regulations can only be adopted in so far as they are strictly necessary for the attainment of the objectives specified in Article 39 of the Treaty, and impair as little as possible the functioning of the common market.

5. Article 3 of the Treaty lists several general objectives, towards the attainment and harmonization of which the Community has to direct its activity. Amongst these objectives, Article 3 prescribes not only 'the institution of a system ensuring that competition in the common market is not distorted', but also in subparagraph (d) 'the adoption of a common policy in the sphere of agriculture'. The Treaty attaches very great importance to the attainment of this latter objective in the sphere of agriculture, devoting Article 39 to it and making the reservation contained in the first paragraph of Article 42. Where protective measures prove to be necessary with a view to preventing, in the market in the products in question, serious disturbances capable of endangering the objectives of Article 39, an explicit statement of the reasons for such measures, in relation to Articles 85 and 86 of the Treaty, is not indispensable.

In Joined Cases

41/70: NV INTERNATIONAL FRUIT COMPANY, Rotterdam,

42/70: NV VELLEMAN & TAS, Rotterdam,

43/70: JAN VAN DEN BRINK'S IM- EN EXPORTHANDEL, Rotterdam,

44/70: KOOY ROTTERDAM, Rotterdam,

represented by C. R. C. Wijckerheld Bisdom and B. H. ter Kuile, Advocates at the Hoge Raad of the Netherlands, with an address for service in Luxembourg at the chambers of J. Loesch, 2 rue Goethe,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Advisers, B. Paulan and J. H. J. Bourgeois, acting as Agents, with an address for service in Luxembourg at the offices of E. Reuter, Legal Adviser to the Commission of the European Communities, 4 boulevard Royal,

defendant,

Application for the annulment of decisions refusing to issue import licences for dessert apples coming from third countries,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and A. Trabucchi, Presidents of Chambers, R. Monaco (Rapporteur), J. Mertens de Wilmars, P. Pescatore and H. Kutscher, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of facts and procedure

1. On the basis of the principles laid down in Regulation No 23 of 4 April 1962 (OJ, English Special Edition 1959 to 1962, p. 97), the Council on 9 December 1969 adopted Regulation No 2513/69 (JO L 318 1969) on the co-ordination and standardization of the treatment accorded by each Member State to imports of fruit and vegetables from third countries. Article 2 of that regulation comprises a safeguard clause by virtue of which appropriate measures may be applied so as to counteract a disturbance or threatened disturbance of the market in the Community.

The conditions for the application of these measures were specified in Regulation No 2514/69 of the Council of the same date (JO L 318 1969).

On 11 March 1970 the Commission approved Regulation No 459/70 (JO L 57 1970) adopting protective measures applicable to the import of dessert apples.

Within the framework of these measures the Commission decided *inter alia* to introduce a system of export licences; the administration of this system was specified in Regulation No 565/70 of 26 March 1970 (JO L 69 1970), supplemented by Regulation No 686/70 of 15 April 1970 (JO L 84 1970).

By Regulation No 983/70 of the Commission (JO L 116 1970) of 28 May 1970 this system, in relation to applications for import licences made to the national authorities, was continued until 22 May 1970.

By a letter received by the Produktschap voor Groenten en Fruit (produce corporation for vegetables and fruit, hereinafter referred to as 'the PGF') on 19 May 1970, each of the applicant companies submitted an application for licences for the import of dessert apples coming from third countries.

In its replies the PGF informed them either that 'the application must be rejected', or that it has been decided to reject it'.

On 5 August 1970 the applicants made the present applications against these refusals. The applications were joined for the purposes of procedure and judgment by an order of the Court of 10 November 1970.

2. In an application or a procedural issue made in each case on 11 September 1970, the Commission asked for a decision as to the admissibility of the original applications pursuant to Article 91 of the Rules of Procedure, without going into the substance of the cases,

and it further requested that the original applications should be dismissed as inadmissible. On 15 October 1970 the applicants lodged documents containing their submissions and the grounds on which they were based.

After hearing the Advocate-General the Court decided by an order of 19 October 1970 to reserve its decision on the applicatiin on a procedural issue for the final judgment.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided that no preparatory inquiry was necessary.

The parties presented oral argument at the hearing on 16 March 1971.

The Advocate-General delivered his opinion at the hearing on 1 April 1971.

