OPINION OF ADVOCATE GENERAL STIX-HACKL

delivered on 20 September 2001 [1]

I — Introduction

1. The present case concerns the taxable amount in relation to transactions of retailers who allow final consumers price reductions upon presentation of a coupon when they purchase goods and who in return receive from the manufacturer which issued the coupon a refund of an amount equal to the price reduction.

II — Facts, main proceedings and questions referred for a preliminary ruling

2. From February 1974 until January 1996 Yorkshire Cooperatives Ltd (hereinafter 'Yorkshire') entered into numerous transactions in North England for the retail sale of food and other goods. In the course of those sales it accepted 'money off' coupons issued by the manufacturers of certain goods sold by it. The coupons were part of specific advertising campaigns by the manufacturers. The manufacturers issued the coupons either directly or in the form of cut-out coupons in newspapers and magazines. Each coupon either stated a sum of money or set out a means of calculating a sum of money (price reduction) and expressly stated that a consumer who presented the coupon to a retailer willing to accept it could buy the specified goods at the normal retail price less the price reduction.

3. Yorkshire accepted such coupons from its customers. It bought the corresponding goods from the manufacturers and offered them for sale at the normal retail price. A customer who did not present a coupon had to pay the normal retail price. A customer who presented a coupon paid the normal retail price less the price reduction. Yorkshire then sent the coupon, in accordance with the instructions on it, to the manufacturer, who refunded to it the amount of the price reduction.

4. After it had received this refund Yorkshire included it in its gross daily takings and accounted for value added tax to the Commissioners on the basis of the full

1 — Original language: German.

normal retail price of the goods, without a price reduction in respect of the coupons.

5. The price which Yorkshire had to pay to the manufacturer upon the purchase of the goods in question was determined without reference to the coupons. In some cases Yorkshire had bought the goods before the manufacturer issued the relevant coupons to the public.

6. By letter of 2 December 1996 Yorkshire sought repayment of the allegedly excess VAT it had paid in the accounting period from February 1974 to January 1996 in connection with the refund granted by the manufacturer. It argued that in return for the supply of goods to its customers it had received only the cash sums from those customers and that the amount of the refund represented a rebate or a discount on the price of the original supply of the corresponding goods by the manufacturer to Yorkshire. As Yorkshire had, in respect of the supply of goods to its customers, paid VAT on the amount of the reduced price paid by the customers plus the amount of the coupon, it was entitled to repayment of the part of the VAT in respect of the amount of the coupon, because that amount was not part of the consideration for the supply of goods by Yorkshire to its customers. As the manufacturers had not, however, issued credit notes to it, it did not have to adjust its input tax in respect of the supplies of goods and was not therefore obliged to make a corresponding adjustment of the value added tax declarations with regard to such supplies. Yorkshire relied in that regard on the judgment in *Elida Gibbs*. [2]

7. By letter of 10 February 1997 the Commissioners rejected Yorkshire's claim. Yorkshire had misinterpreted the decision in *Elida Gibbs* and the taxable amount in respect of supply of goods to its customers was the cash sum paid by the customers plus the amount in respect of the coupons. If the taxable amount in respect of the transactions between Yorkshire and its customers had, instead, been exclusively the cash sum paid by the customers, Yorkshire would, moreover, have had to adjust the allegedly excess sales value by a correspondingly lower value with respect to the transactions between the manufacturers and Yorkshire.

8. In 1998 Yorkshire appealed to the VAT and Duties Tribunal against the Commissioner's decision. The Tribunal has stated in its decision that it is not convinced of the correctness of Yorkshire's interpretation of the effects of the judgment in *Elida Gibbs*, but cannot reject the submissions of either party in that regard as unfounded. After hearing the parties submissions on the

2 — Case C-317/94 [1996] ECR I-5339.

case-law of the Court of Justice, in particular on the judgments in *Elida Gibbs*, *Glawe*,[3] *Naturally Yours Cosmetics*,[4] *Boots Company*[5] and *Empire Stores*,[6] it therefore considered it necessary to seek a preliminary ruling from the Court of Justice pursuant to Article 177 of the EC Treaty (now Article 234 EC) in order to give its decision.

