Having regard to the Treaty establishing the European Economic Community, especially Articles 3 (f), 39, 42, 85, 86, 110 and 155;
Having regard to Regulations Nos 23/62, 159/66, 2513/69, and 2514/69 of the Council;
Having regard to Regulations Nos 459/70, 565/70, 686/70 and 983/70 of the Commission;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

hereby:

1. **Declares the applications to be admissible but dismisses them as unfounded;**

2. **Orders the applicants to bear the costs of the proceedings.**

Lecourt Donner Trabucchi

Monaco Mertens de Wilmars Pescatore Kutscher

Delivered in open court in Luxembourg on 13 May 1971.

A. Van Houtte
Registrar

R. Lecourt
President

## OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 1 APRIL 1971[1]

*Mr President,*
*Members of the Court,*

Today we are concerned with four cases which were joined for the purposes of procedure and judgment by an order of the Court of 10 December 1970 and which relate to the legality of measures which were taken within the scope of the common organization of the market in fruit and vegetables. We should therefore first of all recall some of the details of this organization of the market.

Mention should first be made of Regulation No 23 of the Council of 4 April 1962 (OJ, English Special Edition 1959 to 1962, p. 97) on the progressive establishment of a common organization of the market in fruit and vegetables. One important factor was that there was at

1 — Translated from the German.

that time no common commercial policy. At that time the import rules of the individual Member States still applied to trade with third countries, to some extent with quantitative restrictions, and only in Article 11 of Regulation No 23 was it provided that the Council was to decide, in accordance with the development of a common organization of the market on the coordination and standardization of the treatment accorded by each Member State to imports from third countries. As Community rules for imports from third countries provision was solely made for the imposition of countervailing charges which were to raise the import prices to the level of the reference prices. In Regulation No 159/66 of 25 October 1966 (JO 1966, p. 3286) containing additional provisions for the common organization of the market in fruit and vegetables the Council decided to apply all the tariffs of the Common Customs Tariff. The 'coordination and standardization . . . of the treatment accorded by each Member State to imports from third countries' was however not yet achieved; it was only provided that the necessary measures would be adopted before 1 January 1967. It is admitted that as a matter of fact extensive, and therefore in no way complete, standardization of the national import rules was only achieved in Regulation No 2513/69 of the Council of 9 December 1969 (JO L 318 of 18.12.1969). With some exceptions defined according to products and periods it provides for complete liberalization, that is the lifting of quantitative restrictions or measures having the same effect. At the same time a safeguard clause was introduced whereby in trade with third States appropriate measures could be taken if the market within the Community in one or several of the products referred to in Article 1 of Regulation No 2513/69 is exposed or threatened with exposure, on account of imports or exports, to serious disturbances liable to imperil the objectives of Article 39 of the Treaty. If such a disturbance exists and on application by a Member State the Commission must take the necessary measures within 24 hours following receipt of the request. They are to be applied without delay; however any Member State may refer to the Council the measure taken by the Commission within a period of three working days following the day it was noticed. The Council may amend or cancel the measures in question.

This safeguard clause and its implementing Regulation No 2514/69 of 9 December 1969 (JO L 318 of 18.12.1969) play an important role in the present proceedings. On 10 March 1970 the French Government applied to have the safeguard clause applied to apples which were not intended for the production of cider. The Commission complied with this request in respect of the expected imports of dessert apples of the new crop from the southern hemisphere, in view of the fact that already in February 1970 the danger of serious disturbances in the market in dessert apples had been brought to its attention and in view of the fact that this market in Belgium, France, Luxembourg and Italy was in March 1970 in a state of crisis within the meaning of Article 6 of Regulation No 155/66, which necessitated the removal of large quantities from the market. The first measure of the Commission to be noted is Regulation No 459/70 of 11 March 1970 (JO L 57 of 11.3.1970) which introduced a system of import licences for dessert apples for the period from 1 April to 30 June 1970. We can for the moment ignore the details of this Regulation; at this point I only wish to cite Article 2 which provides:

> '1. At the end of each week and, for the first time, on 20 March 1970, Member States shall communicate to the Commission, by telex, the quantities for which import licences have been requested during the preceding week, stating the months to which they relate.

2. On the basis in particular of the communications referred to in paragraph 1, the Commission shall assess the situation and decide on the issue of the licences.

3. Import licences shall be issued within a period of 10 working days following the lodging of the request, in so far as a positive decision shall have been made in respect of such licences, in the intervening period, in accordance with the provisions of paragraph 2.'