II — Conclusions of the parties

Each of the *applicants* claims that the Court should:

— annul the decision of the Commission of the European Communities contested in the application and of which the applicant was informed on 2 June 1970 by a letter from the PGF bearing the same date (reference: FA/IM), principally on the ground of the Commission's lack of competence, but in addition on the grounds of infringement of an essential procedural requirement, and infringement of the EEC Treaty and the regulations implementing it (especially Regulations Nos 2513/69 and 2514/69), and lastly for misuse of powers by the Commission,

— order the Commission of the European Communities to pay the costs.

The *defendant* contends that the Court should:

— dismiss the applications as inadmissible and in any case as unfounded;

— order the applicants to bear the costs in accordance with the relevant provisions.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

Admissibility

The *Commission* objects that the applications are not admissible, arguing that it had not addressed any 'decision' to the applicants and that the measure, which was at issue in each application, and which was issued by the PGF was in fact a national administrative measure.

The only 'decision' of the Commission which could be in question is that relating to the provisions of Regulations Nos 459/70, 565/70 and 686/70 which the applicants criticize. However an action against these provisions under Article 173 of the Treaty would in the present case also be inadmissible since they are general in nature.

The *applicants* point out that by the system established by Regulation No 459/70, only the Commission has the power to decide on the issue of an import licence and that the Commission bears the responsibility for the contents of that decision. Member States have no discretionary power in this respect, they can only adopt merely implementing measures to support this decision and are only liable for the way in which they notify the parties concerned.

In addition they observe that in these circumstances it should be asked whether and to what extent domestic law is applicable in deciding whether the notification made by the national authorities to the parties concerned informing them of the negative decision in respect of their applications is an internal administrative measure capable of being contested before the courts.

If this communication cannot be considered an internal administrative measure capable of being contested under national law, the decisions relating to the issue of import licences run the risk of being subject to no judicial

scrutiny, if the persons concerned are also denied the right of access to the Court of Justice.

On the other hand if the decision of the Commission can only be examined from the point of view of national law, the danger would arise, because of the divergencies between the national laws or the opinions of the national courts, that different solutions would be arrived at in relation to identical or similar decisions, made in response to identical or similar requests.

The *defendant* replies as follows:

— The Commission does not adopt the decision provided for by Article 2 (2) of Regulation No 459/70 on the basis of individual applications which, indeed, it does not even examine. Only the quantity resulting from all the applications, which is notified to it by the Member States, is of some importance as a criterion on which the abovementioned decision is based. Where the Commission believes, as in the present case, that the situation on the market allows for limited imports, it fixes by means of a decision contained in a provision which is generally binding, a criterion allowing the maximum acceptable quantity to be apportioned objectively. It follows that the individual applications have no influence, as such, on the decision permitting imports up to a given amount and on the method of apportioning this amount. Thus the administrative measure which, within the framework of this system, gives specific content to the rights and duties of the importer is that issued by the competent authorities of the Member States.

— The letter from the PGF cannot be described as 'notification' of the decision of the Commission since it clearly defines the exact scope of the structure of the rules by referring to the general and abstract rule established by the regulation in question and applies it to the applicant's requests.

— Even if it must be admitted that in actual fact, where the administrative measure of the Member State is limited to being a purely technical implementing measure, it is the Community measure which directly governs the legal situation of those concerned, the present applications are equally inadmissible by virtue of the second paragraph of Article 173 of the Treaty since in any event the decisions of the Commission permitting imports up to a certain volume and allowing the maximum quantities for import to be apportioned are in the nature of regulations: a decision of this kind therefore cannot be of individual concern to the applicant.

— Finally the argument as to the consequences which might follow if the application before the national court were inadmissible and if these applications were also inadmissible before the Court of Justice is based on a misconception of the problem. The real terms of the alleged negative conflict between the national procedure and the Community procedure are not the action before the Court of Justice and the action before the national court but the action before the Court of Justice and the application of Article 177 of the Treaty. On the other hand, if the actions were admissible before the national courts the risk of contradictory decisions given by these courts would be inherent not only in the situation envisaged by the applicants but also in all cases of actions brought against a national administrative measure implementing a Community rule if the mechanism of Article 177 did not exist or were abolished.

The substance of the case

The *applicants* argue that the decisions whereby the Commission rejected their requests for import licences are based on Regulations Nos 459/70, 565/70 and 686/70 of the Commission which are contrary to various provisions of the Treaty and of Regulations Nos 2513/69 and 2514/69 of the Council (and of Regulations Nos 23/62 and 159/66)

and which do not sufficiently state the reasons on which they are based.

