

on trade between the different Member States with regard to the group of products in question.

Finally, it must not take account solely of the actual free-at-frontier price of a particular export but may rely on standard justified factors for assessment.

4. In the Treaty there exists no general principle obliging the Community, in its external relations, to accord to third countries equal treatment in all respects and in any event traders do not have the right to rely on the existence of such a general principle.

In Case 55/75

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht Berlin for a preliminary ruling in the action pending before that court between:

BALKAN-IMPORT EXPORT GMBH,

and

HAUPTZOLLAMT BERLIN-PACKHOF,

on the validity of monetary compensatory amounts imposed under Regulation (EEC No 974/71 of the Council,

THE COURT

composed of: R. Lecourt, President, R. Monaco, H. Kutscher, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen, Lord Mackenzie Stuart and A. O'Keeffe, Judges,

Advocate-General: G. Reischl

Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The order making the reference and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

Regulation (EEC) No 974/71 of 12 May 1971 OJ, English Special Edition, 1971 (I), p. 257) established a system of monetary compensatory amounts in the trade between the Member States and with third countries. According to the 6th recital of the preamble to that regulation, these amounts must be limited to the amounts strictly necessary to compensate the incidence of the monetary measures on the prices of basic products covered by intervention arrangements and may only be applied in cases where this incidence would lead to difficulties.

When a consignment of 14 490 kg of sheep's milk cheese from Bulgaria which had been purchased under the terms of a long-term contract dated 29 November 1972, the price for which was laid down in DM, and which comes under tariff heading 04.04 E I b 4 of the Common Customs Tariff, was imported into Germany on 25 April 1974, the defendant in the main action demanded from the plaintiff in the main action the payment of a monetary compensatory amount of DM 9 244.62, calculated on the basis of a rate of DM 63.80 per 100 kg.

The plaintiff in the main action considered that request as incompatible with Community law and brought the matter before the Finanzgericht Berlin

which, by order of 4 June 1975, referred the following questions to the Court of Justice under Article 177 of the Treaty:

1. Was it still compatible with Community law on 25 April 1974 to levy a monetary compensatory charge under Regulation (EEC) No 974/71 of the Council in the version in force on 25 April 1974 when cheese of sheep's milk which comes under heading 04.04 E I b 4 of the Common Customs Tariff was imported from third countries, especially in view of the exemptions under Regulation (EEC) No 1265/73 of the Commission of 14 May 1973 for imports of other types of cheese from payment of a monetary compensatory amount?

If Question 1 is answered in the affirmative:

2. Is the monetary compensatory charge of DM 63.80 per kg levied on 25 April 1974 on imports of cheese of sheep's milk from third countries justified? In particular how can this rate of charge be justified arithmetically?

The Finanzgericht states in the grounds of its order that the reason why it is doubtful whether the charge in question is in conformity with Regulation (EEC) No 974/71 is that since May 1973 certain Italian and Swiss cheeses have been granted exemption from payment of the monetary compensatory amount (Regulation (EEC) No 1265/73 of the Commission of 14 May 1973 altering the monetary compensatory amounts, OJ L 130 of 17 May 1973, p. 1). The Finanzgericht takes the view that the varieties of cheese which have been granted exemption have a considerably greater importance on the market in milk products than sheep's milk cheese.

If their importation cannot cause 'difficulties' within the meaning of Regulation (EEC) No 974/71, the same applies to sheep's milk cheese.

II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities

A — *Observations submitted by the plaintiff in the main action*

The first question

According to the plaintiff in the main action the imposition of a monetary compensatory amount on sheep's milk cheese which comes under tariff heading 04.04 E I b 4 of the Common Customs Tariff is not compatible with Regulation (EEC) No 974/71 of the Council or with other provisions of Community law.

I — *The legality of the compensatory amount*

Article 1 of Regulation (EEC) No 974/71, as amended by Regulation (EEC) No 2746/72 of the Council (OJ, English Special Edition, 28/30. 12. 1972, p. 64), that the imposition of compensatory amounts shall not apply 'where application of the monetary measures ... would lead to disturbances in trade in agricultural products'. In its case-law on compensatory amounts, the Court of Justice has adopted a firm viewpoint on the concept of 'disturbance'.

