OPINION OF MR ADVOCATE GENERAL VAN GERVEN
delivered on 22 February 1989 *

Mr President,
Members of the Court,

1. The Danish Government seeks on the basis of Article 173 of the EEC Treaty the partial annulment of the Commission decisions of 19 June and 18 August 1987 on the clearance of the accounts presented by the Member States in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, for the financial years 1983, 1984 and 1985 respectively. [1] That government objects to the Commission's refusal to allow Community financing in respect of DKR 4 710 776, DKR 1 007 099 and DKR 1 525 762, paid by Denmark by way of export refunds for Grana Padano.

2. The amounts at issue do not constitute the whole of the sum paid out by Denmark by way of export refunds for Grana Padano. The dispute concerns only the difference between the tariffs corresponding to tariff subheadings 04.04 E I ex (a) 1 (Grana Padano, Parmigiano Reggiano) and 04.04 E I ex (a) 3 (Other (cheeses) (excluding cheeses produced from whey), of a fat content, by weight, in the dry matter of 30% or more). The Commission considers that Denmark has wrongly applied the higher tariff corresponding to subheading 04.04 E I ex (a) 1. In its Summary Report concerning the conclusions resulting from the clearance of the accounts of the EAGGF for 1983, the Commission states, in that regard, that:

'Tariff subheading 04.04 E I ex (a) 1 is reserved for Grana Padano- and Parmigiano Reggiano-type cheeses which meet certain production and quality standards and which are manufactured in certain parts of Italy. The Commission has already notified those standards to the Member States with reference to an irregularity. Cheese exported from Denmark did not satisfy those standards and therefore had to be classified under tariff subheading 04.04 E I ex (a) 3'. [2]

3. It is common ground between the parties that the Danish Grana at issue, which according to Denmark qualifies for the same refund as Grana Padano, displays the same essential characteristics as Italian Grana Padano, in particular as regards its form, dimensions, internal and external appearance, colour, composition, consistency and taste, fat and water content, and maturity. The Commission has

* Original language: Dutch.

1 — The first of those decisions also concerns certain expenditure for 1982 but in respect of which the Commission expressed reservations in the same year. There is no disagreement between the parties with regard to that question of fact.

2 — Point 3.1.16 of the Summary Report for 1983, Doc I/165/86; in the Summary Report for 1984 and 1985, the Commission refers to the same point in its statement of reasons.

recognized this by implication,[3] acknowledging in its written observations that the only decisive distinction lies in the — in its view — intrinsic connection between the intervention system and the system of refunds (*infra*, point 11 *et seq.*) and further describing the cheeses as comparable. In reply to a question put to it at the hearing, the Commission expressly stated that in terms of content Danish Grana does not differ from Grana Padano.

4. In its application, the Danish Government challenges the Commission's aforesaid interpretation (*supra*, point 2) with regard to export refunds but not with regard to intervention mechanisms that are internal to the Community, although Italian Grana Padano qualifying to bear the designation of origin[4] and other cheese of the same kind are clearly distinguished inasmuch as a system of intervention is provided only for the former (*infra*, point 5). According to the statement made at the hearing by the Commission's expert, those intervention mechanisms are never applied either in Italy, where producers obtain a price which is far higher than the intervention price, or in Denmark, where production is intended almost exclusively for export to non-member countries. In any event, the Danish Government's action for annulment concerns exclusively the repayment of export refunds.

Legislation

5. The dispute between the parties is centred on the series of regulations concerning the common organization of the markets in milk and milk products. Although the parties are agreed that the proceedings are restricted to refunds, the premiss on which their reasoning is based is the intervention system. It is therefore necessary briefly to consider the two systems in question.