9. Although the supplies in dispute arose partly in the period before the Sixth Directive came into force, the parties have referred exclusively to the Sixth Directive.

10. It has also been suggested that a wholesaler might also be involved. The parties both agree that it is necessary to include the hypothetical case where a manufacturer sells goods to a wholesaler who then sells them on to a retailer. Since that is, in the present case, hypothetical but nevertheless, in principle, feasible in certain circumstances, both possibilities are taken into account in the national court's questions.

3 — Case C-38/93 [1994] ECR I-1679.
4 — Case 230/87 [1988] ECR 6365.
5 — Case 126/88 [1990] ECR I-1235.
6 — Case C-33/93 [1994] ECR I-2329.

11. The questions are as follows:

'(1) On the proper construction of Article 11A(1)(a) and 11C(1) of the Sixth Directive, what is the taxable amount, in relation to a supply of goods by a retailer in the position of the appellant to a customer, where:

(a) the manufacturer of the goods has sold them to the retailer (or, hypothetically, to a wholesaler who has sold them to the retailer),

(b) in the course of a sales promotion the manufacturer procures the issue of a coupon, the terms of which are:

(i) that the holder, on presenting the coupon to the retailer, may buy the goods from the retailer at a price which is less than the retailer's normal selling price by an amount ("the reduction") specified in or ascertainable in accordance with the terms of the coupon, and

(ii) that the manufacturer, when the retailer has sold the goods in accordance with the terms of the coupon and has pres-

ented the coupon to the manufacturer, will pay to the retailer a sum equal to the reduction,

(c) the retailer sells the goods to a customer on presentation of the coupon and on payment of the reduced price,

(d) the retailer presents the coupon to the manufacturer and is paid a sum equal to the reduction?

Is the taxable amount:

(i) the cash sum paid by the customer, or

(ii) the cash sum paid by the customer together with the sum equal to the reduction paid by the manufacturer?

2. If the answer to question 1 is in sense (i), must the retailer adjust his input tax in his returns of VAT in relation to the supply of the goods by the manufacturer (or, as the case may be, by the wholesaler) to him, where the manufacturer or other supplier has not issued a credit note to the retailer for the reimbursement of the reduction?'

III — Legal background

A — *Community law*

12. Article 11 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (hereinafter 'the Sixth Directive') [7] lays down the rules regarding the taxable amount.

13. Article 11A(1)(a) provides:

'1. The taxable amount shall be:

(a) in respect of supplies of goods and services other than those referred to in (b), (c) and (d) below, everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies;...'

7 — OJ 1977 L 145, p. 1.

14. Article 11A(2), (3)(a) and (b) provide:

'2. The taxable amount shall include:

(a) taxes, duties, levies and charges excluding the value added tax itself;

(b) incidental expenses such as commission, packing, transport and insurance costs charged by the supplier to the purchaser or customer. Expenses covered by a separate agreement may be considered to be incidental expenses by the Member States.

3. The taxable amount shall not include:

(a) price reductions by way of discount for early payment;

(b) price discounts and rebates allowed to the customer and accounted for at the time of the supply;...'

15. Article 11C(1) states:

'1. In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States.

However, in the case of total or partial non-payment, Member States may derogate from this rule.'

B — *National law*

16. The Sixth Directive is transposed into national law in the United Kingdom primarily through the Value Added Tax Act 1994.

17. Section 19 of the Value Added Tax Act 1994 provides, so far as material, as follows:

'(1) For the purposes of this Act the value of any supply of goods or services shall, except as otherwise provided by or under this Act, be determined in accordance with this section and Schedule 6, and for those purposes subsections (2) and (4) below have effect subject to that Schedule.