In Case 5/73 (Judgment of 24 October 1973, *Balkan-Import Export GmbH v Hauptzollamt Berlin-Packhof*, [1973] ECR 1091), the Court stressed the temporary nature of the compensatory amounts which was determined by the crisis situation. Meanwhile, the system of compensatory amounts has, however, been integrated into the common agricultural policy and improved and

consolidated as a system. In Case 34/74 (Judgment of 12 November 1974, *Roquette Frères v French State*, [1974] ECR 1229) the Court pointed out that 'the sole objective of the introduction of compensatory amounts was to neutralize the effect of disturbances arising in agricultural trade provoked by the fluctuation of exchange rates for the currencies of certain Member States'. Finally, in Case 74/74 (Judgment of 14 May 1975, *Comptoir National Technique Agricole (CNTA) SA v Commission of the European Communities*, [1975] ECR 533) the Court stated that as the application of compensatory amounts is a measure of an exceptional nature, the existence of disturbances to trade in agricultural products is a condition not only of the introduction but also of the maintenance of compensatory amounts for a specific product.

The plaintiff in the main action acknowledges that the Commission enjoys a wide discretion in that respect but it claims that the latter's use thereof with regard to cheeses which come under heading 04.04 E I b 4 constitutes a case of misuse of power.

1. The misuse of power consists first in the violation of the principle of equality because the Commission did not exempt the abovementioned cheeses although it exempts by Regulation (EEC) No 1265/73 varieties of cheese the importation of which has a much greater effect on the market in milk products than that of imports of sheep's milk cheese.
2. Secondly, the misuse of power follows from the fact that there was no possibility of a disturbance, even if, as the Court had acknowledged in its abovementioned judgment of 14 May 1975, market conditions as well as monetary factors were taken into account in order to judge the existence of a disturbance.

In spite of the arguments which, according to the plaintiff, prove that the importation of the product in question cannot cause a disturbance

(the absence of identical or competing German national production, the increase in prices in the country of origin, the choice of the Deutsche Mark as the currency of the contract and the high production and processing costs) the Commission persisted in refusing the exemption.

3. The maintenance of the compensatory amount in question clearly leads to unreasonable delivery prices to the consumer and causes considerable harm to trade, thus infringing Articles 39 (1) (e) and 110 of the EEC Treaty.
4. In the absence of a disturbance of the market, the charge which has been imposed is no longer, even partially, in the nature of a monetary compensatory amount but, on the contrary, constitutes a charge having equivalent effect which is incompatible both with Article 19 of Regulation (EEC) No 804/68 OJ, English Special Edition, 1968 (I), p. 176) and with the Common Customs Tariff.

II — The legality of the rate of the compensatory amount in question

The plaintiff in the main action recalls that the compensatory amounts must be limited to the amounts strictly necessary to compensate the incidence of the monetary measures on the prices of basic products covered by intervention arrangements. The maintenance of the compensatory amounts ought in addition to be dependent upon that incidence.

In the present case the compensatory amounts were fixed at too high a level: the revaluation of the Deutsche Mark was to a certain extent compensated by the revaluation of some foreign currencies, the costs of German producers who were importing machinery of fertilizers have fallen because of the revaluation, German agriculture has benefited from considerable compensatory payments from public funds and the particularly high inflation rates in some countries have caused their offer prices to rise.

The plaintiff in the main action stresses that in addition the compensatory amounts, the amount of which was already too high, have risen considerably because of the increase in intervention prices after 1972. Precisely the opposite should have occurred. By its nature a compensatory amount aims to spread the sudden effect of monetary fluctuations over a period of varying length. This period must necessarily be longer for basic products which depend on the intervention price than for processed products such as sheep's milk cheese.

Besides, the Commission has acknowledged the disturbing nature of the compensatory amounts with regard to the uniformity of the market in various communications quoted by the plaintiff in the main action.

