latter, even if such classification is subsequently found, in the light of a Commission regulation or a decision of the Court of Justice, to be inconsistent with the Common Customs Tariff.

None the less, the exporting Member State is not empowered to pay traders the difference between the monetary compensatory amount applicable on export which corresponds to the tariff classification made by that Member State, and the lower monetary compensatory amount on export, which corresponds to the tariff classification applied on import by the importing Member State.

In Case 196/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Ireland for a preliminary ruling in the action pending before that court between

ANGLO-IRISH MEAT COMPANY LIMITED, having its registered office in Dublin,

and

THE MINISTER FOR AGRICULTURE, Dublin,

on the interpretation of subheadings 02.01 A II (a) 2 bb and 02.01 A II (a) 4 aa of the Common Customs Tariff, as they appear in the versions of the said tariff successively in force during the period between 20 March 1978 and 28 April 1979, and of Articles 10 a and 11 (2) of Regulation (EEC) No 1380/75 of the Commission of 29 May 1975 (Official Journal L 139, p. 37),

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate General: Sir Gordon Slynn
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

Between 20 March 1978 and 28 April 1979 Anglo-Irish Meat Company Limited (hereinafter referred to as "Anglo-Irish Meat") exported beef from Ireland to the United Kingdom. During that period monetary compensatory amounts were charged on the beef exported from Ireland and were granted, but on the basis of a higher rate, on beef imported into the United Kingdom. At the same time compensatory amounts applicable to imports into the United Kingdom of goods from Ireland were paid, with the agreement of the United Kingdom, directly by the Irish authorities pursuant to Article 2 a of Regulation No 974/71 of the Council of 12 May 1971 (Official Journal, English Special Edition 1971 (I), p. 257) as amended by Regulation No 1112/73 of the Council of 30 April 1973 (Official Journal L 114, p. 4).

The goods exported by the plaintiff consisted of chilled forequarters of beef from which the atlas bone, a small bone of approximately 0.5 kg situated in the neck of the carcase, had been removed. The consignments of beef in question were declared to the Irish authorities and accepted by them as a "bone-in cut" under subheading 02.01 A II (a) 4 aa of the Common Customs Tariff. However, on import into the United Kingdom the meat was classified as "forequarters" under heading 02.01 A II (a) 2 bb of the tariff. The British customs authorities took the view that it corresponded to the definition supplied by Additional Notes 1 A (d) and (e) to Chapter 2 of the Common Customs Tariff, in accordance with which the expression "unseparated forequarters" means "the front part of a carcase comprising all the bones and the scrag, neck and shoulder, with a minimum of four pairs of ribs and a maximum of ten pairs of ribs (the first four pairs of ribs must be whole, the others may be cut) with or without the thin flank" and "separated forequarters" means "the front part of a half-carcase comprising all the bones and the scrag, neck and shoulder, with a minimum of four ribs and a maximum of ten ribs (the first four ribs must be whole, the others may be cut) with or without the thin flank."

During the period in question monetary compensatory amounts applicable to forequarters were lower than those applicable to bone-in cuts, considered normally to have a higher value in the trade, and the Irish authorities therefore paid the plaintiff by way of compensatory amounts applicable to the import of the goods in question into the United Kingdom a sum £442 069 less than that which it would have received if the British authorities had applied the same tariff classification as the Irish authorities.

The plaintiff therefore brought proceedings in the High Court in Dublin claiming the sum of £442 069 with the argument that the classification as bone-in cuts was correct and that the

Irish intervention organization was required to apply that classification in preference to the one accepted by the British authorities.

In the meantime the Commission of the European Communities had received from the customs authorities of the United Kingdom a request for an interpretation of Additional Notes 1 A (d) and (e) to Chapter 2 of the Common Customs Tariff relating to the definition of unseparated and separated forequarters respectively.

Although the responsible officers of the Commission were of the opinion that the removal of the atlas bone had no significance in trade and was carried out solely to manipulate payment of higher monetary compensatory amounts, so that an amendment of the tariff classification did not appear justified, a discussion in the Committee on Common Customs Tariff Nomenclature made it clear that there was a general view in favour of maintaining a restrictive interpretation of the nomenclature.

In these circumstances the Commission, so as to avoid any possibility of speculation, first adopted Regulation No 745/79 (Official Journal L 95, p. 1), which provided a new method of calculation of monetary compensatory amounts by which the amounts applicable to subheading 02.01 A II (a) 4 aa became identical to those applicable to subheading 02.01 A II (a) 2 bb. This changed method was applied for the first time by Commission Regulation No 834/79 of 26 April 1979 (Official Journal L 107, p. 1) which came into force on 30 April 1979.

Subsequently, by Regulation No 936/79 of 11 May 1979 (Official Journal L 117, p. 19), the Commission dealt with the question of the tariff classification of the products in question, deciding that they must be classified in subheading 02.01 A II (a) 4 aa.

As from that date any uncertainty as to the correct classification for the future of the products in question was thus overcome.

By a judgment of 31 July 1980 the High Court stayed the proceedings and asked the Court of Justice to give a preliminary ruling on the following questions:

"1. Are the provisions of the Common Customs Tariff of the European Communities (as contained in Council Regulation (EEC) No 950/68, as amended) to be interpreted in respect of the period between 20 March 1978 and 20 April 1979 [1] as requiring a separated forequarter of beef in a chilled state from which the atlas bone had been removed, to be entered for customs purposes under heading 02.01 A II (a) 4 aa and to be dealt with accordingly in the calculation of monetary compensatory amounts levied upon export or granted upon import in trade between the Member States?