(2) If the supply is for a consideration in money its value shall be taken to be such amount as, with the addition of the VAT chargeable, is equal to the consideration.

(3) If the supply is for a consideration not consisting or not wholly consisting of money, its value shall be taken to be such amount in money as, with the addition of the VAT chargeable, is equivalent to the consideration.

(4) Where a supply of any goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it....'

IV — The first question

A — *The submissions of the parties*

18. By way of introduction, *Yorkshire* describes the operation of the coupon system and states that the coupons at issue in the main proceedings correspond to those in the *Elida Gibbs* case. [8] The manufacturers' aim in issuing the coupons is to ensure that the final consumer obtains the benefit. By requiring the retailer to sell at a reduced price, the manufacturers are reducing the consideration for the supplies.

First, with regard to determining the taxable amount, Yorkshire states that it is apparent from the explanatory memorandum to the proposal for the Sixth Directive that such determination must be applicable to each individual transaction. Moreover, according to the case-law of the Court of Justice, the consideration for tax purposes is the consideration actually received, not the objective value, and must be capable of being valued in money. Furthermore, there must be a direct link between the supply of the goods or services and the consideration received. Finally, the consideration constituting the taxable amount for any person in the chain of production and distribution prior to the final consumer cannot exceed the price paid by the final consumer.

8 — Cited in footnote 2 above.

Further, Yorkshire submits that both the manufacturer and the retailer must account for VAT only on the amount actually received, namely the net amount. Alternatively, the refund by a manufacturer should be regarded as a price reduction after the supply takes place, within the meaning of Article 11C(1) of the Sixth Directive.

Secondly, Yorkshire submits that only the consideration from a final consumer can be included in a retailer's taxable amount. A payment made by a person forming part of the chain of production and distribution cannot be taken into account. A price reduction coupon issued by a manufacturer cannot be regarded as third-party consideration. Although the coupon has value to the retailer, the value merely consists in the fact that it enables him to obtain a refund in respect of the price paid to the manufacturer.

Third, the contention that the manufacturer is to be regarded as a third-party in regard to the refund given by him is contrary to the principle that VAT must be levied at each stage of the production and distribution chain in proportion to the amount actually received. It also contravenes the principle that no one in that chain should pay VAT on an amount greater than the price paid by the final consumer. In that regard Yorkshire submits that there is a difference between the price reduction coupons at issue in the main proceedings and the cash-back coupons at issue in *Elida Gibbs*. In the case of cash-back coupons, the manufacturer refunds a certain amount directly to the final consumers. That does not alter the acquisition price or the sales price.

Unlike in the case of cash-back coupons, in the case of a price reduction coupon the refund is made by the manufacturer to the retailer. Consequently the sales price paid by the final consumer to the retailer must be adjusted. If wholesalers were involved in the chain, they would not, however, have to make any price adjustments because only the acquisition price paid by the retailer is adjusted following the refund by the manufacturer.

Fourthly, Yorkshire submits that the Court of Justice has held, in relation to the supply of services, that in order for the supply of the service to be deemed to be made for consideration within the meaning of the Sixth Directive there must be a legal relationship between the provider and the recipient of the service pursuant to which there is a reciprocal performance. By analogy therewith, in order to determine the taxable amount in the case of supplies of goods, regard must be had to the legal relationship between the participants. In the case of the sale of goods to a final consumer there is basically a legal relationship only between him and the retailer. The relationship between manufacturer and retailer is relevant only if the retailer accepts a coupon from a final consumer

in part payment. It is precisely that acceptance, and not the supply of the goods to the consumer, which is the performance by the retailer to the manufacturer in consideration of the refund of a sum by the manufacturer to the retailer.

In the light of those considerations, Yorkshire submits that the taxable amount can only be the sum paid by the final consumer.