On 25 March 1970 there was further issued Regulation No 565/70 of the Commission (JO L 69 of 26.3.1970) on the management of the system of import licensing for dessert apples and amending Regulation No 459/70. Article 1 of this Regulation provides:

'1. Applications for import licences lodged up to 20 March 1970 shall be treated in accordance with Article 1 of Regulation No 459/70 within the quantity limit shown in the application and up to 80% of a reference quantity.

2. The reference quantity shall be equal to the sum of the quantities of apples other than cider apples which the applicant has imported into the Community in 1969 during the month corresponding to that stated in the application.'

These rules were extended weekly, first by Regulation No 621 of 2 April 1970[1] in which 27 March was substituted for 20 March, and thereafter by a series of further regulations (Regulations Nos 657[2], 686[3], 745[4], 787[5], 844[6], 879[7], 924[8], 983[9], 1061[10] and 1163[11]).

Of these Regulation No 686/70 in particular is to be mentioned as it altered the reference quantities. This was done by the following provision:

'The reference quantity shall be equal to the sum of the quantities of apples other than cider apples which the applicant has imported into the Community during the month corresponding to that for which the application was made:

(a) in 1969; or,

(b) on average taken over the years 1967 to 1969, if that average is higher than the quantity imported in 1969.'

Particular mention should also be made of Regulation No 983/70 of 28 May 1970 as it substitutes the date of 22 May 1970 for the date of 15 May 1970. This is of particular relevance to the present case because undertakings established in Rotterdam which imported fruit from third countries, applied in letters of 13 May 1970 for licences for the import of apples from third countries which were to be made in the months of May and June (only in June in Case 42/70). The letters reached the relevant Netherlands authority, the Produktschap voor Groenten en Fruit on 19 May; the Commission was informed of the quantities in question on 22 May. However the applications could not be granted because licences had already been issued for the relevant months in respect of 80% of the reference quantities and also because (in Case 44/70) no imports had been made in the corresponding months in the years 1967 to 1969. Accordingly the applicants received negative decisions dated 2 June 1970 from the Produktschap.

As a result of this the importers decided to initiate proceedings. It appears from the submissions of the Commission that they challenged the decisions of the Produktschap before the Netherlands courts. However, and this alone is of relevance here, they also lodged applications with the European Court of Justice in complaints which were received at the Court Registry on 5 August 1970.

1 — JO L 74 of 3.4.1970.
2 — JO L 80 of 10.4.1970.
3 — JO L 84 of 16.4.1970.
4 — JO L 90 of 24.4.1970.
5 — JO L 96 of 30.4.1970.
6 — JO L 101 of 7.5.1970.
7 — JO L 105 of 15.5.1970.
8 — JO L 110 of 22.5.1970.
9 — JO L 116 of 29.5.1970.
10 — JO L 122 of 5.6.1970.
11 — JO L 135 of 20.6.1970.

All the applications seek to have declared void the decisions of the Commission whereby their requests for the grant of import licences pursuant to Regulation No 459/70 were rejected and which were notified to them pursuant to the abovementioned regulation by letters from the Produktschap of 2 June 1970. The Commission first reacted by requesting that the applications should be dismissed as inadmissible pursuant to Article 91 of the Rules of Procedure. However the Court of Justice did not comply with this request; by a decision of 19 October 1970 it ruled that the decision on the objection raised by the Commission should be reserved for the final judgment.

When the proceedings were continued the Commission persisted in its main contention that the applications should be dismissed as inadmissible. In addition it is of the opinion that they must in any case be dismissed as unfounded.

*Legal consideration*

I — Admissibility of the applications

In view of the objections raised by the Commission I should start my examination with the question of the admissibility of the applications. In this respect a number of aspects must be distinguished.

1. Since only the decisions issued by the Produktschap are annexed to the applications the Commission first of all raises, in view of the provisions of Article 19 of the EEC Treaty and of Article 38 of the Rules of Procedure (whereby the contested measure is to be produced) the question whether the applicants seek to have the decisions of the Produktschap, and therefore *national* administrative measures, subjected to examination by the Court and it adds that this is of course excluded by Article 173 of the EEC Treaty.

However the doubts raised by the Commission may easily be dispelled, even without going into the question raised by the applicants whether, in the absence of any margin of discretion available to the national authorities (which in the present case is in fact absent) it is possible to speak of *national* administrative measures open to challenge. In my opinion these conclusions and the description of the subject-matter of the dispute make it sufficiently clear that decisions of the *Commission* are challenged and that the letters from the Produktschap are solely notification of these measures. In support of this view the applicants rely on Article 2 of Regulation 459, subparagraph 2 of which expressly states that the Commission shall assess the situation and *decide* on the issue of the licences. Even though it is not therefore exactly stated which of the Commission's measures are to be examined, in my opinion there can be no doubt that the present proceedings do in fact concern the legality of Community measures. Consequently the admissibility of the application cannot be called in question on the grounds dealt with above. Moreover the same applies for the reference to Article 38 (1)(c) of the Rules of Procedure (that is the necessity to define the subject-matter of the dispute) for there are no particular difficulties in identifying it as will soon become clear.

