In Case 170/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Commerce (Commercial Court), Bourg-en-Bresse, for a preliminary ruling in the proceedings pending before that court between

OFFICE NATIONAL DE COMMERCIALISATION DES PRODUITS VITI-VINICOLES (National Office for the Marketing of Wine Products), whose registered office is in Algiers,

plaintiff,

and

SOCIÉTÉ À RESPONSABILITÉ LIMITÉE LES FILS D'HENRI RAMEL, whose registered office is at Charnoz-Meximieux,

defendant,

on the one hand, on the interpretation of the provisions of Community law relating to the determination of the free-at-frontier reference and offer prices upon the importation into a Member State of wines from a non-member country and on the effect of the monetary compensatory amounts on those price mechanisms and, on the other hand, on the compatibility with Community law of an agreement by which the defendant undertook to pay over the monetary compensatory amounts received by it to the plaintiff,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Lord Mackenzie Stuart and Y. Galmot, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts, procedure and the written observations submitted in pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community may be summarized as follows:

I — Facts and written procedure

Following the delivery of wines to the company Les Fils d'Henri Ramel (hereinafter referred to as "Ramel"), whose registered office is at Charnoz, by the Office National de Commercialisation des Produits Viti-Vinicoles [National Office for the Marketing of Wine Products] (hereinafter referred to as "the Office National"), an Algerian public industrial and commercial undertaking responsible, amongst other things, for the marketing of wines produced in Algeria, the Office National submitted to Ramel invoices corresponding to monetary compensatory amounts in the sums of FF 623 698.90 and FF 72 670.35 respectively which Ramel had in fact received.

The contracts pursuant to which those deliveries had been made provided under the heading "Agreed prices": "It is agreed that any sum arising from a monetary compensatory amount granted by ONIVIT shall be paid by the buyer directly into the account of the seller on the basis of a supplementary invoice made out for that purpose. As the compensatory amount is fixed on the day of importation, the buyer undertakes to inform the seller of that amount immediately upon clearance through customs and for that purpose to forward to it a copy of the document DRANCEE completed by the Customs Administration at the place of destination."

Up to and after the beginning of 1978 Ramel complied with these contractual stipulations and regularly paid the sums due under the clause cited above by way of monetary compensatory amounts.

However, as from May 1978, whilst paying the price agreed under the contracts, it refused to pay over to the Office National the sum representing the monetary compensatory amounts, basing its attitude on the fact that such payment was contrary to the Community rules, and in particular to the rules relating to the determination of the free-at-frontier reference price, and that the clause cited above was both illegal and void. In the face of Ramel's refusal to continue to pay over to it the sum in respect of the monetary compensatory amounts the Office National sued it before the Tribunal de Commerce [Commercial Court], Bourg-en-Bresse, in order to obtain payment of the amounts in question.

By judgment of 11 June 1982 that court stayed the proceedings and decided to refer to the Court of Justice the following two questions for a preliminary ruling:

(1) Is a sales organization in a Maghreb non-member country entitled to export wines to a Member State of the Community at import prices lower than the reference price, without any customs duties, at full or reduced rate, being levied on those wines?

If not, may it, in order to avoid the application of that rule, stipulate in its contract with an importer in a country which belongs to the EEC that the monetary compensatory amounts received upon importation are to be paid over to it, in order to enable it subsequently to prove to the Community that its invoice price accords with the reference price?

(2) May the monetary compensatory amounts received by the importer in an EEC country be included in that reference price?

If not, what value should be attributed to an agreement between a sales organization in a Maghreb non-member country and a French importer obliging the latter to transfer the compensatory amounts to the former in order to prove compliance with the reference price?

The judgment making the reference was received at the Court Registry on 21 June 1982.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were lodged by the Office National, the plaintiff in the main action, represented by Paul Arnaud, Avocat at the Cour de Paris, by Ramel, the defendant in the main action, represented by Jean and Corinne Imbach, by the Commission of the European Communities, represented by its Legal Adviser, Jean-Claude Séché, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

The Office National and Ramel were, however, invited to reply, before the hearing, to the following question:

Which of the following three systems was laid down by the contract employed by the contracting parties:

First system:

The initial invoices relate to the free-at-frontier reference price and that price is paid in full by the French importer;

The supplementary invoices made out by the Office National relate to a sum representing the monetary compensatory amounts received from ONIVIT by the French importer.