III — Alternatively, if the answer to the first question is in the affirmative

The plaintiff in the main action suggests that the Court should call upon an expert to give his opinion on the incidence of monetary measures on the price of sheep's milk cheese at the date of the imports before replying to the second question.

B — Observations submitted by the Commission

According to the Commission, the wording used in the first question indicates that the Finanzgericht considers that at the date when the goods in question were imported, 25 April 1974, certain factors argue in favour of an appraisal other than that of the Court of Justice its judgment of 24 October 1973 (Case 5/73, quoted above) when it replied that the questions which had been referred had not revealed any factors such as to affect the validity of the countervailing charge imposed on imports of Bulgarian sheep's milk cheese.

Before turning to the examination of the questions which have been referred, the Commission recalls that two amendments were made to Regulation (EEC) No 974/71 subsequent to the situation examined by the Court in Case 5/73 mentioned above. The Council made the system of compensatory amounts compulsory by Regulation (EEC) No 2746/72 of 19 December 1972 (OJ, English Special Edition 28/30. 12. 1972, p. 64) and introduced it into the framework of the common agricultural policy by basing it on Articles 28, 43 and 235 of the Treaty whilst the American dollar was abandoned as the reference currency for the calculation of the compensatory amounts by Regulation (EEC) No 1112/73 of the Council of 30 April 1973 (OJ L 114 of 30. 4. 1973, p. 4).

The first question

I — The existence of a disturbance in the agricultural market

The Commission examines the argument that the imports of Bulgarian sheep's milk cheese cannot cause 'disturbances in trade in agricultural products' within the meaning of the last paragraph of Article 1 (2) of Regulation (EEC) No 974/71 as amended by Article 1 of Regulation (EEC) No 2746/72 of the Council.

(a) Both the Advocate-General and the Court have already rejected that argument in Case 5/73 stating that 'the necessarily general and flat-rate nature of the compensatory amounts system and the need to adapt quickly to constant fluctuations in currency justified the Commission having considered disturbances only in relation to groups of products, irrespective of origin' ([1973] ECR 1116).

The Commission adds that the non-payment of the compensatory amount with regard to Bulgarian sheep's

milk cheese would have an unfavourable effect on the competitive situation of certain cheeses from the EEC which have already suffered the backlash of the restrictions on imports decided by the United States, Canada, Spain and Switzerland.

(b) In contrast to what appears to be the view of the Finanzgericht, the exemption from which certain Italian cheeses and quality Swiss cheeses benefit gives no indication that no disturbance exists. Even if in view of the exemption granted to other varieties the maintenance of the compensatory amount with regard to sheep's milk cheese may appear to be an inconsistency, that inconsistency is not sufficient to invalidate the maintenance of the compensatory amount with regard to the product in question in so far as the legal conditions laid down in Regulation (EEC) No 974/71 are still fulfilled. This is indeed the case since, with regard to Bulgarian sheep's milk cheese, the situation of the market is still exactly the same as at the date of the imports which were the subject of the judgment in Case 5/71, *Balkan-Import Export GmbH v. Hauptzollamt Berlin-Packhof*.

(c) The attitude of the Commission is, moreover, not at all inconsistent and it does not exceed the discretionary power which the case-law of the Court has acknowledged, in particular in its judgment of 24 October 1973 (Case 43/72, *Merkur-Außenhandels-GmbH v. Commission of the European Communities*, [1973] ECR 1055), in which it is stated that the question is essentially whether the Commission has used that power arbitrarily. In this connexion an answer has been given in Case 5/73 to the question of the exemption granted to the Italian cheeses Grando Padana and Parmigiano Reggiano.

The problem of the exemption granted to Italian cheeses and the problem of the exemption granted to cheeses from third

countries are not comparable, first, because in one case the principle of Community preference is called into play and secondly because of the exceptionally high price and the special use for which those cheeses are intended; the Commission refers in this connexion to the opinion of the Advocate-General in Case 5/73. With regard to the exemption granted to Swiss cheeses, the Commission points out that these are also particularly expensive products (the free-at frontier price of Emmenthal is 165.54 u.a. per 100 kg) whilst the free-at-frontier price appearing in the Common Customs Tariff for Bulgarian cheese of sheep's milk is 95 u.a. per 100 kg. For this reason the incidence of monetary measures is reduced from the outset in the case of Swiss products.