These regulations should be declared void in view of the second paragraph of Article 174 of the Treaty or at least inapplicable to them under Article 184 of the Treaty. Consequently the Commission had no power to adopt the decisions in question on the basis of those provisions. In support of their submissions in this respect the applicants argue in particular as follows:

1. With regard to Regulation No 459/70

(a) According to the general provisions of Regulation No 2513/69 protective measures may be applied where the common market (for dessert apples) experiences or is threatened with serious disturbances likely to endanger the objectives of Article 39 of the Treaty by reason of imports. To assess whether such a situation exists, the factors listed in Article 1 of Regulation No 2514/69, in particularly those in subparagraphs (c) and (d) are to taken into account. Regulation No 459/70 does not clearly show that the Commission took account in particular of the tendency of the price of domestic dessert apples to fall excessively in relation to the base price (subparagraph (c)). Neither did it indicate whether a tendency of the price of dessert apples imported from third countries to fall excessively had been or could have been noticed on the market (subparagraph (d)). This is all the more important as the price of these apples in the Community is substantially higher than the price of the corresponding domestic products and does not reveal any tendency to fall excessively.

(b) On the other hand the state of crisis to which the Commission refers in its regulation relates to the market for domestic apples and is caused by overproduction because of the excessive capacity in France and in Italy in particular. During the period in question imported dessert apples are no longer 'interchangeable' for domestic apples and the market for the latter is in no way affected by imports of apples from third countries.

In the first place during the period from March to June inclusive there is a substantial difference in quality between domestic apples and imported apples. The imported apples are from the new crop and are superior from the point of view of taste to domestic apples which have been stored in silos and which were picked more than six months previously. At this time of the year they are a luxury article whose price is fixed by their relative scarcity and by the particular quality of the product. The difference in price between the imported products and the domestic products is however not influenced by the sale of imported apples and evolves independently of these imports.

Secondly there is no relationship between the quantities of domestic apples of all qualities available during the reference period and the quantities of imported apples which are a luxury article whose price is explained by its quality and its comparative scarcity.

Thirdly the demand for imported apples of better quality and at higher prices is from consumers who tend to buy luxury articles and is therefore not comparable to that of domestic apples which are of inferior quality and whose price is relatively low.

In support of these arguments the applicants produce the evidence of an expert.

(c) In addition, since the system of reference prices and of countervailing charges on imports is the main means of protecting the market in question against imports from third countries, the protective measures provided for by Regulation No 459/70 can only be put into operation if the import prices of dessert apples has fallen or risk falling below the reference price.

Such a situation was not clearly in existence in this case since the import prices of dessert apples had for the period in question remained so substantially above

the reference price fixed for the months of April and May that no reference price had been fixed for the month of June 1970.
However, there is no risk of serious disturbance so long as the price of the imported product is at a substantially higher level than the reference price and the price of domestic products.
The applicants therefore submit that Regulation No 459/70 is contrary to the Treaty and to Regulation No 2514/69 and that the reasons for it are insufficiently stated. On this last point they add that the shortness of the period set for the Commission in this case by Regulation No 2513/69 (Article 2 (2)) to issue the measure in question do not relieve it of the obligation to state its reasons.

2. With regard to Regulations Nos. 565/70 and 686/70

In applying the system of reference quantities set out in these regulations the Commission is in breach of the obligations imposed upon it under Articles 155 and 3 (f) of the Treaty and is in breach of the provisions relating to competition rules, in particular Articles 85 and 86 of the Treaty. In fact by this system competition between undertakings which import into the EEC domestic apples from third countries was crystallized according to the competition which existed during the reference period. These regulations thereby effectively temporarily distorted competition in the sector in question in breach of Articles 85 and 86. Therefore the regulation in question is in this respect neither well founded nor are sufficient reasons for it stated. The applicants submit the Regulations Nos 565/70 and 686/70 are contrary to the abovementioned articles and to Article 155 of the Treaty and no sufficient reasons for them are given. The Commission did not indicate the reasons which made the system of import licences permissible in view of Articles 3 (f), 85 and 86 of the Treaty.