Second system:

The initial invoices relate to the free-at-frontier reference price but the French importer only pays to the exporter that sum less an amount representing an estimate of the monetary compensatory amounts to be received later:

The supplementary invoices relate to the sum representing the monetary compensatory amounts actually received by the French importer.

Third system:

The initial invoices relate to the free-at-frontier reference price less a sum representing an estimate of the monetary compensatory amounts to be received later by the French importer;

The supplementary invoices relate to the sum representing the monetary compensatory amounts received by the importer, provided that the exact total of the said amounts is known.

By order of 1 December 1982 the Court decided, in pursuance of Article 95 (1) and (2) of the Rules of Procedure, to assign the case to the Third Chamber.

II — Summary of the written observations submitted to the Court

1. *Ramel*, the defendant before the Tribunal de Commerce, Bourg-en-Bresse, states that in practice the Office National used to make out several export invoices, including in particular:

An official invoice including the amount of the delivery price of the wines — free-at-frontier reference price — intended for the customs authorities of the country of importation.

A second, "supplementary", invoice, made out after importation and relating to the monetary compensatory amounts the payment of which was not claimed from the French trader before they had been paid by the competent authority and the amount of which it was impossible to know at the time of exportation.

Thus, it maintains, notwithstanding the official invoices the price which in reality was demanded upon importation was lower than the free-at-frontier reference price. The latter price was reached only if, after the release for consumption of the imported wines, the monetary compensatory amounts paid by the competent authority to the trader upon importation were paid by the importer to the Office National, that payment being made several months later.

After recalling the provisions of Community law which in its view are applicable in the matter of reference prices, free-at-frontier offer prices and of countervailing charges,[1] Ramel argues that the various regulations which are applicable require the compliance by Algeria with the free-at-frontier offer price fixed having regard to the factors to be taken into consideration (price of the wine, transportation costs, customs duty, incidental expenses), with the exception of the monetary compensatory amounts which the Member State of importation may grant to the trader importing wines from that country.

In its view the device conceived by the Office National takes no account of those rules and has the effect of allowing the importation of wines at a price lower than the free-at-frontier price.

From this Ramel concludes that, at the Community level, the Office National, a State authority having a monopoly in the trade in wines, by imposing upon it such standard contracts without allowing it any possibility of discussing their terms, had "fraudulently led it into error", especially since the Office National could not fail to have been fully aware of the Community rules. In Ramel's view, the Office National's disregard of the Community provisions in regard to reference prices ought to have entailed the payment of the full duties under the Common External Tariff, brought about the abolition of the preferential advantages granted to Algeria and attracted severe customs penalties, since the Office National has committed a customs offence in contravention of the Community rules, an offence of a criminal-law nature which comes within the ambit of Community and national public policy.

In Ramel's view it follows from this that the conduct of the Office National, which disregarded the free-at-frontier offer price, prohibits it from claiming *a posteriori* monetary compensatory amounts in pursuance of an agreement dictated by itself and based on an infringement of mandatory provisions of Community law.

Ramel stresses that the facts which gave rise to the Court's judgment of

1 — Regulation No 816/70 of the Council of 28 April 1970 (Official Journal, English Special Edition 1970 (I), p. 234), Regulation No 974/71 of the Council of 12 May 1971 (Official Journal, English, Special Edition 1971 (I), p. 257), Regulations Nos 648/73 and 649/73 of the Commission of 1 May 1973 (Official Journal 1973, L 64, pp. 1 and 7 respectively), Regulation No 1463/73 of the Commission of 30 May 1973 (Official Journal 1973, L 146, p. 1).

13 February 1980 (Case 74/79 *Office de Commercialisation et d'Exportation* [1980] ECR 239) are different from the situation in this instance since underlying the case which was then submitted for the Court's consideration was the premise that the parties had complied with the free-at-frontier reference prices.