The Commission acknowledges that the exemption granted to Swiss cheeses constitutes a borderline case and that it is impossible to state *a priori* with certainty whether or not there is a danger of disturbance. It adds that the exemption has also been granted for reasons of commercial policy. Switzerland has always taken the view that the monetary compensatory amounts infringe the provisions of the GATT to the extent to which they are in excess of the maximum amount of the bound customs duties within the framework of the GATT. Although it contests that argument from the legal point of view, the Commission is inclined to take it into consideration in order to avoid difficulties with a trading partner of the Community. It considers that such considerations are legitimate within the context of the system of monetary compensatory amounts for Regulation (EEC) No 974/71 cannot be applied independently of the other aspects of Community policy and in particular the objectives with regard to commercial policy laid down in Article 110. All the basic regulations on the organization of the agricultural markets recall the need to take appropriate account of the objectives laid down in that provision.

II — Discrimination

Even if it is necessary to come to the conclusion that the situation with regard to Bulgarian cheese is not essentially different from that of Swiss cheeses from the point of view of the compensatory amounts it must still be proved that the different treatment constitutes discrimination within the meaning of the second paragraph of Article 40 (3) of the Treaty, that is, that there is discrimination between 'consumers', which includes importers. Such discrimination does not exist for two reasons:

- (1) The first is that Bulgarian sheep's milk cheese is not necessarily in competition with the expensive varieties of Swiss and Italian cheese. The plaintiff in the main action has moreover constantly and insistently pointed out that sheep's milk cheese comes within a very specialized market.
- (2) The second is that importers of Bulgarian sheep's milk cheese benefit from a special system of imports which ought not in spite of the imposition of the monetary compensatory amount to put them in a less favourable position than if the monetary compensatory amount had not been imposed. Regulation (EEC) No 664/74 of the Council of 28 March 1974 (OJ L 85 of 29. 3. 1974, p. 54) provides, *inter alia* for the products in question, for a reduction in the levies when they are imported from third countries by increasing the minimum prices (free-at-frontier prices) at which they are imported.

Article 16 of Regulation (EEC) No 1463/73 of the Commission of 30 May 1973 (OJ L 146 of 4. 6. 1973, p. 1) provides.

'With respect to:

- (a) milk and milk products: the value free-at-frontier of products falling within subheading ... 04.04 E I b) 4 ... are considered to have been

observed at the time of importation from third countries if, for the product in question, the offer price in the case of depreciation of the currency of the importing Member State increased ... by the amount referred to in paragraph 2 ... is not less than ... the value free-at-frontier in question.'

'To the amount referred to in the first indent of paragraph 1 is obtained by multiplying ... the value free-at-frontier ... by a coefficient corresponding to the percentage of appreciation or depreciation of the currency of the importing Member State.'

In other words, under Regulation (EEC) No 664/74 of the Council, in conjunction with Article 16 of Regulation (EEC) No 1463/73 of the Commission, Bulgarian cheeses which could be admitted into the Community whilst being subject to a reduced levy if it observed a minimum free-at-frontier price on the basis of which the levy was calculated could be admitted at a lower price without increasing the levy. The difference between the former minimum price and the reduced minimum price represents precisely the reduction of the price of that product expressed in DM which is the result of the revaluation of that currency. As the objective of the monetary compensatory amount is precisely to compensate that difference in price, the two regulations cancel one another out.

Bulgaria is in a position to import that cheese at a reduced free-at-frontier price precisely because of its low production costs.

The difference between a system of reduction of the minimum offer price (applied to Bulgarian cheeses) and that which involves exemption from the compensatory amounts (applied to Swiss cheeses) lies in the fact that in the second case the exporting State saves the amount payable as a compensatory

amount, whilst in the first case the exporting State achieves no benefit since the goods are offered at a lower price.

