JUDGMENT OF THE COURT (Sixth Chamber)
27 November 1997 *

In Case C-369/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunale di Salerno (Italy) for a preliminary ruling in the proceedings pending before that court between

Somalfruit SpA,

Camar SpA

and

Ministero delle Finanze,

Ministero del Commercio con l'Estero

on the validity of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas (OJ 1993 L 47, p. 1), Commission Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community (OJ 1993 L 142, p. 6) and Commission Regulation (EEC) No 1443/93 of

* Language of the case: Italian.

10 June 1993 on transitional measures for the application of the arrangements for importing bananas into the Community in 1993 (OJ 1993 L 142, p. 16),

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, R. Schintgen (Rapporteur), G. F. Mancini, P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: M. B. Elmer,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Somalfruit SpA and Camar SpA, by A. Miele and W. Viscardini Donà, of the Padua Bar, and G. M. Roberti and A. Tizzano, of the Naples Bar,

— the Italian Government, by Professor U. Leanza, Head of the Legal Department at the Ministry of Foreign Affairs, acting as Agent, assisted by P. G. Ferri, Avvocato dello Stato,

— the French Government, by C. de Salins, Deputy Director at the Legal Affairs Directorate of the Ministry of Foreign Affairs, and F. Pascal, seconded to that Directorate from the central administration, acting as Agents,

— the Council of the European Union, by J. Huber and A. Tanca, Advisers in its Legal Service, acting as Agents,

— the Commission of the European Communities, by E. de March, Legal Adviser, and T. Christoforou, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Somalfruit SpA and Camar SpA, the Italian Government, the French Government, the Council and the Commission at the hearing on 15 May 1997,

after hearing the Opinion of the Advocate General at the sitting on 26 June 1997,

gives the following

Judgment

1 By order of 12 October 1995, received at the Court Registry on 28 November 1995, the Tribunale (District Court), Salerno, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the validity of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas (OJ 1993 L 47, p. 1, hereinafter 'the Council Regulation'), Commission Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community (OJ 1993 L 142, p. 6) and Commission Regulation (EEC) No 1443/93 of 10 June 1993 on transitional measures for the application of the arrangements for importing bananas into the Community in 1993 (OJ 1993 L 142, p. 16).

2 The questions were raised in proceedings between Somalfruit SpA and Camar SpA (hereinafter 'Somalfruit' and 'Camar') and the Ministero delle Finanze (Ministry of

Finance) and the Ministero del Commercio con l'Estero (Ministry of Foreign Trade) concerning the importation into Italy of a cargo of 533 520 kg of bananas originating in Somalia.

Legal background

3 Article 168 of the Fourth ACP-EEC Convention, signed in Lomé on 15 December 1989, approved by Decision 91/400/ECSC, EEC of the Council and the Commission of 25 February 1991 (OJ 1991 L 229, p. 1, hereinafter 'the Lomé Convention'), provides:

'1. Products originating in the ACP States shall be imported into the Community free of customs duties and charges having equivalent effect.

2. (a) Products originating in the ACP States:

— listed in Annex II to the Treaty where they come under a common organization of the market within the meaning of Article 40 of the Treaty,

or

— subject, on import into the Community, to specific rules introduced as a result of the implementation of the common agricultural policy

shall be imported into the Community, notwithstanding the general arrangements applied in respect of third countries, in accordance with the following provisions:

(i) those products shall be imported free of customs duties for which Community provisions in force at the time of import do not provide, apart from customs duties, for the application of any measure relating to their import;

(ii) for products other than those referred to in point (i), the Community shall take the necessary measures to ensure more favourable treatment than that granted to third countries benefiting from the most-favoured-nation clause for the same products.

...'

4 Protocol 5 on bananas, annexed to the Lomé Convention (hereinafter 'Protocol 5'), states in Article 1 that:

'[i]n respect of its banana exports to the Community markets, no ACP State shall be placed, as regards access to its traditional markets and its advantages on those markets, in a less favourable situation than in the past or at present'.