That is why, according to Ramel, the Court is invited to give the following answer to the questions submitted to it:

The first question: A sales organization of a non-member country is not entitled to export wines to a Member State at an import price lower than the reference price. Nor may it claim, *a posteriori,* to have complied with the reference price *vis-à-vis* the Community by means of a contractual provisions which obliges the party with whom it contracts, an importer of a Member State, to pay to it the monetary compensatory amounts received;

The second question: The Community regulations have made no provision for making the monetary compensatory amounts one of the factors included in the determination of the free-at-frontier reference price. It follows that the cause of the obligations imposed on the French trader to pay over those amounts to the Algerian export organization is unlawful. It is for the national court to draw from this the legal consequences under the national legislation applicable in the matter.

2. The *Office National,* defendant before the Tribunal de Commerce, Bourg-en-Bresse, contends that there is no provision of Community law which prohibits an exporter of a non-member country from procuring the payment over to it by the Community importer of the monetary compensatory amounts received by the latter. Thus, as the Court ruled in its judgment of 13 February 1980 (Case 74/79 cited above), "the question whether the gain derived from a monetary compensatory amount must be repaid by the trader who carries out the customs formalities to the party with whom he contracts comes within the sphere of contractual relations and not of Community law".

In this case it is common ground that Ramel entered into a contractual obligation to pay over the monetary compensatory amounts received by it to the Office National.

The Office National stresses that in any event there can be no question of "nullity on grounds of public policy" since no provision of Community law has been disregarded. It adds, on the one hand, that it has not been shown that the contracts between itself and Ramel did not comply with the Community reference prices and, on the other hand, that even allowing that a transaction did infringe the provisions of Community law in regard to reference prices, the Community mechanisms lay down corrective measures which apply in relations between the EEC and the Community importer and which have no direct effect on the contractual relations between the importer and the national of a non-member country with whom he contracts.

In the opinion of the Office National there is, moreover, no point in the Court's answering the preliminary question as formulated. The logic of that preliminary question is founded, on the one hand, on the idea that the contracts concluded between Ramel and the Office

National might not have complied with the free-at-frontier reference price and, on the other hand, on the assumption that such non-compliance would entail the nullity of the contractual clause for the payment over of the monetary compensatory amounts. As these two propositions are incorrect the answer to the preliminary question submitted on this basis serves no purpose and has no practical significance.

The reason for this, according to the Office National, is in the first place that all the contracts at issue were performed in the normal manner and the imports of Algerian wines were submitted in due form to the French customs authorities without any infringement of the Community rules having been ascertained.

Secondly, any failure to comply with the Community reference price would have no effect upon the scope of the contractual commitments of the parties. Thus if a transaction was carried out below the free-at-frontier reference price the importer would lose the benefit of the 80% reduction in customs duties which is granted in respect of the importation of Algerian wines, would have to bear customs duties at the full rates and pay the charges imposed by the Community rules. The Office National stresses that in the matter of imports Community law is of direct concern only to the trader who is in contact with the customs authorities of a Member State. Accordingly, and in any event, the only effect of a failure to comply with the free-at-frontier reference price is that certain obligations are laid upon Ramel when the goods enter the territory of the Community but such failure can have no effect whatsoever on the validity of the contract between the Office National and Ramel.

For these reasons the Office National takes the view that there are no grounds for the Court to give a ruling on the question of the extent to which the reference price must be considered as complied with or not, the answer having no bearing upon the resolution of the dispute.

By way of an alternative argument, however, the Office National proposes to demonstrate that the repayment of the monetary compensatory amounts does not entail any failure to comply with the rule on the Community reference price. For that purpose the Office National sets out the applicable rules and, as regards more particularly wine-growing, relies on the provisions of Article 17 (3) of Regulation No 1380/75 of the Commission of 29 May 1975 (Official Journal, L 139, p. 37) as amended by Regulation No 1577/76 of the Commission of 30 June 1976 (Official Journal, L 172, p. 57), according to which:

"(3) In the wine sector the free-at-frontier reference prices shall be considered to have been observed at the time of import from third countries if, for the product concerned the offer price:

(a) in the case of appreciation of the currency of the importing Member State, increased or

(b) in the case of depreciation of that currency, reduced

by the amount referred to in the following subparagraph is not less than the free-at-frontier reference price.