So far as intervention prices are concerned, the Council regulations on milk and milk products clearly refer to the relevant Italian legislation concerning designations of origin. That is so particularly in Article 5(2) of the basic regulation, Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products,[5] in which reference is made to '... areas of the Community where such cheeses (Grana Padano and Parmigiano Reggiano) qualifying to bear the designation of origin are produced ...'. Article 8(1) of the regulation refers to 'the intervention agency designated by the

3 — Of course, it is not possible to deduce an argument in support of the view that the two types of cheese are different from the mere fact that 'Padano' refers to a part of the Po valley in Italy. Just as Padano refers to the Po valley, Edam and Gouda refer to towns in the Netherlands. None the less, in its judgment of 22 September 1988 in Case 286/86 *Deserbais* [1988] ECR 4907, the Court recognized as self-evident that Member States other than the Netherlands, and therefore towns other than Edam, could produce Edam-type cheese.

4 — In the relevant Community regulations, Parmigiano Reggiano, another type of cheese with an Italian designation of origin, is accorded the same status as Grana Padano. This dispute is not concerned with that cheese and (apart from certain references in the regulations) I do not propose to take it into account. A difference concerning legal status, which the Court is not required to deal with in this case, is the fact that Parmigiano Reggiano in contrast to Grana Padano enjoys protection as a type of cheese and as a designation of origin under the Stresa Convention of 1 June 1951, which has been signed by a number of Member States including Italy and Denmark (on that Convention, see — most recently — the Court's judgment of 22 September 1988 in Case 286/86 *Deserbais* [1988] ECR 4907, paragraph 18).

5 — OJ, English Special Edition 1968 (I), p. 176.

Member State in which Grana Padano and Parmigiano Reggiano cheeses qualifying to bear the designation of origin are produced . . .'. Then there is Regulation (EEC) No 971/68 of the Council of 15 July 1968 laying down general rules for intervention on the market in Grana Padano and Parmigiano Reggiano cheeses.[6] Both Article 1 and Article 10 of that regulation refer to the intervention agency, which clearly means the Italian intervention agency. Accordingly, Article 2(2)(a) and (b) of Regulation (EEC) No 1107/68 of the Commission of 27 July 1968 on detailed rules of application for intervention on the market in Grana Padano and Parmigiano Reggiano cheeses[7] refers to a quality grade ('scelto O/1') for Grana Padano which is derived from the Italian legislation in force in 1968.[8]

6. The *ratio legis* of the special intervention system for Grana Padano is set out in Article 5(2) of Regulation No 804/68, which provides as follows: 'the intervention prices for the cheeses specified in paragraph 1(c) shall be fixed at levels which will give milk producers in areas of the Community where such cheeses qualifying to bear the designation of origin are produced the same long-term security as regards milk prices to producers as that provided by the intervention measures in respect of skimmed milk and butter'.

The reason for Italy's decision to treat certain types of cheese (Grana Padano and Parmigiano Reggiano) as derived products which also qualify for intervention, alongside butter and skimmed-milk powder, is the fact that those two products are manufactured in small quantities in Italy and the consequential need for that country to add a representative product for the manufacture of which only milk may be used which is produced in certain parts of Italy.[9] Italian milk producers are thus

6 — OJ, English Special Edition 1968 (I), p. 251.

7 — OJ, English Special Edition 1968 (II), p. 382.

8 — For a recent assessment of the Italian legislation, see: 'La Villa', in Cohen Jehoram (ed.): *Protection of geographic denominations of goods and services* 1980, p. 37 *et seq.*, especially at p. 53. The author, like the Commission in this case, refers to Presidential Decree No 1269 of 30 October 1955, published in *Gazzetta ufficiale della Repubblica italiana* (GURI), 1955, No 295, p. 4401. According to that decree, the designation 'Grana Padano' is reserved, in connection with Law No 125 of 10 April 1954 entitled 'Tutela delle denominazioni di origine e tipiche dei formaggi' (published in GURI, 1954, No 99, p. 1294) and on the initiative of the Comitato nazionale per la tutela delle denominazioni di origine e tipiche dei formaggi, set up in accordance with Article 4 of that law (see GURI, 1955, No 187, p. 2896), to the types of cheese produced within the territory of the following provinces: Alessandria, Asti, Cuneo, Novara, Torino, Vercelli, Bergamo, Brescia, Como, Cremona, Mantova, on the left bank of the River Po, Milano, Pavia, Sondrio, Varese, Trento, Padova, Rovigo, Treviso, Venezia, Verona, Vicenza, Bologna, on the right bank of the River Reno, Ferrara, Forlì, Piacenza and Ravenna.