19. The *German Government* submits that price reduction coupons are in the nature of a rebate for the supply by the retailer. The acceptance of the coupon should be irrelevant to determination of the taxable amount in respect of the supply of the goods. The German Government does not share Yorkshire's view that a limitation of the taxable amount follows from the judgment in *Elida Gibbs*. That judgment concerns a supply by a manufacturer to a retailer and is silent on the question of how the taxable amount is to be determined in the case of the supply by a retailer to a final consumer. In the case of the coupon system at issue in the main proceedings, there is a reversal in the relationship in the supply chain (manufacturer — retailer — end consumer) in respect of part of the consideration.

There can be a reduction in the taxable amount for the purposes of Article 11A(3)(b) of the Sixth Directive only as a result of an event (rebate, discount, refund) relating to the taxable amount of the transaction between supplier and customer. That there is such an event in this case follows from the fact that, on the basis of the refund by the manufacturer, the retailer can grant the final consumer a price reduction. The refund is therefore a rebate on the acquisition price paid by the retailer to that very manufacturer. That rebate from the manufacturer is passed on to the next transaction stage, that is to say the supply to the final consumer, and consequently affects the size of the taxable amount in respect of that supply.

In the light of those submissions, the German Government proposes that the taxable amount is only the amount paid by the final consumer.

20. The *Irish Government* submits primarily that the taxable amount for the supply of the goods is made up of both the money received from the final consumer and the refund received from the manufacturer. The taxable amount within the meaning of Article 11A(1)(a) of the Sixth Directive is made up of everything which constitutes the consideration which has been or is to be obtained by the supplier for his transactions. Regard must be had to the consideration actually received. Moreover, the following three tests laid down in the Court's case-law should be applied: direct link between the supply and the consideration; consideration capable of being expressed in money; subjective value of the consideration. In the present case, those tests have been met.

As regards the judgment in *Elida Gibbs*, the Irish Government points out, *inter alia*, that the Court did not express a view in that case on the taxable amount for a retailer.

If the taxable amount were restricted to the amount paid by the final consumer, the principle of the neutrality of the VAT system would require an adjustment to be made to the supply by the manufacturer to the retailer. However, in *Elida Gibbs* the Court considered that there was no need for an adjustment to the taxable amount for the intermediate transactions between manufacturer, wholesaler and retailer.

The Irish Government also emphasises that the tax authorities may not levy an amount exceeding the amount paid by the final consumer. Nor may the amount be less than the amount paid by the final consumer, which would be the case if the refund for the coupon were not included.

The Irish Government therefore submits that the taxable amount is the amount paid by the final consumer plus the refund received from the manufacturer.

21. The *United Kingdom Government* maintains that it follows from the judgment in *Elida Gibbs* that a reduction in the manufacturer's taxable amount does not entail a reduction in the acquisition price of the manufacturer's immediate customer or in the taxable amount of the manufacturer's immediate customer.

The United Kingdom Government submits that the approach adopted by the Court of Justice in its judgment in *Elida Gibbs* is incorrect and that a manufacturer's taxable amount should not be reduced by the value of the coupons in respect of which it makes refunds. It follows from this that the taxable amount for a retailer includes both the amount paid by the final consumer and also the value of the coupons, because both amounts are directly connected to the supply by the retailer.

However, even if the judgment in *Elida Gibbs* is regarded as correct, the United

Kingdom Government submits that the argument advanced by Yorkshire is contrary to paragraph 33 of that judgment. It is clear from that judgment that the fact that the manufacturer's taxable amount is reduced by the value of the coupon does not mean that the retailer's acquisition price and his taxable amount must necessarily be reduced by the same amount. That conclusion applies equally to price reduction coupons. The price reduction coupon has no effect on the price between the manufacturer and the retailer or on the amount ultimately received by the retailer for the supply of the goods. That price is always the normal retail price.

The incorrectness of Yorkshire's view becomes clear in cases in which a retailer has not bought the goods from a manufacturer but from a wholesaler. In such a situation the price at which the retailer purchased the goods does not depend on the presence of coupons and whether or not the manufacturer subsequently makes a refund.