The amount referred to in the preceding subparagraph is the monetary compensatory amount applicable in intra-Community trade."

In the opinion of the Office National, when the importer receives monetary compensatory amounts, which will be deducted from the price paid to the exporter in the non-member country, and retains the benefit of those amounts, the real cost of the transaction then becomes equal to the price stipulated in the contract less the sums paid by way of the monetary compensatory amounts. As it is impossible for the exact sum of these amounts, which by their nature fluctuate, to be known on the day on which the contract is concluded, the only way of observing the free-at-frontier reference price, in respect of a sale which is intended to take place at the lower limit, is to frustrate the effect of the positive monetary compensatory amounts by stipulating that the price of the transaction is to be broken down on the one hand into a predetermined element (the free-at-frontier reference price) and, on the other hand, into a sum to be calculated later, namely the monetary compensatory amount established on the day of importation. In this way it will not be possible for the charge on importation borne by the Community importer to be lower than the level laid down by the Community provisions.

Thus the Office National considers that the clause providing for repayment of the monetary compensatory amounts received by the importer, far from constituting a "breach" of Community law, is a lawful means of ensuring that the free-at-frontier reference price is observed and of conferring effectiveness on the Community rules.

Accordingly the Office National considers that the question submitted by the court making the reference should be answered as follows:

(a) The parties are free to stipulate contractually that Ramel is to pay over to the Office National the compensatory amounts received in respect of the contracts with the latter;

(b) There is no need to answer the preliminary question submitted to the Court in so far as the problem of Community law thereby raised has no bearing upon the scope of the contractual obligations of the parties;

(c) In any event the obligation imposed upon Ramel to pay over to the Office National the monetary compensatory amounts received in respect of the contracts with the latter is not in conflict with the Community rules. On the contrary, it is a lawful means of ensuring that the free-at-frontier reference price is observed.

3. The *Commission* considers that the preliminary questions submitted to the Court may be examined from two points of view:

On the one hand, as regards the provisions relating to the rules on wine-growing and to the system applicable to the imports at issue;

On the other hand, as regards the scope of the contractual relations between the sales organization of the non-member country and the French importer.

(a) So far as the applicable provisions of Community law are concerned, these consist, having regard to the date of the imports in question (1978), of the following:

In respect of the system applicable to imports of wines, Regulation No 816/70 of the Council of 28 April 1970 (Official Journal, English Special Edition 1970 (I), p. 234) which provides for the annual fixing of a reference price established on the basis of the "guide prices" for the types of wine most representative of Community production, increased by the costs incurred by bringing Community wines to the same marketing stage as imported wines. Those reference prices form part of the system of trade with non-member countries and, in that context, constitute one of the means available to the Community for the purpose of avoiding disturbances on the internal market in wine products which are caused by offers made on the world market at abnormal prices. Where the free-at-frontier offer price of a wine, plus customs duties, is lower than the reference price, a countervailing charge equal to the difference between them is levied. Furthermore, as regards imports from Algeria, Council Regulation No 1287/76 of 28 May 1976 (Official Journal, L 141, p. 1) reduced by 80% customs duties in respect of imported wines of current consumption;

As regards the effect of the monetary compensatory amounts on the observance of the reference prices of wines upon importation, Article 17 (3) (cited above) of Regulation No 1380/75 of the Commission of 29 May 1975, as amended by Commission Regulation No 1577/76 of 30 June 1976 (cited above).

The Commission concludes from this, on the one hand, that the free-at-frontier prices are considered as complied with provided that, in the case of the imported wine, the offer price expressed in French francs, less the negative monetary compensatory amount, is not lower than the free-at-frontier reference price, itself converted into French francs at the green rate, and, on the other hand, that it is the importer who is responsible for producing, when the customs formalities take place, a contract in which the offer complies with these conditions, and finally that the price to be adopted is in fact that stipulated in the contract and made up by the price initially invoiced plus the monetary compensatory amount granted by ONIVIT in pursuance of the contractual clause at issue. That clause is therefore not contrary to Community law.

