amounts to eliminate completely the differences in situation of importers or exporters in the Member States and to shelter them from all the consequences of the variations in the rate of exchange of the national currencies.

3. As regards monetary compensatory amounts the fact that the factors necessary for their calculation are only determined after the period during which the said amounts have become applicable is inherent in the system itself and cannot be considered, on such grounds, as giving the rules a retroactive effect.
4. Regulation No 648/73 of the Commission of 1 March 1973 laying down detailed rules for the application of 'monetary' compensatory amounts and Regulation No 905/73 of the Commission of 23 March 1973 fixing the amount by which the 'monetary' compensatory amounts are to be adjusted are valid.

In Case 7/76

Reference to the Court under Article 177 of the EEC Treaty by the Ufficio di Conciliazione, Rome, for a preliminary ruling in the action pending before that court between

IRCA (INDUSTRIA ROMANA CARNI E AFFINI S.p.A.), having its registered office in Rome

and

AMMINISTRAZIONE DELLE FINANZE DELLO STATO

on the interpretation of and the validity of Regulation No 648/73 of the Commission of 1 March 1973 laying down detailed rules for the application of 'monetary' compensatory amounts (OJ L 64 of 9. 3. 1973, p. 1) and of Regulation No 905/73 of the Commission of 23 March 1973 fixing the amount by which the 'monetary' compensatory amounts are to be adjusted (OJ L 92 of 7. 4. 1973, p. 1).

THE COURT

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

Advocate-General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

A — Regulation No 805/68 of the Council of 27 June 1968 (OJ, English Special Edition 1968, p. 187) established the common organization of the market in beef and veal.

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 (OJ, English Special Edition 1971, p. 257) introduced a system of compensatory amounts in trade with Member States and third countries, applying to products covered by intervention arrangements as part of the common organization of agricultural markets. This regulation, as modified by Regulation No 509/73 of the Council of 22 February 1973 (OJ L 50 of 23. 2. 1973, p. 1), provides that a Member State of which the currency depreciates below the fluctuation limit shall charge on imports and grant on exports compensatory amounts in trade with Member States and third countries. (Article 1 (1)).

Article 4 (a) of this regulation provides:

'1. In trade with third countries, compensatory amounts
   (a) granted on imports shall be deducted from the import charge,
   (b) charged on exports shall be deducted from the export refund.
2. In trade between the Member States and third countries, the compensatory amounts applicable due to the decrease in value of the currency concerned may not be higher than the charge on products imported from third countries.
   However, the Council, acting on a proposal from the Commission and in accordance with the voting procedure provided for in Article 43 (2) of the Treaty, may decide, in certain exceptional cases, that the first subparagraph shall not be applicable.'

Under Article 6 'detailed rules for the application of this regulation, which may include other derogations from the regulations on the common agricultural policy, shall be adopted in accordance with the procedure laid down in Article 26 of Council Regulation 120/67/EEC of 13 June 1967 on the common organization of the market in cereals (OJ, English Special Edition 1967, p. 33), as last amended by Regulation (EEC) No 2434/70 or, if appropriate, the corresponding article of the other regulations on the common organization of agricultural markets'.

Article 6 of Regulation No 648/73 of the Commission of 1 March 1973 laying down detailed rules for the application of 'monetary' compensatory amounts (OJ L 64 of 9. 3. 1973, p. 1) provides:

'1. For the purposes of applying Article 4 (a) (2) of Regulation (EEC) No 974/71 the Commission shall fix the amounts by which the "monetary" compensatory amounts are to be "adjusted".

2. The amounts fixed pursuant to paragraph (1) shall be altered at regular intervals if this is rendered necessary by changes in the charge on imports from third countries.'

and Article 17 of that regulation provides:

'1. This regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities.

2. However, the amounts resulting from its application shall apply from 26 February 1973.

By way of derogation from the preceding paragraph these amounts shall, at the request of the party concerned, apply from 13 February 1973 if application of this regulation leads to

(a) the granting of:

— compensatory amounts which are higher than those applicable until this regulation enters into force;

or

— newly introduced compensatory amounts;

(b) the levying of import charges which are lower than the "monetary" compensatory amounts applicable until this regulation enters into force.'

The compensatory amounts valid with effect from 26 February 1973 were fixed by Regulation (EEC) No 649/73 of the Commission of 1 March 1973 (OJ of 9. 3. 1973 L 64, p. 7).