2. If the answer to Question 1 above is in the affirmative, are the provisions of Article 10 a and Article II (2) of Regulation No 1380/75 to be interpreted as placing upon the defendant an obligation to grant to the plaintiff a monetary compensatory amount at the rate applicable to the tariff heading in question rather than at the rate applicable to a different heading notified in accordance with article 10 a (4) as having been used for release of the goods in question upon import in the Member State of destination?

3. If the answer to either of the questions above is in the negative, are the said provisions of Regulation

1 — *Translator's note:* It appears from the file that this second date should in fact be understood as being 28 April 1979.

No 1380/75 to be interpreted as imposing upon the defendant an obligation to refund to the plaintiff the excess monetary compensatory amounts levied upon the export of the said goods from Ireland and attributable to the application of tariff heading 02.01 A II (a) 4 aa?"

The judgment making the reference was lodged at the Court Registry on 6 October 1980.

In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by the Anglo-Irish Meat Company Limited, represented by J. D. Cooke, Senior Counsel, instructed by Messrs Hussey & O'Higgins, Solicitors, Dublin, by the Ministry of Agriculture, represented by L. Dockery, Chief State Solicitor, acting as Agent, assisted by H. J. O'Flaherty and E. Fitzsimons, Senior Counsel, by the United Kingdom, represented by R. D. Munrow, Treasury Solicitor's Office, acting as Agent, and by the Commission of the European Communities, represented by R. Wainwright, a member of its legal department, acting as Agent.

On 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 enquiry.

However, it asked the parties to the main action and the Commission to reply before 1 May 1981 to a number of questions.

By order of 25 March 1981, the Court also decided, in pursuance of Article 95 (1) and (2) of the Rules of Procedure, to assign the case to the First Chamber.

II — Written observations submitted to the Court

First question

All the parties which submitted written observations agree in stating that, in accordance with the case-law of the Court, the classification made by the Commission in Regulation No 936/79 of 11 May 1979 has no retroactive effect, although it may in certain circumstances have interpretative value for the purpose of establishing what was the correct tariff classification before its adoption.

Anglo-Irish Meat takes the view that the correct classification of a forequarter of beef from which the atlas bone has been removed has always been classification under tariff subheading 02.01 A II (a) 4 aa ("unboned (bone-in)").

It is beyond argument that the atlas bone is a bone. Tariff subheading 02.01 A II (a) 2 bb ("forequarters") is applicable only to cuts containing "all the bones". It follows that a cut of meat from which the atlas bone has been removed cannot come under that heading.

The view adopted by the United Kingdom customs that the expression "all the bones" refers only to "ribs" is untenable. If the Additional Note 1 A (d) and (e) to Chapter 2 of the Common Customs Tariff had intended to refer to ribs it would have used wording to that effect such as "comprising all of the ribs and the scrag ... etc.". There is no logical basis for suggesting that "bones" means "ribs" when it is deliberately

chosen in distinction from the word "ribs" used later in the same sentence.

The correctness of the classification made by the Irish authorities is moreover borne out by the subsequent authoritative opinion of the Nomenclature Committee and by Commission Regulation No 936/79.

The *Irish Minister for Agriculture* also takes the view that the expression "all the bones" contained in the definition of separated forequarters in the aforementioned additional note cannot mean anything other than all the bones in such separated forequarters including the atlas bone.

The *United Kingdom* stresses that the removal of a small bone in the neck, known as the atlas bone, cannot alter the essential character of a forequarter of beef.

Additional Note No 1 A (d) and (e) does not necessarily preclude the absence of a small bone from the neck. If that had been the intention, the note would have commenced:

"The front part of the half carcase comprising the scrag, neck and shoulder and all the bones therein, with . . .".

The note as drafted is at the very least ambiguous.

It should be noted that the removal of the atlas bone in no way changes the character of the product which continues to be bought and sold in the trade as a forequarter but simply makes it possible to obtain payment of a higher monetary compensatory amount by way of a different tariff classification.

The *Commission of the European Communities* observes that the wording of the additional note leads to the conclusion that on a literal interpretation even the removal of a small bone from the neck is sufficient to take the cut of meat in question outside the subheading "forequarters".

The reasons put forward by the United Kingdom authorities in favour of their interpretation cannot, in the Commission's view, be accepted.

The argument to the effect that the expression "all the bones" relates to the required number of ribs and not to the bones of the neck runs counter to the second half of the notes which defines the number of ribs which must be present and which would not have been appropriate if it had been intended that the expression "all the bones" should also cover the ribs.

The argument to the effect that the practice of removing the atlas bone has no significance in trade and really has the object only of obtaining higher monetary compensatory amounts for the exporter is no doubt worthy of consideration but since it is an economic argument it has no relevance for the pure question of interpretation.

The Commission next deals with the second part of the first question in which the national court inquires whether subheading 02.01 A II (a) 4 aa is to be applied in the calculation of compensatory amounts charged upon export or granted on import.

It remarks that although there is no doubt that the tariff classification must, in the absence of express provisions to the contrary, be the same whether the tariff classification is made for the purposes of customs duties or monetary compensatory amounts, the principle does not necessarily apply for compensatory amounts granted on import.

According to the case-law of the Court relating to export refunds, Member States may limit the grant of Community subsidies in certain circumstances, for example where manipulation or abusive practices are involved, even though the formal conditions for the grant of subsidies have been met. Similarly, having regard to the neutrality of monetary compensatory amounts the authorities of a Member State are entitled, according to the Commission, to limit the grant of such amounts where they find that there is manipulation or abuse and where there is consequently a risk of trade distortion.

The Commission recalls in addition that by virtue of Article 12 (2) of Regulation No 1380/75 no monetary compensatory amounts are to be granted on products which are not of "sound and fair marketable quality". Although there has been no contention in this respect in this case, the existence of that provision does show that there is no absolute right to be granted a compensatory amount in accordance with the applicable tariff heading. Nor would the Commission exclude that tariff manipulation or abuse might bring a product within the scope of Article 12 (2).