2. As I have already pointed out the impression could arise on the basis of Article 2 of Regulation No 459 that the Commission decided on the *individual* applications for licences. The applicants apparently were under this impression since they name as the subject-matter of the applications the decisions of the Commission which were *based* on Regulation Nos 459, 565 and 686. That this is not correct however is clear not only from Article 1 of Regulation 459, according to which the *Member States* shall issue the necessary licences, but also from the measures taken by the Commission implementing Regulation No 459 (that is Regulation No 565 and the other regulations extending the system

for a week at a time). They show that the Commission thereby took an overall decision which solely required implementing measures in the nature of calculations at a national level and that therefore it did not adopt individual measures in respect of each individual application for a licence. When the applicants are contesting a *Community* measure in the context of these rules then, in view of the fact that their applications for a licence were received by the Produktschap on 19 May 1970 they can only refer to Regulation No 983/70 amending Regulation No 565/70 for the ninth time, for this regulated requests for licences submitted until 22 May 1970. The admissibility of the applications must also be decided with this in mind. According to the scheme of Article 173 of the EEC Treaty under which individuals may only institute proceedings against *decisions* of the Community authorities this means that two questions must be examined: first the question whether the measures adopted in Regulation No 983 are in fact in the nature of decisions and secondly—if the first question is answered in the affirmative—the question whether the applications may be regarded as being directly and individually concerned by these measures. The Commission contests both questions. It takes the view that we are dealing with a *genuine* regulation, that is, a measure which was applicable to an objectively defined situation and which applied to categories of persons defined in the abstract. In addition it could in no case be stated that the applicants were *individually* affected since the Commission had restricted itself to making a macro-economic examination and to laying down general criteria whereby the national authorities decided on the individual applications for licences.

Let us therefore examine this argument.

(a) With regard to the *legal nature* of the measures in question, it is clear from the decided cases (for example Joined Cases 16 and 17/62, *Confedération nationale des producteurs des fruits et legumes and Others and Federation nationale des producteurs de raisin de table* v *Council of the European Economic Community* [1962] ECR 471, at pages 478 to 479) that the official description is not decisive but only its subject-matter and its content. Accordingly we must recall what was provided by Regulation No 983 of 28 May 1970. In so doing we must also consider the scheme of Regulation No 459 and the immediately preceding regulation which, as you know, governed applications for licences submitted up to 15 May 1970. From this point of view the answer to the question is quite simple; it was provided that applications for the grant of licences which were necessary by virtue of Regulation No 459, submitted between 16 and 22 May, were to be granted for the amount contained in the application, but only up to 80% of a reference quantity (set out in Regulation No 686). At the same time it was clear that applications for licences which did not comply with the above-mentioned preconditions would have to be rejected. In view of all this it is extremely doubtful whether we are in fact dealing with a *regulation* within the meaning of the definition repeatedly given in the decided cases. On many occasions in judgments of the Court it was emphasized that measures are only to be regarded as regulation if they apply to categories of persons as a whole, defined in the abstract, and if they have a *legislative* nature. If one looks at the decided cases individually, it appears that only clearly *legislative* measures were regarded as regulations (for example in determining derived intervention prices under the organization of the cereals market, and the time-limit for the duty to intervene under the organization of the sugar market or in the clear regulations in the agricultural sphere which were at issue in Joined Cases 16 and 17/62 referred to above). On the other hand there were certain limita-

tions; namely that the measure should not merely be applicable to a limited number of *certain* addressees (Joined Cases 16 and 17/62 1962 ECR 471 at page 479). In addition it must not merely be the interests of certain *identifiable* persons that are affected (Case 30/67 *Industria Molitoria Imolese* v *Council* [1968] ECR 115). However, the latter clearly applies to the present case since the measure of the Commission applied exclusively to clearly determined facts in the past and so if all the necessary elements for the judgment of the individual applications were notified to it, the Commission could have decided on each licence application itself. I am therefore of the opinion that, as the Commission itself indicated in one part of its rejoinder, the measure in question is an '*Allgmeinverfügung*' (a general provision) in German legal terminology, that is, a measure which has the nature of a decision but not a measure with legislative content for which it would be necessary that it apply to the *indeterminate* number of persons.

