103 is the coordination of Member States' conjunctural policies and the adoption of appropriate common measures.

Bearing in mind the monetary situation at the time the disputed measures were adopted, and the fact that the common agricultural policy contained no adequate provision for the case which would enable the necessary measures to be taken in order to deal with such monetary situations, the Council was justified in making interim use of the powers conferred on it by Article 103 of the Treaty.

2. Article 103 does not preclude Community Institutions from having powers to introduce, without prejudice to other procedures set out in the Treaty, any conjunctural measures which may appear to be necessary in order to safeguard the objectives of the Treaty. The Council shall in each instance select the form to be taken by the measure which it considers to be the most suitable.

3. While the Community Institutions must ensure, in the exercise of their powers, that the amounts which commercial operators are charged are no greater than is required to achieve the aim which the authorities are to accomplish, it does not necessarily follow that that obligation must be measured in relation to the individual situation of any one particular group of operators.

4. The Community Institutions must harmonize the various objectives of the common agricultural policy which, taken separately, appear to conflict with one another and, where necessary, allow temporary priority to one of them in accordance with the demands of those economic factors or conditions in view of which their decisions are made.

5. Article 40 contemplates only discrimination between producers or between consumers, while the balance to be held between the conflicting interests of these two groups is dealt with in Article 39.

6. Compensatory amounts are Community measures which, while they do involve a partitioning of the market, serve to compensate for variations in fluctuating exchange rates and thus help to preserve the normal flow of trade in products under the exceptional conditions temporarily created by the monetary situation. The authorization to charge compensatory amounts on agricultural imports from third countries for a time when rates of change are fluctuating is valid.

In Case 5/73

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht (Fiscal Court) of Berlin for a preliminary ruling in the action pending before that court between

BALKAN-IMPORT-EXPORT GMBH, 1 Berlin 15, Bregenzer Straße 10,

and

HAUPTZOLLAMT BERLIN-PACKHOF, 1 Berlin 21, Alt Moabit 143-145,

on the interpretation and validity of 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 L 106, 12. 5. 1971, p. 1) and possibly also Regulations (EEC) No 1013/71 (OJ L 110, 18. 5. 1971, p. 8), No 1014/71 (OJ L 110, 18. 5. 1971, p. 10) and No 548/72 (OJ L 66, 18. 3. 1972, p. 1) of the Commission,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars (Rapporteur), P. Pescatore, H. Kutscher, C. Ó Dálaigh, Lord Mackenzie Stuart, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

Regulation No 974/71 of the Council of 12 May 1971 (OJ L 106, of 12 May 1971, p. 1) provides for the application of a system of compensatory amounts in trade with other Member States and third countries.

When the plaintiff in the main action imported 13 590 kg of Bulgarian white cheese of sheep's milk, tariff heading No 04.04-E-I-3-4-50, into the Federal Republic of Germany, the Hauptzollamt of Berlin-Packhof by notice of 27 March 1972 under the said Regulation claimed in addition to a levy and the turnover tax on the import a compensatory amount of 6 183·45 DM, or 45·50 DM per 100 kg.

The plaintiff in the main action brought an action before the Finanzgericht of Berlin for the annulment of the notice of recovery of the compensatory duty, disputing the validity of Regulation No 974/71.

Accordingly the Finanzgericht of Berlin, by order of 19 January 1973, asked the Court the following questions:

1. Is Regulation (EEC) No 974/71 of the Council of 12 May 1971 're certain measures of conjunctural policy to be taken in the agricultural sector as a result of the temporary widening of the fluctuation margins of the currencies of certain Member States' (Official Journal of the European

Communities, 12 May 1971, L 106, p. 1), or are the Regulations implementing it, viz. Regulations (EEC) No 1013/71, 1014/71 and 548/72 of the Commission, valid, in so far as they provide for the making and computation of compensatory amounts for the import of milk products from Bulgaria?

In particular

(a) Was the Council of the European Communities empowered by Article 103 (2) of the EEC Treaty to make Regulation No 974/71, as a measure of conjunctural policy in the common interest, in the form of a Regulation?

(b) Is the levying of compensatory amounts, in particular in so far as, in the case of imports from Bulgaria, the amount is fixed not on the basis of any profit made by the importer on the rate of exchange, but on the basis of the relationship of the Deutschmark to the US dollar, (Article 2, Regulation No 974/71), compatible with the principle of proportionality, and with Articles 39, 40 and 110 of the EEC Treaty, or with the legal principles contained in the said Articles?

If Question 1 is answered in the affirmative:

2. Was the defendant still entitled, on the proper application of Community law, on 24 March 1972, the date of the application for customs clearance, to impose a compensation tax on trade with third countries?

If Question 2 is answered in the affirmative:

3. (a) What factors should have been taken into account in assessing the compensatory amounts or alignment tax on import of cheese of Tariff No 04.04 (with particular reference to Article 2 (2) of Regulation No 974/71)?

(b) Is Article 2 (2) of the said Regulation, having regard to its form and scope, a sufficiently definite basis of assessment for this purpose?

(c) Is a rate of 45·50 DM per 100 kg of Bulgarian cheese of sheep's milk on 24 March 1972, in accordance with these principles?

The order for reference of 19 January 1973 was registered at the Court of Justice on 5 February 1973.

On the report of the Judge-Rapporteur, and upon hearing the Advocate-General, the Court decided to proceed without any preparatory enquiry.

The plaintiff in the main action, the Government of the Federal Republic of Germany, the Council and the Commission of the European Communities presented their written observations.

At the hearing of 5 June 1973, the plaintiff in the main action represented by Mr Ehle of the Cologne Bar, the Commission represented by its legal adviser, Mr Gilsdorf, the Council represented by its legal adviser, Mr Lambers and the German Government represented by Mr Seidel, Regierungsdirektor, presented oral arguments.

The Advocate-General presented his opinion at the hearing on 26 June 1973.

II — Observations submitted under Article 20 of the Statute of the Court of Justice

The observations submitted under Article 20 of the Statute of the Court of Justice may be summarized as follows:

A — Observations of the plaintiff in the main action

First Question

(a) The plaintiff in the main action considers that Regulation No 974/71

cannot be founded on Article 103 (2), because it was not made within the framework of conjunctural policy but solely to ensure the application of the intervention system in agricultural markets, that there was no question of Common interest and that it authorized the Council only to make directives or take decisions. Only Articles 40 and 43 taken in conjunction with Article 235 of the Treaty could form a basis for introducing compensatory amounts as the Council itself recognized in basing Regulation No 509/72 of 22 February 1973, modifying Regulation No 974/71 (OJ L 50, 23. 2. 1973, p. 1.) solely on Articles 28, 43 and 235 of the Treaty. Regulation No 974/71 should therefore be declared null and void until it was amended by Regulation No 509/73 of 22 February 1973. Nevertheless a limitation can be placed on the nullity by declaration of the Court under Article 174, second paragraph.