(b) As regards the scope of the contractual relations between the seller in the non-member country and the importer, the Commission refers to Case 74/79, cited above, in which the Court held that the Community rules in the agri-monetary sector in relation to monetary compensatory amounts are concerned only with the relationship between the trader and the public authority which levies or grants the monetary compensatory amount and that to go beyond those provisions is to enter the field of contractual relations which are governed by national law. As a result, the question whether the benefit of the monetary compensatory amount must be paid over by the trader to the party with whom he contracts comes within the sphere of contractual relations and not of Community law.

It follows, according to the Commission, that Ramel may not, for the purpose of establishing the unlawful nature of the contract binding it to the Office National, rely on an alleged breach of Community law by the clause at issue, as that clause is not covered by Community law.

Accordingly, the Commission proposes that the court should answer the questions submitted by the court making the reference as follows:

"Upon importation from non-member countries of products coming within the wine sector, the free-at-frontier reference prices are to be considered as observed whenever, for the product concerned, the offer price, plus the positive monetary compensatory amount or less the negative monetary compensatory amount, is not lower than the free-at-frontier reference price.

The appraisal of a provision of a contract concluded between the sales organization of a non-member country and an importer of a Member State of the Community whereby the latter undertakes to pass on to the former the monetary compensatory amounts is not a matter of Community law."

III — Written observations lodged in response to the question put by the Court

(a) After briefly recalling the Community legislation on the system applicable to imports of wine, *Ramel* expresses the view that none of the three systems proposed by the Court corresponds exactly to the circumstances under which the commercial transactions between Ramel and the Office National were carried out.

In short, it acknowledges that the following system was applied:

The initial invoices related to the free-at-frontier reference price and that price was paid in full by the French importer;

The supplementary invoices related to the sum representing the monetary compensatory amounts received by the importer.

Apart from this, Ramel repeats its conclusions and still considers that the result of this "hybrid" system was that the free-at-frontier offer price, as invoiced, was lower than the free-at-frontier reference price at the time of importation into France, as the importation did not comply with the reference price on which the whole system of compensatory amounts is founded.

(b) The Office National gives it to be understood that the system laid down by the contract and applied by the parties thereto was the first of the three systems described in the question put by the Court:

The initial invoices related to a price equal to or higher than the free-at-frontier reference price and the former price, stated in the contract, was paid in full by the importer;

A supplementary invoice corresponding to the compensatory amounts received from ONIVIT by the French importer was then submitted, so as to maintain the charge borne by that trader at least at the level of the free-at-frontier reference price.

IV — Oral procedure

At the sitting on 24 February 1983, the Office National, represented by P. Arnaud, Advocate at the Cour de Paris, Ramel, represented by J. Imbach, Advocate at the Strasbourg Bar and the Commission of the European Communities, represented by J.-C. Séché, acting as Agent, and by Mrs V. Groebner, as expert, presented oral argument.

Mr Séché, representing the Commission in the capacity of Agent, submitted observations which slightly modified the conclusions which the Commission had reached in its written observations.

The new conclusions of the Commission may be summarized as follows:

"(1) In this case, for the purpose of taking account of the dispute in the form in which the court making the reference must decide it, contractual obligations which provide for the repayment to the exporter of a sum equivalent to the monetary compensatory amount applicable on the day on which the customs formalities are completed, may not be considered as contrary to Community law.

(2) A commercial transaction which comprises, on the one hand, a part-payment equal to the free-at-frontier reference price and which also comprises a variable balance which the traders are agreed should be equal to the monetary compensatory amount applicable on the day on which the customs formalities for release into free circulation are completed is compatible with Community law provided that it is possible to ascertain from the result that the offer price is at least equal to the free-at-frontier reference price.