3. With regard to Regulations Nos 459/70 and 686/70

(a) The applicants maintain that the Commission did not have the power to adopt the system of import licences in question since such a system was not mentioned in Article 2 (1) of Regulation No 2514/69 amongst the measures which could be taken pursuant to Article 2 (2) and (3) of Regulation No 2513/69.
(b) In addition they maintain that the Commission misused its powers in adopting this system in the circumstances described above when it did not fix the reference price for the month of June 1970 and did not find it necessary to do so in order to protect the market in question.
The *defendant* states in the first place that the question whether grave disturbances exist or threaten to arise is linked to an economic assessment of various aspects of the market and that such an assessment cannot be restricted to the finding of a certain number of facts which automatically lead to certain consequences fixed by a legal text. It then goes on to observe:

1. With regard to Regulation No 459/70

Regulation 459/70 is well founded in law and sufficient reasons for it are stated. The fact that the preamble giving the reasons for its adoption does not reiterate literally the text of Article 1 (c) and (d) of Regulation No 2514/69 does not enable one to conclude that the Commission did not take account of the factors therein mentioned.
(a) As regards the *price trends*, the second recital of Regulation No 459/70 makes it clear that account was taken of the factor referred to in the abovementioned Article 1 (c). In this respect moreover it should be emphasized that the 'tendency to fall . . . excessively in relation to the basic price' comports an indication of the probable development which is itself only one of the factors in the alternative 'recorded prices for

domestic products on the Community market'.

Moreover in view of the situation then existing, as described in the preamble to Regulation 459/70 (cf. statement of defence, pp. 17 and 18) it would have been difficult to speak of an excessive fall since the level of these prices is near to the minimum limit fixed for intervention measures.

The third recital to the regulation in question mentions in addition the tendency of prices to fall. The table given in Schedule B to the rejoinder makes it possible to compare exactly the development of the prices of domestic apples in a good season (1968 to 1969) with the tendency of the prices during the period in which Regulation No 459/70 was adopted and makes it clear that there is a substantial fall in this case. In addition the Commission had every reason to believe on the basis of the information at its disposal regarding the 1967 to 1968 season, when the market situation was comparable to the one in this case, that this unfavourable price trend was exaggerated by imports since (fourth recital) the liberalization of these had led to an increase in the quantities imported.

Moreover it appears from Article 1 (d) of Regulation No 2514/69 that the tendency to an excessive fall is not a condition *sine qua non* for the legality of the protective measures. It is not necessary that this tendency should in fact have become clear but account should be taken of the development which may be expected. On the other hand the Commission decided that it had to attach greater significance to the second indent rather than to the first and examined the problem with close regard to the consequences which the imports would have on the functioning of the intervention system. Because of the critical situation which existed in this respect within the Community, the unlimited importation of foreign apples which are in fact interchangeable for domestic apples would inevitably have had the effect of increasing subsequently the number of domestic apples sent to the intervention agencies

(b) As to *interchangeability* it should be observed that the factor of quantity may hardly be considered separately from the other factors (quality and price) as a factor indicating the existence of two separate markets. In addition the differences in quality between imported apples and domestic apples must not be exaggerated. Taking account of the new preservation techniques which in recent years have made considerable progress, even though *in abstracto* the differences in quality between the two products are still noticeable in absolute terms they cannot *in concreto* lead to the conclusion which is drawn by the applicants, that is, that during the period in question there exists no correlation between the market for domestic apples and that for imported apples.

As to prices, it should immediately be stated that those of imported apples are influenced by the price level of domestic apples: their level is higher or lower according to whether the prices of domestic apples rise or fall. Finally it appears that during a season in which the prices of domestic apples are not very high, which brings about a reduction in the price of imported apples, sales of the latter increase. Finally the differences between the prices of imported apples and those of domestic apples are less than the figures given by the applicants.

It follows from all this that whilst the two products are not 100% interchangeable, they are so to a great extent.

(c) As to the *system of reference prices* it is wrong to believe that a protective measure under Article 2 of Regulation No 2513/69 is of secondary importance compared to the systems of reference prices and countervailing charges. The process of working out the rules for trade with third countries in the sector in question shows that the two systems are independent of each other because they have different functions. That of

the reference prices and of the countervailing charges is intended to stabilize prices and consists of the normal system of automatic levies as in the other organizations of the market. The protection resulting from the safeguard clause is not an additional factor in the scheme operated at the frontiers of the Community but is a totally different factor.

Moreover, although the system of reference prices does apply to apples it was as a matter of fact quite inadequate in the present case. The reference price which is drawn from an averaging of prices is relatively low while the price of apples freshly picked in the southern hemisphere and imported into the Community after a voyage of about 3 weeks is at a substantially higher level. Furthermore there existed no corrective coefficient allowing for comparison in terms of prices between imported apples from a new crop and domestic apples which have been stored. Moreover the problem to be solved in this case is not that of the price of imported products but a problem of quantities and their effects on the level of prices within the Community.