The Commission, in its Regulation (EEC) 905/73 of 23. 3. 1973 (OJ L 92 of 7. 4. 1973, p. 1) fixed the amounts by which the 'monetary' compensatory amounts are to be adjusted, in accordance with Article 6 of Regulation (EEC) No 648/73, the 'monetary' compensatory amounts appearing in Regulation (EEC) No 649/73. (Annex I: amounts valid with effect from 26. 2. 1973; Annex II: amounts valid with effect from 5. 3. 1973).

B — The IRCA company declares that on 22 March 1973 it imported 563 sacks of frozen meat and offals of bovine animals having a total weight of 19 800 kg and having a value of Lit. 15 635 670.

The customs authorities, it is said, applied the prescribed customs duty, 10 % of the value (Lit. 1 563 570) and accorded the company a credit of Lit. 1 506 780 by way of compensatory amounts. After subtracting this credit from the import duty, by virtue of Article 4 (a) (1) of Regulation (EEC) No 974/71, they then claimed payment of the difference, namely Lit. 56 790.

IRCA took the view that it had wrongly paid this sum, the compensatory amounts being higher than the customs duties and the reduction in these amounts made on the basis of Regulation No 905/73 of the Commission being illegal.

On 10 January 1976, it commenced proceedings before the Ufficio di Conciliazione of Rome, claiming that it should order the revenue authorities to repay the sum levied, reduced to Lit. 50 000.

By order of 22 January 1976, the Giudice Conciliatore decided to stay the proceedings and to refer to the Court of Justice of the European Communities under Article 177 of the EEC Treaty the following questions for a preliminary ruling:

'1. Was Regulation No 905/73 of 23 March 1973, published in the Official Journal of the European Communities L 92 of 7 April 1973, applicable to a transaction which took place on 22 March 1973 and if so, does there exist under the Community legal system a principle or a ruling allowing the Community authorities to adopt retroactive legislation?

2. Was Regulation (EEC) No 648/73 and was Regulation (EEC) No 905/73, which implements it, adopted in accordance with Article 4 (a) inserted

in Regulation (EEC) No 974/71 by Regulation (EEC) No 509/73, or, if that is not the case, did the strict interpretation of Article 4 (a) constitute one of the derogations from the regulations on the agricultural policy referred to in Article 6 of Regulation (EEC) No 974/71? Does the latter come under the inherent power of the Commission to adopt regulations?

3. Are Regulations (EEC) Nos 648/73 and 905/73 valid although their implementation puts Italian importers in a different situation in comparison with importers belonging to countries with a strong currency, and although they always involve a divergence unfavourable to Italian importers between the value calculated as a lump sum by the Community for the "monetary" compensatory amounts and the value determined by the Italian customs authorities upon importation?
4. Are Regulations (EEC) Nos 905/73 and 648/73 valid although they introduce a difference in the application of monetary measures between trade in the meat of bovine animals and that in other products coming under the agricultural regulations since in Italy it is not impossible, as has been maintained, to determine the value for tax purposes of an imported product because, pursuant to Article 3 of the Decreto del Presidente della Repubblica No 633 of 26 October 1972, the Italian customs authorities are always bound without exception to determine for the purposes of value-added tax the value for tax purposes of the imported product whether it is a domestic product or comes from third countries or Member States?

C — The reference was entered at the Court Registry on 26 January 1976.

Pursuant to Article 20 on the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by IRCA, represented and assisted by Augusto Pino and Pier Luigi Bonifazi and by Vincenzo Boccieri, a customs expert, and by the Commission of the European Communities, represented by its Legal Adviser, Cesare Maestripieri, acting as Agent.

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

II — Summary of the written observations lodged with the Court

IRCA argues that the reduction of the compensatory amounts is based on two regulations of the Commission which are invalid:

(a) Regulation No 905/73, because it contains a provision with retroactive effect thus infringing an acquired personal right.
(b) Regulation No 648/73, because it infringes Article 155 of the EEC Treaty, the rules of the Council, and equality as between traders.

(a) After describing the background of regulations in the present case, the undertaking IRCA argues that Regulation No 905/73, which itself says that it shall enter into force on the day of its publication in the Official Journal, namely on 7 April 1973, obviously cannot validly provide that the adjustments set out therein shall apply with effect from 26 February 1973.

It is alleged that notwithstanding the silence of the Treaty on the retroactive effect of Community rules, such retroactive effect is unacceptable because it is contrary to general principles common to all the Member States. To accept the retroactive effect of the adjustments would result in an infringement of an acquired personal

right and in a total lack of respect for the most elementary requirements of commerce.