It claims that its submission is supported by the judgment in *Boots*, which also concerned a system of coupons, under which the manufacturer refunded to the retailer all or part of the price reduction. The Court held that the refunds had to be included in the taxable amount.

In the light of those considerations, the United Kingdom Government suggests that the taxable amount is the amount paid by the final consumer together with the sum equal to the refund paid by the manufacturer.

22. The *Netherlands Government* concludes, on the basis of an analysis of the coupon system at issue in the main proceedings and the relevant case-law of the Court of Justice, that the consideration for the sale of a particular product consists of the price paid for it by the final consumer plus the refund from the manufacturer, if the purchase has been made using a coupon.

Pursuant to the principle of the neutrality of the VAT system, the retailer's taxable amount must not be lower than the amount which he actually received for the supply.

The approach adopted by the Court in its judgment in *Elida Gibbs* cannot be transposed to the present case, because the present case concerns the retailer's taxable amount. Each link in the supply chain must account for the VAT on the value it has added to the product. A reduction in the taxable amount by the manufacturer does not alter the added value created by the retailer.

Consequently the Netherlands Government suggests that the taxable amount is the price paid by the final consumer plus the amount equal to the price reduction which is refunded by the manufacturer.

23. The *Commission* submits that the consideration within the meaning of Article 11A(1)(a) of the Sixth Directive which a retailer receives in a situation such as that at issue in the main proceedings is the full price of the goods. That price is paid in part by the final consumer and in part by the manufacturer. With regard to that provision, the manufacturer must be regarded as a third-party, which is why the refund paid by him must be included in the retailer's taxable amount.

The Commission considers that it is arguable that the refund by the manufacturer could be regarded as a refund of part of the original acquisition price paid by the retailer. However, that makes no difference to the amount of VAT for which the retailer is liable. That amount is unchanged, irrespective of how the amount refunded by the manufacturer is appraised.

Furthermore, the argument raised by Yorkshire according to which a reduction in the retailer's input tax depends on the issue of a credit note by the manufacturer, is incorrect.

As regards the judgment in *Elida Gibbs*, in particular paragraph 33 thereof, the Commission emphasises that the reasoning of the Court applies not only to 'cash-back' coupons but also to the 'money-off' coupons at issue in the main proceedings.

Finally, only a manufacturer can rely on Article 11C(1) of the Sixth Directive in order to reduce his taxable amount and thus the amount of VAT for which he is liable.

The Commission therefore submits that the taxable amount is the full retail price, made up of the amount paid by the final consumer plus the amount refunded by the manufacturer to the retailer.

B — *Assessment*

24. First of all it is necessary to clarify certain matters relating to the first question.

25. Thus, 'customer' is to be understood as meaning 'final consumer' within the meaning of the Sixth Directive. Moreover, it should be noted that the price reduction is granted by the retailer. The payment of the

reduction by the manufacturer to which the national court refers is therefore more precisely a refund by the manufacturer to the retailer. It is only because the amount of that refund is the same as the amount of the price reduction that one can say that the manufacturer pays the price reduction.

26. Furthermore, the additional situation referred to in the national court's questions, in which the goods are sold by the manufacturer to a wholesaler should not be dealt with in these proceedings. It is, as expressly stated, a hypothetical factual situation and thus a hypothetical question. It is settled case-law of the Court of Justice [9] that such questions are inadmissible. Moreover, it is not necessary to examine such a set of circumstances in order to provide an answer in the case in point.

27. It is first of all necessary to call to mind the defining principle of the Sixth Directive, namely that of tax neutrality. That includes the principle that the taxable amount may not be lower than the consideration actually received. According to Article 11A(1)(a) of the Sixth Directive, the taxable amount is 'in respect of supplies of goods and services..., everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third-party for such supplies'.

28. As the present case concerns the taxable amount of the retailer, it is therefore necessary to determine the value of the consideration which he receives.

29. As consideration, the retailer receives, first, the amount which the final consumers, his customers, pay to him. That amount is either the 'normal' final sales price or — if a coupon is presented — the price reduced by the amount of the price reduction.