The existence of the special system of reduced minimum offer prices set out above cannot however be interpreted as meaning that the importation of the product in question is not capable of leading to disturbances in the importing Member State. That system is a compromise between the basic need to apply monetary compensation, on the one hand, and considerations of commercial policy on the other. It is valid as long as the observance of the (reduced) minimum price seems generally to preclude any real danger for the Community market.

The Commission adds that another reason for the maintenance of the system of compensatory amounts is their importance in intra-Community trade. In the present case the result of simply abolishing the compensatory amounts would be that a product from a third country could be imported into the Community via the Member State in which the relationship between the national currency and the unit of account is the most favourable for importation at the minimum price and then re-exported to Member States with stronger currencies without any monetary compensatory amounts being imposed on the price which has been artificially lowered in that way.

The maintenance of different systems for Bulgarian and Swiss cheeses is therefore justified and does not constitute discrimination to the disadvantage of the former.

The second question

The Commission draws attention to a new system of calculating compensatory amounts introduced by Regulation (EEC) No 648/73 of 1 March 1973 (OJ L 64 of 9. 3. 1973, p. 1) and retained in Regulation (EEC) No 1463/73.

In the former system different compensatory amounts were applied according to whether the trade was intra-Community or with third countries. Since that system involved an excessive increase in the number of compensatory amounts, Regulation (EEC) No 648/73 and afterwards Regulation (EEC) No 1463/73 established a 'basic compensatory amount' applying to both trade between Member States and with third countries. The defects arising from the standard nature of that basic amount are corrected by the application of a 'monetary coefficient' applied to the levies and repayments and expressing the effect of the monetary situation of the Member State in question. Thus the monetary compensation properly speaking which is laid down by Regulation (EEC) No 974/71 is the result of the combination of a 'basic monetary amount' and the application of a correcting factor to the levies. With regard to importations to Germany the application of the correcting factor to the levy enables the portion of monetary compensation already contained in that levy to be identified and calculated. For this reason that portion, which in this case is DM 21.59, is then deducted from the compensatory amounts.

Applied to the case in question, this method of calculation results in an actual compensatory charge of DM 42.21 (DM 63.80 — DM 21.59 = DM 42.21) instead of the compensatory amount of DM 63.80 per 100 kg. Compared with the compensatory amount applied in Case 5/73 (DM 45.50) the figure of DM 42.21, in so far as it was applied by the German administration, indicates that the charge was not excessive.

The method of calculation of the compensatory amount applicable to the product in question is derived in

accordance with Article 2 (2) of Regulation (EEC) No 974/71, from that applicable to butter and skimmed milk powder, which are basic products in respect of which there are intervention prices. Although by comparison with Case 5/73 the method of deriving the calculation has been improved by making a distinction according to categories of cheese, it has not been fundamentally altered and the grounds on which the Court of Justice acknowledged the legality of the cruder method which was used at that time in Case 5/73, apply *a fortiori* in the present case.

The Commission suggests that the questions which have been referred by the Finanzgericht be answered as follows:

The examination of the questions referred for a preliminary ruling has not revealed any factor which is capable of casting doubt on the validity of the fixing of a compensatory amount under Regulation (EEC) No 947/71 of the Council with regard to a cheese which comes under subheading 04.04 E I b 4 and which was imported from Bulgaria on 25 April 1974. The same applies with regard to the rate of that compensatory amount in conjunction with the rules laid down in Article 4 (3) of Regulation (EEC) No 1463/73 of the Commission.

During the hearing on 19 November 1975, the plaintiff in the main action, represented by Mr Ehle of the Cologne Bar and the Commission, represented by its Agent, Mr Gilsdorf, expanded the arguments put forward during the written procedure.

The Advocate-General delivered his opinion at the hearing on 17 December 1975.

