OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 31 JANUARY 1980 [1]

Mr President,
Members of the Court,

This case is referred to the Court of Justice by the Cour d'Appel [Court of Appeal], Paris, which asks whether, where wine from Morocco is imported by a French company, Community legislation — in particular the provisions of Regulation No 974/71 of the Council and Regulations Nos 648/73 and 649/73 of the Commission — requires the compensatory amounts which were granted to the French importer to be paid over by it to the Moroccan exporter.

The principal action has its source in a contract concluded on 18 June 1974 between the Office de Commercialisation et d'Exportation (O.C.E.), a Moroccan public undertaking, and the Société Anonyme Méditerranéenne et Atlantique des Vins, Samavins.

Under 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 649/73 of the Commission of 1 March 1973 fixing those amounts Samavins received, by way of a deduction from the customs duty which it paid, monetary compensatory amounts on the importation of the wine into France. The O.C.E. asked Samavins to repay these amounts, which Samavins refused to do.

The reference made by the Cour d'Appel, Paris, to Regulation No 974/71 of the Council calls for one observation. It should be pointed out that, in its original form, this regulation, which, as the Court is aware, introduced the system of monetary compensatory amounts, did not envisage trade with countries with depreciated currency, such as France in 1974. As Mr Advocate General Warner recalled in his opinion in Case 94/77, *Fratelli Zerbone S.N.C.* v *Amministrazione delle Finanze dello Stato.* [1978] ECR 99 at p. 121, only with Regulation No 509/73 of the Council of 22 February 1973 was Article 1 (1) amended so as to make monetary compensatory amounts applicable in a Member State with a depreciated currency.

In order to answer the specific question put by the Cour d'Appel, it suffices to note that Community legislation in the agri-monetary field is limited to providing that it is the trader who carries out the customs formalities who receives or pays, as the case may be, the compensatory amount. The question of how the latter shares the gain from, or, as the case may be, the burden of these amounts with the party with whom he contracts clearly lies outside the scope of Community law. That law is concerned only with relationships between the customs administration and the trader who is in direct contact with it. The relationship between the latter and other parties contracting with him depends on their own independent intentions as expressed in the contract which links them together and it is at that contractual level alone that the solution may be found.

1 — Translated from the French.

For these reasons I move that the answer to be given to the Cour d'Appel, Paris, should be that:

In the case of the importation of goods giving rise to the payment of monetary compensatory amounts there is no requirement whatever under Community law to the effect that such amounts received by the importer must be paid over by him to the exporter.