OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 8 July 1986 *

Mr President,
Members of the Court,

1. In this dispute between Irish Grain Board (Trading) Limited (hereinafter referred to as 'Irish Grain') and the Minister for Agriculture, the Supreme Court of Ireland is asking the Court of Justice to interpret two Community measures: Regulation (EEC) No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (Official Journal, English Special Edition 1971 (I), p. 257) and Regulation (EEC) No 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts (Official Journal 1975, L 139, p. 37). In particular, the national court wishes to ascertain whether and on what conditions a trader is entitled to payment of monetary compensatory amounts on imports of grain whose release into the economy of the importing State has not been fully established.

Between December 1977 and July 1978 Irish Grain, an industrial and provident society which purchases grain from its members and markets it on their behalf, exported grain from Ireland to five purchasers in Northern Ireland. During that period monetary compensatory amounts were levied on exports from Ireland to the United Kingdom and granted on imports into the United Kingdom. At the time the two countries were bound by an agreement made under Article 2 a of Regulation No 974/71, whereby the exporting State pays the monetary compensatory amounts which should be granted by the importing State. Irish Grain accordingly claimed from the Minister for Agriculture (who in Ireland is the intervention agency) payment of the monetary compensatory amounts on the grain imported into the United Kingdom. It is common ground that the documentation needed for compliance with the Community legislation on monetary compensatory amounts and on the export of the grain in question was duly completed by Irish Grain's customs clearance agent. That documentation included *inter alia* the control copy T 5 form which contained a declaration that the grain was 'intended for home use in Northern Ireland'.

Where grain had been exported by Irish Grain in its lorries or by a carrier acting on its behalf, the intervention agency paid the monetary compensatory amounts without delay. However, where grain had been transported by carriers acting on behalf of Northern Irish purchasers, the intervention agency considered that an administrative investigation was called for. The United Kingdom customs authorities, who were entrusted with the task of carrying out the investigation, were unable to satisfy themselves that the grain had entered the United Kingdom for home use and the Irish Minister for Agriculture therefore refused to pay the monetary compensatory amounts.

Irish Grain accordingly brought an action against the intervention agency before the High Court of Ireland in order to recover from the defendant the monetary compensatory amounts claimed by it and totalling over IRL 138 000. By judgments of 9 March 1981 and 19 July 1982, the High Court held that the Northern Irish

* Translated from the Italian.

purchasers or at least some of them were guilty of fraudulent manoeuvres and of irregularities. The High Court was also satisfied that Irish Grain was in no way guilty of or privy to those irregularities. It therefore ruled that the plaintiff did not forfeit its entitlement to the payment of monetary compensatory amounts and ordered the defendant to pay the amount claimed, but rejected the plaintiff's claim for interest.

The Minister for Agriculture, however, appealed against the judgment of 19 July 1982 to the Supreme Court on the ground that the investigation carried out by the United Kingdom authorities and the High Court's finding regarding frauds and irregularities on the part of the purchasers justified his refusal to pay the monetary compensatory amounts claimed by Irish Grain until satisfactory evidence was produced of the entry of the grain for home use within the territory of the importing Member State. The Minister's argument was based on a number of provisions of Community law and, in particular, on Article 8 of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218) and of Articles 11 and 16 of Regulation No 1380/75.

Irish Grain, on the other hand, contended that the Minister was not entitled to refuse payment of the monetary compensatory amounts. It argued, in particular, that Article 8 of Regulation No 729/70 was inapplicable in this case because of the agreement concluded between the United Kingdom and Ireland under Article 2 a of Regulation No 974/71, as amended by Regulation (EEC) No 1112/73 (Official Journal 1973, L 114, p. 4). In its view, when acting as the agent of the importing Member State, the intervention agency has no function in the matter other than to pay the amount claimed. Irish Grain also argued that it was entitled to the payment of interest on the monetary compensatory amounts as from the date on which payment was claimed and, further, that it was entitled to payment in pounds sterling and not in Irish pounds.