(3) Subject to observance of the free-at-frontier reference prices, and to that extent only, the appraisal of a provision of a contract concluded between the sales organization of a non-member country and an importer of a Member State of the Community whereby the latter undertakes to pass on the monetary compensatory amounts to the former is not a matter of Community law."

The Advocate General delivered his opinion at the sitting on 24 March 1983.

V — Request by Ramel for the re-opening of the oral procedure

By a letter dated 8 March 1983, received at the Court Registry on 10 March, Ramel presented submissions "for the purposes of the re-opening of the oral procedure and, should it be necessary, of the written procedure, in accordance with Article 61 of the Rules of Procedure of the Court of Justice of 4 December 1974".

The Third Chamber, after taking cognizance of that letter and finding that all the information needed to answer the questions put to it in this case was already at its disposal, decided not to allow the request.

Decision

1 By judgment of 11 June 1982, received at the Court on 21 June 1982, the Tribunal de Commerce [Commercial Court], Bourg-en-Bresse, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions relating, on the one hand, to the interpretation of the provisions of Community law concerning the determination of the free-at-frontier reference offer prices upon importation into a Member State of wines from a non-member country and to the effect of monetary compensatory amounts on those price mechanisms (in particular, Regulation No 816/70 of the Council of 28 April 1970 (Official Journal, English Special Edition 1970 (I), p. 234) and Regulation No 1380/75 of the Commission of 29 May 1975 (Official Journal, 1975, L 139, p. 37), as amended by Commission Regu-

lation No 1577/76 of 30 June 1976 (Official Journal, 1976, L 172, p. 57) and, on the other hand, to the compatibility with Community law of a clause in a contract between two traders providing for the passing-on of monetary compensatory amounts.

2 Those questions are raised in the context of a dispute between the Office National de Commercialisation des Produits Viti-Vinicoles [National Office for the Marketing of Wine Products] (hereinafter referred to as "the Office National"), an Algerian public industrial and commercial undertaking responsible, amongst other things, for the marketing of wines produced in Algeria and the limited liability company Les Fils d'Henri Ramel (hereinafter referred to as "Ramel") whose registered office is at Charnoz Meximieux.

3 Ramel imports into France wine from Algeria which it buys from the Office National. The contracts of sale provide under the heading "Agreed prices":

"It is agreed that any sum arising from a monetary compensatory amount granted by ONIVIT shall be paid by the buyer directly into the account of the seller on the basis of a supplementary invoice made out for that purpose. As the compensatory amount is fixed on the day of importation, the buyer undertakes to inform the seller of that amount immediately upon clearance through customs . . ."

4 Up to and after the beginning of 1978 Ramel complied with these provisions and duly paid, in pursuance of the clause cited above, the sums payable by way of monetary compensatory amounts. However, as from May 1978, whilst paying the price agreed in the contracts, it refused to pay to the Office National the sum representing the monetary compensatory amounts, basing its position *inter alia* on the fact that such payment was contrary to the Community rules and that the clause cited above was at once unlawful and void.

5 Faced with this refusal, and after submitting to Ramel the invoices corresponding to the sums representing the monetary compensatory amounts which that company had in fact received, the Office National sued Ramel before the Tribunal de Commerce, Bourg-en-Bresse, with a view to obtaining the payment of the sums at issue.

6 By judgment of 11 June 1982 that court stayed the proceedings and decided to refer to the Court of Justice the following two questions for a preliminary ruling:

"(1) Is a sales organization in a Maghreb non-member country entitled to export wines to a Member State of the Community at import prices lower than the reference price, without any customs duties, at full or reduced rate, being levied on those wines?

If not, may it, in order to avoid the application of that rule, stipulate in its contract with an importer in a country which belongs to the EEC that the monetary compensatory amounts received upon importation are to be paid over to it, in order to enable it subsequently to prove to the Community that its invoice price accords with the reference price?

(2) May the monetary compensatory amounts received by the importer in an EEC country be included in that reference price?

If not, what value should be attributed to an agreement between a sales organization in a Maghreb non-member country and a French importer obliging the latter to transfer the compensatory amounts to the former in order to prove compliance with the reference price?"