Law

- 1 By an order dated 4 June 1975 which was received at the Court Registry on 24 June 1975, the Finanzgericht Berlin referred to the Court of Justice two questions under Article 177 of the EEC Treaty on the validity of the provision which is contained in Part 5 of Annex I of Regulation No 725/74 of the Commission of 29 March 1974 (OJ L 89 of 1. 4. 1974, pp. 1 and 18) amending the monetary compensatory amounts and according to which the compensatory amount to be imposed on the importation into the Federal Republic of Germany of products under heading 04.04 E I (b) 4 of the Common Customs Tariff (cheese of sheep's milk or buffalo milk, in containers containing brine, or in sheep or goat skin bottles) (OJ L 1 of 1. 1. 1974) is fixed at DM 63.80 in so far as the provision relates to such products imported from Bulgaria.
- 2 These questions were put in the context of a case brought by an importer against the customs administration of the Federal Republic of Germany relating to the conformity with Community law of the imposition of the compensatory amount set out above on imports of Bulgarian sheep's cheese on 25 April 1974. It appears from the file that the reasons for questioning the validity of the provision in question are based in the first place on the fact that in establishing and determining the scope of application of the compensatory amount at issue without excepting the products in question coming from Bulgaria, the Commission is thought to have infringed in particular the second paragraph of Article 1 (2) of Regulation No 974/71 of the Council of 12 May 1971 (OJ, English Special Edition (1971) I, p. 257) as amended, *inter alia*, by Regulation No 2746/72 of the Council of 19 December 1972 (OJ, English Special Edition, 1972, 28/30 December) and by Regulation No 509/73 of the Council of 22 February 1973 (OJ L 50 of 23 February 1973) concerning the establishment, originally on an optional basis but subsequently mandatory, of compensatory amounts in trade in certain agricultural products between Member States and between Member States and third countries. The alleged illegality might, in the second place, consist in the discrimination employed against cheeses under tariff heading 04.04 E I (b) 4 in comparison with other cheese coming from Italy and from Switzerland which benefited from an exemption from compensatory amounts.
- 3 Regulation No 974/71 of the Council as amended, in particular, by Regulations Nos 2746/72 and 509/73 obliges those Member States which

permit the exchange rate of their currency to fluctuate by a margin wider than the one authorized by the international rules in force on 12 May 1971 to charge or grant as appropriate, on the export or import of certain agricultural products, compensatory amounts intended to neutralize the incidence of currency fluctuation on the price of these products in trade between Member States or with third countries. Subparagraphs (a) and (b) of Article 1 (2) of Regulation No 974/71 provide that the charge or grant of compensatory amounts shall apply to those agricultural products covered by intervention arrangements under the common organization of the markets and to those products the price of which depends on the price of the products referred to under (a) and which are governed by a common organization of the markets or are the subject of a specific arrangement under Article 235 of the Treaty.

As to the first question

- 4 It appears from the preamble to the order making the reference that the first question is concerned in the first place with whether the validity of the provision in question could be affected because of the fact that its scope of application extends to the product in question whereas the currency measures which caused the system of compensatory amounts to be established, in particular the appreciation in value of the DM, could no longer on 25 April 1974 have the consequence that the importation from Bulgaria of the product in question could be such as to cause disturbances on the German market for agricultural products.
- 5 It is said that the cheese in question is not produced in the Community and does not compete with cheeses which are produced there. Moreover, the actual free-at-frontier offer price of the product in question was, in particular following the increase in the costs of production in the exporting country, increased so that any distortions in competition within the Community were excluded. This is all the more so with regard to the import in question since the imported goods were charged in DM.
- 6 It is not disputed that the product the charging of which is the subject-matter of the main action belongs to the category of those in respect of which the charge or grant of compensatory amounts is mandatory under Article 1 of Regulation No 974/71. It is also not disputed that the conditions to which Article 8 (2) of this regulation subjects the termination of its application were not fulfilled at the date of the importation in question.