More particularly in relation to the arguments relating to the failure to state sufficient reasons, the defendant adds that the protective measures provided for by Regulation No 459/70 were taken at the request of a Member State and had to be adopted within a period of 24 hours (Regulation No 2513/69, Article 2 (2)). While it recognizes that the shortness of the period does not relieve it of the obligation to state its reasons, it believes that such a factor may influence the extent of particulars given in the reasons stated.

2. As regards Regulations Nos 565/70 and 686/70

Article 3 of the Treaty provides not only for 'the institution of a system ensuring that competition in the Common Market is not distorted' (subparagraph f) but also for 'the adoption of a common policy in the sphere of agriculture' (subparagraph d); it does not, however, establish any priority between the two objectives. Apart from the provisions of the Treaty relating to competition contained under the title 'Agriculture' (Article 38) that it is for the Community, weighing up all the interests at stake and taking account of the objectives of the Treaty, to harmonize as far as possible the two tasks and to grant a certain priority to one or the other according to the requirements of the case.

Furthermore the system in question is based on two essential requirements: the rejection of any idea of national apportionment of a Community quota and the restriction of the issue of import licences to commercial operators who have already previously imported dessert apples which, at least to a certain extent, has the effect of preventing speculative requests. The Commission did not thereby intend to harm the legitimate interests of other dealers; it simply felt that because of the circumstances the interests of established importers (which also include that of maintaining existing commercial links) took precedence over the interests of other importers. As to the argument relating to the failure to state its reasons, the Commission decided that because of the factors set out above, a statement of grounds with regard to Articles 85 and 86 was not necessary in this case.

3. As regards Regulation Nos 459/70, 565/70 and 686/70

(a) As to the allegation of its lack of competence, the Commission replies that for this argument to be upheld it would have to be accepted that the system of import licences may not be considered as 'a suspension of imports' within the meaning of Article 2 (1) of Regulation No 2514/69. However this was not in fact the case since this system and the manner in which it is applied imply

precisely that the imports were suspended as from 1 April 1970 and that they remained suspended each week by decision of the Commission with the exception of the quantities for which requests for export licences were granted. Furthermore the Council itself had considered that this system was covered by the concept of 'suspension of imports'. First, it neither amended nor repealed the protective measure which was referred to it in accordance with Article 2 (3) of Regulation No 2513/69. Also if it had considered that such a system was not covered by the above-mentioned concept, it would certainly not have failed to mention it expressly in the list contained in Regulation No 2514/69.

(b) Moreover as to the argument of misuse of powers it makes reference to its arguments relating to the allegation of infringement of the Treaty and adds that even if it were established that the protective measures were not necessary it would not be possible to draw the conclusion that the Commission had allowed itself to be guided by objectives which were foreign to the case when it adopted the regulations in question.

Grounds of judgment

[1] The applicants seek the annulment of a decision adopted by the Commission pursuant to Article 2 (2) of Regulation No 459/70 of 11 March 1970 (JO L 57 1970), whereby the Commission refused to grant them licences to import dessert applies from third countries, and which was notified to them through the intermediary to the Produktschap voor Groenten en Fruit (the 'PGF') at The Hague.

Admissibility

[2] The defendant submits that no decision was addressed to the applicants, and that the refusal to grant them import licences emanates from the PGF and is in reality an administrative measure governed by national law.

[3] It states that the only 'decisions' of the Commission concerning the grant of import licences were contained in Regulation No 565/70 and the subsequent amending regulations.

[4] These 'decisions' were of general application and in the nature of regulations, and the defendant submits that they could not therefore be of individual concern to the applicants within the meaning of the second paragraph of Article 173.

[5] By Regulation No 459/70, adopted on the basis of Regulations Nos 2513/69 and 2514/69 of the Council, protective measures were taken with the object of limiting the import of dessert apples from third countries into the Community in the period from 1 April 1970 to 30 June 1970.

[6] This regulation provides for a system of import licences, which are granted to the extent to which the state of the Community market allows.

7 Under this system and in accordance with Article 2 (1) of Regulation No 459/70, 'at the end of each week ... the Member States shall communicate to the Commission the quantities for which import licences have been requested during the preceding week, stating the months to which they relate'.

8 The following paragraph of the same article provides that the Commission, on the basis *inter alia* of these communications, 'shall assess the situation and decide on the issue of the licences'.

9 On the basis of the latter provision, the Commission subsequently stipulated in Article 1 of Regulation No 565/70 of 25 March 1970 that 'applications for import licences lodged up to 20 March 1970 shall be treated in accordance with the provisions of Article 1 of Regulation No 459/70, within the quantity limit shown in the application and up to 80% of a reference quantity'.