The Commission therefore proposes that the following answer should be given to the first question:

"1. Separated forequarters of bovine animals in a fresh or chilled state, from which the atlas bone has been removed, fall to be classified under subheading 02.01 A II (a) 4 aa of the Common Customs Tariff.

2. The criteria for the tariff classification of products coming under the above subheading are, for the purposes of the application of monetary compensatory amounts, the same as those which result from the rules of interpretation and application of the tariff and its nomenclature.

It is however for the competent national authorities to judge the facts with a view to preventing undue granting of monetary compensatory amounts for example, as a result of manipulation for abuse of the rules of tariff classification."

Second question

Anglo-Irish Meat observes that the issue in this case is not whether national customs authorities are bound by a tariff classification of another authority but whether the Community itself is bound by the incorrect unilateral decision of a national authority.

According to the plaintiff endorsements on Control Form T 5 by the United Kingdom customs do not have the effect of altering the classification of goods but merely of notifying the defendant of a dispute in relation to the classification asserted.

As payment has been accepted only under protest and without prejudice to the plaintiff's right to pursue its claim upon the classification which it has always considered to be correct, finalization of the transaction has been suspended pending a decision as to the correct tariff classification. The Court of Justice has been specifically asked to resolve that dispute. Consequently if the Court makes reply to the first question in the affirmative it follows that the answer to the second question must also be in the affirmative.

Anglo-Irish Meat emphasizes that in accordance with the case-law of the Court (judgment in Case 795/79, *Pesch*), an exporting Member State which takes advantage of the facility provided in Article 2 a of Regulation No 974/71 is bound by the tariff classification of goods asserted by an importing Member State in the absence of a definitive interpretation through the procedures of the Community legal system. Following the plaintiff's protest, the Irish intervention agency did in fact have recourse to one of these procedures by referring the problem of tariff classification of the product to the Committee on Common Customs Tariff Nomenclature which upheld the classification of the plaintiff.

It must be recalled that at all times the national intervention agencies are acting as local agents on behalf of the Community fund. In Case 137/78, *Henningsen*, the Commission conceded that it considered itself bound by its own interpretation "with regard to its intervention within the framework of the financing of the common agricultural policy and to the reimbursement of monetary compensatory amounts". What is binding on the principal must be binding upon its agents. Anglo-Irish Meat therefore considers that the decision of the Nomenclature Committee, as stated in Regulation No 936/79, was sufficient to entitle the defendant to make payment on the basis of the plaintiff's claim.

If the Court answers the first question in the affirmative and the second question in the negative the effect must be that an importer or exporter is totally at the mercy of arbitrary and possibly subjective decisions of Member States as to tariff classification and has, despite the terms of the *Pesch* judgment, to which reference has already been made, no method for obtaining relief in justice by means of the procedures laid down for that purpose by Community law. Such a development is clearly contrary not only to the spirit of Community law but also to the dictates of natural justice. The discretion thus granted to the customs authorities of the importing Member State in deciding on tariff classification must necessarily lead to distortion of trade in products subject to the common agricultural policy and leads to uncertainty for traders who are at the mercy of the national customs authorities.

Anglo-Irish Meat further observes that even though in accordance with the case-law of the Court the role of the exporting Member State is confined to making payment of the monetary compensatory amounts that does not exonerate the State from exercising that function responsibly and if it has any doubts as to the accuracy of the information before it as to classification or otherwise it is obliged to pursue such enquiries as may be necessary in that respect. Moreover Article 2 a requires the exporting Member State to pay the amount which "should be granted" by the importing Member State. In Anglo-Irish Meat's opinion that is to be interpreted as meaning the amount which the importing Member State ought to grant on a proper interpretation of Community law. It would be absurd to suggest that the tariff classification inserted by the importing Member State is conclusive for all purposes. If that were the position it would follow that the exporting Member State could be bound by a classification which was manifestly incorrect.

Anglo-Irish Meat does not claim that the exporting Member State is entitled to

substitute its own classification for that of the importing Member State. It recognizes in fact that such a solution would be open to the same objections in relation to uncertainty and abuse as would apply to an obligation upon the exporting Member State to apply blindly the classification asserted by the importing State. It submits however that where, as in this case, an obvious divergence arises, the Member State responsible for payment under Article 2 a of Regulation No 974/71 should pursue such enquiries as are necessary to resolve the issue in dispute. If this entails an interpretative regulation of the Commission or a reference to the Court of Justice on the basis of a preliminary question the correct interpretation of Community law should prevail over a practice which has grown up between national authorities simply as an *ad hoc* method of filling a gap in Community law.

According to Anglo-Irish Meat Case 795/79 is to be distinguished from the present case mainly in three aspects.

First, in the *Pesch* case the court submitting the reference made the supposition that "the Court of Justice has not ruled on the classification of a product in the Common Customs Tariff", whereas in this case the High Court has asked first for a ruling on the conflicting tariff headings so that the plaintiff's claim may be dealt with upon the basis of a resolution of that issue.

Secondly, in the abovementioned case, the issue involves cumulative monetary compensatory amounts whereas this case involves the payment of a levy upon export and a grant upon import. The extension of the principle adopted in the *Pesch* case to the circumstances of this case must lead, in the plaintiff's view, to a distortion of inter-State trade, an abuse of the mechanism of the common agricultural policy and a gross injustice to the beneficiaries under that policy.

Finally in the *Pesch* case there were uncertainties as to the classification of the product in question and finally the classification asserted by the exporting State was found to be correct whereas in this case there are no ambiguities and the description of the product and the Common Customs Tariff, which states that the forequarters should contain all the bones, are very precise.