In the light of those arguments and considering that the solution of the dispute called for the interpretation of Community law, the Supreme Court set in motion the procedure under Article 177 of the EEC Treaty. Accordingly, by order of 25 June 1985, the Supreme Court decided to stay the proceedings and to refer the following questions to this Court for a preliminary ruling:

(a) In a case where monetary compensatory amounts are payable by it in respect of commodities exported to another Member State pursuant to the relevant Community regulations and Community law governing the payment of such monetary compensatory amounts (in particular Articles 38 to 45 of the EEC Treaty, Regulation No 974/71 of 12 May 1971, as amended, Regulation No 1380/75 of 29 May 1975, as amended, and Regulation No 3094/76 of 17 December 1976) is a Member State entitled to refuse payment when the commodities concerned have not been released into the economy of the importing Member State due to fraud or other irregularity on the part of the purchasers of the said commodities, notwithstanding that customs formalities were completed, appropriate T 5 forms issued and the 'exporter' or 'person concerned', within the meaning of the said regulations, at all times acted *bona fide* in relation to the said transaction?

(b) Is a Member State entitled to refuse payment of monetary compensatory amounts claimed in respect of commodities exported to another Member State unless and until the claimant discharges an onus of establishing that such transactions were actually carried out and executed

correctly in accordance with the Community regulations and law, and notwithstanding the production of the appropriate T 5 forms or the *bona fides* of the actual claimant?

(c) Where the competent authority liable to pay monetary compensatory amounts has not paid them within two months from the date of receipt of sufficient supporting documentation by reason of having set in train administrative inquiries owing to the doubts concerning the said documentation, is Article 16 of Regulation No 1380/75 to be interpreted as requiring the said competent authority to pay interest on the monetary compensatory amounts and, if so, from what date and at what rate?

(d) Where a Member State is obliged to charge a levy on exports under Regulation No 974/71, as amended, and by agreement with another Member State under Article 2 a of the said Regulation No 974/71 is paying the monetary compensatory amounts granted on imports by that importing Member State and which exceed the levy so that the amount paid to the person concerned is the excess of the monetary compensatory amount over the levy, are Article 2 a of Regulation No 974/71 and Article 8 of Regulation No 1380/75 to be interpreted as entitling the person concerned to be paid in the currency of the importing Member State granting the monetary compensatory amount?

2. Since the Court has given numerous judgments in this area, I will confine myself to a brief outline of those rules governing monetary compensatory amounts to which the questions refer. Article 1 (1) of Regulation No 974/71 of the Council, as amended by Regulation (EEC) No 509/73 (Official Journal 1973, L 50, p. 1), provides that: 'If, for the purposes of commercial transactions, a Member State allows the exchange rate of its currency to fluctuate by a margin wider than that permitted . . . on 12 May 1971, (a) the Member State whose currency increases in value beyond the permitted fluctuation margin shall charge on imports and grant on exports, (b) the Member State whose currency decreases beyond . . . [those] margins shall charge on exports and grant on imports, compensatory amounts for the products referred to in paragraph 2, in trade with the Member States and third countries.'

With regard to the possibility referred to in Article 1 (1) (b), it is normally the exporting State which levies or grants the monetary compensatory amounts payable, where the customs formalities have been completed and the product has left its territory (see Article 10 (1) of Regulation No 1380/75). The rules also provide that the monetary compensatory amounts payable upon importation are granted or levied by the importing State. However, Article 2 a of Regulation No 974/71 authorizes the exporting and importing States to conclude an agreement whereby monetary compensatory amounts owed by the latter State are paid by the former. That provision lays down 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. . . . The compensatory amount shall be converted on the basis of the spot market rate of the relevant currencies as recorded over a period to be determined.'

The detailed rules governing the application of that provision are laid down in Article 11 of Regulation No 1380/75. The first subparagraph of Article 11 (2) of that regulation provides 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.' The second subparagraph of Article 11 (2) adds that proof is to be furnished by production of the control copy provided for in Article 1 of Regulation (EEC) No 2315/69 of the Commission of 19 November 1969 on the use of Community transit documents for the purpose of applying Community measures for verifying the use and/or destination of goods (Official Journal, English Special Edition 1969 (II), p. 515). Certain details, which are exhaustively set out in the regulation, must be entered in that document which is known as the T 5 form.