30. Second, the retailer receives — if he passes on to the manufacturer the coupon presented to him — a refund from the manufacturer equal to the value of the coupon. The coupon therefore has a value not only for the final consumer, in that it obtains a price reduction for him, but also for the retailer. For the retailer, the coupon represents the right to a refund of part of the purchase price he has paid to the manufacturer. That value which the coupon has for the retailer makes the coupon a kind of means of payment. That follows from the judgment in *Boots*, in which the Court held that 'where the coupon surrendered to *Boots* is then recovered by its supplier,... the coupon has monetary value for *Boots* equal to the amount actually paid by the supplier to *Boots*...'. [10]

9 — See Case C-340/99 *TNT Traco* [2001] ECR I-4109 and the case-law cited there.

10 — Case 126/88 (cited in footnote 5), paragraph 13.

31. That is so in the present case. The manufacturers refund to the retailer, upon presentation of the voucher, the difference between the price actually paid by the final consumer and the 'normal' unreduced price.

32. Also favouring characterisation of a coupon as a consideration is the judgment of the Court in *Argos Distributers*, according to which 'the subjective consideration... is constituted wholly or in part by the vouchers presented by the buyer of the goods'. [11]

33. It already follows from the wording of Article 11A(1)(a) of the Sixth Directive that the consideration can be paid not only by the purchaser but also by a third-party. Thus, in the *Bally* case the Court recognised that the payment of the price through the 'intervention' [12] of a third-party, in that case the intervention of a credit card company, was 'consideration' within the meaning of Article 11A(1)(a) of the Sixth Directive. In the present case, a third-party is also used, namely the manufacturer, who pays part of the 'normal' price — that is to say, the price reduction — to the retailer, in the form of a refund.

34. It can be deduced from the judgment in *Elida Gibbs* that not only price reductions which are granted directly between two parties to a contract, as for example between manufacturer and final consumer, are of relevance to determining the taxable amount, but also such reductions which are granted 'through retailers'. [13]

35. Just as the amount of the price reduction and the corresponding refund must be taken into account with regard to the manufacturer, so it must also be taken into account with regard to the retailer. However, as the retailer is not the payer, but the recipient of that amount, that amount cannot be taken into account in the same way as it is with regard to the manufacturer. It cannot be that not only the supplier, but also the recipient of a supply, had either not to include that amount or could include that amount but then deduct it again.

36. As the Irish Government correctly states, in the present case the following three requirements for characterisation as consideration are satisfied: the direct link

11 — Case C-288/94 [1996] ECR I-5311, paragraph 18.

12 — Case C-18/92 [1993] ECR I-2871, paragraph 17.

13 — Case C-317/94 (cited in footnote 2), paragraph 31.

between the supply of the goods and the consideration, the consideration capable of being expressed in money, and the subjective value of the consideration.

37. The direct link, required by the case-law, [14] between the supply of goods to the final consumer on the one hand and — in the instant case — both parts of the consideration on the other hand, is constituted in the coupon system at issue in the main proceedings by the fact that the supply takes place at the reduced price only if the coupon is also presented.

38. The requirement that both parts of the consideration be capable of expression in money is also fulfilled. That applies both to the cash amount paid by the final consumer and to the coupon, that is to say, to the value which it represents. That is because each coupon indicates the amount of the price reduction which the retailer grants to the final consumer and which the manufacturer refunds to the retailer.

39. Finally, each part of the consideration fulfils the requirement that it should have a subjective value. While that is obvious in the case of the cash amount paid by the final consumer, in the case of the coupon it is because it represents a value for the retailer inasmuch as he receives a refund from the manufacturer equal to the amount of the price reduction.

40. It follows from the principle of the neutrality of the value added tax system that 'the tax authorities may not... charge an amount exceeding the tax paid by the final consumer'. [15] That would however be the case if neither the manufacturer nor the retailer could adjust his share of value added tax.