This conclusion is not shaken by the judgment in Case 64/69 (*La Companie francaise, commerciale et financière, SA* v *Commission* [1970] ECR) where a measure was described as a regulation in spite of the possibility of determining the number and identity of persons affected by it. The special features of that case must not be overlooked. As you know that was a measure which formed part of a *body* of provisions and which was intended to adapt the intervention rules in the agricultural sector to the devaluation of the franc. This could be regarded as a *transitional* provision and as such it was part of both the old and the new provisions which were to be adapted to each other and therefore partook of their general nature. However the present case is certainly not a corresponding situation.

The analysis undertaken of Regulation No 565 in conjunction with Regulation No 983 leads to the conclusion that Article 1 of these regulations, which is the only one which presently concerns us, contains no legislative measure and that therefore, as there is no third possibility, the measure is a *decision* within the meaning of Article 189 and Article 173 of the EEC Treaty.

(b) Although it was comparatively easy to ascertain the legal nature of the measure in question, the question whether the applicants can claim to be *individually* affected presents greater difficulties. As you know the relevant ruling developed in the decided cases relating to the second paragraph of Article 173 of the EEC Treaty runs as follows, 'persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them, or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed' (Case 25/62, *Plaumann and Co.* v *Commission of the European Economic Community* [1963] ECR 95 at page 107). The Commission denies that these conditions are complied with by referring to the general validity of the import prohibition and by arguing that the measures adopted by it affected not only past and future importers but also producers and sellers of domestic dessert apples and also producers and exporters in third countries.

This argument is certainly of some force. However I believe that the evaluation of the situation made by the Commission is in the final analysis incorrect. In relation to Article 173 of the EEC Treaty I have already repeatedly referred to the necessity to differentiate between the ways in which the person is affected. Thus it is certainly not permissible to treat those who are *favoured* by a measure in the same way as those who are affected to their detriment. In addition it must also be recognized that not all the above-

mentioned persons adversely affected are affected in the same way. The system created by the Commission is quite clear: in the months of April, May and June 1970 imports could only be made on the basis of licences. Therefore it appears justified to regard the application for a licence, which was bound up with the lodging of a deposit and which could result in an *obligation* to import, as a particular circumstance within the meaning of the judgment in Case 25/62. Indeed in this respect a parallel can clearly be drawn with the Joined Cases 106 and 107/63 (*Alfred Toepfer and Getreide-Import Gesellschaft* v *Commission of the European Economic Community* [1965] ECR 405 at pp. 411 and 412) in which an application for import licences was also regarded as a particular circumstance which in respect of a retroactive protective measure singled out the imports affected from the category of importers as a whole and gave them a right of action. It only remains to consider whether the *number* of importers affected is of importance (in the submission of the Commission around 100 established undertakings are concerned as having a right to apply) and whether the fact that the overall decision taken by the Commission was applicable for the whole common market has any relevance. However, I believe that this quantitive and territorial aspect also is not decisive. In the above-mentioned definition given by the Court of Justice no express mention is made of it. Moreover to regard it as decisive would be to disregard the principle which is also emphasized in Case 25/62 that 'provisions of the Treaty regarding the right of interested parties to bring an action must not be interpreted restrictively'. Therefore in spite of the doubts raised by the Commission it must be recognized that the measure in question concerned the applicants individually.

As to the question of the *direct* concern on which the Commission raises no doubts there is little that needs to be said. It must certainly be recognized that the measure was of direct concern because according to the decision of the Commission if certain preconditions were fulfilled the rejection of the licence applications was inevitable. The national authorities implementing the rules had only to establish the factual situation and to draw certain conclusions and they possessed no discretionary power. Once again we can draw a parallel with the Toepfer Case in saying that the Community measure penetrated directly into the national sphere.

Therefore there can be no objection to the admissibility of the applications under the provisions of the second subparagraph of Article 173 of the EEC Treaty.

3. I need only say a few words about the observance of the limitation period for bringing the proceedings.

If one regards Regulation No 983/70 as the measure contested, as I believe we should, then the relevant date from which time began to run was not the decision of the Produktschap of 2 June 1970 but the notification of the Commission's measure in the Official Journal of the Communities. This notification was made on 29 May 1970. Nevertheless there are no difficulties in the present question since the two months' period prescribed in Article 173 of the EEC Treaty was not only prolonged by Annex 2 to the Rules of Procedure by an extension on account of distance of six days but also since it is a published measure it began in accordance with Article 81 (1) of the Rules of Procedure only 15 days after the publication in the Official Journal of the European Communities. The relevant limitation period is indeed observed although the applications only reached the Court Registry on 5 August.