(b) Since Regulation No 974/71 takes account only of the exchange rates between the DM and the dollar, the compensatory amounts had unjustifiably been fixed too high on several occasions, notably in the present case. The Commission had itself admitted in its proposal for amendment of Regulation No 974/71 of 10 May 1972 that the system should have taken account of the exchange rates of the currencies of third countries exporting to the Community.

The system of compensatory amounts infringed the prohibition of taxes having like effect to customs duties, the principle of proportionality and the provisions of Article 39 and 110 of the Treaty which should have taken into account under Article 33 of Regulation No 804/68 (OJ L 148, 28. 6. 1968, p. 13). As the Finanzgericht of Berlin admitted in its Order for reference, the compensatory amount had a like effect to customs duties, prohibited by the Treaty and by Article 19 of Regulation No 804/68, to the extent that they exceeded the effect of the floating of the Deutschmark in relation to the currency of a third country and at least in relation to the weighted average of the parities of the currencies of third countries.

The method of calculating the compensatory amounts provided for in Article 2 of Regulation No 974/71 moreover infringes the principle of proportionality expressly recorded in the last recital of this Regulation. Although according to the plaintiff it might have been possible to fix the compensatory amounts, having regard to the parity of the currencies of the principal commercial partners, in relation to the DM, account could have been and should have been taken at least of the fluctuations of the DM in relation to a weighted average of the currencies of representative third countries. On this assumption the effect of revaluation of the DM would have been distinctly less marked. The plaintiff in the main action refers in this connection to the procedure followed as regards the calculation of the levies (Article 14 (4) of Regulation No 804/68).

After the devaluation of the American dollar on 8 May 1972 it appeared that the total of the new (increased) levies and the new (reduced) compensatory amounts was considerably below the total of the former levies and former compensatory amounts, which proves that the earlier methods of calculation were wrong.

Compensatory amounts which exceed the effect of floating not only went against the objective of reasonable prices in supplies to consumers (Article 39 (1) (e)) but also against the very basis of a commercial policy linked with the provisions of GATT.

Second Question

The plaintiff in the main action considers that the collection of the compensatory duty was no longer justified on 24 March 1972, the date on which the request was made for the goods in issue to be put in free circulation.

Article 8 (2) of Regulation No 974/71 specifies that it 'shall cease to be applicable as soon as all the Member States concerned again apply the international rules on margins of exchange-rate fluctuation around official parity'. Under the agreement of 18 December 1971 at Washington, the Member States agreed to the fixing of a new central rate for the DM in relation to the dollar (3·2225 DM/dollar), the Bundesbank resuming its interventions on the currency market to maintain the exchange rate for the DM within the margin of fluctuation agreed (3·150 DM — 3·295 DM). This average rate although not notified to the IMF had been applied in practice. Moreover Article 8 of Regulation No 974/71 referred only to 'the application of the international rules . . .' There cannot therefore be any pretext for saying that a central rate and not a par value is at issue so as to evade the application of the said Article 8.

Moreover Article 1, last paragraph of Regulation No 974/71 makes the fixing and application of the compensatory amounts conditional upon the application of rates of exchange above the limits authorized by international rules leading 'to disturbances in trade in agricultural products'. The existence of similar disturbances which should be observed product by product was not established for the product concerned: the price of cheese did not depend on that of products for which intervention measures are provided within the framework of the common organization of agricultural markets (Article 2 (a) and 2 (b) of Regulation No 974/71). In any event, the application of compensatory amounts to cheese, a product enjoying no price guarantee, was justified only for a short time, the fluctuations in market prices compensating and often exceeding the fluctuations in rates of exchange, as happened in March 1972.

Third Question

As regards the factors involved in the calculation of the compensatory amount on the product at issue — the objective of the third question — the plaintiff in the main action observes that it was not possible to answer it so long as the Commission did not prove whether and how it took account of the various components in calculating the compensatory amounts affecting the product at issue, whose price was mainly determined by market forces and quite easily compensated monetary fluctuations. Moreover for agriculture the revaluation of the DM was equivalent to a reduction in the cost of production.

Article 2 (2) of Regulation No 974/71 infringed both the principle of legal certainty and that whereby legislative measures must be expressed with adequate precision.

The compensatory amount, fixed at 45·50 DM/100 kg was in any event excessive because there had been practically no variations in the rate of exchange between the DM and Bulgarian currency, cheese was wholly independent of the intervention price and anyhow any unfavourable effect of monetary measures was offset in the two months.

B — Observations of the Council

First Question

(a) In the Council's view Regulation No 974/71 was indeed a conjunctural measure within the meaning of Article 103 of the Treaty. The concept of 'conjunctural policy' included all the measures taken by public authorities to prevent, as far as possible, all factors on which the internal and external balance of the economy depends from developing differently from long term expectations. Conjunctural measures could thus cover the most varied fields. Indeed the purpose of Regulation No 974/71 was to prevent abnormal deviations in prices and incomes caused by massive imports of agriculture into countries with a floating currency.

The specific procedures provided for in the Treaty did not prevent recourse to Article 103, whose field of application would be considerably narrowed if, in every field in which particular procedures are provided for, measures of conjunctural policy could be taken only where the conditions required by the other Articles for these particular procedures were satisfied.

The requirements for every conjunctural policy were such that in many cases regard could not be had to other procedures without compromising it. Accordingly in the view of the Council the purpose af Article 103 permits its use in fields where particular rules of the Treaty are provided, so long as the measures are designed with a conjunctural end in view. Thus recourse could be had to Article 103 (2) as regards agriculture, independently of Article 38 and especially independently of the powers conferred by Article 43 (2).

In certain cases the conjunctural measures could not meet the specific objectives assigned to them without certain derogations from the provisions of Community legislation being provided for and without a safeguard clause comparable with that provided for in Article 226.

If the intra-Community compensatory amounts falling within rules common with extra-Community compensatory amounts of necessity affect the free movement of goods, they did not however constitute an infringement of the principle of free movement of goods which was included as one of the aims of agricultural policy only to the extent that it allowed the aims of Article 39 (1) to be realized. The introduction of compensatory amounts was based on the consideration that the aims must not be compromised by short term fluctuations caused by the floating of certain currencies within the Community. Moreover it ensured free movement of goods for the future whatever decisions might be taken as regards currencies.

As to the fact that the measure at issue was enacted in the form af a regulation, the Council considers that Article 103 (2) does not limit the choice of the Institutions of the Community as to the legal form to be adopted. The term 'decide upon' was not used in its technical sense. As to paragraph (3), if it provides for the legal form of a directive for implementation measures, even where the legal rule to be implemented is a regulation, this was explained by the fact that these implementation measures can be taken by qualified majority. Consequently it would have been reasonable to provide only for the most flexible means of intervention, namely the directive and to reserve recourse to regulations for rules adopted unanimously.

The Community could not pursue a truly Community conjunctural policy if it was authorized only to make directives simply to Member States while at the same time being denied recourse to regulations.