The submissions as to inadmissibility presented by the Office National

7 The Office National has maintained that, in view of the threefold circumstance that no breach of the Community rules has been committed or ascertained, that any failure to observe the Community reference price would have no effect on the scope of the parties' contractual commitments and that therefore the answer to the question raised would in any event be irrelevant to the resolution of the dispute, there are no grounds for the Court to answer the preliminary question as formulated by the court making the reference.

8 As the Court has held repeatedly, it is not for the Court to rule on the expediency of a request for a preliminary ruling. As regards the division of jurisdiction between national courts and the Court of Justice under Article 177 of the Treaty it is for the national court which is alone in having a direct

knowledge of the facts of the case and of the arguments put forward by the parties, and which will have to give judgment in the case, to appreciate, with full knowledge of the matter before it, the relevance of the questions of law raised by the dispute before it and the necessity for a preliminary ruling so as to enable it to give judgment.

The answer to be given to the first part of Question 1 put by the court making the reference

9 The national court asks the Court of Justice to state whether a sales organization in a Maghreb non-member country is entitled to export wines to a Member State at an import price lower than the reference price, without any customs duties being levied on those wines.

10 In pursuance of Article 9 of Regulation (EEC) No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine, which is applicable in this case, reference prices for wines are to be fixed annually and expressed in units of account per degree/hl on the basis of the guide prices for the types of wine most representative of Community production. In respect of each wine for which a reference price is fixed, a free-at-frontier offer price for all imports is to be determined. Where the free-at-frontier offer price for a wine is lower than the reference price, a countervailing charge equal to the difference between the reference price and the free-at-frontier offer price is to be levied.

11 Furthermore, by virtue of Article 13 of the Interim Agreement between the European Economic Community and the Democratic People's Republic of Algeria, annexed to Council Regulation (EEC) No 1287/76 of 28 May 1976 (Official Journal 1976, L 141, p. 1) the reduction in customs duties on the importation into the Community of wines of fresh grapes originating in Algeria is also subject to the requirement that the import prices must not be less than the Community reference prices.

12 It follows from an examination of these provisions, taken together, that the answer to the question set out above must be that those provisions prevent a

sales organization of a non-member country, such as Algeria, from exporting wines to a Member State of the Community at a free-at-frontier offer price lower than the reference price relating to those wines. In such a case, a countervailing charge equal to the difference between the reference price and the free-at-frontier offer price should be levied.

The answers to be given to the other questions put by the court making the reference

13 It seems to the Court that the second part of the first question and both parts of the second question raise the problem of the effect of monetary compensatory amounts on the price mechanisms examined earlier and on the conformity with Community law of the contractual provisions which are the subject-matter of the dispute. As these preliminary questions are closely related it is proper for the Court to examine them together and rule upon them by way of a single answer.

14 By virtue of Article 17 (3) of Regulation No 1380/75, in the amended version set out in Article 1 of Regulation No 1577/76, which is applicable to the issue in the main action:

"(3) In the wine sector the free-at-frontier reference prices shall be considered to have been observed at the time of import from third countries if, for the product concerned the offer price:

(a) in the case of appreciation of the currency of the importing Member State, increased or

(b) in the case of depreciation of that currency, reduced

by the amount referred to in the following subparagraph is not less than the free-at-frontier reference price.

The amount referred to in the preceding subparagraph is the monetary compensatory amount applicable in intra-Community trade."

15 If follows from that provision that the monetary compensatory amounts must, depending on whether there has been an appreciation or depreciation of the currency of the importing Member State, be respectively added to or

deducted from the free-at-frontier offer price and that, for the provisions of Community law to be complied with, the resulting figure must be higher than or equal to the free-at-frontier reference price.

16 In the case in point, it emerges from the written observations of the parties, as explained in greater detail in the course of the oral procedure, that the Office National would initially invoice to Ramel, upon importation, the free-at-frontier reference price, deemed to be known at the time of the transaction, and that Ramel would promptly pay that first invoice. Later, when the monetary compensatory amounts relating to the transaction were known precisely, the Office National would send Ramel a supplementary invoice relating to the sum representing the monetary compensatory amounts received by the latter.