According to Article 2 of Protocol 5:

'Each of the ACP States concerned and the Community shall confer in order to determine the measures to be implemented so as to improve the conditions for the production and marketing of bananas. This aim shall be pursued through all the means available under the arrangements of the Convention for financial, technical, agricultural, industrial and regional cooperation. The measures in question shall be

designed to enable the ACP States particularly Somalia, account being taken of their individual circumstances, to become more competitive both on their traditional markets and on the markets of the Community ...'

5 The Joint declaration relating to Protocol 5, which forms Annex LXXIV, states:

'... Article 1 of Protocol 5 does not prevent the Community from establishing common rules for bananas, in full consultation with the ACP, as long as no ACP State, traditional supplier to the Community, is placed as regards access to, and advantages in, the Community, in a less favourable situation than in the past or at present.'

6 In a special declaration relating to Protocol 5, set out in Annex LXXV, the Community confirmed the special rights of the ACP States which are traditional suppliers.

7 According to Article 360 of the Lomé Convention:

'1. This Convention shall enter into force on the first day of the second month following the date of deposit of the instruments of ratification of the Member States and of at least two thirds of the ACP States, and of the act of notification of the conclusion of this Convention by the Community.

2. Any ACP State which has not completed the procedures set out in Article 359 by the date of the entry into force of this Convention as specified in paragraph 1 may do so only within the 12 months following such entry into force and shall be able to proceed with these procedures only during the 12 months following such

entry into force, unless before the expiry of this period it gives notice to the Council of Ministers of its intentions to complete these procedures not later than six months after this period on the condition that it undertakes the deposit of its instrument of ratification within the same time limit.

...'

8 As appears from information published in the Official Journal by the Council's Secretariat, the Lomé Convention entered into force on 1 September 1991 (OJ 1991 L 229, p. 287).

9 The Democratic Republic of Somalia, which signed the Lomé Convention on 15 December 1989, did not deposit an instrument of ratification within the period provided.

10 Nor did Somalia participate in the Agreement amending that convention signed in Mauritius on 4 November 1995 (OJ 1997 C 20, p. 134). Article 364a of that agreement expressly envisages the future accession of the Democratic Republic of Somalia to the Lomé Convention.

11 On 28 June 1996 the ACP-EU Council of Ministers adopted the following conclusions concerning the Democratic Republic of Somalia:

'The ACP-EU Council of Ministers

1. confirms the political accession of Somalia to the Lomé Convention, despite the fact that Somalia has not been able to ratify the Convention for reasons beyond its control;

...'.

12 In Title IV the Council Regulation replaced the various national systems which had hitherto operated by a common system of trade with third countries.

13 As regards imports of bananas originating from the ACP States, the Council Regulation distinguishes in Article 15, which became Article 15a after the adoption of Council Regulation (EC) No 3290/94 of 22 December 1994 on the adjustments and transitional arrangements required in the agriculture sector in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations (OJ 1994 L 349, p. 105), between 'traditional imports from ACP States', meaning the quantities of bananas, set out in the Annex, exported by each ACP State which has traditionally exported bananas to the Community, and 'non-traditional imports from ACP States', meaning the quantities of bananas exported by those States which exceed the quantity defined in the annex.

14 The annex to the Council Regulation sets the traditional quantity for Somalia at 60 000 tonnes/net weight.

15 Article 18(1) of that regulation, as amended by Regulation No 3290/94, provides that a tariff quota of 2.1 million tonnes (net weight) is to be opened for 1994 and a tariff quota of 2.2 million tonnes (net weight) for the following years for 'third-country bananas' and 'non-traditional ACP bananas'.

16 Under that tariff quota imports of non-traditional ACP bananas are to be subject to a zero duty, whereas apart from that quota they are to be subject to a levy of ECU 750 per tonne.

17 Article 17 of the Council Regulation, as amended by Regulation No 3290/94, subjects any importation of bananas into the Community to the submission of an import licence issued by the Member States. Save where derogations are adopted, such licences are to be issued subject to the lodging of a security guaranteeing that the products are imported in compliance with the import commitment by the operator.