Regulation No 1380/75 contains two further provisions of general scope which are relevant for the purposes of this case. The first is Article 8 which is concerned with the level of the monetary compensatory amounts. Article 8 (1) provides that: 'The monetary compensatory amount to be granted or levied shall be the amount applicable on the day of export or on the day of import'. According to Article 8 (5), the day of import is 'the date used for determining customs duties and levies'. The second is Article 16 and is concerned with the period in which monetary compensatory amounts must be paid. It specifies that: 'Where the competent authorities are to grant a monetary compensatory amount, payment shall be made within two months from the day of deposit of sufficient supporting documents except in cases: of *force majeure*; or where administrative inquiries have been commenced owing to doubts concerning the accuracy of the evidence produced'.

It is appropriate to conclude this survey of the relevant rules of Community law by referring to Article 8 of Regulation No 729/70 of the Council, which provides that: 'The Member States in accordance with national provisions laid down by law, regulation or administrative action shall take the measures necessary to: satisfy themselves that transactions financed by the [European Agricultural Guidance and Guarantee] Fund are actually carried out and are executed correctly; prevent and deal with irregularities; recover sums lost as a result of irregularities or negligence . . . '.

A final point. In its first question the national court refers to Article 1 (1) of Regulation No 3094/76 laying down additional rules for the application of monetary compensatory amounts in trade between Ireland and the United Kingdom (Official Journal 1976, L 348, p. 21). That provision, however, according to which the competent authorities may make the granting of monetary compensatory amounts subject to special conditions in order to prevent irregularities, seems to be unconnected with this case. Article 1 (2) of the same regulation provides that the Member States concerned must immediately inform the Commission of the measures taken. Special conditions were in fact laid down for cereals under an agreement notified to the Commission on 30 May 1979, that is to say after the material events took place.

3. The Supreme Court is asking the Court of Justice in the first place to state whether it is lawful to refuse payment of monetary compensatory amounts to a Member State where, notwithstanding the proper completion of customs formalities and the exporter's good faith, doubts persist concerning the actual release of the grain

into the economy of the importing State. I would recall that the defendant in the main proceedings and the Commission of the European Communities suggest that the Court should answer this question in the affirmative, whilst Irish Grain takes the opposite view.

Irish Grain relies on three arguments:

(a) exportation is a single operation and may not be divided into two stages. At any rate, completion of the import formalities and the stamp placed on the T 5 forms by the customs authorities of the importing State on entry preclude any surmise that the goods were not released into the economy of that State;

(b) the rules of Community law and, in particular, Article 11 (2) of Regulation No 1380/75 do not require proof of actual release of the commodity on to the domestic market;

(c) once the commodity has been exported, it ceases to be under the control of the exporter who no longer has any means of knowing what becomes of it.

In the plaintiff's view, those contentions are supported by the Court's judgments of 18 September 1980 in Case 795/79 (*Pesch* v *Hoofdproduktschap voor Akkerbouwprodukten* [1980] ECR 2705) and of 1 October 1981 in Case 196/80 (*Anglo-Irish Meat Company Ltd* v *Minister for Agriculture* [1981] ECR 2263). In those cases the Court held that where it acts as the agent of the importing State and pays the monetary compensatory amounts itself, the exporting State has no authority to interfere with the documentation furnished by the customs authorities of the importing State.

I am not persuaded by the argument which I have just summarized. The Commission rightly considers that to attempt to resolve the problem merely by means of a literal interpretation of Article 11 (which, I would recall, provides that the exporter is to be entitled to the grant of the monetary compensatory amounts on furnishing proof that import formalities have been completed and, in particular, upon production of the T 5 form), without taking account of what becomes of the exported commodity and, I would add, of the possibility that the documentation furnished may be unreliable, is to over-simplify matters. That provision must be read in the light of *all* the other provisions of the regulation of which it forms part or, better still, in the light of all the rules of Community law on monetary compensatory amounts.