The importer claims that on 22 March 1973 it had an individual right to the compensatory amounts set by Regulation No 649/73, and that there is no rule nor any principle of Community law which allows individual acquired rights to be ignored.

Moreover every trader takes into consideration every item of cost in his financial calculations, and on the basis of these costs he sets the price at which he re-sells to traders within the importing Member State. To increase the costs after the importation and the re-sale has taken place is to impose a serious and unjustified financial burden.

The retroactive nature of the adjusting amounts is not in line with the criteria which the Commission usually takes into account, and more particularly has taken into account in the regulations making provision for derogations from the application of the compensatory amounts (examples, p. 18).

But the invalidity of Regulation No 905/73 also results from the fact that the rule setting the adjusting amounts is void by reason of the invalidity of its legal basis, that is to say, Article 6 of Regulation No 648/73.

(b) The latter provision infringes Article 155 of the Treaty, and the rules laid down by the Council, especially Articles 4 (a) and (6) of Regulation No 974/71, and the principle of non-discrimination.

The Commission, with its system of adjusting amounts, has profoundly altered a regulation made by the Council. Instead of deducting compensatory amounts from the import charge (Article 4 (a) (1) of Regulation No 974/71) and of leaving any excess out of account (paragraph (2)), the Commission has provided for the reduction of the compensatory amounts to the level of the import charge by fixing a flat-rate import charge. In acting thus the Commission has altered the whole scheme of the rules adopted by the Council. For, to render monetary measures effective by providing that the excess of compensatory amounts over the charge on imports shall not be taken into account, and to reduce the compensatory amounts by adopting, in addition, a flat-rate system, are two different things.

The absence of any charge on imports as regards intra-Community trade apparently renders it impossible to apply Article 4 (a) (2).

The reduction of the compensatory amounts has led to a system of a flat-rate charge on imports. The necessity of resorting to this flat-rate system is the consequence of upsetting the system adopted by the Council. If that necessity had already arisen it would have constituted grounds for a new regulation of the Council. The problem only arises because the problem of comparing the compensatory amounts with the charge on imports has been converted into a problem of the equality of the compensatory amounts. The latter question, however, is foreign to the intentions of Article 4 (a) (2) of Regulation No 974/71.

Moreover, at the practical level, the method adopted by the Commission has created a difference between the charge levied on imports and the theoretical flat-rate charge. This difference is such that the compensatory amounts are often lower than the import charge, whereas Article 4 (a) (2) only says that they shall not be higher.

In Regulations Nos 905/73 and 648/73 the Commission has exceeded the limits to the power conferred on it by Article 6 of Regulation No 974/71. Clearly, in introducing a system of a flat-rate reduction of the compensatory amounts in the beef and veal sector, the

Commission has not applied Article 4 (a). The Commission has itself admitted that the said article does not require the flat-rate system as regards trade with third countries (see Case 46/75, *IBC* v *Commission,* Judgment of the Court of 27 January 1976, [1976] ECR 65) and that the method adopted was necessary for the purposes of applying Article 4 (a) to intra-Community trade, the reason for this being the absence of any charge on imports and the fact that the customs offices are not equipped for assessing the value of the goods.

Yet that provision did not intend any comparison with the compensatory amounts in intra-Community trade where no import charge exists. In mentioning trade between the Member States this rule obviously refers to goods in free circulation, and for such goods the import charge can generally be obtained on the basis of the documents mentioned in Article 11 of Regulation No 648/73.

The rule laid down by the Council ought to be interpreted as meaning that the compensatory amounts granted to importers belonging to Member States whose currency has devalued must not be higher than the difference in value on the two markets. For beef and veal this difference is calculated as a percentage of the value on the world market, to be added or subtracted depending on whether extra or intra-Community trade is involved.

The comparison of the difference in value with the monetary compensatory amounts on the beef and veal market does not present any difficulties (see example, p. 26) and the Commission's objection to the effect that the customs on the frontiers of the Community are insufficiently equipped is unfounded. For every trading transaction between Member States and third countries, it is always the duty of those offices to assess the value of the goods. IRCA refers to the provisions of the directives of the Council on the harmonization of the laws of the Member States relating to taxes on turnover (No 227/67 of 11. 4. 1967, OJ, English Special Edition 1967, p. 14; No 228/67 of 14. 4. 1967, OJ, English Special Edition 1967, p. 16) and to the implementing rules adopted by the Member States on assessing the value of goods (pp. 27 to 32).