18 Article 19(1) divides the tariff quota thus opened, allocating 66.5% to the category of operators who marketed third-country and/or non-traditional ACP bananas, 30% to the category of operators who marketed Community and/or traditional ACP bananas and 3.5% to the category of operators established in the Community who started marketing bananas other than Community and/or traditional ACP bananas from 1992.

19 Article 19(2) of that regulation provides that each operator is to obtain import licences on the basis of the average quantities of bananas that he has sold in the three most recent years for which figures are available.

20 Under Article 20 the Commission is empowered by the Council to adopt detailed rules for implementing the regulation which may in particular cover the issue of licences.

21 In order to implement the Council Regulation, the Commission adopted in particular Regulation No 1442/93 which reproduces in Articles 2 and 3 the distinction between the three categories of operators referred to in Article 19(1) of the Council Regulation, and designates them Categories A, B and C.

22 Article 10 of the Commission Regulation provides that the national authorities are to notify the Commission of the individual quantities of bananas covered by import licence applications in respect of each category and also to notify the Commission of unused quantities.

23 Under Article 10(3):

'Quantities unused shall be reallocated on application to the same operators the following quarter.'

24 Article 14(2) of the Commission Regulation provides:

'Import licence applications shall be lodged with the competent authorities of any Member State during the first week of the last month of each quarter.'

25 Article 17 of the Commission Regulation lays down the detailed rules governing the issue of licences by the national authorities and provides that the Member States are to notify the Commission of the quantities covered by unused or partly used import licences.

26 Article 17(4) provides:

'Unused quantities shall be re-allocated on application to the same operators the following quarter.'

27 In Regulation No 1443/93 the Commission laid down transitional measures for the application of the arrangements for importing bananas into the Community in 1993.

28 In Commission Regulation (EC) No 2161/94 of 2 September 1994 fixing quantities for imports of bananas into the Community for the fourth quarter of 1994 (OJ 1994 L 230, p. 1) the Commission determined the quantities for imports of bananas into the Community for the fourth quarter of 1994. The annex to that regulation fixes the quantity of traditional bananas available for import in that quarter at 60 000 tonnes for Somalia.

29 Council Regulation (EC) No 2686/94 of 31 October 1994 establishing a special system of assistance to traditional ACP suppliers of bananas (OJ 1994 L 286, p. 1) refers, in its annex, to Somalia.

Facts of the case in the main proceedings

30 Somalfruit and Camar are companies that respectively export and import Somali bananas into Italy.

31 On 20 September 1994 Camar applied to the Italian authorities for a licence to import a cargo of 533 520 kg of bananas originating in Somalia, which were scheduled to arrive at Italian ports during the final quarter of 1994.

32 In its communication to the Commission the Italian Ministry of Foreign Trade pointed out that the application had been lodged after expiry of the time-limit provided for in Article 14(2) of the Commission Regulation; it nevertheless proposed that the Commission allow the application in view of the political situation in Somalia and the small volume of the importation.

33 On 3 October 1994 the Commission issued a negative opinion, on the ground that the application had been made after the mandatory time-limit prescribed had expired.

34 In those circumstances the Italian authorities rejected the application.

35 Somalfruit and Camar applied for an emergency order to the Tribunale di Salerno, which ordered the bananas to be cleared for customs and released for free circulation against payment of security guaranteeing payment of the customs duty of ECU 750 per tonne prescribed in respect of imports outside the non-traditional ACP bananas quota.

The questions referred to the Court

36 In those circumstances, the Tribunale di Salerno decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Should that part of Council Regulation (EEC) No 404/93 which limits the right to import Somali bananas — the so-called right of access, as recognized by the Lomé Convention of 15 December 1989, Protocol 5 thereto and the Joint

Declaration contained in Annex LXXIV to the Convention — be considered valid, in particular inasmuch as it:

(a) establishes different import arrangements for traditional bananas, non-traditional bananas and bananas in excess of the quota set for that purpose and thus imposes quantitative restrictions;

(b) imposes the requirement to obtain an import document and to lodge a security for that purpose — a document which is not purely for statistical purposes and is subject to conditions that are onerous and difficult to satisfy;

(c) imposes a customs duty of ECU 750 per tonne for bananas in excess of the tariff quota?