Anglo-Irish Meat recalls that, as the Court stated in Case 5/78, *Milchfutter,* a particular tariff classification by one Member State does not necessarily bind another Member State. It takes the view that the principle works both ways. Consequently if the United Kingdom customs authorities were not bound to accept the classification asserted by the Irish customs authorities, the Irish authorities were not obliged either to accept as final and conclusive the altered tariff classification made by the United Kingdom authorities. This principle is underlined by the judgment in the *Pesch* case, where the Court indicated the procedures to be followed to avoid an injustice which might otherwise be caused by divergent classifications.

According to Anglo-Irish Meat it appears from that case-law that the Court accepted the opinion expressed by Mr Advocate General Capotorti in Case 5/78 to the effect that "the requirements

of the proper functioning of the system of monetary compensatory amounts should induce the importing State to refrain from carrying out systematic inspections of the goods and in any event to avoid adopting a classification of the goods which is different from that of the State of origin unless it is objectively shown that the first classification was incorrect".

The plaintiff takes the view that to the extent to which that statement represents the expression of a principle it tended to ensure as far as possible the desired uniformity of tariff classification, it is relevant to point out that objectively the first classification, that is to say the one asserted by the Irish Customs authorities, was correct.

It therefore states that the following principles emerge from the case-law of the Court:

1. The unilateral decision of one Member State is not necessarily binding upon another Member State subsequently dealing with the same transaction.

2. The Customs authorities can question an earlier classification and alter it if it is objectively incorrect.

3. For the purpose of Article 2 a of Regulation No 974/71 an exporting Member State is bound by the classification of the importing Member State until the Nomenclature Committee and the Commission or Court of Justice has given a ruling as to the correct classification.

4. The Commission, as the ultimate paying authority of the Community Fund is not necessarily bound by the incorrect decision or classification of a national authority.

The *Irisch Minister for Agriculture* believes that his point of view to the effect that the classification by the United Kingdom customs authorities of separated forequarters with atlas bone removed was incorrect does not entitle the Minister to disregard that classification.

He observes that in accordance with Article 11 (2) of Regulation No 1380/75, the payment by the exporting Member State of the amount which should be granted by the importing Member State is conditional upon the production of proof that customs import formalities have been completed and that any duties and charges having equivalent effect payable in the importing Member State have been charged. Such duties and charges having equivalent effect can only be fixed and charged following the making of a decision by that Member State upon the tariff classification of the goods. Furthermore Article 10 a (4) of Regulation No 1380/75 expressly entitles the customs authorities of the importing Member State to alter the tariff classification entered in the transit document accompanying the goods when they reached the customs.

In the Minister's view the combined effect of these provisions was to entitle an importing Member State to make the definitive decision upon the tariff classification of the goods imported so as in this way to bind the authority of the exporting Member State charged with the payment of the monetary compensatory amounts thereon.

The fact that monetary compensatory amounts based on a different classification were charged by the Irish Minister for Agriculture on the export of the goods from Ireland does not alter the

position. The applicable regulations did not rule out the possibility of different tariff classifications being made by the exporting and importing Member States and made no provision for resolving a situation where this might occur.

The Minister for Agriculture states that he took into account the views of the Commission as expressed in its letter of 31 October 1979 in which it confirmed that within the meaning of the Community regulations the only monetary compensatory amounts legally applicable in this case to products imported into the United Kingdom were those recorded by the Customs authorities of that country and he therefore takes the view that in paying those amounts he acts as agent for the European Agricultural Guidance and Guarantee Fund and has therefore acted in a proper and responsible manner.

The Minister recognizes that the circumstances of the case in which the customs authorities of the exporting and importing Member States disagree on the tariff classification to be attributed to the same goods is inimical to the proper functioning of the Common Customs Tariff and Community intervention measures. He observes however that the case-law of the Court seems to have accepted the principle that the tariff classification made by an exporting Member State is not necessarily binding on the importing State in respect of the same goods.

In these circumstances and having regard to the provisions of the applicable regulations the Minister for Agriculture took the view that he was bound not by the classification made by the Irish authorities but by that of the United Kingdom authorities. He did not regard himself as entitled to consider the issue of whether or not that classification was correct, an issue which is for judicial determination. In his view the Court of Justice of the European Communities was and is the appropriate tribunal to make such a determination since the interpretation of a provision of the Common Customs Tariff is at issue.

The *United Kingdom* takes the view that according to the case-law of the Court the exporting Member State availing itself of the facilities laid down in Article 2 a of Regulation No 974/71 is bound by the tariff classification effected by the importing Member State.

It maintains that its classification opinion should be regarded as valid, certainly until Commission Regulation (EEC) No 936/79 took effect on 2 June 1979.

According to the United Kingdom, although the classification regulation was published in order to enforce the majority decision reached by the Committee on Common Customs Tariff Nomenclature that the product was a "bone in cut" it was never the intention that any financial advantage should accrue from its effects, as is proved by the fact that already from 20 April 1979 Regulation No 834/79 had reduced monetary compensatory amounts on "bone-in cuts", to the same level as that on "forequarters".

If the Court should give an affirmative answer to the first question the United Kingdom thinks that retroactive application of the ruling should not be allowed for the period in question since that would amount to sanctioning payment of Community funds not intended to be paid.

According to the United Kingdom, whilst Community law does not exclude all possibility of retroactive effect of

Community legislation, the general principle is that in the absence of special factors retroactivity will not be allowed. In this case there are no special factors which might justify rectroactive application of the ruling but it was precisely with a view to avoiding disruption that Regulation (EEC) No 834/79, altering compensatory amounts, was brought into effect before Regulation (EEC) No 936/79, altering the classification.