- 7 The second subparagraph of Article 1 (2) of Regulation No 974/71, as amended by Article 1 (3) of Regulation No 2746/72, provides that the grant or the imposition of compensatory amounts 'shall apply only where application of the monetary measures referred to in paragraph (1) would lead to disturbances in trade in agricultural products'. Under Article 6 of Regulation No 974/71 the Commission, deciding in accordance with the established procedure of management committees, shall rule as to the existence of a risk of disturbance.
- 8 As the evaluation of a complex economic situation is involved, the Commission and the Management Committee enjoy, in this respect, a wide measure of discretion. In reviewing the legality of the exercise of such discretion, the court must confine itself to examining whether it contains a manifest error or constitutes a misuse of power or whether the authority did not clearly exceed the bounds of its discretion.
- 9 Article 1 (2) of Regulation No 974/71 (as amended) cannot be interpreted as obliging the Commission to decide case by case, or in respect of each product individually, and making distinctions according to the country of export, whether there is a risk of disturbance. The very terms of this provision show that evaluations of a general nature may be made in this respect. In particular, compelling reasons relating to the practicability of the system of compensatory amounts enable groups of products to be taken into consideration in assessing the possibility of disturbances in trade in agricultural products. Such may especially be the case for a group of products under the same tariff heading which are subject to the same levy rules.
- 10 In addition, a different assessment of the possibilities of disturbances which might be caused by the importation of one and the same product according to its geographical origins would have the effect of encouraging deflections of trade apart from the fact that it would itself also endanger the practicability of the system. Finally, the Commission must not only take into consideration the effect of the depreciation or the appreciation of the currency of a Member State on trade between third States and this State but it must also take account of the effect of this depreciation or appreciation on trade between different Member States with regard to the group of products in question. Indeed it appears from the documents produced by the Commission that if the compensatory amounts here criticized were not maintained trade might be

deflected through those Member States with a devalued currency and this might cause distortions in trade. Finally, in order to assess the danger of disturbance, the Commission must not necessarily solely take account of the actual free-at-frontier price of a particular export but may rely on standard but justified factors for assessment, such as the lowest free-at-frontier prices which are fixed, in reality by agreement with third countries, under Regulation No 664/74 of the Council of 28 March 1974 in implementation of Article 8 of Regulation No 823/68 of the Council of 28 June 1968 (OJ, English Special Edition (1968) I, p. 199).

- 11 Thus, even if it were shown that the importation from Bulgaria into the Federal Republic of Germany in April 1974 of the product at issue at the free-at-frontier price stated in the documents produced by the plaintiff was not in itself of such a nature as to cause disturbances in trade in agricultural products in the Federal Republic of Germany, it by no means follows that the Commission made an obvious mistake or clearly exceeded the bounds of its discretion in holding that the importation from third countries, in general, of the group of products derived from milk which included cheese of sheep's milk was, in the absence of compensatory amounts, of such a nature as to disturb trade in agricultural products in the Community.
- 12 In addition, there do exist within the Community cheeses of a similar nature to those which form the subject-matter of the dispute but it has not been established that the product at issue would not, by reason of its particular characteristics, be capable of competing with the cheeses produced within the Community.
- 13 Referring to the exemption from payment of compensatory amounts granted to certain Italian and Swiss varieties of cheese, the German court then asks whether, in refusing the same treatment to cheese of sheep's milk coming from Bulgaria, the Commission did not violate the principle of equality of treatment. In this connexion it refers to the argument that if the varieties of cheese which were exempted do not, in the opinion of the Commission, cause disturbances, it follows that the importation of Bulgarian cheese of sheep's milk, too, cannot have such an effect.
- 14 Although Article 2 of Regulation No 974/71 of the Council, by specifying the method of calculating the compensatory amounts, determines the amounts

which cannot be exceeded, it does not follow that the Commission could not undertake to apply lower amounts or to grant negotiated exemptions in respect of certain third countries and for reasons relating to the exercise of other powers which it holds under the Treaty. In the Treaty there exists no general principle obliging the Community, in its external relations, to accord to third countries equal treatment in all respects and in any event traders do not have the right to rely on the existence of such a general principle.