## II — The substance of the case

If one accepts the above considerations there is no obstacle to an examination

of the substance of the case. I will now turn to this part of my examination in which different aspects must also be distinguished.

*1. Breach of GATT obligations*

The first submission that the measures adopted by Regulations Nos 459, 565 and 686 constituted a breach of the GATT rules need not delay us for long. On the one hand the applicants failed to give particulars on this point and on the other hand it must be stated in principle that in proceedings under Article 173 of the EEC Treaty the Court may only consider grounds of complaint which are contained in this Treaty. It thus may only review compliance with *Community* law.
Thus as the Commission emphasized, the first submission does not advance the applicants' case and must be rejected.

*2. Infringement of Regulations Nos 2513 and 2514 of the Council*

The applicants believe Regulations Nos 2513 and 2514 have been infringed by virtue of the fact that the system of import licences established by the Commission is not expressly mentioned there. Therefore it cannot be considered as a protective measure within the meaning of the abovementioned regulations.
At first glance this objection is supported by the fact that Article 2 of Regulation No 2514 which gives details of the 'appropriate measures' of Regulation No 2513, only refers to the suspension of imports or exports and of the imposition of export taxes. However, it must be asked whether 'suspension of imports' in fact may only refer to a complete halt of imports or whether it may also refer to the less drastic measure of regulating imports as was established by Regulations Nos 459 and 565/70 according to which, in the period from 1 April to 30 June 1970, the Commission decided each week upon applications for licences submitted, that is, it determined to what extent they should be granted. There can really be no doubt that if the safeguard clause is reasonably interpreted, the question must be answered to the effect that the measure by the Commission falls within the limits prescribed by the said Article 2. Quite apart from that the system established was in fact a 'suspension of imports' for all importers who wished to import dessert apples from third countries for the first time in 1970, for importers who had not made imports during the reference period and also for importers who had already exhausted the reference quantities.
It is therefore my opinion that the system established is within the scope of Regulation No 2514. Should any further confirmation be needed it can be found in particular in the fact that the Council, which was the author of Regulation No 2514, neither amended nor abolished the measures taken by the Commission although they were referred to it in accordance with Article 2 of Regulation No 2513 by a Member State.

*3. Protective measures under Regulation Nos 2513 and 2514 of the Council and the system of reference prices*

The applicants further object that within the common organization of the market for fruit and vegetables the reference prices are the main means of protection against imports. Other measures can only be regarded as permissible if the import prices fall below the reference prices. During the relevant period in 1970 however the import prices stood approximately 100% higher than the reference prices and there was no cause to fear any movement towards the reference prices or the market prices. In addition no reference price at all was fixed for the month of June 1970.
In this connexion we must recall how the system of reference prices works. As we know reference prices are fixed every year for the whole Community at the level of the arithmetical average

of the producers' prices in the Member States to which is added the marketing costs. Producers' prices mean the average of the rates which were attained during the 3 years prior to the fixing of the reference price on the most representative markets in the growing areas with the lowest rates. They are compared with the prices for imports from third countries which are reduced according to the average lowest rates on the representative import markets and are reduced by the amounts of customs duties, import levies and transport costs. If the import prices fall below the reference prices a countervailing charge of the amount of the difference is due which is levied in addition to the customs duties.

First, it is important to note in examining this system that it was introduced by Regulation No 23 of 4 April 1962, that is, at a time when there was no standardization of the national import rules, but when these remained provisionally in force with additional protective measures. At least since the adoption of Regulation No 65/65 (and comparing it with Regulation No 23) it becomes clear that there is nothing in the nature of a safeguard clause in the reference price system and that it is characterized by an automatism which moreover became more accentuated with the issue of Regulation No 2512 at the same time as Regulation No 2513. I therefore agree with the Commission that the purpose of the reference prices is to ensure a stabilization of prices with the aid of countervailing charges, in a manner similar to the levies within the common organization of the market in cereals (to which however special safeguard clauses are attached). On the other hand Article 2 of Regulation No 2513 certainly has the nature of safeguard clause. As the Commission rightly says it was necessary to compensate for the simultaneously adopted prohibition of quantitive restrictions or in other words because the rule of Regulation No 2513 had to contain the essentials of the national import rules which had been in existence until then.

