In Case 5/78

REFERENCE to the Court pursuant to Article 177 of the EEC Treaty by the Finanzgericht (Finanze Court) Münster for a preliminary ruling in the proceedings pending before that court between

MILCHFUTTER GMBH & CO. KG, Diepholz,

and

HAUPTZOLLAMT PRINCIPAL CUSTOMS OFFICE GRONAU,

on the interpretation of provisions of regulations of the Council and of the Commission concerning respectively the calculation of levies in the milk and milk products sector and the method of determining the lactose content of compound feeding-stuffs imported from third countries with regard to the rate of monetary compensatory amounts levied on compound feeding-stuffs,

THE COURT (Second Chamber)

composed of: M. Sørensen, President of Chamber, P. Pescatore and Lord Mackenzie Stuart, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

On 14 and 20 January and 19, 20, 25, 26 and 27 March 1975 Milchfutter GmbH & Co. KG of Diepholz imported from the Netherlands into the Federal Republic of Germany several consignments of milk-based compound feeding-stuffs intended for fattening calves, having a starch content by weight of less than 10% and falling under tariff subheading 23.07 B I a of the Common Customs Tariff.

Milchfutter obtained customs clearance into free circulation for the goods at the customs office at Oeding, declaring that

the goods came under tariff subheading 23.07 B I a 3 of the Common Customs Tariff (preparations of a kind used in animal feeding, containing starch and containing not less than 50% but less than 75% by weight of milk products).

The customs office, however, classified the product under tariff subheading 23.07 B I a 4, finding a milk product content of more than 75 %. It made its finding in application of Article 11 (1) of Regulation No 823/68 of the Council of 28 June 1968 determining the groups of products and the special provisions for calculating levies on milk and milk products (Official Journal, English Special Edition 1968 (I), p. 199), which provides that the milk product content of products falling within tariff subheading ex 23.07 B are to be determined by applying a coefficient of 2 to the lactose content per 100 kg of the product in question, and in application of Regulation No 1216/68 of the Commission of 9 August 1968 laying down the method for determining the lactose content of compound feeding-stuffs imported from third countries (Official Journal, English Special Edition 1968 (II), p. 421).

Accordingly, the customs office at Oeding levied monetary compensatory amounts in respect of the imports carried out in January 1975 at the rate of DM 169.90 per 1 000 kg net weight and of the imports carried out in March 1975 at the rate of DM 149.40 (instead of DM 127.40 and 112.110 respectively).

The objections lodged by Milchfutter against that decision were rejected by the Hauptzollamt (Principal Customs Office) Gronau on 25 August 1975.

On 19 September 1975 Milchfutter brought proceedings before the Finanzgericht (Finance Court) Münster which, by order of its Fourth Chamber of 29 September 1977, decided, pursuant to Article 177 of the EEC Treaty, to stay proceedings until the Court of Justice had delivered a preliminary ruling on the following questions:

1. Is the "milk product content" which results from the application of Article 11 (1) of Regulation (EEC) No 823/68 of the Council of 28 June 1968 and of Article 1 of Regulation (EEC) No 1216/68 of the Commission of 9 August 1968 decisive with regard to the amount of the monetary compensatory amounts which it was necessary to impose during the period from January to March 1975 on compound feeding-stuffs coming under tariff subheadings 23.07 B I a 3 or 23.07 B I a 4 of the Common Customs Tariff which were imported from the Netherlands into the Federal Republic of Germany?
2. If Question 1 is answered in the negative:

   Is the "actual" milk product content decisive?
3. If Question 2 is answered in the affirmative:

   Does it follow from Community law which method is to be used for determining the actual milk product content?
4. Within the context of the system of monetary compensatory amounts, is the tariff classification made by the exporting Member State of the European Communities binding upon the importing Member State?

The order of the Finanzgericht Münster was received at the Registry of the Court on 5 January 1978.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the Commission of the European Communities on 9 March 1978 and by Milchfutter GmbH & Co. KG, the plaintiff in the main action, on 15 March.

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

By order of 12 April 1978 the Court, in application of Article 95 (1) of the Rules of Procedure, decided to assign the case to the Second Chamber.

II — Written observations submitted to the Court

Milchfutter GmbH & Co. KG, the plaintiff in the main action, emphasizes that the case is intended to determine whether milk-based substitute feeding-stuffs fall within subheading B I a 3 or subheading B I a 4 of tariff heading 23.07, the difference between the two consisting in the milk product content. It has been established in the main action that the goods in question have a milk product content of less than 75%. The question is whether that actual content is irrelevant and whether the notional content calculated in application of Article 11 of Regulation No 823/68 is alone decisive.

(a) In the plaintiff's view the answer to the question whether the milk product content which results from the application of Article 11 (1) of Regulation No 823/68 and of Article 1 of Regulation No 1216/68 determines the rate of the monetary compensatory amounts applicable in intra-Community trade is in the negative.

Article 11 of Regulation No 823/68 relates only to levies. Regulation No 823/68 is based on Article 14 (6) of Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176); the enabling provision is contained in Title III which is solely concerned with trade with third countries.