2. Should those parts of Commission Regulations (EEC) Nos 1442/93 and 1443/93, as amended and supplemented by later regulations, which limit, reduce or restrict unnecessarily and in a disproportionate manner in relation to the objective pursued the right of access of Somali bananas, as guaranteed by the Convention referred to in Question 1 and by Council Regulation No 404/93, be considered valid, in particular inasmuch as they:

(a) set the final date for the submission of applications for import licences up to three months and three weeks before the transaction and limit the period for submitting applications to one [full] week on only four occasions a year;

(b) provide, in the event of non-compliance with the deadline, for forfeiture, in all cases, of the right to import for an entire quarter, without laying down specific rules or derogations for situations of *force majeure*, unforeseeable circumstances and similar situations;

(c) make the issue of the licence subject to the prior deposit of a security?'

First question

37 By its first question the national court asks whether the Council Regulation is compatible with the Lomé Convention and Protocol 5, inasmuch as it limits free access to the Community market in bananas by distinguishing between three different categories of imports which are subject to different customs treatment, by imposing a customs duty of ECU 750 per tonne for bananas in excess of the tariff quota and in requiring an import licence to be presented, the issue of which is subject to the lodging of a security.

38 The French Government, the Council and the Commission maintain that the applicants in the main proceedings may not challenge the legality of the Council Regulation on the basis of the Lomé Convention, since Somalia has not ratified that convention. They conclude that the Court should decline jurisdiction to reply to that question.

39 The applicants in the main proceedings, while accepting that there was no formal ratification because of that country's internal difficulties, nevertheless point out that the Community treats the Democratic Republic of Somalia as an ACP country.

40 As to those submissions, it is to be remembered that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 177 of the Treaty, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment

and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see, *inter alia*, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59).

41 However, the Court has no jurisdiction to give a preliminary ruling on a question submitted by a national court where it is quite obvious that the interpretation of Community law or the examination of the validity of a rule of Community law sought by that court bears no relation to the actual facts of the main action or its purpose or where the problem is hypothetical and the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, Joined Cases C-320/94, C-328/94, C-329/94, C-337/94, C-338/94 and C-339/94 *RTI and Others* [1996] ECR I-6471, paragraph 23, and Case C-134/95 *USSL No 47 di Biella* v *INAIL* [1997] ECR I-195, paragraph 12. The spirit of cooperation which must prevail in the preliminary-ruling procedure requires the national court, for its part, to have regard to the function entrusted to the Court of Justice, which is to assist in the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions (see, *inter alia*, Case C-83/91 *Meilicke* v *ADV/ORGA* [1992] ECR I-4871, paragraph 25, and *Bosman*, cited above, paragraph 60).

42 In this case the questions referred to the Court do not, however, relate to the problem of the ratification by the Democratic Republic of Somalia of the Lomé Convention and the import of the related political declarations, but to the validity of the Council Regulation. In that connection it is appropriate to point out that the annex to that regulation, which fixes the traditional quantities of bananas from the ACP States, provides for a traditional quantity of 60 000 tonnes for Somalia.

43 It does not therefore appear that the question of the compatibility of the Council Regulation with the Lomé Convention is obviously hypothetical in relation to the case before the national court, so that the Court has jurisdiction to give a reply to that question.

44 As regards the validity of the Council Regulation, it should be recalled that in Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 102, the Court dismissed the plea in law, put forward as a ground for annulment of that regulation, alleging that it was incompatible with the Lomé Convention and Protocol 5.

45 Question 1(a) and (c) relate in substance to the difference in the treatment of traditional and non-traditional imports of ACP bananas which was challenged by the Federal Republic of Germany in Case C-280/93 cited above. The Court held, on that point, that with respect to the establishment of a tariff quota, the import of bananas from ACP States fell under Article 168(2)(a)(ii) of the Lomé Convention. In accordance with Protocol 5, the Community was obliged to permit the access, free of customs duty, only of the quantities of bananas actually imported 'at zero duty' in the best year before 1991 from each ACP State which was a traditional supplier. Moreover, Annexes LXXIV and LXXV relating to that Protocol confirmed that the Community's only obligation was to maintain the advantages, with respect to access of ACP bananas to the Community market, which the ACP States had before the Lomé Convention (Case C-280/93 *Germany* v *Council*, cited above, paragraph 101).