41. According to the judgment in *Elida Gibbs*, the taxable amount for the manufacturer in accordance with Article 11A(1)(a) and C(1) of the Sixth Directive is the 'selling price charged by the manufacturer, less the amount indicated on the coupon and refunded'. [16]

42. However, it also follows from the judgment in *Elida Gibbs* that the retailer may not readjust his value added tax. According to that judgment 'there is no

14 — Case 154/80 *Coöperatieve Aardappelenbewaarplaats* [1981] ECR 445 and the judgments in Case 126/88 (cited in footnote 5) and in Case C-33/93 (cited in footnote 6).

15 — Case C-317/94 (cited in footnote 2), paragraph 24.

16 — Ibid., paragraph 34.

need to readjust the taxable amount for the intermediate transactions'. [17]

43. If the retailer were allowed a corresponding adjustment, not all of his receipts would be subject to tax and the value added tax would have an effect on his operating profit because it would represent an income item for him.

44. However, according to the judgment of the court in the *Freemans* case, a taxable person may not receive 'a sum corresponding to a part of the sales price that is the consideration for the goods delivered' without 'that sum... [being] part of the taxable amount'. That would, however, be precisely the case if the amount of the coupon were not included by the retailer in the taxable amount.

45. The rule that the amount of the coupon reduces the taxable amount only of the manufacturer but must be included in that of the retailer ensures that the amount is neither totally left out of account nor taken into account twice. It ensures that the amount is instead taxed only once. It also prevents the tax authority from losing VAT or collecting too much tax.

46. Finally, this result is in accordance with the Sixth Directive's value added tax system, whose underlying idea is that at each stage of the supply chain the added value produced at that stage should be taxed.

47. The answer to the first question should therefore be that in a case such as that at issue in the main proceedings the taxable amount is the cash amount paid by the customer plus the amount which corresponds to the price reduction paid by the manufacturer.

V — The second question

A — *The parties' submissions*

48. Yorkshire submits that the VAT element of the refund must be deducted

17 — Ibid., paragraph 33.

from its input tax and that repayment of output tax does not depend upon the issue of a credit note or debit note. The issue of such notes is even precluded by national law in a situation such as that in the main proceedings. Yorkshire therefore submits that the retailer does not have to readjust his input VAT.

49. The *German Government* does not consider that the obligation to adjust input tax follows from the judgment in *Elida Gibbs*. It refers in that connection rather to Article 20(1)(b) of the Sixth Directive under which the retailer has an obligation to adjust. There can be a reduction in the taxable amount only by virtue of the fact that the amount of the refund paid by the manufacturer to the retailer is to be regarded as a price refund to the retailer. Only such a system ensures the neutrality of the VAT, in that the amount deductible as input tax corresponds to the amount which the manufacturer owed as output tax.

50. The *United Kingdom Government* submits that the retailer must adjust his input tax, because only the added value is to be taxed.

51. The *Netherlands Government* submits that the principle of the tax neutrality of VAT requires that an adjustment takes place if the taxable amount is only the amount paid by the final consumer.

52. Having regard to their submissions concerning the answer to the first question, the *Irish Government* and the *Commission* consider that there is no need to answer the second question.

B — *Assessment*

53. The second question is posed in the event that the answer to the first question is that the taxable amount is only the cash sum paid by the customer.

54. As I am here proposing that the Court's answer to the first question should be that the taxable amount is the sum paid by the final consumer plus the amount of the refund paid by the manufacturer, there is no need to go into the second question in any more detail.

VI — Conclusion

55. In the light of those considerations I propose that the Court should answer the national court's questions as follows:

(1) The answer to the first question — leaving aside the hypothetical case of the involvement of a wholesaler — is that, in a case such as that at issue in the main proceedings, the taxable amount is the cash sum paid by the customer together with the sum equal to the reduction paid by the manufacturer.

(2) Having regard to my proposed answer to the first question, there is no need to answer the second question.