9 — Article 2(1)(b), first indent, of Regulation No 1107/68 of the Commission of 27 July 1968 on detailed rules of application for intervention on the market in Grana Padano and Parmigiano Reggiano cheeses provides as follows: 'the Member States shall take all measures necessary to ensure that . . . undertakings process only milk originating from their own collection area'. According to the Commission's contention, which has not been challenged, that indent refers to Presidential Decree No 1269 of 30 October 1955, mentioned in the preceding footnote, which defines the areas in which Grana Padano must be produced. That decree also lays down a quality standard for the milk to be used ('milk which is produced by cows whose basic feed consists of green or preserved fodder, is obtained by milking twice a day and, after it has been allowed to settle, is partially skimmed by hand'). The conclusion can be drawn from the existence of that provision concerning the milk to be used and from the definition of designations of origin ('denominazioni di origine') in Article 1 of that decree and of 'type designations' ('denominazioni tipiche') in Article 2, the sole difference between the two lying in the influence which the 'production areas' ('le zone di produzione') are considered to exert on the requirements for designations of origin, that the milk to be used must come from the listed areas. That conclusion is supported by the definitions of 'denominazioni di origine' and 'denominazioni tipiche' in Article 2 of Law No 125, referred to in the preceding footnote, which lays down that the product characteristics which the types of cheese in question must exhibit in order to qualify for a designation of origin 'are determined primarily by the particular state of the production area', and in order to qualify for a type designation, by 'specific methods of production'.

accorded the same 'long-term security' with regard to the price of milk as is accorded to producers elsewhere in the Community.

7. I now turn to the regulations concerning refunds. Whereas, as stated earlier, Article 5 concerning intervention prices (Title I) and Article 8 concerning intervention mechanisms (Title II) of Regulation No 804/68 expressly refer to Grana Padano 'qualifying to bear the designation of origin', the provisions concerning the rules on trade with third countries and thus relating to refunds (Title III) make no reference to Grana Padano (and Title IV containing general provisions does not refer to it either). Nor does Regulation (EEC) No 876/68 of the Council of 28 June 1968 laying down general rules for granting export refunds on milk and milk products and criteria for fixing the amount of such refunds [10] refer either to Grana Padano or to designations of origin.

As regards the regulations of the Commission, a shift in attitude can be observed. In the annual regulations on the fixing of refunds that were adopted before 1979 [11] tariff subheading 04.04 E I ex (a) 1 is described simply as 'Grana'. It is only since 1980 that the description in the annex has been amended to 'Grana Padano' and that different refunds are specified for tariff subheadings 04.04 E I ex (a) 1 (Grana Padano) and 04.04 E I ex (a) 3 (Other cheeses). [12] In subsequent regulations on the fixing of refunds, including Regulation (EEC) No 33/82 of 7 January 1982 [13] — that is to say the regulation that was in force at the commencement of the material period — there is still no reference to Grana Padano or to designations of origin either in the preamble or in the text and the difference of treatment is still apparent in the annex inasmuch as different refunds are specified for the two aforesaid tariff headings. In the Nimexe nomenclature the description used is still simply 'Grana', [14] which leads to confusion in the light of Article 19 of Regulation No 804/68. [15] In the Commission's Explanatory Notes to the Common Customs Tariff, 'Grana' in subheading 04.04 E is described as a type of cheese of which both 'Parmigiano Reggiano' and 'Grana Padano' are subdivisions, whereas in subheading 04.04 E II ex (a) 'Grana' is described simply as a hard cheese alongside 'Parmigiano Reggiano'.