46 It must also be noted that, as stated in the Court's judgment in Case C-469/93 *Chiquita Italia* [1995] ECR I-4533, paragraph 59, Article 1 of Protocol 5 on bananas takes the form of a standstill clause. In other words, that provision aims to ensure the access of bananas from ACP States to their traditional markets upon conditions and according to rules which are no less favourable than those which existed when it entered into force. However, that guarantee of access benefits bananas from ACP States only up to the quantities imported when that provision entered into force.

47 The import limits that result from the Council Regulation are not therefore such as to entail its invalidity.

48 With regard to Question 1(b), relating to the validity of the requirement of an import licence, the issue of which is subject to the lodging of a security, the national court considers that that document does not merely serve statistical purposes and its issue is made subject to conditions that are difficult to satisfy. It therefore entertains doubts as to the compatibility of Article 17 of the Council Regulation with the principle of proportionality.

49 According to the case-law of the Court, in order to establish whether a provision of Community law complies with the principle of proportionality, it must be ascertained whether the means which it employs are suitable for the purpose of attaining the desired objective and whether they do not go beyond what is necessary to attain it (see, *inter alia*, Case C-426/93 *Germany* v *Council* [1995] ECR I-3723, paragraph 42).

50 The Court has also stated on numerous occasions that, where the evaluation of a complex economic situation is involved, the Community institutions 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 is not vitiated by a manifest error or misuse of power or whether the institution in question has not manifestly exceeded the limits of its discretion (see Case C-354/95 *National Farmer's Union and Others* [1997] ECR I-4559, paragraph 50).

51 The 17th recital in the preamble to the Council Regulation states that monitoring imports within the framework of the tariff quota requires an import licence scheme backed by a security.

52 That requirement, in so far as it is designed to ensure compliance with the commitment to import, in accordance with the conditions of the Council Regulation, during the period of validity of the licence, must be regarded as an administrative measure in respect of tariff quotas that is indispensable for the monitoring of imports in a system of differing import arrangements.

53 In the light of those considerations, it would not appear that the requirement of an import licence, the issue of which is subject to the lodging of a security as required by the regulation, goes beyond what is necessary to attain the desired objective.

54 In view of the foregoing, the answer to the first question must be that consideration of the Council Regulation in the light of the Fourth ACP-EEC Convention, Protocol 5 and the Common declaration constituting Annex LXXIV to that Convention has revealed no factor of such a kind as to affect its validity.

Second question

55 By its second question the national court questions the validity of Commission Regulations Nos 1442/93 and 1443/93, as amended and supplemented by later regulations, with regard to the Council Regulation and the Lomé Convention.

56 It must first be pointed out that Regulation No 1443/93 was no longer in force at the time of the importation of the bananas of Somali origin at issue in the main proceedings. Pursuant to Article 1(1) thereof, that regulation applied only to imports of bananas into the Community in 1993. Consideration of the validity of the provisions of Regulation No 1443/93 with regard to the Council Regulation is accordingly manifestly of no interest for the purposes of the decision in the case in the main proceedings.

57 Moreover, in the absence of specific details as regards the other amending or supplementing Commission regulations referred to by the national court, the Court must confine itself to examining Regulation No 1442/93.

58 In Question 2(c) the Tribunale di Salerno questions the validity of making the issue of import licences subject to the lodging of a security.

59 The provision of a security is prescribed in the second paragraph of Article 17 of the Council Regulation. Since the issue of import licences subject to the lodging of a security is provided for by the Council Regulation and not by the Commission Regulation, the question of the validity of the latter regulation with regard to the Council Regulation with respect to that condition is also devoid of purpose.

60 The Court must consequently confine itself to an analysis of the validity, with regard to the Council Regulation, of the provisions of the Commission Regulation that fix the periods within which applications for import licences must be submitted and the final dates for their submission, forming the subject-matter of Question 2(a) and (b).