If as a result of this development of the organization of the market in fruit and vegetables the reference price system and the safeguard clause of Regulation No 2513 have different functions then we must also accept the Commission's view that the independence postulated by the applicants does not exist because nowhere is express mention made of the subsidiary nature of the safeguard clause. It can also be said that one and the same safeguard clause applies for products for which reference prices are not fixed as well as for products (at the present moment 10) for which such reference prices do exist. That too may only be understood if one accepts that the application of the safeguard clause is independent of the application of reference prices. In addition the Commission made it clear enough that within the scope of the situation which had to be regulated by it in 1970 the imposition of countervailing charges according to the reference prices was not an appropriate means. In the first place, as we shall later see, there was a *problem of quantities*. Moreover it must not be forgotten that the reference prices are average values (and therefore lower values) and that they can only produce effects in relation to the higher priced imports from third countries if conversion factors have been fixed with regard to the differences in quality (the old crop on the one hand and the new crop on the other). However the Community authorities had not fixed such a factor, although this is no ground for criticizing them in view of the system of the organization of the fruit market.

Thus all in all I agree with the view of the Commission that, having regard to the level of the import prices and to the failure to fix a reference price for the month of June 1970, the absence of countervailing charges does not argue against the permissibility of the protective measures adopted by the Commission.

*4. The substantive prerequisites of Regulations Nos 2513 and 2514*

In the examination of the present case the greatest weight must surely be attached to the question whether the prerequisites set out in Regulations Nos 2513 and 2514 of the Council for the adoption of protective measures did exist. This too the applicants have challenged with various arguments. I will first recall how the abovementioned preconditions were determined.

The basic situation for the adoption of protective measures is set out in Regulation No 2513 as follows: 'If the market in the Community in one or several products referred to in Article 1 suffers or is likely to suffer, on account of imports or exports, serious disturbance . . .'. It is thereby clear that a *threatened* disturbance is sufficient, the state of crisis therefore does not have to be in existence already, it is sufficient that it is to be reckoned with on any reasonable prognosis. Moreover imports must certainly play an important role; they must have or be expected to have a decisive influence. The implementing Regulation No 2514 further provides, for determining whether the market is threatened with serious disturbance on account of imports, that a series of criteria are in particular to be 'taken into account' which, interpreted reasonably, can only mean that they are to be taken into consideration while not being an exhaustive list. These criteria are: the volume of imports or exports carried out or anticipated, the quantities available on the Community market, the recorded prices for domestic products on the Community market or the expected trend of such prices and in particular their tendency to fall excessively, and—if the disturbance occurs or threatens to occur because of imports—the quotations recorded on the Community market for products from third countries and in particular their tendency to an excessive fall, and the quantities for which withdrawal transactions are taking place or might take place. The following is clear from a review of the whole system of these criteria: a *prognosis* appears to be sufficient in respect of the expected volume of imports. In considering the prices for domestic products it is further not absolutely necessary to find a *tendency to fall excessively*. The third mentioned criterion contains various alternatives, reasonably, as otherwise in the event of a crisis within the meaning of Article 6 of Regulation No 159/66 (which we will consider presently), this in situations where the very low level of intervention prices is already reached, protective measures on imports would not be conceivable. Finally for the quotations for products from third countries an actual *tendency* to an excessive fall is not absolutely necessary but we can agree with the Commission that a *threatened* tendency is also sufficient just as it is sufficient that there be a *threatened* serious disturbance of the market for the fundamental prerequisite of the safeguard clause to be met.

On the basis of these fundamental considerations we must now appraise the economic data and forecasts submitted in relation to the situation of the market for apples in early 1970 and which are said to determine the permissibility or, in the opinion of the applicants, the impermissible nature of the protective measures taken.

First, it is not contested that the apple crop of the 1969 to 1970 financial year was excessive (about 7 million metric tons) since it was about 550 000 metric tons over the amount produced in the 1967 to 1968 financial year when more than 300 000 metric tons had to be taken off the market. For that reason in early 1970 there were still large stocks of the domestic crop in store (according to the Commission around 1 million metric tons). From this it is clear that the Commission took into account subparagraph (b) of Article 1 of Regulation No 2514 of the Council and justifiably reached the decision that

excessive quantities of dessert apples were available on the Community market.