10 — OJ, English Special Edition 1968 (I), p. 234.

11 — The last two are Commission Regulation (EEC) No 1654/78 of 14 July 1978 fixing the refunds on milk and milk products exported in the natural state (OJ L 192, 15.7.1978, p. 5) and Regulation (EEC) No 2033/79 of 18 September 1979, bearing the same title (OJ L 235, 19.9.1979, p. 5).

12 — Regulation No 2822/79 of 14 December 1979 (OJ L 320, 15.12.1979, p. 20).

13 — OJ L 4, 8.1.1982, p. 15.

14 — Annex to Commission Regulation (EEC) No 3631/85 of 23 December 1985 amending the nomenclature of goods for the external trade statistics of the Community and statistics of trade between Member States (Nimexe), OJ L 353, 30.12.1985, p. 3, in particular at p. 36.

15 — Article 19(1) provides as follows: 'the general rules for the interpretation of the Common Customs Tariff and the special rules for its application shall apply to the tariff classification of products covered by this regulation; the tariff nomenclature resulting from application of this regulation shall be incorporated in the Common Customs Tariff'.

8. Although the rules concerning refunds are therefore characterized by a degree of ambiguity, the amendment in 1979 of the description of tariff subheading 04.04 E I ex (a) 1 and the reference to different refunds for subheadings 04.04 E I ex (a) 1 and 04.04 E I ex (a) 2 none the less indicate that it was the Commission's unequivocal intention to classify only Grana Padano with an Italian designation of origin under the first-mentioned tariff heading and to accord preferential treatment to that type of cheese.

At the hearing, the Commission gave reasons connected with commercial policy for its attitude. In 1979 it had noticed that Belgian producers manufactured and exported a cheese of the type at issue to the United States. Since the production of that (Belgian) cheese was not subject to the obligation that milk from a specified (Italian) region must be used, the producers could produce it more cheaply and undercut the Italian products sold on the United States market, to the annoyance of the United States trading partner. In order to preserve good relations with the United States and in order to continue its support for milk production in Italy by the grant of refunds,[16] the Commission found it necessary to draw a distinction as from 1 January 1980 between Italian Grana Padano and other Grana-type cheeses.[17] It put that policy decision into practice by adding the word 'Padano' to the description of tariff subheading 04.04 E I ex (a) 1 in the regulation on the fixing of refunds.

16 — No support was in fact provided under the intervention system: *supra*, point 4.

17 — As from the same date other Italian Grana-type cheeses, in particular Grana Veneziano and Grana Lombardo (which, as was stated at the hearing, are said to account for approximately 5% of Italian production), could still qualify only for the lower refund on the same footing as non-Italian Grana-type cheeses.

Rejection of the argument *a contrario*

9. The Danish Government deduces an argument *a contrario* from the differences outlined between the rules on intervention and the rules on refunds. That argument must, in its view, lead to the conclusion that all cheeses which can, under the national rules in force, be called 'Grana Padano' must be be eligible for the higher refund (since 1 January 1980) for subheading 04.04 E I ex (a) 1.

The applicant's argument is as follows. Neither the designation 'Grana Padano' nor, to be sure, the phrase 'qualifying to bear the designation of origin' are to be found either in the provisions on refunds in Regulation No 804/68, or in Council Regulation No 876/68 laying down general provisions concerning refunds, or in the preamble to or text of the Commission's regulations on the fixing of refunds. Clearly it is otherwise under the intervention system, whose unequivocal provisions

expressly establish on the basis of the *ratio legis* a preferential system for 'Grana Padano qualifying to bear the designation of origin'. That contrast demonstrates, according to the Danish Government, that neither the Council nor the Commission, at least initially, intended to set up so far as refunds were concerned a preferential system for Grana Padano with a designation of origin. That is borne out, according to the Danish Government, by the fact that the Commission inserted the word 'Padano' — though still without the addition of the phrase 'qualifying to bear the designation of origin' — in the annex to the regulations on the fixing of refunds as from 1 January 1980 for the first time. [18]