The special nature of the calculation of the levy is clearly evident from the recitals in the preamble to Regulation No 823/68: it is to be undertaken according to a "standard starch and milk product content". For this purpose the lowest possible starch content and the highest possible milk product content are to be used. That rule expresses clearly the protective function which the method of calculation chosen is to fulfil. The preamble to Regulation No 823/68 further states that milk ingredients have a much greater effect on price formation than cereal ingredients; that is why Article 11 (1) of the Regulation multiplies the lactose content by a coefficient of 2 in order to determine the milk product content of products falling within tariff subheading ex 23.07 B. In that way the Council established for the levy a basis of assessment which differs from the system of the customs tariff: a product falling within tariff subheading ex 23.07 B is classified for tariff purposes according to its actual milk product content, while Regulation No 823/68 establishes as the criterion the notional content and thus takes as the basis for the calculation of the levy for third countries the highest possible milk product content, in order to ensure that the Community market is sufficiently protected.

For the determination of refunds in application of Regulation No 876/68 of the Council of 28 June 1968 laying down general rules for granting export refunds on milk and milk products and criteria for fixing the amount of such refunds (Official Journal, English Special Edition 1968 (I), p. 234) the Commission takes account of the actual milk product content.

The special rules relating to levies are not relevant for tariff classification under the general rules for the interpretation of the Common Customs Tariff. Although Article 19 of Regulation No 804/68 provides that the classification

of products covered by the common organization of the market in milk and milk products is to be governed by the rules laid down for the application of the Common Customs Tariff, that classification applies only for the levying of customs duties; it merely serves as an indication for the imposition of levies.

The same principles are applicable for the calculation of monetary compensation. The object of monetary compensatory amounts is not the same as that of levies; levies serve a protective function in the context of the system of Community preference while compensatory amounts serve to correct variations in exchange rates, any instability of which, in a system of organizations of the market based on common prices, is likely to cause disturbances in trade in agricultural products. Classification of products according to the same provisions, in particular according to the same tariff nomenclature, both for the imposition of levies and for the levying of monetary compensatory amounts cannot be in conformity with the objective of monetary compensatory amounts. Article 11 of Regulation No 823/68 is solely intended to apply to the calculation of the levy; monetary compensatory amounts are to be limited to the amounts strictly necessary to compensate the incidence of monetary measures on the prices of basic products covered by intervention arrangements. Feeding-stuffs containing milk powder in substitution for other protein are derived products within the meaning of Article 1 (2) (b) of Regulation 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 (Official Journal, English Special Edition 1971 (I), p. 257); taking account of the objective and the provisions of that regulation the calculation of the compensation at the frontier should therefore be carried out not on the basis of the highest possible milk product content but at most on the basis of the actual content. This is particularly true where the method of calculating the lactose content of feeding-stuffs containing milk powder in substitution for other protein laid down in Regulation No 823/68 inevitably leads to incorrect results in cases where the product also contains powdered whey.

Regulation No 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts (Official Journal L 139, p. 37) draws a distinction between the application of monetary compensatory amounts in trade with third countries and their application to intra-Community trade. For the former it states in particular that the provisions concerning the charging of customs duties and import levies are to apply; intra-Community trade is subject to no such rule. In that way the principle that the tariff classification of a product by the customs authorities is to be carried out irrespective of its origin is not infringed. The tariff classification is undertaken according to the objective characteristics and nature of the product; a derogation may certainly be made in special circumstances, such as a particular calculation of the levy, but in each case the special circumstances are of an exceptional nature and are only relevant in the context for which they were expressly provided. As regards the levying of monetary compensatory amounts in intra-Community trade no reference, direct or indirect, is made to Article 11 of Regulation No 823/68.

In any event, if such a reference existed the calculation of monetary compensation for feeding-stuffs containing milk powder in substitution for other protein in accordance with Article 11 of Regulation No 823/68 would constitute a breach of the prohibition of discrimi-

nation and the obligation to apply uniform methods of calculation laid down in Article 40 (3) of the Treaty.

In the present instance Milchfutter and the Netherlands exporting company would be discriminated against in comparison with German manufacturers of identical feeding-stuffs if, on the exportation or importation of those feeding-stuffs, they had to pay monetary compensation not only for the actual milk product content but also for a notional content. The difference is considerable; it constitutes a charge having an effect equivalent to a customs duty and cannot be regarded as correcting variations in unstable exchange rates.

In addition, under the third subparagraph of Article 40 (3) of the Treaty a common price policy is to be based on common criteria and uniform methods of calculation. The system of monetary compensation which in itself is already contrary to the principle of uniform prices should be confined to the actual milk product content.

(b) The second question should be answered in the affirmative. The Court of Justice has ruled that in the interests of legal certainty and of administrative procedures the decisive criteria for the classification of products in the Common Customs Tariff are to be their objective properties and characteristics, subject to any special indications or circumstances which imply that other criteria are to be used. Chapter 23 of the Common Customs Tariff and in particular the Additional Notes to that chapter contain no indication of an exceptional classification.