(b) Regulation No 974/71 did not violate the principle of proportionality. Only more or less all-embracing wording enabled a compromise to be found between the need for taking account, to the greatest possible extent, of the incidence of monetary measures and for finding a solution which works in practice. If corrency fluctuations in relation to the mean value of all or some currencies of third countries had been taken into account the compensation would have been insufficient for the currency of the principal third country, the United States of America, which played a decisive role in most of the trade in agricultural products. It must not be overlooked that in spite of certain difficulties of implementation, the solution selected does not involve charges which unjustifiably exceed the incidence of alterations in the exchange rates.

Nor was there a discrimination which was prohibited by Article 40. If the compensatory amounts encumber differ-

ent agricultural products unequally, they are nevertheless calculated on the basis of homogeneous criteria defined in particular in Articles 2, 3 and 4 of the Regulation. Article 7 of Regulation No 974/71 moreover prevents compensatory amounts being fixed in part. Producers and consumers of the various Member States do not suffer any discriminatory treatment, since all the Member States concerned have availed themselves of the authorization to impose compensatory amounts.

To sum up, there could be an infringement of the fundamental principle formulated in Articles 39 and 110 only if the Institutions had exceeded the margin of discretion which they must be allowed so that they can reconcile aims which are partly contradictory.

Second Question

According to the Council this question seeks to ascertain whether Regulation No 974/71 had ceased to be applicable on 24 March 1972 by virtue of Article 8 (2) thereof. The Council considers that the conditions laid down by this provision for the termination of the rules established by this provision for the termination of the rules established by this Regulation were not fulfilled.

The Communiqué published following the Washington monetary conference of 18 December 1971 did not in fact fix a new parity but left the States concerned face to adopt the 'central rates' which did not have the legal effects resulting from the fixing of a parity in accordance with the rules of the International Monetary Fund. Moreover the whole system of agricultural prices governed by the Community market organizations continued to be based on a unit of account whose relationship with the currencies of the Member States was determined on the basis of the official parities notified to the IMF. The abandonment of the compensatory amounts would have had incalculable consequences for the implementation of countless agricultural regulations if these had not ceased linking the unit of account to the official parities of the currencies of Member States.

C — Observations of the German Government

First Question

(a) The German Government considers that Regulation No 974/71 is an intergral part of conjunctural policy and is quite properly based on Article 103 of the Treaty. In fact a conjunctural policy or a short term economic policy whilst linked to the general aims of long or medium term policy, had as its precise aim the lessening of inflationary and deflationary movements in economic development. Moreover the abnormal prices and incomes following the floating of the exchange rate by certain Member States would have, in the absence of Regulation No 974/71, disorganized the intervention system and caused a collapse of intervention and market prices involving abnormal developments in prices and incomes.

The fact that Regulation No 974/71 is a measure of conjunctural policy does not conflict with particular powers being provided for the Community under Articles 38 *et seq.* of the Treaty in the field of agricultural policy. These powers moreover had in view first and foremost structural requirements and did not provide any suitable procedure for immediate action of conjunctural character by the Community. The expression 'without prejudice to any other procedures provided for in this Treaty' in Article 103, meant therefore that, simultaneously with regulations for a particular sector, recourse could be had to Article 103.

The compensation system laid down by Regulation No 974/71 was not against the common interest because it included the greater part of the agricultural sector and avoided serious imbalances in the

agriculture of certain Member States which would have endangered the agricultural common market.

As regards the legal form of Regulation No 974/71 the German Government considers that nothing in Article 103 limits the choice of the most suitable instrument. The use of the term 'decide upon' in the second paragraph of Article 103 had no special significance because it was in fact a case of 'introducing measures'. The preference for the Directive set out in Article 103 (3) to determine according to the circumstances the implementation procedures was justified by the consideration that there was the least rigid instrument, as regards substantial intrusions into the sovereign area of States, contemplated by Article 103 (3).

(b) There was no infringement of the principle of proportionality by reason of the all-embracing nature of compensatory amounts from a practical point of view. A system in which the amount of compensatory tax corresponded exactly, for each import, with the incidence of the monetary measure could not be achieved, having regard to the large number of compensatory amounts already in existence in the system in use. Moreover, if the relationship between the floating currency and the currency of a third importing country had been taken into account in fixing the compensatory amounts, it might have caused large scale deflection of trade. On the other hand a system of compensation in terms of an arithmetic mean of the variations of the Deutschmark in relation to the currency of third countries was also of an all-embracing character and this too did not allow sufficient compensation when the parity of the currency of the third country in question in relation to the DM was below the mean parity of the currencies of third countries. Faced with a choice of several solutions the Council, pursuant to its discretionary power, had been able to choose the one it deemed most suitable and most advantageous from the standpoint of efficiency and practicability. (Court of Justice, Judgment of 17. 12. 1970, Case 11/70, Internationale Handelsgesellschaft, Rec. 1970).

Nor was there any infringement of the objectives laid down in Article 39, which were not always in harmony: they had to be reconciled and a compromise sought. Thus the objective of a reasonable price level for consumers should be reconciled with that of seeking a reasonable income for agricultural workers.

The same applied to the objectives of commercial policy referred to in Article 110 of the Treaty. They were in conflict with those of Article 39 and the implementation of the two provisions also involved the application of the discretionary power of the Institutions.

Second Question

At the 24 March 1972 there was no fundamental change in the events which led to the issue of Regulation No 974/71. In spite of the introduction of central rates following the Washington Agreements of 18 December 1971, the effects of the fluctuations in the rates of exchange even within the limits imposed by those Agreements had justified the retention of the measure. No return to the parities to be declared to the IMF had occurred, at the time of these Agreements, to justify the abolition of compensatory amounts under Article 8 (2) of Regulation No 974/71. The parities termed 'central rates' had not the same force in law as the official exchange rates declared to the IMF.

D — Observations of the Commission

The Commission observes that the examination of the third question should also extend to the possible absence of disturbances in trade in agricultural products which, according to one argument of the Balkan company before the national judge, made the inclusion of Bulgarian cheese of sheep's milk within

the scope of Regulation No 974/71 illegal.

Economic context

In analysing the origin and the working of the system of compensatory amounts, formulated in Regulation No 974/71, the Commission draws attention to the following points.

In order to lessen the effect of the influx of currencies into the Federal Republic of Germany and the Netherlands, the Council, by Resolution of 9 May 1971 (OJ C 58, 10. 6. 1971, p. 1) authorized the said Member States to float their exchange rates under Article 103 of the Treaty so as to avoid disturbances in trade in agricultural products which Regulation No 974/71 would have caused.

The latter was based on the principle that official parities have not changed. So the introduction of compensatory amounts had been justified by the fact that the intra-Community prices for products subject to intervention or products whose price depended on these had remained unchanged while the price on the extra-Community market expressed in DM had fallen following the revaluation and in proportion to it.

In Regulations No 1013/71 (OJ L 110, 18. 5. 1971, p. 8) and No 1014/71 (OJ L 110, 18. 5. 1971, p. 10) fixing the procedures for implementing Regulation No 974/71, the Commission had sought to limit the list of products to which the compensatory amounts applied.