I am not swayed by that reasoning *a contrario*. In my view, it is impossible to draw any conclusions one way or the other from the fact that the rules on refunds for milk and milk products initially contained no reference to Grana Padano with a designation of origin. Admittedly, in the regulations of the Council that reference does not appear in connection with refunds. Does this mean, however, that the Commission should not, by analogy with the rules on intervention, have applied that reference in relation to refunds as it did subsequently? Since the regulations of the Council do not expressly preclude the application of that reference by analogy, to do so would seem to me to come within the scope of the Commission's implementing powers. However, it is necessary to ascertain whether, in so doing, the Commission acted in a manner that was contrary to one or other of the binding provisions of the Treaty or of Regulation No 804/68. In my view, that is the real question which arises, and which I now propose to consider.

Article 17(2) of Regulation No 804/68

10. The aforesaid question is also central to the Danish Government's reasoning. It refers to Article 17(2) of Regulation No 804/68 of the Council, according to which the refund is to be the same for the whole Community but may be varied according to use or destination. This is an instance involving the application of the principle of equality, as it is generally applied to the common agricultural policy. The Danish Government contends, not without reason, [19] that this principle must be applied as a guideline for interpretation where the wording of a regulation is open to two interpretations. In this case, the Danish Government uses that as an argument in support of its reasoning *a contrario*: since it

18 — In order to reinforce its argument *a contrario*, Denmark refers to the case of 'Prosciutto di Parma' and 'Prosciutto di San Daniele', two types of ham protected in Italy by a designation of origin for which there is a special system of refunds based on regulations expressly adopted by the Commission and not simply on different tariff headings in an annex (see Commission Regulation (EEC) No 3037/87 of 9 October 1987 fixing the export refunds on pigmeat, OJ L 288, 10.10.1987, p. 13). However, that comparison is not of great value since there is for those products only a system of refunds and not an intervention system.

19 — See the judgment of 25 November 1986 in Joined Cases 201 and 202/85 *Klensch* [1986] ECR 3477, paragraph 21, in which the Court stated that 'when it is necessary to interpret a provision of secondary Community law, preference should as far as possible be given to the interpretation which renders the provision consistent with the Treaty; in this case regard must be had specifically to the requirement not to discriminate between producers within the Community which is laid down in Article 40(3) of the EEC Treaty'.

is questionable whether the Council wished to draw a distinction between Grana Padano with an Italian designation of origin and other types of Grana in connection with the grant of refunds, it is necessary in the light of Article 17(2) to opt for the interpretation according to which all Grana-type cheeses within the Community are to be accorded equal treatment for the purposes of the grant of export refunds.

That is a weighty argument, particularly since, if accepted in its entirety — that is to say, if the distinction between types of Grana were to be considered contrary to the general principle of equality (*infra*, point 13) — it could call in question the whole system, including the rules on intervention, a consequence which the Danish Government did not wish (or dare) to draw either [20] and which is therefore not an issue in these proceedings (*infra*, point 14).

11. The Commission rejects the Danish Government's argument and maintains that Grana Padano with an Italian designation of origin is a different product from other cheeses of the same kind. Naturally, the Commission relies not on differences as to content, for evidently there are none (*supra*, point 3), but on the fact that Grana Padano with an Italian designation of origin is subject to quite different statutory provisions. The Commission has in mind, in particular, the obligation to use for the production of the Italian cheese milk from certain specified parts of Italy, which makes that cheese more expensive than, for instance, Danish Grana which can be manufactured from milk that is cheaper. As a result of that price difference, which is attributable to a difference in production costs, Grana Padano with an Italian designation of origin is treated differently under the Community intervention system which, according to the Commission, in its turn means that, on account of the intrinsic connection between internal intervention mechanisms and export refunds, that cheese must likewise be treated differently under the system of refunds.

