

In Joined Cases 21 to 24/72

Reference to the Court under [Article 267 TFEU] by the College van Beroep voor bet Bedrijfsleven, The Hague, for a preliminary ruling in the action pending before that court between

INTERNATIONAL FRUIT COMPANY NV, Rotterdam (Case 21/72),

KOOY ROTTERDAM NV, Rotterdam (Case 22/72),

VELLEMAN EN TAS NV, Rotterdam (Case 23/72),

JAN VAN DEN BRINK'S IM- EN EXPORHANDEL NV, Rotterdam (Case 24/72),

and

PRODUKTSCHAP VOOR GROENTEN EN FRUIT, The Hague, on the interpretation of the said [Article 267 TFEU] and, if necessary, on the compatibility of certain regulations of the Commission with Article XI of the General Agreement on Tariffs and Trade (GATT),

THE COURT

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

gives the following

JUDGMENT

Grounds of judgment

- 1 By decision of 5 May 1972, received at the Court Registry on 8 May 1972, the *College van Beroep voor het Bedrijfsleven* referred to the Court, under [Article 267 TFEU], two questions relating to the interpretation of that article and to the validity of certain regulations adopted by the Commission.
- 2 The first question invites the Court to rule whether the validity of measures adopted by the institutions of the [Union] also refers, within the meaning of [Article 267 TFEU], to their validity under international law.
- 3 The second question, which is raised should the reply to the first question be in the affirmative, asks whether Regulations Nos 459/70, 565/70 and 686/70 of the Commission -which laid down, by way of protective measures, restrictions on the importation of apples from third countries -are 'invalid as being contrary to Article XI of the General Agreement on Tariffs and Trade (GATT)', hereinafter called 'the General Agreement'.
- 4 According to the first paragraph of [Article 267 TFEU] 'The Court of justice shall have jurisdiction to give preliminary rulings concerning ... the validity ... of acts of the institutions of the [Union]'.
- 5 Under that formulation, the jurisdiction of the Court cannot be limited by the grounds on which the validity of those measures may be contested.
- 6 Since such jurisdiction extends to all grounds capable of invalidating those measures, the Court is obliged to examine whether their validity may be affected by reason of the fact that they are contrary to a rule of international law.
- 7 Before the incompatibility of a [Union] measure with a provision of international law can affect the validity of that measure, the [Union] must first of all be bound

by that provision.

- 8 Before invalidity can be relied upon before a national court, that provision of international law must also be capable of conferring rights on citizens of the [Union] which they can invoke before the courts.
- 9 It is therefore necessary to examine whether the General Agreement satisfies these two conditions.
- 10 It is clear that at the time when they concluded the Treaty establishing the European Economic Community the Member States were bound by the obligations of the General Agreement.
- 11 By concluding a treaty between them they could not withdraw from their obligations to third countries.
- 12 On the contrary, their desire to observe the undertakings of the General Agreement follows as much from the very provisions of the [Treaty on the Functioning of the European Union] as from the declarations made by Member States on the presentation of the Treaty to the contracting parties of the General Agreement in accordance with the obligation under Article XXIV thereof.
- 13 That intention was made clear in particular by [Article 206 TFEU], which seeks the adherence of the [Union] to the same aims as those sought by the General Agreement, as well as by the first paragraph of [Article 351 TFEU] which provides that the rights and obligations arising from agreements concluded before the entry into force of the Treaty, and in particular multilateral agreements concluded with the participation of Member States, are not affected by the provisions of the Treaty.
- 14 The [Union] has assumed the functions inherent in the tariff and trade policy, progressively during the transitional period and in their entirety on the expiry of that period, by virtue of Articles 111 [repealed] and [Article 207 TFEU].
- 15 By conferring those powers on the [Union], the Member States showed their wish to bind it by the obligations entered into under the General Agreement.
- 16 Since the entry into force of the Treaty establishing the European Economic Community and more particularly, since the setting up of the common external tariff, the transfer of powers which has occurred in the relations between Member States and the [Union] has been put into concrete form in different ways within the framework of the General Agreement and has been recognized by the other contracting parties.

- 17 In particular, since that time, the [Union], acting through its own institutions, has appeared as a partner in the tariff negotiations and as a party to the agreements of all types concluded within the framework of the General Agreement, in accordance with the provisions of Article 114 of the EEC Treaty [repealed] which provides that the tariff and trade agreements 'shall be concluded ... on behalf of the [Union]'.
- 18 It therefore appears that, in so far as under the [Treaty on the Functioning of the European Union] the [Union] has assumed the powers previously exercised by Member States in the area governed by the General Agreement, the provisions of that agreement have the effect of binding the [Union].
- 19 It is also necessary to examine whether the provisions of the General Agreement confer rights on citizens of the [Union] on which they can rely before the courts in contesting the validity of a [Union] measure.
- 20 For this purpose, the spirit, the general scheme and the terms of the General Agreement must be considered.
- 21 This agreement which, according to its preamble, is based on the principle of negotiations undertaken on the basis of 'reciprocal and mutually advantageous arrangements' is characterized by the great flexibility of its provisions, in particular those conferring the possibility of derogation, the measures to be taken when confronted with exceptional difficulties and the settlement of conflicts between the contracting parties.
- 22 Consequently, according to the first paragraph of Article XXII 'Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by any other contracting party with respect to ... all matters affecting the operation of this Agreement .
- 23 According to the second paragraph of the same article, 'the contracting parties' - this name designating 'the contracting parties acting jointly' as is stated in the first paragraph of Article XXV - 'may consult with one or more contracting parties on any question to which a satisfactory solution cannot be found through the consultations provided under paragraph (1)'.
- 24 If any contracting party should consider 'that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as a result of ', *inter alia*, 'the failure of another contracting party to carry out its obligations under this Agreement', Article XXIII lays down in detail the measures which the

parties concerned, or the contracting parties acting jointly, may or must take in regard to such a situation.

- 25 Those measures include, for the settlement of conflicts, written recommendations or proposals which are to be 'given sympathetic consideration', investigations possibly followed by recommendations, consultations between or decisions of the *contracting parties*, including that of authorizing certain contracting parties to suspend the application to any others of any obligations or concessions under the General Agreement and, finally, in the event of such suspension, the power of the party concerned to withdraw from that agreement.
- 26 Finally, where by reason of an obligation assumed under the General Agreement or of a concession relating to a benefit, some producers suffer or are threatened with serious damage, Article XIX gives a contracting party power unilaterally to suspend the obligation and to withdraw or modify the concession, either after consulting the contracting parties jointly and failing agreement between the contracting parties concerned, or even, if the matter is urgent and on a temporary basis, without prior consultation.
- 27 Those factors are sufficient to show that, when examined in such a context, Article XI of the General Agreement is not capable of conferring on citizens of the [Union] rights which they can invoke before the courts.
- 28 Accordingly, the validity of Regulations Nos 459/70, 565/70 and 686/70 of the Commission cannot be affected by Article XI of the General Agreement.
- 29 The costs incurred by the Government of the Kingdom of the Netherlands and by the Commission of the European [Union], which have submitted observations to the Court, are not recoverable and since these proceedings are, in so far as the parties to the main actions are concerned, in the nature of a step in the actions pending before the national court, costs are a matter for that court;

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the oral observations of the plaintiffs in the main actions and the Commission of the European [Union];

Upon hearing the opinion of the Advocate-General;

Having regard to the [Treaty on the Functioning of the European Union] especially [Articles 206, 207, 267 and 351 TFEU];

Having regard to the General Agreement on Tariffs and Trade, especially Articles XI, XIX, XXII, XXIII and XXV;

Having regard to Regulation No 459/70 of the Commission of 11 March 1970 (JO L 57, p. 20);

Having regard to Regulation No 565/70 of the Commission of 25 March 1970 (JO L 69, p. 33);

Having regard to Regulation No 686/70 of the Commission of 15 April 1970 (JO L 84, p. 21);

Having regard to the Protocol on the Statute of the Court of Justice of the [EU], especially Article 20;

Having regard to the Rules of Procedure of the Court of Justice of the European [Union],

THE COURT,

in reply to the question referred to it by the College van Beroep voor het Bedrijfsleven in accordance with the decision delivered by that court on 5 May 1972, hereby rules: ·

1. The validity, within the meaning of [Article 267 TFEU], of measures taken by the institutions may be judged with reference to a provision of international law when that provision binds the [Union] and is capable of conferring on individuals rights which they can invoke before the courts;
2. Since Article XI of the General Agreement does not have such an effect, the validity of Regulations Nos 459/70, 565/70 and 686/70 of the Commission (JO L 57, p. 20; L 69, p. 33; L 84, p. 21 respectively) cannot be affected by that provision.

	Lecourt	Monaco	Pescatore
Donner	Trabucchi	Mertens de Wilmars	Kutscher

Delivered in open court in Luxembourg on 12 December 1972.

A. Van Routte
Registrar

R. Lecourt
President