IRCA observes that the assessment of the value of goods for the purposes of applying VAT does not require a method of assessment different from the one adopted for the purposes of calculating the import charge on goods coming from third countries, and for calculating the difference compared with the price applied on the world market for goods crossing intra-Community frontiers. Article 2 of the abovementioned Directive No 227/67 makes it clear that the calculation is to be made according to the same criterion as the one with which the import charge on beef and veal is determined, and more generally, on the basis of the difference in value between the Community market and the world market, given that it is always a percentage of the price that is involved.

The system of adjusting amounts has infringed the principle of non-discrimination.

The application of that system, although contrary to Article 4 (a), would not inevitably have brought about the loss which, as the Commission has itself admitted, was in fact caused. It would have been sufficient for the Commission to avoid simultaneously applying two different methods of calculating, and thus eliminate the possibility of a difference between the flat-rate charge calculated and the actual import charge, by providing that the deduction prescribed by Article 4 (a) be carried out in relation to the flat-rate charge and not to the actual charge. If it had acted thus, the Commission would have been following a practice already observed when, pursuant to Article 17 of

Regulation No 803 of 27 June 1968 (OJ, English Special Edition 1968, p. 170) introducing the system of standard average values as the basis of assessment for applying the Common Customs Tariff, it adopted Regulation (EEC) No 1570/70 of 3. 8. 1970 for the citrus fruits sector (OJ, English Special Edition 1970, p. 537).

Admittedly, the disadvantages suffered by some traders corresponds to the advantages obtained by others, but it is precisely this distinction between traders that the common market is intended to prevent. This distinction is not limited to traders in one and the same Member State but is aggravated as between traders belonging to a Member State with a weak currency and those in a Member State with a strong currency. So far as the latter are concerned, the fact that there is no difference between the flat-rate charge and the actual charge means that beef and veal are cheaper for them than for importers belonging to a Member State with a currency that has depreciated.

The *Commission* first of all makes a reference to the observations put forward in Case 46/75 *(IBC* v *Commission;* Judgment of the Court of 27 January 1976) and describes the circumstances in which the regulations in question were adopted.

As to the first question

According to the Commission, the principle that laws shall not have retroactive effect applies with all its force in criminal law (cf. Article 25 of the Italian Constitution). However, in other branches of the law retroactive provisions can exist, even on fiscal matters, when this is required by imperative considerations of the public interest. The Commission makes references to Italian and German textbooks and case-law on this point (p. 5 (1) and (2)).

Where Community law is primarily concerned with economic relationships, it may be applicable retroactively so as to protect the paramount public interest. In any case, it would be dangerous to impose an absolute prohibition on the Community legislature against adopting retroactive provisions when imperative necessity justifies doing so.

In the present case, it is necessary to take into account the circumstances in which the regulation in question was adopted and entered into force.

Regulation No 648/73 of the Commission of 1 March 1973 had already unequivocally announced that the amounts by which the monetary compensatory amounts to be adjusted were being introduced (preamble and Article 6). Merely on reading those provisions and those of Regulation No 649/73 of the same date and published in the same Official Journal as the regulation already mentioned 'it ought on those dates at least to have been clear to an experienced trader that the introduction of a new method of calculation was imminent' (Judgment of 10 December 1975 in Joined Cases 95 to 98/74, 15 and 100/75, *Union nationale des coopératives agricoles de céréales et autres* v *Commission and Council,* [1975] ECR 1615). It is argued in addition that Article 1 of Regulation No 649/73 introduced an express reservation concerning the application of Article 4 (a) (2) of Regulation No 974/71. The question therefore arises whether it remains possible in the present case to say that the Community provision was retroactive.

As to the second question

The Commission refers to Article 6 of Regulation No 974/71 which consists of a particularly wide delegation of powers given by the Council to the Commission. The limits to that delegation are to be found in the very purposes of the system of compensatory amounts. In addition, the regulation lays down a series of criteria which the Commission should

take into account. Amongst the detailed rules of application which the Commission is required to adopt, the fixing of compensatory amounts is particularly mentioned (Article 6 (2)). This fixing, which is not a purely automatic calculation, therefore calls for an evaluation which must take into account currency fluctuations and changes in the levels of the prices of the products. Admittedly, the Commission should also take into account the interests of individual traders, but its major concern ought to be to avoid 'abnormal price movements disturbing the normal development of the conjunctural situation in the agricultural area' and 'disturbances in trade in agricultural products'. Finally, in setting the compensatory amounts, it is necessary to take into account Article 4 (a) (2), first paragraph, of Regulation No 974/71, introduced by Regulation No 509/73. The Commission took this complex situation into account and performed the duty which had been placed upon it as part of the powers conferred on it by the Council.