It is further uncontested that in early 1970 a crisis within the meaning of Article 6 of Regulation No 159/66 existed in Belgium, France, Italy and Luxembourg and that similarly such a crisis was imminent in the Netherlands. What does this mean in fact? Article 6 of Regulation 159/66 provides that a crisis exists when the quotations in respect of the representative producer markets is below the purchase price increased by an amount equal to 15% of the basic price (whereby the basic price is the average of the quotations from the representative markets in the surplus areas with the lowest prices and the purchase price for apples is between 50 and 55% of the basic price). In such a crisis situation the Member States grant financial compensation for the goods withdrawn from the market. This apparently occurred to a considerable extent in early 1970. In addition the crisis lasted for a long time (until 4 May in Luxembourg, until 19 May in France and until 31 May in Belgium and Italy). Therefore the Commission also took into account subparagraph (c) of Article 1 of Regulation No 2514, that is, it correctly decided that the level of domestic prices had been very low (which moreover is confirmed by the figures contained in Schedule B to the rejoinder). It similarly took into account the second indent of subparagraph (d) of Article 1 of Regulation No 2514, that is the quantities for which withdrawal measures were taken or might be taken. That the market for dessert apples in the Community was in fact in an exceptionally difficult situation in early 1970 is moreover confirmed by a number of other factors. I need only recall that the Member States were empowered by the Council by means of Regulation No 480/70 to grant financial compensation to the producers' organizations for the precautionary measure of removing apples from the market. I also recall that in the Federal Republic of Germany credit was made available to encourage sales because of the low level of the prices and I also recall Regulation No 2517 whereby a grubbing-up grant was paid to apple producers who undertook to cease production.

This is however merely one side of the situation. Under Regulation No 2514 the volume of imports, their relevant quotations and their influence on the domestic market are also important factors. In this respect it is clear from the pleadings of the Commission that above all it worked on the basis of forecasts and apprehensions based on the experience of previous years. It compared the situation of the market in the months of April, May and June of the financial year 1967 to 1968 (that is a year with domestic over-production and a low level of prices with the corresponding situation of the financial year 1968 to 1969 (that is a year with a normal crop and higher domestic prices) and it drew the conclusion that the import prices in the year of surplus production were 20% below those of the normal financial year 1968 to 1969 and about the level of domestic prices in normal financial years (cf. Schedule A to the rejoinder). In addition it found that the imports in early 1968 of 115 000 metric tons were greater than those in early 1969 when only 101 000 metric tons were imported. From this it drew the conclusion that even in the year of surplus production 1969 to 1970 reduced import prices and correspondingly large imports had to be expected (as was confirmed by the applications for licences which were later made). Indeed it is hard to see how this form of reasoning can be challenged particularly if one bears in bind that in 1970 for the first time there was a liberalization of imports which in itself led to the expectancy of an increase in imports.

There only remains for us to examine the applicant's objection that in reality the imported apples of the new crop have a market which was distinct from

the domestic apples of the old crop; that imported apples are not interchangeable with domestic apples and that it cannot therefore be maintained that imports of apples from third countries affect the market in the domestic products. In this respect the applicants made reference to differences of quality and price and to the extent to which apples were imported from third countries. On this question too, however, it seems that we must accept the Commission's view. In the first place it justifiably argues against the applicants that their figures on relative prices (whereby the import prices were 100% higher than the domestic prices) are of little evidential value since they relate to a period in which Community protective measures were already in force and in which therefore the supply of apples from third countries was limited. The same applies to the particulars submitted by the applicants with regard to quantities imported to which it must also be pointed out that they must be compared to the volume of sales in the relevant period, thus not the whole financial year (which produces a value of 10% not 5%). Apart from this the exclusion of any possibility of substitution (the Commission itself only submits, as you know, that the products may only be substituted to a *certain extent*) seems to be contradicted by the judgment of the average consumer. In any case I cannot see how it can be argued that apples of the same variety are not interchangeable for each other when on the one hand there is the product of the new crop and on the other hand products of an earlier crop which, we must remember, can retain their quality for a long peroid by means of new methods of preservation. In fact one can no more rule out completely interchangeability in this case than in the case of apples of the same crop which (as the Commission showed by means of reference prices and therefore average prices) show considerable differences in price. Furthermore the view of the Commission that imported apples affect the domestic market is also supported by the abovementioned experiences of the previous years. In fact nobody can seriously dispute the persuasive force of the tables produced by the Commission on trends in imports (their quantities and prices) and their relation to the domestic market and its prices.

Finally however, if we reflect that in spite of the absence of a provision corresponding to Article 33 of the Treaty establishing the European Coal and Steel Community, similar principles must still apply in cases relating to economic matters in the EEC context, and that the Court of Justice can therefore not make a detailed economic assessment of the situation but is really limited to the question whether the measures adopted by the Commission appear suitable and reasonable according to the known factors then the final conclusion may indeed only be in favour of the Commission: it is not contested that the state of crisis caused by the excessive domestic crop would be exacerbated by unlimited imports at presumably ever lower prices (even when only in the form of an increase in intervention transactions). Consequently no objections may be upheld against the adoption of protective measures in March 1970 and their retention during the period here in question (apart from the continuation of the crisis one need only refer to the fact that in June large quantities were still available for sale and that for that reason, as an exceptional measure, a basic price was fixed for the month of June).