The *Commission of the European Communities* states that as regards this question, it remains of the opinion which it has expressed in the past and which has recently been confirmed by the Court. It therefore takes the view that the authorities of an exporting Member State are bound to apply the classification made by the authorities of the importing Member State on import. It even goes further and maintains that in the context of Article 2 a of Regulation No 974/71 the exporting Member State is no more than the paying agent and as such is bound by the total appreciation of the importing Member State of the compensatory amount to be paid on import.

This conclusion is not affected by the Commission's view that the classification effected in this case by the United Kingdom authorities is incorrect.

If the Court were to give judgment as regards the first question in the sense suggested by the Commission the authorities of the United Kingdom should in consequence change their classification even though strictly speaking they are not parties to these proceedings. However, in the Commission's view it would still be open to them to decide that the monetary compensatory amounts should be granted only at the rate appropriate to "forequarters", notwithstanding the formal change of classification. That decision could be communicated to the Irish authorities who as mere paying agents for the United Kingdom's compensatory amounts would be obliged to follow that decision. Moreover it might even be that the United Kingdom authorities cannot be legally obliged to change their classification if the plaintiff is time-barred under United Kingdom procedural rules. In any event it is clear that there is nothing in the present proceedings which could lead the national court to order the Irish authorities to pay over the United Kingdom import compensatory amounts at a rate other than that appropriate to the appreciation of the United Kingdom authorities.

The Commission therefore suggests that the reply to the second question should be as follows:

"Article 2 a of Regulation No 974/71 of the Council together with Article 11 of Regulation No 1380/75 of the Commission is to be interpreted in the sense that the exporting Member State is bound, for the determination of the monetary compensatory amount on import into another Member State by the appreciation which the latter Member State makes of the goods in question."

Third question

Anglo-Irish Meat submits that the same classification must be applied to the same transaction. The system of monetary compensatory amounts is designed to facilitate the freedom of movement of agricultural products between Member States in accordance with the objectives of the common agricultural policy and to avoid the obstacle caused by fluctuating

currencies. It would be illogical to permit a situation to develop in which that system should itself become an obstancle. The application of two different and inconsistent classifications to the same product would necessarily lead to distortion of trade in agricultural products subject to the common agricultural policy.

The *Irish Minister for Agriculture* observes that Regulation No 1380/75 does not make any express provision for the situation envisaged by the third question and that in consequence the question whether a claim for reimbursement arises is to be determined in accordance with national law.

The *Commission of the European Communities* observes that the third question is based on two mutually exclusive hypotheses.

If the Court were to interpret the Common Customs Tariff in the same sense as the authorities of the United Kingdom the Irish authorities would then be bound to change their classification provided that their internal rules so permit and should thus reimburse part of the compensatory amounts charged on export. That is possible as Regulation No 936/79 on tariff classification does not have retroactive effect.

If on the other hand in accordance with the Commission's view the Court were to interpret the Common Customs Tariff in the sense indicated by the Irish authorities, but to declare that the latter are nevertheless bound by the tariff classification made by the United Kingdom authorities, the Commission thinks that the situation would be a perverse one and not compatible with Community law if the Irish authorities were to be obliged to change from a correct to an incorrect classification simply in order to palliate the harmful effects for the plaintiff of the United Kingdom's decision not to grant compensatory amounts at the higher rate. That solution might at first sight appear shocking but would be a logical consequence of the powers attributed to the Member States for the grant and the charging of compensatory amounts. It is also a result which might have arisen in just the same way if Ireland and the United Kingdom had not been exercising the option under Article 2 a of Regulation No 974/71.

The Commission therefore suggests that the third question should be answered as follows:

"The said provisions of Regulation No 974/71 [Article 2 a] and No 1380/75 [Article 11] are not to be interpreted as imposing any obligation on an exporting Member State to refund monetary compensatory amounts which have been charged on export on the basis of a correct tariff classification, even where that Member State has been obliged to limit the payment of monetary compensatory amounts on import into another Member State in accordance with the appreciation made by the latter."

III — Oral procedure

Anglo-Irish Meat, represented by J. D. Cooke, Senior Counsel, the Minister of Agriculture, represented by H. J. O'Flaherty, Senior Counsel, and the Commission of the European Communities, represented by R. Wainwright, a member of its Legal Department, acting as Agent, presented oral argument at the sitting on 21 May 1981.

The Advocate General delivered his opinion at the sitting held on 2 July 1981.

Decision

1 By an order of 31 July 1980 which was received at the Court on 6 October 1980 the High Court of Ireland referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty several questions concerning the interpretation of certain provisions of the Common Customs Tariff and of Regulation (EEC) No 1380/75 of the Commission of 29 May 1975 (Official Journal L 139, p. 37) laying down detailed rules for the application of the monetary compensatory amounts introduced by Regulation No 974/71 of the Council of 12 May 1971 (Official Journal English Special Edition 1971 (I), p. 257) in order to resolve a difficulty concerning tariff classification and certain rules governing the application of monetary compensatory amounts.

2 Article 2 a of Regulation No 974/71 of the Council, as amended by Regulation No 1112/73 of the Council of 30 April 1973 (Official Journal L 114, p. 4), provides that:

"Where a product exported from one Member State has been imported into a Member State which has to grant a compensatory amount upon importation, the exporting Member State may, by agreement with the importing Member State, pay the compensatory amount which should be granted by the said importing Member State. In this case no compensatory amount shall be granted by the importing Member State for products originating in the Member State concerned. . . ."

