile which would have gone up from 42 000 tonnes, calculated on the basis of 1976, to 42 600 tonnes.

(d) Breach of the principle of the protection of legitimate expectation

47 The Court's attention has been further drawn to the question whether the Commission was in breach of the principle of the protection of legitimate expectation on the ground, in particular, that it adopted the protective measure in issue at a late stage, after the importers concerned had entered into supply and affreightment contracts, and without making provision for transitional measures in favour of those importers.

48 Although, as the Court has recently confirmed in its judgment of 16 May 1979 in Case 84/78 *Tomadini* [1979] ECR 1801, the principle of the protection of legitimate expectation is one of the fundamental principles of

the Community, nevertheless "the field of application of this principle cannot be extended to the point of generally preventing new rules from applying to the future effects of situations which arose under the earlier rules in the absence of obligations entered into with the public authorities". In the same judgment the Court went on to say that "this is particularly true in a field such as the common organization of markets, the purpose of which necessarily involves constant adjustment to the variations of the economic situation in the various agricultural sectors".

49 The very circumstances which justify the adoption of protective measures within the meaning of Article 3 (1) of Regulation No 2707/72 underline the need for such adjustment enabling the common organization to avert the threat of a serious disturbance likely to endanger the objectives set out in Article 39 of the Treaty.

50 What is more, in view of the needs which the temporary suspension of imports met, transitional measures which exempted contracts already entered into from the suspension of imports would have robbed the protective measure of all practical effect by opening the Community market in dessert apples to a volume of imports likely to jeopardize that market.

(e) Breach of the principle of non-discrimination

51 During the proceedings the issue was raised whether Regulation No 797/79 and No 1152/79 offend against the principle of non-discrimination enunciated in the field of the common agricultural policy by the second paragraph of Article 40 (3) of the Treaty in so far as they make no provision for the imports for which the plaintiff in the main action had sought an exemption from the application of the aforesaid measures.

52 As has previously been observed, Regulations Nos 797/79 and 1152/79 are not intended to allow a derogation from the protective measures in issue as regards the quantities of dessert apples from Chile accepted for import into

the Community but are solely designed to adjust their application to goods which, at the time when those measures entered into force, were "in transit" within the meaning of Article 3 (2) of Regulation No 2707/72.

53 In those circumstances, the fact that the Commission took into consideration only the goods which were already in the course of being transported by sea on 12 April 1979 and excluded those which on that date had not yet left a Chilean port is in keeping with the provisions of Article 3 (2) of Regulation No 2707/72.

54 Since the situation of goods which had not yet left a Chilean port with respect to Article 3 (2) of Regulation No 2707/72 is not comparable to the situation of goods "in transit", within the meaning of Article 3 (3), the fact that the arrangements under the contested Regulations No 797/79 and No 1152/79 were not extended to such a situation cannot therefore be regarded as constituting discrimination contrary to the Treaty.

55 On the contrary the extension of those arrangements to imports, limited as they were, from a country which had not accepted the voluntary export restraint clause proposed by the Commission would have been discriminatory in regard to the other countries in the southern hemisphere which had accepted such a clause and would have endangered the observance of the commitments assumed by those countries.

56 For all those reasons the answer to be given to the national court should be that consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Commission Regulations Nos 687/79, 797/79 and 1152/79.

Costs

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

On those grounds,

THE COURT,

in answer to the question referred to it by the Hessisches Finanzgericht by order of 24 March 1980, hereby rules:

Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Commission Regulations Nos 687/79, 797/79 and 1152/79.

Mertens de Wilmars Mackenzie Stuart Koopmans O'Keeffe Bosco

Touffait Due Everling Chloros

Delivered in open court in Luxembourg on 5 May 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 24 FEBRUARY 1981 [1]

Mr President,
Members of the Court,

Article 29 (1) of Regulation No 1035/72 of the Council on the common organization of the market in fruit and vegetables (Official Journal, English Special Edition 1972 (II), p. 437) as amended by Regulation No 2454/72 of the Council (Official Journal, English Special Edition 1972 (November), p. 60) provides:

"(1) Appropriate measures may be applied in trade with third countries if:

— By reason of imports or exports, the Community market in one or more of the products referred to in Article 1" (including dessert apples coming under tariff subheading 08.06 A II) "experiences or is threatened

1 — Translated from the German.