The fact of reducing the compensatory amount by an adjusting amount does not run counter to the purposes of compensatory amounts. On this point, the Commission stresses the importance of Article 4 (a) (2) of Regulation No 974/71 in this system. The purpose of that provision is to prevent imports from third countries below the world market price. A further fact, however, is that the said provision presupposes that the import charge which, in the case of beef and veal subject to *'ad valorem'* duty, varies for each consignment of goods imported, is calculated so as to determine the level of the compensatory amounts in intra-Community trade.

The Commission cites the case-law of the Court confirming that compensatory amounts are not automatic (Judgment of 15 January 1974 in Case 154/73, *Becher* v *Hauptzollamt Emden,* [1974] ECR 19), stating the purposes of the system of compensatory amounts (Judgment of 12 November 1974 in Case 34/74, *Roquette* v *France* [1974] ECR 147) and recognizing the difficulties which would arise from having varying compensatory amounts, which might have tended to provoke deflections of trade (Judgment of 24 October 1973 in Case 5/73, *Balkan-Import-Export* v *Hauptzollamt Berlin Packhof,* [1973] ECR 1091).

Finally, the Commission refers to the opinion of the Advocate-General in Case 46/75 concerning the problem at issue.

As to the third question

Nor can the validity of the regulations concerned be called in question on the ground that they introduce discriminations as regards Italian importers.

When the stability of agricultural prices is threatened, the monetary compensatory amounts become necessary in order to compensate for the effects of monetary measures on the prices of the basic products for which intervention prices are fixed. As regards the situation of importers of beef and veal in the different Member States, it is precisely the absence of compensatory amounts which would bring about discriminations. These amounts do not introduce any discrimination because the application of them is based on objective criteria, which are more particularly defined in Articles 2, 3 and 4 of Regulation No 974/71.

The Commission submits calculations relating to an importation of meat into Italy and into the Federal Republic from third countries carried out on 22 March 1973 (Annex).

As to the fourth question

The Commission confirms its explanations given in Case 46/75.

It reminds the Court that the Commission fixes the compensatory

amounts which are applicable in theory, and that the Member States, for their part, have the duty of making a true and real comparison between the amount theoretically applicable and the import charge on the same product for the purposes of a possible application of the rounding-off rule (Article 4 (a) (2) of Regulation No 974/71). This division of duties is indispensable because in practice it would be impossible to take the rounding-off rule into account at the time when the compensatory amounts are fixed. These amounts depend on factors which are totally different from those which determine the import charge and that these factors which are totally different from those which determine the import charge and that these factors vary at different rates.

The particular application of the rounding-off rule to the beef and veal sector arises because of the existence of *ad valorem* duty on imports from third countries on the value of the goods in fact imported.

The existence of *ad valorem* duty would not present particular problems for the application of Article 4 (a) if the compensatory amounts were only applied to imports from third countries. However, trade between Member States must be taken into account and the following must be considered:

(a) The compensatory amounts for trade between Member States must be identical to those applicable to trade with third countries, for otherwise deflections of trade would be provoked.

(b) The import charge with which the compensatory amount has to be compared consists of a percentage applied to the value of the goods: in order to convert this percentage into a monetary figure, the value of the goods has to be assessed. This operation constitutes a serious obstacle to intra-Community trade for which the customs offices of the Community are no longer equipped, intra-Community customs duties having been abolished. In the case of exports to third countries complications also arise, because the customs offices do not normally undertake an assessment of the value of the goods.

These considerations led to the introduction of a flat-rate system and, in the beef and veal sector, to the system introduced by the regulations in question. This system provides that where a reduction of the compensatory amount may be required in order to bring it down to the level of the import charge, such reduction is not carried out case by case by the customs offices, but on an abstract basis by the Commission.

The Commission admits that the application of the criticised system can cause difficulties which it had already pointed out in the telex message of 7 December 1973 sent by the Director-General for Agriculture to the Italian Permanent Representation. The flat-rate determination of the import charge is essentially, as are all evaluations of this kind, the taking of an average and it is inevitable that the application of this method brings advantages to some and imposes sacrifices on others.