Subsequently the Commission, particularly after the abolition of the convertibility of the dollar into gold (15. 8. 1971), and the floating of the Belgian and Luxembourg currencies (23. 8. 1971) and later also the pound sterling and the lira (beginning of 1972), had been led several times to widen the field of application of compensatory amounts.

On the other hand, the devaluation of the dollar on 8 May 1972 had allowed of a reduction of the compensatory amounts proportionate to the increase in the levies. A proposal to amend Regulation No 974/71 presented by the Commission on 16 May 1972, designed to limit recourse to compensatory amounts had not been followed up, because the anticipated revaluation of certain Community currencies had not taken place. A second proposal integrating the system of compensatory amounts into agricultural policy was adopted by Regulations of the Council No 2746/72 of 19 December 1972 (OJ L 291, 28. 12. 1972, p. 148).

After the fresh devaluation of the dollar on 13 February 1973 it was decided to record the variations of the exchange rates provided for in Article 2 (1) of Regulation No 974/71 by reference to the actual dollar parity.

First Question

(a) According to the Commission, Article 103 of the Treaty must be considered as the correct legal basis for Regulation No 974/71 since the latter effectively constitutes a measure of conjunctural policy.

Monetary measures so far as they are short term, constitute typical conjunctural measures whose specific objective was constituted by short term aims, not exceeding periods of 18 months, and consisting essentially of methods of correcting or damping cyclic movements.

As to the objection raised on the grounds that Regulation No 974/71 was pursuing aims of agricultural policy having only fortuitous conjunctural effects, this lost sight of the fact that the Regulation at issue concerns the agricultural aspect of an aggregate of measures of a monetary character enacted by the Member States in agreement with the Community Institutions.

Not only does Article 103 itself declare that Member States shall regard their conjunctural policies as a matter of common concern but further the whole Community is in effect interested to see that measures are taken to prevent the

markets in the currencies of Germany and the Netherlands being swamped with offers of dollars. As a common floating of Community currencies was not yet possible in May 1971, the floating of the florin and the DM required accompanying measures even if they hindered free movement of goods.

A ban on the lifting of the fixed parities between Member States was not to be found either in Article 107 of the Treaty or the Bretton Woods Agreement binding the Member States by the expedient of Article 234 or in the use of fixed parities after the setting up of the agricultural markets.

The Resolution of 22 March 1971 concerning the realization by stages of economic and monetary union within the Community (OJ C 28, 27. 3. 1971, p. 1) expressed only a political commitment and the measures relating to exchange rates remained within the powers of the Member States; it followed that the decision to let a currency float could not be considered incompatible with the obligation to cooperate referred to in Article 5 of the Treaty.

The absence of compensatory amounts had upset the internal agricultural market both by the influx of imports at reduced prices and the inadequacy of refunds on exports.

On the question whether the introduction of compensatory amounts should have been based first on Article 43 of the Treaty, Article 103 being only subsidiary, the Commission considers that the terms of Article 103 show that powers are concurrent.

If the plaintiff's view were followed, the powers would be shared between various Community bodies and conjunctural measures would be fragmented contrary to what was implied in Article 103, since that provides for more flexible procedures than those needing Parliamentary consultation, precisely because measures of a conjunctural character are necessarily urgent.

If the Council, on the proposal of the Commission, gave preference to Article 103, this was because of a desire to avoid incorporating the system of compensatory amounts in agricultural policy, to emphasize its exceptional and short-term nature and avoid Community financing because it was preferable to let the Member States concerned bear the financial consequences.

By 1973 the conjunctural aspect had fallen into the background. For this reason Articles 28, 43 and 235 were invoked alongside Article 103 in Regulation No 2746/72 (OJ L 291, 28. 12. 1972, p. 148).

To the extent that Article 103 confers powers which are in addition to the powers in individual sectors, the Council cannot be reproached for not having had recourse of Article 19 (2) of Regulation of the Council No 804/68 establishing a common organization of the markets in the milk and milk products sector (OJ L 148, 28. 6. 1968, p. 13), which definitely allows derogation from the prohibition on imposition of customs duties and charges having equivalent effect.

As to the effect of compensatory amounts in relation to the principle of the free movement of goods, the Commission after observing that Article 103 cannot be used for the insertion of safeguard clauses observes that the free movement of goods within the framework of the organizations of the agricultural markets was not of the same irreversible nature as in the industrial sector and that corrective measures appeared to be necessary. In any event the system of compensatory amounts was less restrictive than possible quantitative restrictions.

As to the form of Regulation No 974/71, the Commission observes that, if having regard to the flexible voting procedure on the methods of implementation provided for in Article 103 (3), it was understandable that the Council should in accordance with this provision use the most flexible measure, viz. the directive, that did not in any event preclude the

Council from delegating to the Commission its powers for the implementation of the rules that it lays down under Article 155 of the Treaty. To the extent that the basic decision lies in the Council's setting up a system of financial charges which of necessity implies a large number of implementation measures and which interposes itself into an already existing mechanism of a Community policy, the implementation measures had of necessity to come from the executive body. Moreover, the form of regulation had to be most clearly shown in so technical a field both from the point of view of implementation and the unity of Community law and also the legal protection of the individual. So the Commission did not see how the Council could not itself exercise a power which it could delegate to the Commission.

(b) As regards the use of the dollar as a standard of comparison under Article 2 (1) of Regulation No 974/71, the Commission observes that only an all-in system of compensatory amounts was attainable in practice and in any event it was not possible to limit the collection of compensatory amounts to cases where the imported product enjoyed an advantage due to currency fluctuations because that would have implied supervision for every single import transaction and this would have gone against the principles governing the collection of levies and payment of refunds; the Court of Justice itself had recognized the validity of abstract methods of calculation for this purpose (Judgment of 15. 12. 1970, Case 31/70, Deutsche Getreide und Futtermittel, Rec. 1970).

The use of the dollar parity as a standard of comparison took account of the realities of international trade, while an all-in calculation, based on the mean of the parities of the currencies of third countries, needing such diverse factors to be taken into consideration as the size, value, origin and contractual methods whereby agricultural products were transferred, would not properly have reflected the fluctuations in the exchange rate of the American dollar which was the basis of most international trade.

In fact the plaintiff in the main action could have safeguarded itself against the consequences of using American currency as the criterion by using the American dollar as the currency for payment or providing for the vendor's taking over liability for the compensatory amount.

There was no infringement of the principle of proportionality, the necessary respect for which, as recorded in the last recital of Regulation No 974/71 must be assessed on the basis of the 'strictly necessary nature' of the system in its entirety and not of individual imports. Whilst admitting that the Council could have used the mean of the parities of currencies of third countries as a criterion it must also be admitted that the choice taken remained within the limits of the discretion available to the legislator. The implementation of the Regulation at issue would always have allowed the Commission to adapt the compensatory amounts to changes in circumstances.

No discrimination was to be found in the system of compensatory amounts since, on the one hand, the imposition was based on objective criteria and on the other hand, as regards the different burden on each product, not based on monetary measures, account had to be taken of the matters raised concerning infringement of proportionality. As to the alleged advantage of agricultural producers in acquiring raw materials, the Commission observes that for agricultural products (e. g. seeds) the compensatory amounts reduced this advantage and that for imported industrial products the effect of revaluation had been only a moderate price reduction.