Regulation No 1380/75 in fact contains another provision, namely Article 16, cited above, which empowers the competent authority to delay payment of the monetary compensatory amounts where inquiries have been commenced 'owing to doubts concerning the accuracy of the evidence produced'. *A fortiori*, therefore, the authorities are authorized to refuse payment where the inquiries — which have not only been 'commenced' but have been completed — confirm that there are doubts concerning the accuracy of the documentation. Indeed payment would have to be refused in those circumstances as the authorities are required to satisfy themselves that transactions financed by the European Agricultural Guidance and Guarantee Fund are actually carried out and are executed correctly, and to prevent and deal with any irregularities (Article 8 of Regulation No 729/70).

But that is not all. The Court has stated that the object of monetary compensatory amounts is to promote the satisfactory circulation of products between two States with different price levels, and has concluded from this that the system of monetary compensatory amounts applies

only if (a) the goods concerned actually move between the two States and (b) such price-difference as may exist between the exporting State and the importing State constitutes an economic factor which adversely affects trade (judgment of 27 October 1981 in Case 250/80 *Anklagemyndigheden* v *Töpfer* [1981] ECR 2465).

If that is the object of monetary compensatory amounts and their purpose 'is to correct the effects of variations in unstable rates of exchange, which in a system whereby markets in agricultural products are organized on the basis of common prices are likely to cause disturbances in trade in such products' (judgment of 15 October 1985 in Case 125/84 *Continental Irish Meat* v *Minister for Agriculture* [1985] ECR 3441, paragraph 16 of the decision), it follows that they will continue to serve that purpose only in so far as the commodity actually reaches the market of the importing State because that is the only factor which can give rise to a variation in rates of exchange. However, as Mr Advocate General Capotorti pointed out in the *Töpfer* case, that requirement is not satisfied *ipso facto* by the completion of customs clearance formalities. Those formalities must be completed if the product is to be released on to the market of the importing State but, in the absence of further conditions such as the supply of the product, no 'disturbances in trade' can arise.

It should next be said that there is no substance in Irish Grain's argument to the effect that the intervention agency which pays the monetary compensatory amounts under the agreement provided for by Article 2 a of Regulation No 974/71 acts as the agent of the importing State and cannot therefore refuse to discharge that obligation. In explaining in the *Continental Irish Meat* judgment the decisions referred to by the plaintiff in that case, the Court stated that the role conferred by Community law on the intervention agencies of the Member States includes the exercise of broad powers for the management of the system. In particular, when acting under Article 2 a, the intervention agency of a Member State may exercise the same powers as those conferred upon it for the recovery of the monetary compensatory amounts due on exportation of a commodity from the territory of that State.

Finally, the fact that an irregularity arises from the unlawful conduct of a third party is, in my view, irrelevant, or, to be more accurate, inherent in the commercial risk borne by the exporter. The exporter may protect himself against that risk by inserting an appropriate clause in the contract which he concludes with the purchaser of the commodity.

4. In question 2 the national court seeks to ascertain whether the onus of establishing that the product has actually been released into the economy of the importing State is to be borne by the person claiming the monetary compensatory amounts or by the intervention agency. Irish Grain, as has been seen, considers that the answer to that question depends on Article 11 of Regulation No 1380/75. Production of the T 5 form stamped by the customs authorities is decisive for the purposes of that provision. Having completed those formalities, the exporter has discharged his duty. He cannot therefore be required to prove that the transaction concerned has taken place and has been carried out correctly.

However, that argument too fails to take account of Article 16 which, as the Court will recall, authorizes the intervention agency to commence inquiries concerning the legality of the transaction and the accuracy of the documentation. It seems clear to me that if the results of those

inquiries do not point one way or the other, the onus of clarifying or rectifying those results by establishing that the product has reached the market of the importing State must be borne by the person claiming the monetary compensatory amounts.