*5. Failure to state sufficient reasons*

The legality of the measures in question does not however depend solely on the existence of the substantive prerequisites of Regulations Nos 2513 and 2514; a sufficient statement of reasons is also necessary. The applicants also maintain that this is lacking. They regard the

statement of reasons in Regulations Nos 459 and 565 as insufficient, contradictory and incomprehensible because it is not stated whether the conditions laid down in Regulations Nos 2513 and 2514 of the Council are fulfilled, because nothing is said about the possibility of substitution of the products in question and because it is not apparent whether the Commission took into account an excessive fall in the prices on the market for domestic apples and on the market for imported apples.

It must be first of all stated with regard to this objection that, in principle, the obligation to state reasons, properly understood, only requires the giving of the legal and factual considerations upon which, in the opinion of the issuing authority, the measure is based and it does not require a discussion of all conceivable objections and of course does not require the use of formulae used in the legislation. This is of importance with regard to the tendency to an excessive fall in respect of the market for imported apples which, in the view of the Commission, did not have to exist but had to be reckoned with (it is possible to discern here an implicit reference to the situation in previous years). In addition, from the decided cases (cf. for example Case 16/65 *Firma C. Schwarze* v *Einfuhr-und Vorratsstelle für Getreide und Futtermittel* [1965] ECR 877) the fact that the Commission only had 24 hours to prepare and issue the protective measure at issue must also be taken into consideration. This factor naturally requires a different standard for the statement of reasons than may be expected for measures which are drafted in normal circumstances. In addition it must not be overlooked that Regulations Nos 565 and 686 are based on Regulation No 459 and that it is therefore necessary to regard the preamble to the abovementioned provisions *as a whole*.

In view of all these factors one may hardly speak of a failure to give sufficient reasons in the present case. I need only point out that Regulation No 459 refers to the quantities of apples produced in the Community (which is compared with the quantities of earlier years), that it mentions the quantities in store and the necessity to take intervention measures, that it refers to the state of crisis existing in various Member States, the volume of imports of apples, interchangeability with domestic products and also the fall in quoted prices and the increase in the quantities which have to be withdrawn from the market. In addition Regulation No 565 refers to the quantities for which applications for licences have been submitted. It would certainly be setting the requirements of the statement of reasons too high to argue that this information is not a sufficient statement of reasons.

Thus the measures in question are not illegal for reasons of form.

6. *Distortion of the conditions of competition*

In their last submission the applicants finally put forward the view that the protective measure crystallized and distorted competition by limiting imports and by taking into consideration earlier reference periods. In addition (this is only relevant in respect of the applicant in Case 44/70) it denied access to import transactions to undertakings which had not imported during the reference period. It had thereby infringed the principles set out in Articles 3 (f), 85 and 86 of the EEC Treaty.

To this argument it must be conceded that a certain impairment of competition by the measures in question cannot be denied. This does not automatically imply an infringement of the Treaty and the illegality of the measures taken. One must certainly agree with the Commission that it is not strictly and exclusively bound by the basic principles mentioned. This is clear from Article 3 of the EEC Treaty which not only provides for the institution of a system ensuring undistorted competition but also for the adoption of a common policy in the sphere

of agriculture. Again reference may be made to the reservation contained in Article 42 of the Treaty relating to the rules on competition, in which both the common organization of the market and the agricultural products there included take part. At most the question can be asked whether, in harmonizing the different objectives of the Treaty mentioned above the Commission was wrong in giving one of them priority. However, this may hardly be said to be the case. On the one hand, even after the adoption of the protective measures in question in respect of imported apples, a sphere of competition remains. On the other hand it must be recognized that exceptional situations may justify special measures. In assessing them we must take into consideration the shortness of their duration and the fact that they are limited to the imports of apples from the southern hemisphere (whereas the sphere of trade of importers is so specialized only in rare cases). Although when faced with this situation the Commission gave priority to the interests of established import firms which had earlier carried out their activities over undertakings which sought to import apples for the first time in 1970, this certainly does not warrant being described as a disregard of a principle of the Treaty. Moreover since the applicants only formulated a few general remarks in respect of other conceivable possibilities in order to protect the apple market but did not show that they were practicable in the same way and that they were less to the detriment of the affected parties, I would like to sum up by stating with regard to the last submission that the annulment of the protective measures in question cannot be brought about even by relying on the principles of undistorted competition.

## III — Summary

All told, therefore, my conclusions are as follows:

Contrary to the view of the Commission the applications must be regarded as admissible. They are however unfounded and for this reason must be dismissed with the further consequence that the applicants must bear the costs of the proceedings.