The infringement of Article 39, resulting from a very high price to the consumer (Article 39 (1) (e)) could not be established since the compensatory amounts had not been fixed too high

and Article 39 authorized the legislator, within the limits of its discretion, to secure a balance between the aims there set out.

As to Article 110, this was too wide and indefinite for individual rights to be derived from it. Moreover the system used had minimized harm to international trade having regard to the prevailing conditions.

Second Question

According to the Commission this question raises the problem whether the retention of compensatory amounts after the Washington Conference of 18 December 1971 was valid, having regard to the terms of Article 8 of Regulation No 974/71 which declares that Regulation No 974/71 'shall cease to be applicable as soon as all the Member States concerned again apply the international rules on margins of exchange rate around official parity'. In fact the 'Member States concerned' had still not resumed the implementation of the international rules; on the one hand the central rates of the DM, florin and Belgian franc were, at first sight, outside the margins of fluctuation fixed by the international rules and, on the other hand, the new margins of fluctuation agreed on (2·25 % instead of 1 %) also departed from international regulations. If the Community Institutions have continued to retain the official parities, this is because agricultural regulations as a whole were based on them. It was therefore to be expected that the same course should be followed in Regulation No 974/71.

Only after the second devaluation of the dollar on 13 February 1973 did the Commission, drawing on past experience, take account of the true parities for calculating levies and refunds which avoided the need to alter the compensatory amounts. It was sufficient when calculating them in accordance with Article 2 of Regulation No 974/71 to use the actual dollar parity (Article 2 (1), last indentation).

Third Question

As regards products for which intervention measures are provided, the intra-Community compensatory amount was determined by adding to the intervention price the percentage by which the Community currency concerned had been revalued in relation to the American dollar. For products whose price is dependent on that of the previous products, the compensatory amount was equal to the incidence on their price of the implementation of the compensatory amounts on the products subjected to intervention. In the milk and milk products sector there were intervention prices for butter and skimmed-milk powder; the price of other milk products was dependent on these prices even though determined partly by the laws of the market. For extra-Community compensatory amounts the calculation was made on the basis of free-at-frontier prices.

The method adopted for cheese, for which the compensatory amount is based on the incidence of compensatory amounts in the price of butter and skimmed-milk powder, is logical and in conformity with the provisions of Article 2 (2) of Regulation No 974/71.

When the calculation of the levies and refunds was made on the basis of the world-market price for various kinds of cheese, the Council had voluntarily decided on another system for the calculation of compensatory amounts. The rules relating to levies and refunds was the fruit of long experience and it was impossible to apply it as it stood to the system of compensatory amounts which was of a temporary nature and also concerned intra-Community trade. Within these rules thus established the Commission had only a 'technical' margin of discretion available.

If the fixing of compensatory amounts is in conformity with the principles of Article 2 (2) of Regulation No 974/71, it might be asked, according to the Commission, whether there was any need to apply it to the product in issue.

The plaintiff in the main action had observed that the import of Bulgarian cheese of sheep's milk did not involve any disturbance of trade in agricultural products so that under the terms of Article 1 (2), last intention, there was no case for fixing compensatory amounts. Such an argument could not be based on the monetary situation because the Commission could not be expected to foresee the course and impact of imports from each third country. In the contrary case, the requests for exemption would have multiplied and the system of compensatory amounts would have been weakened. Contrary to what the plaintiff in the main action asserts, there was competition with Italian cheese of sheep's milk (pecorino) and other varieties of Community cheese, especially goat's milk cheese.

The Commission considers that its answer to the first question must be that nothing has occurred to call into question the validity of Regulation No 974/71, to the second question, that the collection on 24 March 1973 of compensatory amounts on imports from third countries was in accordance with Community law and to the third question that Article 2 (2) of Regulation No 974/71 was a sufficiently precise basis of calculation and that the rate of 45·50 DM per 100 kg of Bulgarian cheese of sheep's milk does not infringe Community measures either as regards the principle or the amount.

Grounds of judgment

1 By order dated 19 January 1973, lodged at the Registry on 5 February 1973, the Berlin Finanzgericht referred to the Court for a preliminary ruling the question of the interpretation and validity of various provisions contained in Regulation (EEC) No 974/71 of the Council of 12 May 1971, concerning 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 L 106, 12. 5. 1971, p. 1), and, if appropriate, of some of the provisions of Regulations (EEC) Nos 1013/71, 1014/71 of the Commission (OJ L 110, 18. 5. 1971, p. 8 and 10), and 548/72 (OJ L 66, 18. 3. 1972, p. 1) implementing the above Regulation No 974/71.

2 On 24 March 1972, the plaintiff in the main action requested customs clearance for cheese of sheep's milk which it had imported from Bulgaria into the Federal Republic of Germany, and was charged, under Regulation No 974/71, compensatory amounts at the rate of 45·50 DM per 100 kg, a rate calculated, for products under tariff heading 04.04 of the Common Customs Tariff, by reference to the Annexes to Regulation No 548/72 of 16 March 1972 fixing the compensatory amounts applicable at the time of the clearance in question.

The plaintiff brought an action before the Finanzgericht disputing the amounts charged, claiming that the system of compensatory amounts introduced by Regulation No 974/71 was incompatible with the Treaty.

Analysis of the compensatory amounts system

3 As a result of the increasing influx of foreign currency and short-term speculative capital in the early months of 1971 and the effects produced by this in some Member States, especially the Federal Republic of Germany and the Netherlands, the Council indicated in a Resolution of 9 May 1971 (OJ C 58, 10. 6. 1971, p. 1) that it was prepared to envisage 'that, in certain cases, these countries might, for a limited period, widen the margins of fluctuation for the exchange rates of their currencies in relation to their (present) parities.'

In the same Resolution, the Council emphasized that under normal circumstances a system of floating currencies such as this would not be compatible with the proper functioning of the common market, and, 'so as to avoid resort to unilateral measures', decided that it was desirable for it to adopt 'immediately, in accordance with Article 103 of the Treaty ...' appropriate measures in the agricultural sector.

4 The organization of agricultural markets is designed, *inter alia*, to ensure a fair standard of living for the agricultural community and to stabilize markets, in particular by means of a stable price system whereby target prices, threshold prices and intervention prices are determined on the basis of fixed parities for the currencies of the various Member States by reference to a single unit of account.

Since it was not possible to fix new parities while the DM and the guilder were floating, the price levels considered to be appropriate continued to be determined and calculated, for products with fixed intervention prices and for products whose price depends on the price of the first-mentioned products, on the basis of the parities previously declared to the IMF, even for the Netherlands and the Federal Republic.

But while these prices thus remained unaltered in theory, they were in fact reduced — particularly when they were expressed in DM — in proportion to

the effects of the *de facto* revaluation of this currency, causing disturbances in agricultural trade detrimental to producers and capable of disrupting the intervention system established by Community legislation.