17 In those circumstances, where the importation was carried out in a country whose currency had depreciated, the free-at-frontier offer price had at least to be equal to the free-at-frontier reference price increased by the monetary compensatory amounts relating to that importation in respect of a transaction which the traders wished to effect at the minimum price.

18 It follows that if the free-at-frontier offer price is equal to or higher than the free-at-frontier reference price plus the monetary compensatory amounts and if that price is immediately paid by the importer, the contractual provisions concerning the payment over of the monetary compensatory amounts by the French importer to the Algerian exporter do not fall within the field of Community law but within the ambit of the contractual relations governed by national law, as the Court has already held in its judgment of 13 February 1980 in Case 74/79 *Samavins* [1980] ECR 239.

19 Conversely, if at the time of importation the importer has paid only a sum equal to the free-at-frontier reference price whereas the transaction must be carried out on terms under which the free-at-frontier offer price is equal to the free-at-frontier reference price plus the monetary compensatory amounts, the payment over by the French importer to the Algerian exporter of a sum representing the monetary compensatory amounts is a necessary condition for compliance with the provisions of Community law cited above.

20 Consequently, in that case, namely where the transaction is effected at the minimum price, and provided that the monetary compensatory amount relating thereto and applicable on the day on which the customs formalities for release into free circulation are completed can be known only after the performance of the transaction, a contractual provision for the transfer of the sum representing that monetary compensatory amount cannot be regarded as contrary to Community law the observance of which it is, on the contrary, designed to ensure.

21 The answer to the second part of the first question and to both parts of the second question put by the court making the reference should therefore be that where a transaction is carried out at the minimum price, the provisions of Article 17 (3) of Regulation No 1380/75, in the amended version set out in Article 1 of Regulation No 1577/76, are to be interpreted as meaning that if, at the time of importation, the importer has paid only a sum equal to the free-at-frontier reference price whereas the transaction must be carried out on terms under which the free-at-frontier offer price is equal to the free-at-frontier reference price plus the monetary compensatory amounts, the payment over by the French importer to the Algerian exporter of a sum representing the monetary compensatory amounts when the latter are known exactly is a necessary condition for compliance with the provisions of Community law cited above, and that, consequently, in that case, a contractual provision for the transfer of the sum representing those monetary compensatory amounts cannot be regarded as contrary to Community law the observance of which it is, on the contrary, designed to ensure.

Costs

22 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court are not recoverable. As the proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Tribunal de Commerce, Bourg-en-Bresse, by judgment of 11 June 1982 hereby rules:

1. It is contrary to the combined provisions of Article 9 of Regulation No 816/70 of the Council of 28 April 1970 and of Article 13 of the Interim Agreement between the European Economic Community and the Democratic People's Republic of Algeria annexed to Council Regulation (EEC) No 1287/76 for a sales organization in a non-member country, such as Algeria, to export wines to a Member State of the Community at a free-at-frontier offer price lower than the reference price relating to those wines. In such a case, a countervailing charge equal to the difference between the reference price and the free-at-frontier offer price should be levied.

2. Where the transaction is carried out at the minimum price, the provisions of Article 17 (3) of Regulation No 1380/75, in the amended version set out in Article 1 of Regulation No 1577/76, are to be interpreted as meaning that if, at the time of importation, the importer has paid only a sum equal to the free-at-frontier reference price whereas the transaction must be carried out on terms under which the free-at-frontier offer price is equal to the free-at-frontier reference price plus the monetary compensatory amounts, the payment over by the French importer to the Algerian exporter of a sum representing the monetary compensatory amounts when the latter are known exactly is a necessary condition for compliance with the provisions of Community law cited above, and that, consequently, in that case, a contractual provision for the transfer of the sum representing those monetary compensatory amounts cannot be regarded as contrary to Community law the observance of which it is, on the contrary, designed to ensure.

Everling — Mackenzie Stuart — Galmot

Delivered in open court in Luxembourg on 28 April 1983.

For the Registrar

H. A. Rühl

Principal Administrator

U. Everling

President of the Third Chamber