12. I am inclined to agree with the Commission's reasoning. Once it is established that the Grana Padano in question deserves to be protected within the internal organization of the market, it must also be supported for purposes of export to foreign markets, if it is still to be competitive there. [21] In the circumstances, however, that

20 — A possible factor here, as the Danish Government has itself pointed out in its application, is that in the dairy sector in Denmark there is also an intervention system which refers to national quality or approval standards for a certain type of butter ('lurmærket').

21 — In that connection reference may be made to Article 33 of Regulation No 804/68 which permits by way of a general provision (that is therefore also applicable to export refunds) 'appropriate account' to be taken 'at the same time' of agricultural and commercial policy objectives. However, I can find little or no basis in the case-law of the Court to substantiate the existence of an 'intrinsic' connection, as emphasized by the Commission, between intervention mechanisms and refunds. The Court does acknowledge the existence of a connection between export refunds and import levies with a view to combating abuses (see the judgment of 7 July 1981 in Case 158/80 *Rewe* [1981] ECR 1805, paragraph 22). However, the Court does not acknowledge the existence of any such connection between refunds and monetary compensatory amounts (see the judgment of 5 March 1980 in Case 38/79 *Butter- und Eierzentrale Nordmark* [1980] ECR 643, paragraphs 7 to 9). Some support for the view that there is a link between intervention mechanisms and refunds is provided by paragraph 10 of the Court's judgment of 4 March 1980 in Case 49/79 *Pool* [1980] ECR 569: '. . . the prices obtained by individual producers are indirectly determined by the combination of intervention in the market and the arrangements for the Community's external trade . . . '.

is not the case on account of the expenditure on intervention which would have been necessary in order to guarantee the cheese producers a higher price. In practice, as stated above (*supra*, point 4), such intervention has not so far been necessary since the price obtained by the Italian producers is higher than the intervention price. However, that is the result of the higher production costs and the willingness of consumers to pay a higher price for Grana Padano with a designation of origin.

In its reasoning, the Commission refers to Italian legislation on the quality and designation of origin of Italian Grana Padano which predates the EEC Treaty. As stated above (*supra*, point 5), the obligation incumbent on Italian producers to use milk from a specified part of Italy for the manufacture of that cheese was originally imposed by Italian provisions adopted in 1955. That obligation leads to a difference in production costs — according to an uncontested statement by the Commission, those additional costs amount to ECU 4 to 6 per 100 kg — and enables the Commission to argue that Grana Padano with an Italian designation of origin is different and can therefore, notwithstanding Article 17 of Regulation No 804/68 of the Council, qualify as a distinct product for different and more favourable treatment with regard to export refunds.

In the absence of a Community system of quality requirements and/or designations of origin for cheese [22] (in contrast to wine [23]), national rules may, according to the consistent case-law of the Court, be applicable in both the sphere of quality requirements [24] and the sphere of designations, [25] albeit within the limits set by Articles 30 to 36 of the Treaty. [26] I therefore find the Commission's reasoning plausible,

22 — Notwithstanding the preparatory work carried out at the Commission's behest (Eugen Ulmer: *The law on unfair competition in the Member States of the EEC*, Part I: comparative survey, 1965, Study undertaken at the request of the Commission of the European Communities by the Max-Planck-Institut für ausländisches und internationales Patent-, Urheber- und Wettbewerbsrecht, München, in particular No 432), no harmonization has been achieved with regard to designations of origin, indications of provenance and so on (see Written Question No 250/86, OJ C 290, 17.11.1986, p. 36). Designations of origin exist in the legal systems of some Member States, and to a lesser extent or not at all in that of others (see in that regard: Jean Pierre Cochet: *La notion d'appellation d'origine en droit communautaire*, 1985, and Klaus-Jürgen Kraatz: *Der Schutz geographischer Weinbezeichnungen im Recht der Europäischen Gemeinschaften*, 1980).