The Commission considered it necessary to give priority to the public interest and to avoid, as an overriding objective, deflections of trade which would have been dangerous for the common organization of the markets in the sector considered. As for this primacy of the public interest, the Commission refers to the opinion of the Advocate-General and to the judgment of the Court of 14 May 1975 in Case 74/74 *(CNTA v Commission* [1975] ECR 533). In the present case there existed an overriding need to preserve the functioning of the common organization of the market in beef and veal, and no one has shown that a solution other than the one adopted by the Commission exists in order to

mitigate difficulties resulting from the existence of an *ad valorem* duty.

The Commission is therefore of the opinion that consideration of the questions raised by the Giudice Conciliatore, Rome, has disclosed no factor of such a kind as to affect the validity of Regulations Nos 648/73 and 905/73.

III - Oral procedure

The oral observations of IRCA and of the Commission of the European Communities were heard at the hearing on 21 May 1976.

The Advocate-General delivered his opinion at the hearing on 22 June 1976.

Law

1 By order of 22 January 1976, which reached the Court Registry on 26 January 1976, the Giudice Conciliatore has referred to the Court of Justice for a preliminary ruling four questions on the interpretation and validity of Regulation No 648/73 of the Commission of 1 March 1973 laying down detailed rules for the application of 'monetary' compensatory amounts (OJ L 64, of 9.3.1973, p. 1) and Regulation No 905/73 of the Commission of 23 March 1973 fixing the amount by which the 'monetary' compensatory amounts are to be adjusted (OJ L 92, of 7.4.1973, p. 1).

2 The questions have been referred to the Court in relation to an action between IRCA, the plaintiff in the main action, and the Italian revenue authorities. IRCA has claimed that the revenue authorities should be ordered to repay a sum wrongly assessed for payment by reason of the fact that certain compensatory amounts with which IRCA ought to have been credited had been wrongly calculated.

3 The undertaking argued that when, on 22 March 1973, it imported 563 parcels of frozen meat and offals of bovine animals, the customs authorities applied the prescribed customs duty, namely Lit. 1 563 570, credited the undertaking with Lit. 1 506 780 by way of monetary compensatory amounts and, after subtracting this credit from the import charge, which in this case corresponded to the customs duty, claimed payment of the difference, namely Lit. 56 790.

4 The questions referred to the Court seek enlightenment first on whether the Community regulation on which the revenue authorities based their

calculations are valid, and secondly on whether the retroactive effect which the administration allegedly gave to those regulations is compatible with the principles and rules of the Community legal order.

5 It is appropriate to examine first the questions relating to the validity of Regulations Nos 648/73 and 905/73 (Questions 2, 3 and 4).

6 Before going in detail into the problems raised by these questions, mention should be made of the fact that Regulation No 974/71 of the Council was amended by Regulation No 509/73 which not only added Article 4a to it but changed and extended the whole system because of world-wide currency disturbances which affected the rate of exchange of several Member States from 13 February 1973 onwards.

7 This modification rendered it necessary for the Commission to replace its old implementing Regulation No 1013/71 (OJ L 110, p. 8) by Regulation No 648/73.

The latter lays down first how the coefficients corresponding to the variations in the rates of exchange are to be fixed, and secondly how the prices to which these coefficients are to be applied are to be determined by providing, in Article 5, that: 'A basic compensatory amount shall be fixed for each Member State for which the conditions set out in Article 1 of Regulation (EEC) No 974/71 are fulfilled'.

Thus the two factors necessary for calculating the monetary compensatory amounts are fixed by the Commission so as to ensure that the system set up is applied in a prompt and uniform manner.

8 Next, Regulation No 649/73 of the Commission of 1 March 1973 fixing the 'monetary' compensatory amounts (OJ L 64, p. 7) in the form adopted and published, provides in Article 1:

'Without prejudice to the provisions of Article 4a (2) of Regulation (EEC) No 974/71 'monetary' compensatory amounts shall be arrived at as follows:

1. The basic amounts shown in Annex I for the Member State concerned shall be multiplied by the coefficient shown in Annex II ...'

9 Article 6 of Regulation No 648/73 provides:

'1. For the purposes of applying Article 4a (2) of Regulation (EEC) No 974/71 the Commission shall fix the amounts by which the 'monetary' compensatory amounts are to be 'adjusted'.