Nor can it be argued that the Court's judgment of 5 December 1985 in Case 124/83 (*Direktoratet for Markedsordningerne* v *Corman* [1985] ECR 3777) runs counter to that view; there it was held that 'it is for the competent authorities claiming that there is an error in . . . [the T 5] document to furnish proof of the error' (paragraph 50 of the decision). The terms of the problem differ in this case from those in which it was posed in *Corman*. Whereas in this case payment has not been made because the investigation carried out revealed that the customs documentation was inconclusive, in *Corman* a similar inspection had established the accuracy of the documents produced with the result that the authorities were obliged to release the security deposited by the purchaser. However, the national intervention agency was not satisfied with the results of that inspection and carried out a further inspection with a view to recovering the amount paid. It was therefore logical for the Court to hold that the burden of proof rested on the national authorities.

5. The third and fourth questions seek to ascertain whether interest is payable as a result of the delay in the payment of the monetary compensatory amounts and to determine the currency in which those compensatory amounts are to be paid. In the light of the conclusions which I have reached so far, those problems could be left aside. However, I will deal with them for the sake of completeness.

As regards question (c), I would recall that the Court has consistently held that 'it is . . . for national courts . . . to settle all ancillary questions . . . such as the payment of interest, by applying their domestic rules regarding the rate of interest and the date from which interest must be calculated' (judgments of 21 May 1976 in Case 26/74 *Roquette* v *Commission* [1976] ECR 677, paragraph 12 of the decision, and of 12 June 1980 in Case 130/79 *Express Dairy Foods* v *Intervention Board for Agricultural Produce* [1980] ECR 1887, paragraph 17 of the decision). That principle was laid down in relation to the reimbursement of charges improperly imposed but it is clearly of general application and therefore applies to any area, including that of monetary compensatory amounts, in which there are no specific provisions concerning payment of interest.

Moreover, the Commission has rightly pointed out at the hearing that the national court will have to take two factors into account: (a) Article 16, which has been referred to several times, authorizes the intervention agency to delay payment until it is satisfied by the results of the inquiries or the proof furnished by the exporter that the commodity has reached the market of the importing State; and (b) the conditions of payment may not be less favourable than those laid down in similar situations by national law, and they may not be so framed as to render virtually impossible the exercise of rights conferred by Community law (judgment of 9 November 1983 in Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595, paragraph 12 of the decision).

I now turn to the problem of the currency in which payment is to be made. As we know, the Member States pay the monetary compensatory amounts in their own currency at the rate applicable on the date of importation. However, when an agreement is concluded under Article 2 a of Regulation No 974/71, that rule may not be applied in such a way as to place traders at a disadvantage. It follows that in the circumstances referred to by the Supreme Court, the monetary compensatory amounts

should be paid either in pounds sterling or the equivalent thereof, calculated at the aforesaid rate, in Irish pounds.

It might be argued that although the solution which I have suggested may be an equitable one, it conflicts with the statement made by the Court in paragraph 17 of the *Continental Irish Meat* judgment to the effect that Article 2 a merely simplifies the administration of the system of monetary compensatory amounts by making it possible to enter the debts and claims of each exporter in a single account kept by the intervention agency of one Member State (in this case Ireland) in the currency of that State (in this case Irish pounds). That objection, however, would be misconceived. As I said earlier, Article 2 a provides that: 'The compensatory amount shall be converted on the basis of the spot market rate of the relevant currencies as recorded over a period to be determined'. Accordingly, when the Court referred to the currency of the exporting country, it must have had in mind the sum expressed in that currency, initially calculated in the currency of the importing country and subsequently converted at the rate applicable on the date of importation.

6. In the light of all the foregoing considerations, I suggest that the questions submitted by the Supreme Court of Ireland by order of 25 June 1985 in the proceedings between Irish Grain Board (Trading) Ltd and the Minister for Agriculture should be answered by the Court in the following manner:

(1) Where a Member State is required under the rules of Community law to pay monetary compensatory amounts in respect of commodities exported to another Member State, it is entitled to refuse payment if, following the conduct of an administrative inquiry, doubts persist concerning the actual release of the commodities into the economy of the importing State, notwithstanding the fact that the customs formalities have been completed, that the T 5 form has been issued and that the exporter has acted in good faith.

(2) The onus of proving that export transactions have been carried out properly and that the commodity has actually been entered for home use must be borne by the person claiming payment of the monetary compensatory amounts.