3 Detailed rules for the application of that provision were laid down in Regulation No 1380/75 of the Commission, in particular in Article 10 a thereof, which was inserted by Commission Regulation (EEC) No 1556/77 of 11 July 1977 (Official Journal L 173, p. 10), and in Article 11. During the period in question paragraph (2) of the latter article provided, *inter alia*, that:

"Payment by the exporting Member State of the monetary compensatory amount which should be granted by the importing Member State shall be conditional upon the production of proof that customs import formalities have been completed and that the duties and charges having equivalent effect payable in the importing Member State have been charged.

This proof shall be furnished by production of the control copy provided for in Article 1 of Regulation (EEC) No 2315/69. . . ".

4 The file on the case shows that between 20 March 1978 and 28 April 1979 the plaintiff in the main action exported beef from Ireland to the United Kingdom. During that period monetary compensatory amounts were charged on the beef exported from Ireland and were granted, at a higher rate, on importation into the United Kingdom of the goods in question. At the material time collection and payment of those amounts was governed, as between the United Kingdom and Ireland, by the rules laid down in Article 2 a of Regulation No 974/1; pursuant to those rules monetary compensatory amounts applicable to imports into the United Kingdom were paid, with the agreement of that Member State, directly by the authorities in Ireland, the exporting Member State.

5 The goods exported to the United Kingdom by the plaintiff in the main action consisted of chilled forequarters of beef from which the atlas bone had been removed. The Irish authorities classified the goods under subheading 4 aa of heading 02.01 A II (a) of the Common Customs Tariff as "bone-in cuts" and charged the monetary compensatory amounts applicable to exports of such goods.

6 The British authorities applied a different tariff classification and classified the said goods on importation into the United Kingdom under subheading 2 bb of the same tariff heading as separated or unseparated forequarters "other" than those referred to in subheading 1 aa. Subheading 2 bb, covering such "other" quarters, provided at the time in question for payment of monetary compensatory amounts on importation at a rate lower than those applicable to "bone-in cuts".

7 In view of the tariff classification of the goods adopted by the British customs authorities the Irish intervention agency responsible for the application of monetary compensatory amounts paid the plaintiff the amounts applicable on importation into the United Kingdom which corresponded to that tariff classification and not to the classification adopted on exportation by the Irish customs authorities.

8 In the meantime the Commission, to which the United Kingdom had referred a question concerning the tariff classification of such goods, investigated the problem. By means of Regulation No 745/79 of 11 April 1979 (Official Journal L 95, p. 1) the Commission laid down a new method for calculating monetary compensatory amounts whereby the amounts

applicable to the two tariff subheadings in question were identical. Subsequently, by means of Regulation No 936/79 of 11 May 1979 (Official Journal L 117, p. 19), it resolved the question of the tariff classification of such products by deciding that they must be classified in subheading 02. 01 A II (a) 4 aa.

9 The plaintiff in the main action challenged the correctness of the decision of the Irish national authorities to pay it the monetary compensatory amounts applicable on importation into the United Kingdom corresponding to tariff subheading 02.01 A II (a) 2 bb, the subheading applied by the British authorities. It maintained in particular that for the purposes of Article 2 a of Regulation No 974/71 of the Council the exporting Member State is bound by the tariff classification adopted by the importing Member State only until such time as the Commission adopts an official view on the point or a decision is given by the Court of Justice stating which tariff classification is to be applied to the goods in question. That applies, in its opinion, in the present case, and therefore the difficulty concerning tariff classification which is the subject of the proceedings must be resolved in the light of the above mentioned Commission Regulation No 936/69 and in accordance with the judgment to be delivered by the Court of Justice in the present proceedings.

10 The defendant in the main action contended that the decision which it took to pay the monetary compensatory amounts appropriate to the tariff classification adopted by the British authorities was wholly in conformity with the provisions of Regulation No 1380/75 of the Commission, in particular Articles 10 a and 11 thereof.

11 In order to resolve the dispute the High Court of Ireland, before which the action was brought, referred the following questions to the Court for a preliminary ruling:

"1. Are the provisions of the Common Customs Tariff of the European Communities (as contained in Council Regulation (EEC) No 950/68, as amended) to be interpreted in respect of the period between 20 March 1978 and 20 April 1979 [1] as requiring a separated forequarter of beef in a chilled state from which the atlas bone had been removed, to be entered for customs purposes under heading 02.01 A II (a) 4 aa and to be dealt with accordingly in the calculation of monetary compensatory amounts levied upon export or granted upon import in trade between the Member States?

1 — *Translator's note:* It appears from the file that this second date should in fact be understood as being 28 April 1979.

2. If the answer to Question 1 above is in the affirmative, are the provisions of Article 10a and Article 11 (2) of Regulation No 1380/75 to be interpreted as placing upon the defendant an obligation to grant to the plaintiff a monetary compensatory amount at the rate applicable to the tariff heading in question rather than at the rate applicable to a different heading notified in accordance with Article 10 a (4) as having been used for release of the goods in question upon import in the Member State of destination?

3. If the answer to either of the questions above is in the negative, are the said provisions of Regulation No 1380/75 to be interpreted as imposing upon the defendant an obligation to refund to the plaintiff the excess monetary compensatory amounts levied upon the export of the said goods from Ireland and attributable to the application of tariff heading 02.01 A II (a) 4 aa?"

Question 1

12 The first problem raised by the national court in Question 1 concerns the tariff classification of the products involved in the dispute on the basis of the provisions of the Common Customs Tariff which were applicable at the time in question, as provided for by Council Regulations No 2500/77 of 7 November 1977 (Official Journal L 289) and No 2800/78 of 27 November 1978 (Official Journal L 335)

13 According to the order making the reference to the product the tariff classification of which is disputed consists of chilled separated forequarters of beef from which the atlas bone, a small bone of approximately 500 grammes in weight situated in the neck of the animal, has been removed.