- 15 In particular, with regard to cheese coming from Italy, the general principle of Community preference justifies a different assessment of the possibilities of disturbance according to whether the products involved come from another Member State or from a third State. With regard to products coming from the Swiss Confederation, it must first be noted that the examination of the principle of equality of treatment must relate not to the existence or absence of competition between Swiss and Bulgarian cheeses but to their comparability as regards the disturbance which their importation may cause in trade in agricultural products. In this respect the Commission believes that because of their high free-at-frontier offer price (165.54 u. a. for Emmental) the importation of Swiss cheeses causes less danger of disturbance than that of Bulgarian cheese of sheep's milk for which the free-at-frontier offer price is substantially lower. As has been stated above, in assessing the existence of risks of disturbances the Commission may take account of fixed standard free-at-frontier offer prices. Therefore it is irrelevant whether, as maintained by the plaintiff in the main action but contested by the Commission, the actual free-at-frontier offer prices of Bulgarian cheese of sheep's milk were in April 1974 higher than the actual free-at-frontier offer price for Emmental.

As to the second question

- 16 It is subsequently asked whether 'the (monetary) compensatory charge of DM 63.80 per 100 kg levied on 25 April 1974 on imports of cheese of sheep's milk from third countries [is] justified', and 'in particular how can this rate of charge be justified arithmetically?'
- 17 The plaintiff in the main action alleges that the rate of DM 63.80 per 100 kg is in breach of the principle contained in the final recital of the preamble to Regulation No 974/71 of the Council according to which 'the compensatory amounts should be limited to the amounts strictly necessary to compensate

the incidence of the monetary measures on the prices of basic products covered by intervention arrangements'.

- 18 In its judgment of 24 October 1973 (Case 5/73, *Balkan-Import Export v Hauptzollamt Berlin-Packhof* [1973] ECR 1091 at p. 1118) the Court ruled that examination of the methods of computation of the compensatory amount in force in March 1972 on imports of Bulgarian cheese of sheep's milk had not revealed any elements capable of affecting the validity of this charge. Since that date subsequent regulations have in two respects further defined the method of computation. On the one hand Regulation No 648/73 of the Commission of 1 March 1973 (OJ L 64 of 9. 3. 1973, p. 1) and Regulation No 1463/73 of the Commission of 30 May 1973 (OJ L 146 of 4. 6. 1973, p. 4, Article 4 (4)) provide that the compensatory amounts described as the 'basic compensatory amount' shall, in the event of an appreciation in value of the national currency, be reduced by a coefficient expressing the incidence of the currency situation of the Member State concerned on the levy. On the other hand, Regulation No 3259/73 of the Commission of 30 November 1973 (OJ L 332 of 3. 12. 1973, p. 1) replaced the system of a single standard compensatory amount for all varieties of cheese by a system dividing cheeses into various groups according to their fat and albumin content and subjecting each group to a specific compensatory amount. For the rest, the means of deriving the compensatory amount employed in computing the amount at issue in the main action corresponds entirely with that used in Case 5/73. In the case of importation into a Member State whose currency rate fluctuates upwards, the modifications mentioned above have the effect of making the compensatory amount lower than it was before.

- 19 In view of these considerations examination of the questions referred has revealed nothing capable of affecting the validity of the compensatory amount in question.

Costs

- 20 The costs incurred by the Commission of the European Communities which submitted observations to the Court are not recoverable. As these 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

in answer to the questions referred to it by the Finanzgericht Berlin by order of that court dated 4 June 1975, hereby rules:

Examination of the questions referred has revealed nothing capable of affecting the validity of the compensatory amount in question.

| | | |
|---------|--------------------|------------------|
| Lecourt | Monaco | Kutscher |
| Donner | Mertens de Wilmars | Sørensen |
| | | Mackenzie Stuart |

Delivered in open court in Luxembourg on 22 January 1976.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 17 DECEMBER 1975¹

*Mr President,
Members of the Court,*

Balkan-Import Export, which has a registered office in Berlin, regularly imports from Bulgaria into the Federal Republic of Germany cheese of sheep's milk on the basis of a long-term contract made with the Bulgarian national trade department 'Rodopa-Impex' for which

the price is agreed in German marks. In accordance with Community rules which were to be examined, from various points of view, in cases before the Court for a preliminary ruling the sum of DM 9 244-62 was charged by way of a monetary compensatory payment at the frontier on a consignment which was cleared into free circulation on 25 April 1974.

¹ — Translated from the German.