10 The criteria for fixing this reference quantity were stated in greater detail, and amended, by Article 2 of Regulation No 686/70 of 15 April 1970.

11 By various regulations published in the period between 2 April 1970 and 20 July 1970, the expiry date of 20 March 1970 specified in Article 1 of Regulation No 565/70 was repeatedly postponed.

12 By these postponements the said measures were periodically extended and made applicable to applications for import licences submitted within each period.

13 By virtue of Article 1 of Regulation No 983/70 of 28 May 1970, this system was applied in the period in which the applications for licences were submitted by the applicants.

14 Hence, the issue of admissibility in the present cases must be determined in the light of the lastmentioned regulation.

15 For this purpose, it is necessary to consider whether the provisions of that regulation—in so far as they make the system established by Article 1 of Regulation No 565/70 applicable—are of direct and individual concern to the applicants within the meaning of the second paragraph of Article 173 of the Treaty.

16 It is indisputable that Regulation No 983/70 was adopted with a view on the one hand to the state of the market and on the other to the quantities of dessert apples for which applications for import licences had been made in the week ending on 22 May 1970.

17 It follows that when the said regulation was adopted, the number of applications which could be affected by it was fixed.

18 No new application could be added.

19 To what extent, in percentage terms, the applications could be granted, depended on the total quantity in respect of which applications had been submitted.

20 Accordingly, by providing that the system introduced by Article 1 of Regulation No 565/70 should be maintained for the relevant period, the Commission decided, even though it took account only of the quantities requested, on the subsequent fate of each application which had been lodged.

21 Consequently, Article 1 of Regulation No 983/70 is not a provision of general application within the meaning of the second paragraph of Article 189 of the Treaty, but must be regarded as a conglomeration of individual decisions taken by the Commission under the guise of a regulation pursuant to Article 2 (2) of Regulation No 459/70, each of which decisions affects the legal position of each author of an application for a licence.

22 Thus, the decisions are of individual concern to the applicants.

23 Moreover, it is clear from the system introduced by Regulation No 459/70, and particularly from Article 2 (2) thereof, that the decision on the grant of import licences is a matter for the Commission.

24 According to this provision, the Commission alone is competent to assess the economic situation in the light of which the grant of import licences must be justified.

25 Article 1 (2) of Regulation No 459/70, by providing that 'the Member States shall in accordance with the conditions laid down in Article 2, issue the licence to any interested party applying for it', makes it clear that the national authorities do not enjoy any discretion in the matter of the issue of licences and the conditions on which applications by the parties concerned should be granted.

26 The duty of such authorities is merely to collect the data necessary in order that the Commission may take its decision in accordance with Article 2 (2) of that regulation, and subsequently adopt the national measures needed to give effect to that decision.

27 In these circumstances as far as the interested parties are concerned, the issue of or refusal to issue the import licences must be bound up with this decision.

[28] The measure whereby the Commission decides on the issues of the import licences thus directly affects the legal position of the parties concerned.

[29] The applications thus fulfil the requirements of the second paragraph of Article 173 of the Treaty, and are therefore admissible.

The substance of the case

[30] The applicants dispute the legality of the decisions whereby their applications for import licences were refused, on the ground that the regulations on which such decisions were based, that is to say, Regulations Nos 459/70 of 11 March 1970, 565/70 of 25 March 1970 and 686/70 of 15 April 1970 of the Commission, are illegal.

[31] (1) The applicants maintain that Regulation No 459/70 is ill-founded, and that it is not accompanied by a sufficient statement of reasons, in so far as it is based on the view that the Community market is threatened, as a result of imports, with serious disturbances capable of endangering the objectives of Article 39 of the Treaty.

[32] They state that it is not apparent from this regulation that the Commission, in enacting the protective measures in question, took into account all the factors mentioned in Article 1 (c) and (d) of Regulation No 2514/69 of the Council.

[33] In particular, it is said that the Commission failed to justify those measures by reference to the 'expected trend' of prices for domestic products on the Community market and 'in particular their tendency to fall excessively', such prices having in fact been quite stable.

[34] Article 1 (c) of Regulation No 2514/69 provides that in applying protective measures, the Commission must take into account in relation to domestic products 'recorded prices on the Community market or the expected trend of such prices, and in particular their tendency to fall excessively'.

[35] This provision must be read in the light of the organization of the market resulting from the regulations in force.