2. The amounts fixed pursuant to paragraph (1) shall be altered at regular intervals if this is rendered necessary by changes in the charge on imports from third countries'.

10 Pursuant to this provision, the Commission adopted and published its Regulation No 905/73.

11 The answer to the question whether Regulations Nos 648/73 and 905/73 of the Commission were adopted in accordance with Articles 4a and 6 of Regulation No 974/71 of the Council is that those regulations were properly adopted, particularly when account is taken of the exceptionally wide terms of Article 6 of Regulation No 974/71, which requires the Commission to adopt detailed rules for application and provides that those detailed rules shall cover in particular the fixing of the compensatory amounts.

12 The third question asks whether the validity of Regulations Nos 905/73 and 648/73 is not affected by the fact that 'their implementation puts Italian importers in a different situation in comparsion with importers belonging to countries with a strong currency, and ... they always involve a divergence unfavourable to Italian importers between the value calculated as a lump sum by the Community for the 'monetary' compensatory amounts and the value determined by the Italian customs authorities upon importation'

13 The reason why the importers and exporters of the different Member States are put in different situations is to be found not in the application of the system of compensatory amounts but in the circumstances which led to its introduction, namely the movements of national currencies beyond the limits of fluctuation authorized by international rules.

The very purpose of the system of compensatory amounts is to prevent these currency movements from disturbing the functioning of the common agricultural policy.

However it would be expecting too much to require the system of compensatory amounts to eliminate completely the differences in situation of importers or exporters in the Member States and to shelter them from all the consequences of the variations in the rates of exchange of the national currencies.

Moreover, although the system chosen may in certain cases place Italian importers in an unfavourable situation compared with importers of other Member States, the said system may, for the same reasons, have the reverse effect as regards exporters.

14 Therefore the validity of the regulations in question cannot be affected by the facts set out in the third question.

15 The fourth question asks whether the said regulations 'are ... valid although they introduce a difference in the application of monetary measures between trade in the meat of bovine animals and that in other products coming under the agricultural regulations'.

In this connexion the national court states that the supposed impossibility of determining the value for tax purposes of the goods imported does not apply to Italy, where, for the reasons set out in the question, no such impossibility exists.

16 It is not correct that Regulation No 905/73 only covers beef and veal, as Annexes I and II thereto comprise a Part A relating to cereals and a Part B relating to beef and veal. It follows that that regulation is not an exceptional measure adopted for beef and veal alone, but constitutes a general measure implementing Article 4a of Regulation No 974/71 for the agricultural products which that article was intended to cover.

17 However, the plaintiff in the main action alleges that the way in which Article 4a is applied by Regulation No 905/73 is unacceptable as regards beef and veal because, contrary to the provisions governing the other agricultural products, the Common Customs Tariff does not set a fixed rate calculated by weight on the importation of beef and veal, but an *ad valorem* duty of 10 %.

18 Nevertheless both Regulation No 649/73 and Regulation No 905/73 respectively set for beef and veal a basic amount and an adjusting amount

under Article 4a of Regulation No 974/71. These amounts do not reflect the value of specific goods.

Therefore, in the case of an importation of beef and veal of a value higher than the average of world-wide prices which determines the basic amount and the adjusting amounts, a difference would arise involving a requirement for the importer to pay a portion of the customs duties notwithstanding the fact that the true value of the goods ought, it is argued, to entitle him to a more favourable calculation of the compensatory amounts.

19 The whole system of monetary compenstory amounts is founded on the principle that these amounts are not based on the prices in fact paid for the goods, but on basic amounts fixed by the Commission from week to week.

Although this principle may bring about disadvantages in individual cases not only in the beef and veal sector, but as regards all the agricultural products concerned, it is nevertheless unavoidable because of the necessity of maintaining uniformity in its application and of ensuring that it is administered with the utmost possible despatch.

20 Moreover this principle is the one most in line with the purpose of the system, which is not to indemnify the parties concerned against the consequences of disturbances on the world currency markets, but to render the functioning of the common organizations of agricultural markets possible notwithstanding the fluctuations of the currencies of the Member States.

21 Furthermore an exception such as the one suggested by the plaintiff would meet with grave difficulties, since as regards intra-Community trade goods are valued according to criteria which are not uniform.

22 It follows from the foregoing that the questions referred to the Court of Justice by the national court have disclosed no factor of such a kind as to affect the validity of Regulations Nos 648/73 and 905/73.