14 Under the provisions of the Common Customs Tariff which were in force at the material time fresh or chilled "separated or unseparated forequarters" of beef fall under tariff subheading 02.01 A II (a) 2, subparagraphs aa and bb of which distinguish between quarters which have specific characteristics as regards their weight, the degree of ossification and the colour of certain essential components, and "other" quarters.

15 Since the description of the goods covered by that tariff subheading contains no details regarding its application in respect of separated forequarters which

do not contain all the bones of that portion of the animal its scope must be determined in the light of the interpretative criteria laid down by the Common Customs Tariff.

16 It appears from the Additional Notes on Chapter 2 of the Common Customs Tariff, in particular Note 1 A (e), that "separated forequarters" for the purposes of, *inter alia*, the subheading in question, means the front part of a half carcase "comprising all the bones and the scrag, neck and shoulder, with a minimum of four ribs and a maximum of ten ribs ... with or without the thin flank".

17 The expression "comprising all the bones" which appears in that note cannot be interpreted as referring exclusively to the ribs and not to the neck bones. The very fact that the note itself expressly stipulates the minimum and maximum number of ribs which must be present in the portion of the animal in question implies that that expression refers not to the ribs but to the other bones, including the neck bones.

18 In view of that definition of the products which fall within subheading 02.01 A II (a) 2 bb the possibility of classifying in that subheading separated quarters such as those in the present instance from which a neck bone, even a small one, has been removed, must be excluded.

19 From the General Rules for the Interpretation of the Nomenclature of the Common Customs Tariff, in particular Rule 3 (c) thereof, it is evident that only tariff subheading 02.01 A II (A) 4, which covers products "other" than carcases, half carcases, forequarters and hindquarters, is relevant for the purposes of the tariff classification of the said products. In view of the fact that subparagraphs aa and bb of that subheading cover "unboned (bone-in)" cuts or "boned or boneless" cuts respectively, and that these products have been only partly boned, by the removal of one small bone in the neck, the most appropriate tariff classification under the Common Customs Tariff must therefore be in the present case that of "unboned (bone-in)" cuts within the meaning of subheading 02.01 A II (a) 4 aa.

20 The national court then asks whether, that being the tariff classification applicable to the goods in question, the monetary compensatory amounts applicable to such goods were to be at the rate appropriate to that classification.

21 As the Court has confirmed in past decisions (judgment of 4 July 1978 in Case 5/78, *Milchfutter,* 1978 ECR 1597); judgment of 28 March 1979 in Case 158/78, *Biegi,* 1979 ECR 1103), in the absence of express provisions it would be inappropriate for the headings of the Common Customs Tariff to be applied differently for one and the same product depending on whether the classification is for the imposition of customs duties, the application of the rules of the common organizations of the market or those of the system of compensatory amounts.

22 In those circumstances the reply to the first question must be that the provisions of the Common Customs Tariff which were in force during the period from 20 March 1978 to 28 April 1979 must be interpreted as meaning that fresh or chilled separated forequarters of beef or veal from which the atlas bone has been removed are to be classified in subheading 02.01 A II (a) 4 aa and to be subject to the monetary compensatory amount appropriate to such classification.

Question 2

23 In its second question the national court wishes in essence to know whether, when the trader has completed the export formalities laid down in Article 10 a of Regulation No 1380/75 of the Commission and where proof of completion of the formalities on importation has been furnished in the circumstances laid down in Article 11 (2) of that regulation, the exporting Member State is bound as far as payment of the monetary compensatory amounts on importation is concerned by the tariff classification, perhaps different from that applied by itself, which has been adopted by the Member State of importation and of which it has been notified in accordance with the provisions of Article 10 a (4) of the abovementioned regulation.

24 The plaintiff in the main action has observed, *inter alia,* that whilst it is true that the rules laid down in Article 2 a of Regulation No 974/71 of the Council, as amended by Regulation No 1112/73 of the Council, provide that the exporting Member State may not substitute its own tariff classification for that adopted by the importing Member State, nevertheless the said Member State is not bound to apply the classification adopted by the

importing Member State if the latter classification is found, in the light of a Commission regulation concerning interpretation or a decisions of the Court of Justice concerning the classification applicable to the products in question, to be inconsistent with the Common Customs Tariff. That is the case here, according to the plaintiff, in consideration of both Commission Regulation No 936/79 providing for tariff classification of the products in question in subheading 02.01 A II (a) 4 aa and the judgment of the Court of Justice to which the present proceedings regarding the tariff classification applicable to the products in question have been referred, should it uphold the classification which was applied by the exporting Member State.

25 Apart from the fact that a Commission regulation specifying the conditions for classification in a particular tariff heading or subheading is of a legislative nature and cannot therefore have retroactive effect (judgment of 28 March 1979, *Biegi*, cited above) it should be noted that the argument set out above is based on a misinterpretation of the provisions of Article 2 a of Regulation No 974/71 of the Council.

26 As the Court recently confirmed in its judgment of 18 September 1980 (*Pesch*, Case 795/79 [1980] ECR 2705) those rules are consistent with the general principles relating to the application of the Common Customs Tariff and governing the functioning of monetary compensatory amounts. It is common ground on the one hand that the determination of the monetary compensatory amounts applicable on import or export is linked to the tariff classification to which the imported or exported products are subject and on the other hand that the implementation of the Common Customs Tariff is the responsibility of the importing State in the case of each import and the exporting State in the case of each export.

27 In the same judgment the Court stated that that interpretation is borne out by the provisions of Regulation No 1380/75 of the Commission as amended by Commission Regulation No 1556/77 of 11 July 1977. Article 11 (2) thereof provides that where an exporting State exercises the option provided for in Article 2 a of Regulation No 974/71 payment by that State of the monetary compensatory amount due from the importing Member State is conditional upon, *inter alia* "production of proof that customs import formalities have been completed". Since the customs import formalities necessarily involve classification of the goods in question in accordance with the classification made by the national authorities of the importing Member State it follows that under the system established by that provision the tariff

classification made by the importing Member State binds the exporting Member State as regards payment of the compensatory amounts on import.