61 By that question the national court asks whether the Commission Regulation, in the light of the Lomé Convention and the Council Regulation, did not establish arrangements that restrict access of Somali bananas to the Community market to an excessive degree.

62 According to the settled case-law of the Court, in the context of the common agricultural policy, since only the Commission is in a position to keep track of agricultural market trends and to act quickly where necessary, the Council may find it necessary to confer on it wide powers in that sphere (see, *inter alia*, Case 23/75 *Rey Soda* v *Cassa Conguaglio Zucchero* [1975] ECR 1279, paragraph 11, and Case C-285/94 *Italy* v *Commission* [1997] ECR I-3519, paragraph 22). The limits of those powers must be determined by reference among other things to the essential general aims of the market organization (see Case 22/88 *Vreugdenhil and Others* [1989] ECR 2049, paragraph 16, and Case C-478/93 *Netherlands* v *Commission* [1995] ECR I-3081, paragraph 30).

63 Article 20 of the Council Regulation authorizes the Commission to adopt, in accordance with the banana management committee procedure, detailed rules for the application of the arrangements for trade with third countries. It provides expressly that those detailed rules may cover, in particular, additional measures concerning the issue of import licences, their term of validity, and the frequency of issue of licences. The purpose of the Commission Regulation is therefore to lay down the detailed rules for applying the import arrangements for fresh bananas referred to in Title IV of the Council Regulation.

64 The effect of Article 14(2) of the Commission Regulation is that the time-limit for lodging import licence applications expires three weeks before the quarter concerned by the import licence requested. An operator who is late in lodging an application for an import licence with the competent authorities for a quarter loses the chance of importing bananas under the tariff quota for the quarter in question, although it should be noted that, in view of the period of validity of the licences laid down in Article 11(2) of that regulation, he may continue to market bananas until the seventh day following the quarter in respect of which he has obtained import licences.

65 Nevertheless, in such a case, the operator still obtains an annual quantitative reference and he may ask that unused quantities should be reattributed to him for the following quarter. He is thus in a position during the following quarters to market quantities of bananas amounting to his individual reference volume, save that, in accordance with Article 1(3) of the Council Regulation which specifies that the marketing year is to run from 1 January to 31 December, failure to comply with the time-limit laid down for lodging an application for an import licence for the final quarter means that the operator forfeits any chance of marketing the remaining part of his annual reference quantity after 31 December.

66 Similarly, an operator who, during the final quarter, has not used certain quantities of bananas which gave rise to the issue of an import licence may not market the unused volume of his reference quantity.

67 However, as is apparent from the description of the detailed rules for issuing import licences, the division of the procedure relating to the import of bananas into four quarters but without that entailing any definitive loss of operators' rights falls within the Commission's power to modify the conditions of access of bananas originating in third countries to the Community without, however, restricting them. Failure to comply with certain dates for lodging an application for licences or for carrying out imports under the licences issued does not entail the complete loss of any chance of marketing the quantity of bananas attributed annually to each operator.

68 There is therefore no factor to suggest that the issue of import licences quarterly and in restricted periods, for the purposes of ensuring the proper marketing of bananas in the Community during the marketing year, contravenes the Lomé Convention or the Council Regulation.

69 The reply to the second question must therefore be that consideration of the Commission Regulation in the light of the Lomé Convention and the Council Regulation has revealed no factor of such a kind as to affect its validity.

Costs

70 The costs incurred by the Italian and French Governments and by the Council of the European Union and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Tribunale di Salerno by order of 12 October 1995, hereby rules:

1. **Consideration of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas in the light of the Fourth ACP-EEC Convention, signed in Lomé on 15 December 1989 and approved by Decision 91/400/ECSC, EEC of the Council and the Commission of 25 February 1991, has revealed no factor of such a kind as to affect its validity.**

2. **Consideration of Commission Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community in the light of the Fourth ACP-EEC Convention and Regulation No 404/93 has revealed no factor of such a kind as to affect its validity.**

Ragnemalm Schintgen Mancini

Kapteyn Murray

Delivered in open court in Luxembourg on 27 November 1997.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber