Opinion of the Court

1 It is helpful to review briefly the various stages in the present proceedings as set out in the section 'Background and Facts' of the Request for an Opinion.

2 The agreed outcome of the negotiations between Colombia, Costa Rica, Nicaragua, Venezuela and the European Community on the Community import regime for bananas, to which is annexed the Framework Agreement on Bananas, was signed by the Member of the Commission responsible for Agriculture and Rural Development and by the Ambassador of Colombia on 28 and 29 March 1994.

3 The request for an Opinion was lodged by the Federal Republic of Germany on 25 July 1994.

4 According to the facts set out in the section 'Backround and Facts' of the request for an Opinion, points 1 and 7 of that agreement, which concern the fixing of an import customs quota, were incorporated in Schedule LXXX which includes the customs concessions proposed by the Community in the context of the Uruguay Round negotiations. The Framework Agreement is set out in an annex to that Schedule LXXX.

5 On 15 April 1994 the Council, notwithstanding the reservations expressed by certain Member States concerning the incorporation of the Framework Agreement in the Community's proposals, decided to sign the Final Act of the Uruguay Round.

6 On 22 December 1994, the Council adopted Decision 94/800/EC concerning the conclusion on behalf of the European Community, as regards matters within its

competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994).

7 On 1 January 1995, the Uruguay Round agreements, including the schedules setting out the Community's commitments in relation to banana imports, entered into force.

8 It follows from its incorporation in an annex to Schedule LXXX to the Final Act that the Framework Agreement is legally an integral part of the agreements reached in the Uruguay Round multilateral negotiations and that it was concluded together with those agreements after the Court had been requested to deliver this Opinion.

9 In order to determine whether, in those circumstances, the Court should deliver the Opinion requested, the terms and purpose of Article 228(6) of the EC Treaty must be analysed.

10 Article 228(6) provides that the Council, the Commission or a Member State may obtain the Opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of the Treaty.

11 It is not clear from the wording of the first sentence of that provision whether it is sufficient that the agreement be envisaged when the request is lodged or whether it must still be so when the Court delivers its Opinion.

12 The second sentence of Article 228(6) provides however that, where the Opinion of the Court of Justice is adverse, an agreement may enter into force only in accordance with Article N of the Treaty on European Union, which concerns amendment of the Treaty.

13 It would therefore be contrary to the internal logic of Article 228(6) to accept that it is appropriate for the Court to rule on the compatibility with the Treaty of an agreement which has already been concluded, since a negative Opinion would not have the legal effect prescribed by that article.

14 In Opinion 1/94 of 15 November 1994 [1994] ECR I-5267 the Court considered that it may be called upon to state its opinion pursuant to Article 228(6) of the Treaty at any time before the Community's consent to be bound by the agreement is finally expressed. The Court also stated, in paragraph 12, that, unless and until that consent is given, the agreement remains an envisaged agreement.

15 That interpretation is also consistent with the purpose of the procedure for requesting an Opinion.

16 The purpose of Article 228(6) of the Treaty, as the Court indicated in Opinion 1/75 of 11 November 1975 [1975] ECR 1355, is to forestall complications which would result from legal disputes concerning the compatibility with the Treaty of international agreements binding upon the Community.

17 The Court also noted in that Opinion that a possible decision of the Court to the effect that such an agreement is, by reason either of its content or of the procedure adopted for its conclusion, incompatible with the provisions of the Treaty could not fail to provoke, not only in a Community context but also in that of

international relations, serious difficulties and might give rise to adverse consequences for all interested parties, including third countries.

18 For the purpose of avoiding such complications, the Treaty had recourse to the exceptional procedure of a prior reference to the Court of Justice for the purpose of elucidating, before the conclusion of the agreement, whether the latter is compatible with the Treaty.

19 However, the preventive intent of Article 228(6) of the Treaty can no longer be achieved if the Court rules on an agreement which has already been concluded.

20 It cannot be contended that that interpretation undermines the judicial protection of the institution or Member State which requested the Opinion at a time when the agreement had not yet been concluded.

21 The procedure under Article 228(6) of the Treaty aims, first, as has already been stated, to forestall difficulties arising from the incompatibility with the Treaty of international agreements binding the Community and not to protect the interests and rights of the Member State or Community institution which has requested the Opinion.

22 In any event, the State or Community institution which has requested the Opinion may bring an action for annulment of the Council's decision to conclude the agreement and may in that context apply for interim relief.

23 It follows from the foregoing that the request for an Opinion has become devoid of purpose because the Framework Agreement on Bananas, incorporated in the agreements reached in the Uruguay Round multilateral negotiations (1986-1994), was concluded with those agreements after the request for an Opinion was submitted to the Court and there is accordingly no need to respond to that request.

In conclusion

THE COURT

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler (Rapporteur), J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm and L. Sevón, Judges,

after hearing G. Tesauro, First Advocate General, C. O. Lenz, F. G. Jacobs, A. La Pergola, G. Cosmas, P. Léger, M. B. Elmer, N. Fennelly and D. Ruiz-Jarabo Colomer, Advocates General,

finds:

There is no need to respond to the request for an Opinion.

Rodríguez Iglesias Kakouris Edward Hirsch

Mancini Schockweiler Moitinho de Almeida Kapteyn

Gulmann Murray Jann Ragnemalm Sevón

Luxembourg, 13 December 1995.

R. Grass
Registrar

G. C. Rodríguez Iglesias
President