[36] These regulations provide, for the market in question, for price-support mechanisms, especially intervention measures, as soon as the prices of the products fall below a certain level.

[37] Thus, on a market in which the level of prices is low, a downward trend in prices cannot lead to an excessive fall in the strict sense of the word, but only to an increased offer of domestic products to the intervention agencies.

[38] Having regard to the structure of the market, a tendency of prices to fall excessively within the meaning of that article may thus be deduced from a sharp increase in offers of the relevant products to the intervention agencies.

[39] The second recital in the preamble to Regulation No 459/70 states that price quotations for domestic products were low, not only in Germany but also in most other Member States, where a state of crisis within the meaning of Article 6 of Regulation No 159/66 had been declared.

[40] These difficulties may be explained largely by the substantial overproduction of dessert apples in various Member States and the obstacles encountered on the Community market by the normal marketing of this production.

[41] It is not disputed that the production prices found to exist on three representative markets of the Community were, at the beginning of the relevant period, lower than the prices in the same period of the preceding year.

[42] In the special circumstances of the fruit market in question, therefore, the Commission could reckon with a sharp increase in offers to the intervention agencies, and could deduce from this a tendency for prices to fall excessively within the meaning of Article 1 (c) of Regulation No 2514/69.

[43] (2) Furthermore, the applicants contend that the Commission infringed Article 1 (d) of this regulation by failing to take into account the fact that the prices of imported products did not in any way show a tendency to fall excessively as required by this provision, but remained so far above the reference prices that the Commission did not even fix any reference prices for the month of June 1970.

[44] They argue that since, moreover, the imported products, because of their price and quality, were not interchangeable for the domestic products during the period under consideration, it was not open to the Commission to find, on the basis of imports from third countries, a disturbance or threatened disturbance within the meaning of the first paragraph of Article 1 of Regulation No 2514/69.

[45] By virtue of Article 1 (d) of Regulation No 2514/69, the Commission, in a case where the state of crisis referred to in the first paragraph of that article arises as a result of imports from third countries, must take into account in particular 'the quotations recorded on the Community market . . . in particular their tendency to fall excessively', and 'the quantities for which withdrawal transactions are taking place or might take place'.

46 The scope of this provision must be determined in the light of the whole of Article 1, so that not only the factors already examined above, and contained in subparagraph (c), but also those mentioned in subparagraphs (a) and (b), must be taken into account.

47 In weighing up the importance of each of these factors for an assessment of the situation referred to in the first paragraph of Article 1 of that regulation, in the case of imports from third countries, the Commission must in particular take account of the results which such imports have or may have on the market situation.

48 When a feature of this situation is that the normal marketing of products presents difficulties, the prices of domestic products tend to become stabilized around the intervention price and can no longer be influenced by the higher prices of the imported products.

49 Yet, irrespective of the prices of these products there is still a danger that because they can be substituted for domestic products they may attract part of the internal demand and thus cause even greater quantities to flow in to the intervention agencies.

50 According to the first recital in the preamble to Regulation No 459/70, production of apples in the 1969 to 1970 season was about 550 000 metric tons greater than in the 1967 to 1968 season, in which more than 300 000 metric tons had had to be taken off the market.

51 In view of the stocks held, it was foreseeable that a surplus of the same magnitude could not be released on the market in normal conditions before the end of the season, so that there was a danger that intervention measures would have to be adopted, since these stocks could not, for technical reasons, be retained for more than a limited time.

52 According to the figures supplied by the defendant in its note of 10 March 1971, the stocks at the beginning of the relevant period still stood at about one million metric tons.

53 It is true that the products coming from third countries during this period were manifestly superior both as to quality and price to the domestic products, but on the other hand the quality of the latter products was not so inferior that interchange of the two categories was in no circumstances possible.

54 It was thus not inconceivable that imports from third countries in this period, by attracting a demand which otherwise would have been at least to a large

extent directed towards domestic products, might have led in any event to an increase in the quantities which would have to be taken off the market.

55 Although the difficulties in disposing of domestic products did not affect all Member States in the same way, and were particularly acute in certain ones, nevertheless they affected the whole common market, where the machinery for stabilizing prices, such as the national intervention arrangements, is based on the financial participation of all Member States and upon a Community responsibiilty.

56 In view of the situation on the market for the products in question at that time, an appreciable increase in imports after the introduction of the new trading system on 1 March 1970 might have increased the difficulties in disposing of these products subsequently, and might thus have brought about a disturbance of the market.