5 As a result, the Council decided that the measures to be taken immediately should consist in the introduction of a system of compensatory amounts which these Member States would be authorized to charge on imports and grant on exports in their trade both with other Member States and with third countries, with a view to offsetting the effects of the monetary measures on the price of basic products for which intervention prices have been imposed, and for agricultural products whose price depends on the price of those products.

6 Under Article 2 of Regulation No 974/71, the compensatory amounts are obtained by applying to the prices of agricultural products covered by intervention arrangements the percentage difference between the official parity and the true parity of the national currency in relation to the U S dollar.

For the other products covered by Regulation No 974/71, the compensatory amounts are equal to the incidence, on the price of the products concerned, of the application of the compensatory amount to the price of the product on which they depend.

Moreover, according to the last sentence of Article 1 of the Regulation, compensatory amounts can be charged only where the monetary measures would lead to disturbances in trade in the agricultural products mentioned.

It is for the Commission, after obtaining an opinion from the management committees, to decide whether or not such a situation exists.

Finally, Article 8 of the above Regulation states that the latter shall cease to be applicable as soon as all the Member States concerned again apply the international rules on margins of exchange-rate fluctuation around official parity.

7 Owing to the deterioration of the monetary situation, particularly the suspension of the convertibility of the dollar on 15 August 1971 and the subsequent floating of Belgo-Luxembourg Economic Union currencies from 23 August 1971, the system of compensatory amounts was extended to a wider range of products and to the exports and imports of those Member States.

At the Washington Conference on 18 December 1971 the rates of exchange were closely re-defined in relation to the dollar in the form of central rates, the margins of fluctuation remaining, however, wider than those authorized under the Bretton Woods Agreements.

Nevertheless, since no official change of parities followed these decisions and the monetary system was still in disarray, the compensatory amounts scheme was extended to France and Italy and to all the agricultural products mentioned in Article 1 of Regulation No 974/71.

8 Subsequent to the facts giving rise to the action, the Council, by Regulation No 2746/72 of December 1972, made the compensatory-amounts scheme compulsory and 'incorporated' it into the framework of the common agricultural policy, giving Articles 28, 43 and 235 of the Treaty as its basis.

9 The circumstances outlined above and their continuing development must be borne in mind in considering the intervention made by the Council and the Commission.

I — Question one

10 The first question asks whether Regulation No 974/71 is valid insofar as it provides for the computation and charging of compensatory amounts on imports of milk products from Bulgaria.

(a) The legal basis of Regulation (EEC) No 974/71

11 This question concerns, first, whether the validity of the above Regulation could be affected by the fact that it is based on Article 103 of the Treaty, which does not touch on the common agricultural policy, the latter being governed by the specific provisions of Articles 38 to 47 of the Treaty, and that in any case, the said Article 103 authorizes only the adoption of conjunctural measures, which the disputed measures are not.

12 Article 40 of the Treaty states that Member States shall bring the common agricultural policy into force by the end of the transitional period at the latest and that, in order to attain the objectives set out in Article 39, a common organization of agricultural markets is to be established.

The same Article provides that this common organization may include any measures required and in particular regulation of prices, aids for production

and marketing, storage and carry-over arrangements and common machinery for stabilizing imports and exports.

By virtue of the third paragraph of Article 43 (2), the Council shall (on a proposal from the Commission and after consulting the Assembly, acting, after the end of the second stage of the transitional period, by a qualified majority) make regulations, issue directives, or take decisions in this sphere.

It is evident from these provisions that the powers conferred for implementing the common agricultural policy do not relate merely to possible structural measures but extend equally to any immediate short-term economic intervention required in this area of production, and that the Council is empowered to resort to them in accordance with the decision-making procedures there set out.

13 On the other hand, Article 103 refers to Member States' conjunctural policies, which they must regard as a matter of common concern.

Consequently it does not relate to those areas already subject to common rules, as is the organization of agricultural markets.

The real object envisaged by Article 103 is the coordination of Member States' conjunctural policies, and, according to the terms of paragraph 2 of that Article, the adoption of common measures appropriate to the situation.

14 The floating of the exchange rates for the German and Dutch currencies, deemed essential if the wave of speculative capital into the Federal Republic and the Netherlands was to be checked, imperilled the unity of the common market and made measures designed to safeguard the machinery and objectives of the common agricultural policy imperative.

The introduction of compensatory amounts was not intended to provide extra protection, but to maintain uniform prices, the foundation of the present organization of the markets, despite the temporary departure from fixed paritites, thus preventing the collapse of the intervention price system and preserving the normal flow of trade in agricultural products both within the Community and with third countries.

These measures, intended to compensate temporarily for the harmful effects of national monetary measures, so that the process of economic integration may meanwhile continue its progress, are of an essentially transitory nature and would normally have had to be adopted by virtue of the powers conferred on the Council by Articles 40 and 43 and in accordance with the procedures set out therein, in particular after consulting the Assembly.

15 However, owing to the time needed to give effect to the procedures laid down in Articles 40 and 43, a certain amount of trade might then have passed free of the regulations, and this could jeopardise the relevant common organizations of the market.

There being no adequate provision in the common agricultural policy for adoption of the urgent measures necessary to counteract the monetary situation described above, it is reasonable to suppose that the Council was justified in making interim use of the powers conferred on it by Article 103 of the Treaty.

Consequently — while the suddenness of the events with which the Council was faced, the urgency of the measures to be adopted, the seriousness of the situation and the fact that these measures were adopted in an area intimately connected with the monetary policies of Member States (the effects of which they had partially to offset) all prompted the Council to have recourse to Article 103 — Regulation No 2746/72 shows that this state of affairs was only a temporary one, since the legal basis for the measure was eventually found in other provisions of the Treaty.

(b) The form in which the disputed measure was adopted

16 The next question is whether Regulation No 974/71 is invalid on the ground that Article 103 of the Treaty, notably in paragraph 3, authorizes the adoption of measures only in the form of a directive or decision, not in the form of a regulation.

It is alleged that such an interpretation is borne out by the wording of Article 103 and is justified in view of the fact that in the realm of conjunctural policy no more than a coordinating rôle has been given to the Institutions.

17 Although by Article 103 (1) Member States are bound to regard their conjunctural policies as a matter of common concern, the wording does not preclude Community Institutions from having power to lay down themselves, without prejudice to other procedures set out in the Treaty, conjunctural measures on matters within the spheres of their competence.

On the contrary, Article 103 (2), by declaring that the Council may, 'acting unanimously ... decide upon the measures appropriate to the situation', confers on that body — subject to the condition referred to above — the powers necessary to adopt, in principle, any conjunctural measures which may appear to be needed in order to safeguard the objectives of the Treaty.

Without some such faculty, the natural concomitant of any kind of economic administration, the Institutions of the Comunity would find it impossible to accomplish the tasks entrusted to them in this field.

18 The phrase 'measures appropriate to the situation' in Article 103 (2) means that as regards form, too, the Council may choose whichever seems best suited to the case in hand.