23 The first question asks whether Regulation No 905/73 published in the Official Journal of 7 April 1973 could be applied to an importation which took place on the preceding 22 March and, if so, whether there exists under the Community legal system a principle or a rule allowing the Community authorities to adopt retroactive legislation.

24 The purpose and organization of the system of monetary compensatory amounts make it inevitable that the amounts applicable for a certain period shall only be fixed after the event, since in the nature of things the decisive factors can in general only be determined towards the end of that period.

Such in particular is the case concerning periods during which either rates of exchange or world prices are subject to considerable variations.

Therefore such a fixing of compensatory amounts for periods which have already come to an end at the time when the fixing takes place cannot be described as retroactive application.

Moreover the previous rules on the same subject-matter confirm the foregoing and make it clear that the interested parties must for a long time have been aware of the needs of the machinery introduced.

25 It should be noted that the system of compensatory amounts was not introduced but only amended by Regulations Nos 509/73 and 648/73.

The last application of the previous system, namely Regulation No 450/73 of the Commission of 6 February 1973, fixing the monetary compensatory amounts for certain cereals, must have ceased to be effective by reason of the entry into force, on 26 February 1973, of the amendment to Regualtion No 974/71 made by Regulation No 509/73.

26 It was therefore necessary, in order that there be no discontinuity in the application of a system which had become essential to the functioning of the common agricultural policy, to adopt rules and to fix amounts for the period subsequent to that date.

In these circumstances Regulations Nos 648/73 and 649/73 could only provide that they were to apply with effect from 26 February 1973.

Moreover, as has just been stated, such a fixing of the compensatory amounts after the event was inherent in the nature of the system.

27 However, the amounts laid down by Regulation No 649/73 had to be adjusted in accordance with Article 4a of Regulation No 974/71, as Article 1 of the first of those regulations expressly provides.

These adjustments formed an integral part of the amounts fixed by Regulation No 649/73 and the regulations which followed it, even though the fixing thereof took place after a certain understandable delay.

28 Since, in the circumstances set out above, it is appropriate to recognize that Regulation No 649/73 validly applied with effect from 26 February 1973 although it was only published on 9 March 1973, it follows that the same must be true of Regulation No 905/73 which constitutes the necessary complement of Regulation No 649/73, and which was foreseeable from the day when Regulation No 509/73 was published.

29 It follows from all the foregoing that it is right to state that with regard to monetary compensatory amounts the fact that the factors necessary for their calculation are only determined after the period during which the said amounts have become applicable is frequently inherent in the system itself, particularly at a time of sudden and unforeseeable changes in market conditions, and cannot, therefore, be considered, on such grounds, as giving the rules a retroactive effect.

Costs

30 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

As these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Ufficio di Conciliazione, Rome, by order of 22 January 1976, hereby rules:

1. **With regard to monetary compensatory amounts, the fact that the factors necessary for their calculation are only determined after the period during which the said amounts have become**

applicable is inherent in the system itself, and cannot be considered, on such grounds, as giving the rules a retroactive effect.

2. Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulations Nos 648/73 and 905/73.

Lecourt Kutscher O'Keeffe Donner Mertens de Wilmars

Pescatore Sørensen Mackenzie Stuart Capotorti

Delivered in open court in Luxembourg on 7 July 1976.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 22 JUNE 1976

My Lords,

This case is concerned with the validity of a Regulation of the Commission dated 23 March 1973 fixing, or purporting to fix, certain reductions to be made in the monetary compensatory amounts applicable in particular to trade in beef and veal. The case is in large part a replay of Case 46/75 *IBC* v *Commission* (not yet reported) in which I delivered my opinion on 17 December 1975 and the Court delivered judgment on 27 January 1976. There is however this important difference that, whereas *IBC* v *Commission* was an action for damages purportedly brought under Article 178 of the Treaty, the present case comes to the Court by way of a reference ordered under Article 177 by the Guidice Conciliatore of Rome. In *IBC* v *Commission,* the Court held the action inadmissible and did not need to deal with the substantive arguments. Here there is no question of the reference being inadmissible. Another difference is that, in *IBC* v *Commission,* a question as to the possible invalidity of the Regulation in so far as it was retroactive, was raised too late to be considered at all, whereas here that question is expressly referred to the Court by the Guidice Conciliatore.

Your Lordships will remember that monetary compensatory amounts (which I will call for short 'm.c.a.'s') were introduced by Council Regulation (EEC)