57 It does not appear, therefore, that the Commission has wrongly applied Article 1 of Regulation No 2514/69 by basing its decision on the consequences which imports from third countries might have had for the 'quantities to be taken off the market'.

58 (3) The applicants further maintain that the Commission exceeded the limits of its authority by taking protective measures when the machinery of reference prices had not led to the imposition of countervailing charges on imports and the Commission had failed to fix any reference price for the month of June 1970.

59 It is clear from the facts established above that the difficulties facing the market in question were much more concerned with disposal of surpluses than with support for the prices of domestic products.

60 Moreover, as the applicants themselves have pointed out, the prices of products from third countries were very high in comparison with the reference prices in force, so that fixing the prices afresh could not, having regard to the method of calculation used, have brought about the desired result.

61 (4) The applicants further maintain that the Commission had no authority to introduce a system of import licences as provided for in Regulations Nos 459/70, 565/70 and 686/70, since such a system is not mentioned in Article 2 (1) of Regulation No 2514/69 among the measures which may be adopted pursuant to Article 2, (2) and (3) of Regulation 2513/69.

62 According to Article 2 (1) of Regulation No 2514/69, these measures are 'the suspension of imports or exports or the imposition of export taxes'.

63 The measures adopted by the Commission in Regulation No 459/70 in the present case resulted, in accordance with the criteria prescribed in Regulations Nos 565/70 and 686/70, in a limitation of quantities to be imported.

64 In accordance with the general objectives of the Treaty, the protective measures permitted by Regulations Nos 2513/69 and 2514/69 can only be adopted in so far as they are strictly necessary for the attainment of the objectives specified in Article 39 of the Treaty, and impair as little as possible the functioning of the common market.

65 Since the Commission was entitled to take protective measures leading to a complete suspension of imports from third countries, it was, *a fortiori,* entitled to adopt less restrictive measures.

66 (5) Finally, the applicants claim that Regulations Nos 565/70 and 686/70 are void or at least are not applicable to them, inasmuch as they establish a system of import licences which is in conflict with Articles 3 (f), 85 and 96 of the Treaty.

67 Moreover, these regulations are said to be insufficiently supported by reasons, inasmuch as the grounds on which the system was necessary or at least permissible under the said articles and under Article 39 of the Treaty are not stated.

68 Article 3 of the Treaty lists several general objectives, towards the attainment and harmonization of which the Commission has to direct its activities.

69 Amongst these objectives Article 3 specifies not only 'the institution of a system ensuring that competition in the common market is not distorted', but also (subparagraph (d)) 'the adoption of a common policy in the sphere of agriculture'.

70 The Treaty attaches very great importance to the attainment of this latter objective in the sphere of agriculture, devoting Article 39 to it and providing, in the first paragraph of Article 42, that the provisions relating to competition shall apply to agricultural products only to the extent determined by the Council, account being taken of the objectives set out in Article 39.

71 It follows from this that the application of protective measures in the form of a restriction of imports from third countries might in the present case prove to be necessary with a view to preventing, in the market in the products in question, serious disturbances capable of endangering the objectives of Article 39.

72 In these circumstances an explicit statement of the reasons for the measures in question, in relation to Articles 85 and 86 of the Treaty, was not indispensable.

[73] It may well be that the grant of import licences according to the criterion of a reference quantity led in the present case to a crystallization of the previously existing trade relations with third countries. Yet, on the other hand, the laying down of objective criteria for calculating the quantities of which import was permitted made it possible to avoid discrimination among those who received licences on the basis of previously existing trade relations with third countries.

[74] This system was the one best adapted to distort competition to the smallest possible extent.

[75] For these reasons, the submissions directed against Regulations Nos 459/70, 565/70 and 686/70 must be rejected.

[76] (6) The applicants seek the annulment of the decisions contained in Article 1 of Regulation No 983/70 on the ground that the regulations on which those decisions are based, namely Regulations Nos 459/70, 565/70 and 686/70, infringe the Treaty.

[77] In particular they claim that, in so far as these regulations are illegal in the sense of the second paragraph of Article 174, or not applicable to them under Article 184 of the Treaty, the Commission had no legal basis for adopting such decisions.

[78] Examination of the submissions directed against these regulations has not made it possible to find that the regulations are illegal and these submissions must accordingly be rejected.

Costs

[79] According to the first subparagraph of Article 69 (2) of the Rules of Procedure of the Court, the unsuccessful party shall be ordered to pay the costs if they have been asked for in the successful party's pleading.

[80] The applicants have failed in their applications and must therefore be ordered to pay the costs of the action.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;

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.