28 Similarly, the provision in Article 10 a (4) of the abovementioned Regulation No 1380/75 regarding Community transit, to the effect that the authorities of the Member States where the product is released for home use after completion of customs formalities must inform the Member State from which the goods departed of the classification applied on import, which may be different, confirms by implication that the tariff classification of the imported products is the responsibility of the importing Member State and that any discrepancy between the tariff classification made by the importing Member State and that adopted by the Member State whence the goods came has no effect other than to confer on the latter State the right to be informed thereof.

29 Although in accordance with the principle laid down in Article 5 of the Treaty, and having regard to the need for uniform application of the Community rules within the common market, every Member State making a tariff classification which proves in the light of a judgment of the Court interpreting the Common Customs Tariff to be inconsistent with the tariff, is bound to draw the appropriate conclusion from that judgment as regards the application of a correct tariff classification, nevertheless such a judgment does not give the exporting Member State within the framework of the system laid down in Article 2 a of Regulation No 974/71 of the Council the power to substitute itself for the importing Member State in selecting the tariff classification applicable to the goods once those goods enter the customs territory of the latter State.

30 Whilst undoubtedly the scheme laid down in Article 2 a of Regulation No 974/71 may in certain cases create problems for traders when the tariff classification made by the exporting Member State differs from that adopted by the importing Member State, those difficulties are not themselves attributable to the conditions governing the application of the system but may arise even outside the confines of the latter, as it is natural for them to appear at the present stage in the development of the Community rules governing tariff classification.

31 Furthermore, in view of the note made on the control copy T 5 by the customs authorities of the importing Member State regarding the tariff

classification which they had adopted, it appears that the plaintiff failed to avail himself of the oppurtunities open to him under the internal legislation of that Member State in order to challenge before the appropriate authorities of the country the conformity with the Common Customs Tariff of the disputed classification and, consequently, of the rate of the monetary compensatory amount on import resulting from that classification.

32 For those reasons the reply to the second question must be that the provisions of Regulation No 1380/75 of the Commission of 29 May 1975 are to be interpreted as meaning that the exporting Member State which, pursuant to the rules laid down in Article 2 a of Regulation No 974/71 of the Council, as amended by Regulation No 1112/73 of the Council, and with the agreement of the importing Member State, pays the monetary compensatory amounts payable by the latter State, is bound by the tariff classification adopted by the latter and may pay the monetary compensatory amounts due from the importing Member State only at the rate which corresponds to the tariff classification adopted by the latter.

Question 3

33 In its third question the national court inquires whether, in cases such as the present where the goods exported from a Member State and imported into another Member State have been given different classifications, and where the tariff classification applied on export is consistent with the Common Customs Tariff, the exporting Member State may, under the system introduced by Article 2 a of Regulation No 974/71 of the Council, refund to traders the difference between the monetary compensatory amount charged on export and the lower amount which would be collected by the exporting State on the basis of the tariff classification adopted by the importing Member State.

34 From the considerations set out above in regard to the second question it follows that the refund of such extra portion of the monetary compensatory amount, which has no legal basis in the tariff classification adopted by the exporting Member State, would conflict with the Community rules concerning the Common Customs Tariff and with those governing the operation of monetary compensatory amounts.

35 In the light of all those factors the reply to the third question must be that the provisions of Regulation No 974/71 of the Council, and in particular of Article 2 a thereof, and those of Regulation No 1380/75 of the Commission of 29 May 1975 must be interpreted as meaning that the exporting Member State is not empowered to pay traders the difference between the monetary compensatory amount applicable on export, which corresponds to the tariff classification made by that Member State, and the lower monetary compensatory amount on export which corresponds to the tariff classification applied on import by the importing Member State.

Costs

The costs incurred by the United Kingdom and by the Commission of the European Communities, which have 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 proceedings before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (First Chamber)

in answer to the questions referred to it by the High Court of Ireland by an order of 31 July 1980, hereby rules:

1. **The provisions of the Common Customs Tariff which were in force during the period from 20 March 1978 to 28 April 1979 must be interpreted as meaning that fresh or chilled separated forequarters of beef or veal from which the atlas bone has been removed are to be classified in subheading 02.01 A II (a) 4 aa and to be subject to the monetary compensatory amount appropriate to such classification.**

2. **The provisions of Regulation No 1380/75 of the Commission of 29 May 1975 are to be interpreted as meaning that the exporting Member State which pursuant to the rules laid down in Article 2 a of Regulation No 974/71 of the Council, as amended by Regulation No 1112/73 of the Council, and with the agreement of the importing**

Member State, pays the monetary compensatory amounts payable by the latter State, is bound by the tariff classification adopted by the latter and must pay the monetary compensatory amounts due from the importing Member State at the rate which corresponds to the tariff classification adopted by the latter.

3. **The provisions of Regulation No 974/71 of the Council, and in particular of Article 2 a thereof, and those of Regulation No 1380/75 of the Commission of 29 May 1975 must be interpreted as meaning that the exporting Member State is not empowered to pay traders the difference between the monetary compensatory amount applicable on export which corresponds to the tariff classification made by that Member State, and the lower monetary compensatory amount on export which corresponds to the tariff classification applied on import by the importing Member State.**

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 1 October 1981.

J. A. Pompe
Deputy Registrar

T. Koopmans
President of the First Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 2 JULY 1981

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling made by the President of the High Court in Ireland on 31 July 1980, in an action in which Anglo-Irish Meat Company Limited claims from the Irish Minister