23 — Wine constitutes an exception to the lack of harmonization of the laws on designations of origin. As a supplement to the common organization of the market in wine (as most recently regulated by Council Regulation (EEC) No 337/79 of 5 February 1979, OJ L 54, 5.3.1979, p. 1), which encompasses the pricing and intervention system for table wine, the Council adopted on the same day Regulation (EEC) No 338/79 laying down special provisions relating to quality wines produced in specified regions (OJ L 54, 5.3.1979, p. 48); according to Article 16 of that regulation, Community law accords protection to traditional designations such as — in the case of Italy — 'denominazione di origine controllata' and 'denominazione di origine controllata e garantita'. The Court's judgment of 12 July 1984 in Case 49/83 *Luxembourg* v *Commission* [1984] ECR 2931, paragraph 13 deals with the difference between the systems established by those two regulations.

24 — Judgment of 7 February 1984 in Case 237/82 *Jongeneel* [1984] ECR 483, paragraph 13.

25 — Judgment of 22 September 1988 in Case 268/86 *Deserbais* [1988] ECR 4907, paragraph 11 of the decision.

26 — Apart from the two judgments referred to in the two preceding footnotes, reference must be made in this connection to the Court's judgment of 20 February 1975 in Case 12/74 *Commission* v *Germany* [1975] ECR 181.

although I am still left with certain misgivings which are considered below.

The principle of equality

13. My reservations are connected with the established case-law of the Court concerning the prohibition of discrimination between Community producers, as laid down in Article 40(3) of the EEC Treaty. The Court has held that:

'the various elements in the common organization of the markets, such as protective measures, subsidies, aid and so on, may *not* be differentiated according to region or according to other factors affecting production or consumption *except* by reference to objective criteria which ensure a proportionate division of the advantages and disadvantages for those concerned *without distinction between the territories* of the Member States' (emphasis added). [27]

The question arises whether at present — several years after the establishment of the common organization of the market in milk and milk products and following the accession of Member States in which there are probably areas where milk and cheese are produced in similar circumstances — it is still consistent with the principle of equality to maintain preferential treatment which refers to national legislation concerning the designation of origin for certain types of cheese without providing the same possibility for products from other parts of the Community in which production or consumption may be affected by similar factors. My reservations in that regard are all the greater since the Court has made it clear in a recent judgment that the broad discretion which, according to an earlier judgment, the Community institutions enjoy with regard to the implementation of the common agricultural policy diminishes as the integration of the market increases. [28]

14. Notwithstanding my reservations, I do not intend to advise the Court to consider that issue in further detail. The thrust of that argument goes far beyond the bounds of these proceedings, inasmuch as it relates not only to the rules on export refunds but also to the rules on intervention, as set out in the regulations of the Council. Since the parties — and in particular the Danish Government in its application (*supra*, point 4) — have confined these proceedings to the rules applicable to the repayment of export refunds, and since that argument as a whole has scarcely been touched upon, if at all, either in the written or in the oral procedure, the Court does not, in my opinion, have to state its views on it. Should the Court wish to consider that point, however, it would be necessary, in my view, to reopen the proceedings.

27 — Judgments of 13 July 1978 in Case 8/78 *Milac* [1978] ECR 1721, paragraph 18, second part, of 13 December 1984 in Case 106/83 *Sermide* [1984] ECR 4209, paragraph 28, and of 20 September 1988 in Case 203/86 *Spain* v *Council* [1988] ECR 4563, paragraph 25.

28 — Judgment of 2 February 1988 in Case 61/86 *United Kingdom* v *Commission* [1988] ECR 431, paragraph 14.

Conclusion

15. On the basis of the arguments put forward, I have come to the conclusion that the action for annulment brought by the Danish Government should be dismissed and that Denmark should be ordered to pay the costs.