Subject to the requirement of a unanimous decision, Article 103 (2) refers to the general procedures whereby the Council may exercise its powers, described in Articles 145, 155 and 189, including therefore, its right to delegate to the Commission the implementation of Regulations it has laid down.

Article 103 (3) differs from Article 103 (2) in that, as the use of the phrase 'where required' shows, it envisages the possibility that the Council might not be able to reach the unanimity required to carry into effect the rules for the application of the conjunctural measures decided on. In that circumstance only, these rules would be binding on Member States as far as they concerned the result to be obtained, but would have to leave to the national authorities the choice of form and method.

(c) The question of proportionality

19 The next question asked is whether Regulation No 974/71 conflicts with the principle of proportionality and with Articles 39, 40 and 110 of the Treaty and Article 19 of Regulation No 804/68 of the Council of 27 June 1968 creating a common organization of the market in milk and milk products (OJ L 148, 28. 6. 1968, p. 13), on the grounds that the compensatory amounts are not based on any profit made by the importer on the rate of exchange, but solely on the relationship between the official parity of the DM compared with the dollar and its true parity.

20 According to the final paragraph of the preamble to Regulation No 974/71, the amounts adopted should be limited to those strictly necessary to compensate the incidence of the monetary measures.

It is not disputed that, owing to the fact that a single overall criterion was selected, imports into Germany from countries whose currencies are fluctuating in relation to the DM to an extent different from that of the dollar, are affected by compensatory amounts which do not always correspond precisely to the effects in the monetary field of the revaluation of the DM.

The plaintiff in the main action claims that the Council ought either to have varied the compensatory amounts in accordance with the rates of exchange against the dollar of the different currencies of countries importing from or exporting to the Federal Republic and the Netherlands, or to have computed

them on the basis of a set weighted average dependent on the volume of trade.

21 Faced with the necessity of drawing up measures of immediate effect and applicable to all imports and exports of the products concerned, in a situation developing constantly and more or less unpredictably, the Council contrived to make an overall assessment of the advantages and disadvantages of the system to be introduced.

It was able to conclude that to vary the compensatory amounts according to the geographical origin of the products would have prejudiced the practicability of the scheme, largely because of the multiplicity of individual situations, such as those which might arise from the multiple-rate systems employed in some countries, or from the special characteristics of State-trading countries.

A system of this kind might in any case have tended to provoke diversions of trade, which would be difficult to regulate otherwise than by means of systems involving certificates of origin or by controlling the movements of goods in such a way as to inhibit their free circulation.

Furthermore, the choice of contractual currency made by the parties could have rendered the system nugatory.

By determining the size of the compensatory amounts, for each Member State authorized to introduce them, on the basis of a comparison between the official and the true parity of the national currency as against the dollar, the Council sought to take into account the fact that on imports made into Member States, a significant proportion of the dealing is expressed in dollars, and that for exports, particularly to third countries, this was so at the time in the large majority of cases.

22 Moreover, a weighted system, because of its flat-rate nature, would bring the same disadvantages as those criticized, yet without supplying the complete protection deemed necessary in relation to the world's leading exporter of agricultural produce.

Since one of the aims of the conjunctural measures planned was to provide a short-term remedy for the consequences of the revaluation of the DM which might place in jeopardy the goal of a fair standard of living for the agricultural community, it was reasonable to contemplate the necessity of allowing a maximum corrective factor.

In excercising their powers, the Institutions must ensure that the amounts which commercial operators are charged are no greater than is required to

achieve the aim which the authorities are to accomplish; however, it does not necessarily follow that that obligation must be measured in relation to the individual situation of any one particular group of operators.

Given the multiplicity and complexity of economic circumstances, such an evaluation would not only be impossible to achieve, but would also create perpetual uncertainty in the law.

An overall assessment of the advantages and disadvantages of the measures contemplated was justified, in this case, by the exceptionally pressing need for practicability in economic measures which are designed to exert an immediate corrective influence; and this need had to be taken into account in balancing the opposing interests.

23 The Court is not satisfied, then, that in weighing up the advantages and disadvantages of the system linking compensatory amounts to the relationship with the dollar of the national currency of each Member State concerned, and in opting for the system in force, the Council imposed burdens on traders which were manifestly out of proportion to the object in view.

(d) Contravention of Articles 39 (1) (c), 40 (3) (second paragraph) and 110 of the Treaty

24 Article 39 of the Treaty sets out various objectives of the common agricultural policy.

In pursuing these objectives, the Community Institutions must secure the permanent harmonization made necessary by any conflicts between these aims taken individually and, where necessary, allow any one of them temporary priority in order to satisfy the demands of the economic factors or conditions in view of which their decisions are made.

If, owing to developments in the monetary situation, preference happens to be given to the interests of the agricultural community, the Council does not in so doing contravene Article 39.

Moreover, it has not been established that the measures questioned gave rise to prices which would appear obviously unreasonable on selling to consumers.

25 According to the second paragraph of Article 40 (3) of the Treaty, the common organization of the market shall be limited to pursuit of the objectives set out in Article 39 and shall exclude any discrimination between producers or consumers within the Community.

It appears from the reference to this provision made by the national court that the latter contemplated the possibility that discrimination had occurred between producers and consumers to the detriment of the consumers.

26 Article 40 refers only to discrimination between producers or between consumers, while the balance to be held between the conflicting interests of these two groups is dealt with in Article 39.

The Council did not, therefore, contravene Article 40 by adopting the measures in dispute.

27 Lastly, these measures do not contravene Article 110 either, since it has not been established, nor has there been any offer to do so, that by adopting such measures the Council overstepped the boundaries of the wide powers of assessment conferred on it by this provision in matters of commercial policy.

(e) Contravention of Article 19 of Regulation (EEC) No 804/68

28 Article 19 of Regulation No 804/68 prohibits, in trade with third countries, the levying of any customs duty or charge having equivalent effect on products subject to the common organization of the market in milk and milk products.

29 Although the compensatory amounts do constitute a partitioning of the market, here they have a corrective influence on the variations in fluctuating exchange rates which, in a system of market organization for agricultural products based on uniform prices, might cause disturbances in trade in these products.

Diversion of trade caused solely by the monetary situation can be considered more damaging to the common interest, bearing in mind the aims of the common agricultural policy, than the disadvantages of the measures in dispute.

Consequently these compensatory amounts are conducive to the maintenance of a normal flow of trade under the exceptional circumstances created temporarily by the monetary situation.

They are also intended to prevent the disruption in the Member State concerned of the intervention system set up under Community Regulations.

Furthermore, these are not levies introduced by some Member States unilaterally, but Community measures which, bearing in mind the exceptional circumstances of the time, are permissible within the framework of the common agricultural policy.

30 The Council did not contravene Article 19 of Regulation No 804/68 in adopting them.

Examination of the first question, therefore, has not revealed any elements capable of affecting the validity of the Regulation in dispute.

II — Question two

31 The second question asks whether the defendant in the main action was still entitled, on the proper application of Community law, to impose, on 24 March 1972, the date of the application for customs clearance, a countervailing charge on trade with third countries.

The point raised by this question is whether or not the conditions imposed by Article 8 of Regulation No 974/71 for its ceasing to be applicable had been met on that date by reason of the fact that, after the Washington Agreement of 18 December 1971, Member States had decided not to float their currencies, while accepting a margin of fluctuation for exchange around a rate, known as a central rate, greater than that permitted by the Bretton Woods Agreements.

32 Article 8 of Regulation No 974/71 provides that it shall cease to be applicable as soon as all the Member States concerned again apply the international rules on margins of exchange-rate fluctuation around official parity.

This provision envisages the abolition of compensatory amounts as soon as all the Member States have decided to observe again the original parities, or new parities declared to the I.M.F.

33 The Agreement of 18 December 1971 did not meer those requirements.

Far from restoring fixed parities, the countries concerned merely agreed that they would maintain, as far as possible, central rates, which were subject to alteration; the Agreement also allowed margins of fluctuation around these rates of 2·25 % above and below, sometimes equalling the very fluctuations which had prompted the introduction of compensatory amounts.

Moreover, even after the Agreement mentioned, the trend towards the revaluation of certain currencies in the Community continued within the scope of the widened margins of fluctuation; at the time of the disputed

imports, the difference between the DM and its old official parity had reached 13 %, where it remained until the devaluation of the dollar on 8 May 1972.

Finally, the fact that it was certain that the Member States concerned would not go back to the old parities against the dollar was not relevant, since the international rules mentioned in Article 8 do not provide for one set parity but for a system of fixed parities.

III — Question three

34 The third question asks whether Article 2 (2) of Regulation No 974/71 forms a sufficiently precise basis of assessment for compensatory amounts and whether the rate of 45·50 DM charged under Regulation No 548/72 of the Commission on the imports in issue results from the application of the principles contained in that Article.

35 Under Article 2 (2) of Regulation No 974/71, compensatory amounts for products whose price depends on that of products covered by intervention arrangements shall be equal to 'the incidence', on the prices of the product concerned, of the application of the compensatory amount to the prices of the product subject to intervention.

The plaintiff in the main action contends that this explanation of the principles for calculating compensatory amounts is too vague and infringes one of the general rules of law, that laws authorizing the collection of taxation must be sufficiently specific.

36 The term 'incidence' in Article 2 puts the Commission under a duty to consider the repercussion, on the prices of the product not suspect to intervention, of the application of compensatory amounts to the ingredients common to it and to the product subject to intervention on which it depends.

37 Article 5 of Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products provides for the annual fixing of an intervention price for butter and for skimmed-milk powder.

Since there is no intervention price for fresh milk, the price of other milk products, including cheese, must therefore depend on the price of butter and of skimmed-milk powder.

For this reason, in applying Article 2 (2) of Regulation No 974/71 to cheese, the Commission first calculated the incidence of the compensatory amounts, applied to the price of butter and skimmed-milk powder, on fat and skimmed milk, which are two of the ingredients of those products.

Once it had thus measured the effect of the countervailing charge on the unit price of fat and skimmed milk, the Commission was able to carry over that effect and apply it to the fresh milk from which cheese is made.

This deductive method requires only a limited margin of discretion on the part of the Commission, as is shown by the calculations it submitted which arrive at the figure of 45·50 DM.

38 The plaintiff in the main action also complains that no compensatory amount could be charged on the product in dispute because, contrary to the requirement in Article 1 (2) (b) of Regulation No 974/71, the price of cheese does not depend on the price of a product subject to intervention, but is to a great extent determined by the market.

39 The prices for cheese, on the one hand, and for butter and skimmed-milk powder on the other hand, are linked, notably as regards threshold prices, by Regulations of the Council Nos 804/68 of 27 June 1968 and 823/68 of 28 June 1968 determining the groups of products and the special provisions for calculating levies on milk and milk products.

The fact that in Regulation No 804/68 the free-at-frontier prices for cheese are fixed on the basis of the most favourable buying conditions on the international market, does not preclude the Council from being entitled, in calculating compensatory amounts, to select a less complex method, bearing in mind the temporary nature of the system.

40 Finally, the plaintiff in the main action claims that to charge compensatory amounts on imports of cheese of sheep's milk from Bulgaria contravenes the last sentence of Article 1 of Regulation No 974/71, since the floating of the German and Dutch currencies did not give rise to any disturbances in the cheese trade.

41 The necessarily general and flate-rate nature of the compensatory amounts system and the need to adapt quickly to constant fluctuations in currency justify the Commission's having considered disturbances only in relation to groups of products, irrespective of origin.

A distinction based on origin would in any case have created a risk of trade deflection.

42 Hence, examination of Question 3 has not revealed any elements capable of affecting the validity of Regulations Nos 974/71 and 548/72 of the Commission.

Costs

43 The costs incurred by the Government of the Federal Republic of Germany, the Council and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable, and as these proceedings are, insofar as the parties to the main action are concerned, in the nature of a step in the action pending before a national court, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the Balkan firm, the Government of the Federal Republic of Germany, the Council and the Commission;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 38 to 47, 103, 110 and 177;
Having regard to Regulations of the Council Nos 804/68 of 27 June 1968, 823/68 of 28 June 1968, 974/71 of 12 May 1971 and 2746/72 of 19 December 1972;
Having regard to Regulations of the Commission Nos 1013/71 and 1014/71 of 18 May 1971 and 548/72 of 18 March 1972;
Having regard to the Resolution of the Council of 9 May 1971;
Having regard to the Protocol on the Statue of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

in answer to the questions referred to it by the Berlin Finanzgericht by order of that court dated 19 January 1973, hereby rules:

Examination of the questions referred has not revealed any elements capable of affecting the validity of Regulation No 974/71 of the Council nor of Regulations Nos 1013/71, 1014/71 and 548/72 of the Commission, fixing the compensatory amounts applicable during the period indicated in the questions referred.

Lecourt Donner Sørensen Monaco Mertens de Wilmars
Pescatore Kutscher Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 24 October 1973.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 26 JUNE 1973 [1]

Mr President,
Members of the Court,

By Order dated 19 January 1973 the Finanzgericht at Berlin submitted to the Court a series of questions bearing upon the validity of some Community Regulations (insofar as they have as their subject matter compensatory amounts on imports of milk products from Bulgaria). I shall not now read out the rather extensive list of questions; in this respect I would refer you to the Report for the hearing.

It will aid an understanding of the proceedings if I preface my opinion by the following preliminary remarks: — During the months of April and May 1971 some foreign currency markets within the Community had been disturbed by speculative movements and by the abnormal influx of short-term capital. Having regard to the resultant increase in the volume of money, which could have had dangerous inflationary effects, the Federal Republic of Germany and the Kingdom of the Netherlands on 9 May 1971 freed the rates of exchange of their currencies, i.e. they widened the fluctuational margins of these rates of exchange in relation to the official parity. Once the actual rate of exchange deviated beyond certain limits from the official parity, these measures were bound to cause difficulties for the functioning of the common market organizations, which are based upon units of account and official parities, for

1 — Translated from the German.