(c) The determination of the milk product content of feeding-stuffs containing milk powder in substitution for other protein should be made on the basis of principles and procedures recognized in chemistry and chemical technology. In the present instance the use of methods of analysis harmonized within the context of the Council Directive No 70/373/EEC of 20 July 1970 on the introduction of Community methods of sampling and analysis for the official control of feeding-stuffs (Official Journal, English Special Edition 1970 (II), p. 535) enable it to be shown clearly and irrefutably that the animal feeding-stuffs involved in the present dispute contain less than 75% of milk products: the total sugar content, to the exclusion of lactose, fat and starch, is greater than 25% and consequently the milk product content must necessarily be less than 75%.

(d) The exporting Netherlands company obtained the refund to be granted within the context of the system of monetary compensation for tariff subheading 23.07 B I a 3 of the Common Customs Tariff, while for the levying of compensation at the frontier the German customs authorities took as a basis tariff subheading 23.07 B I a 4, for which a considerably higher compensation is laid down in the relevant provisions. The Commission is aware of these difficulties: it modified Regulation No 1380/75 by Regulation No 1556/77 of 11 July 1977 (Official Journal L 173, p. 10), which in particular requires the persons concerned to submit, when all the customs formalities for clearance into free circulation are completed, all information necessary for the calculation of the monetary compensatory amount. That regulation does not call in question the principle that the decisive classification is that by the exporting country. That principle is justified by the fact that the check in the exporting country is much more precise and effective than the check carried out in the importing Community country, the fact that in application of Article 2a of Regulation No 974/71 the monetary compensatory amount may be paid by the exporting Member State and the fact that it

appears desirable within the context of the scheme of monetary compensatory amounts to apply the principle which is to be found in particular in the decided cases of the Court of Justice relating to public and veterinary health inspection questions that the analyses carried out in the exporting country are decisive.

The *Commission of the European Communities* first observes that its Regulation No 539/75 of 28 February 1975 fixing the monetary compensatory amounts and certain rates for their application (Official Journal L 57, p. 2), which was in force at the time of the importation in question in the main action, does not use an autonomous nomenclature but is based on the product descriptions of the Common Customs Tariff, which coincide with those of the nomenclature for levies. With regard to the levying of monetary compensatory amounts in trade with third countries the provisions applicable are those relating to the imposition of customs duties or levies in accordance with Article 6 of Regulation No 1463/73 of the Commission of 30 May 1973 laying down detailed rules for the application of monetary compensatory amounts (Official Journal L 146, p. 1) and Article 6 of Regulation No 1380/75.

(a) The distinction drawn in the tariff classification of the different compound feeding-stuffs under tariff heading 23.07 is an attempt to reconcile contradictory administrative and economic requirements with the particular nature of those products and the limited possibilities offered by techniques of analysis for determining that nature.

In the context of the common price rules applicable to agricultural products it is impossible not to base the tariff classification on the percentage of milk products used in the manufacture of the compound feeding-stuff in question: apart from cereal products, the most relevant factor in the value and price of compound feeding-stuffs is the quality of each of the milk products (skimmed-milkpowder, powdered whey, partly desugared powdered whey, sweet powdered whey, fermented milk powder, buttermilk, lactose, casein and milk protein) which is used in its manufacture.

The tariff classification of a particular product for the purpose of the imposition of compensatory charges is the responsibility of the customs authorities of the importing Member State. They cannot undertake that classification on the basis of a product other than that which is actually submitted to them for the completion of import formalities; they must differentiate between animal feeding-stuffs on the basis of their objectively discernible characteristics and composition. The distinction required by the wording of the customs tariff must remain practicable for the national authorities in the implementation of their supervisory functions and it should not require unreasonable equipment or expense.

The control of manufacture of compound feeding-stuffs carried out abroad in the manufacturer's undertaking is not sufficient to satisfy those objectives: it can serve as evidence only if it can be shown that the products imported and the products subject to the control are identical; that is only rarely the case.

If the analysis of the imported compound feeding-stuffs carried out by the customs authorities on the basis of the samples taken by them resolves the problem of whether the products subject to the control and the products imported are identical, the fact would remain that it is impossible to carry out a quantitative analysis of those samples such as to enable the exact percentage of the various milk products contained therein to be determined with sufficient certainty.

For the system of levies imposed at the time of importation on products coming from third countries the problem has been resolved to the effect that where the nomenclature of the customs tariff draws a distinction on the basis of the milk product content by weight the customs authorities can apply that distinction by fixing the decisive content by weight, which is obtained by a standard post clearance calculation, based on the lactose content of the animal feeding-stuff which can be ascertained by analysis (Article 11 of Regulation No 823/68 and Regulation No 1216/68). That standard determination is sufficient to satisfy the objectives of the compensation of prices which the levies are intended to serve; it offers the customs authorities and importers the advantage of certain, simple and uniform tariff classification and calculation of the charges payable.

No express provision has been adopted to differentiate in the same way between the different animal feeding-stuffs under tariff subheading 23.07 B I a for the purposes of monetary compensation. For reasons of legal certainty and the uniform application of the law their tariff classification as regards monetary compensation should not however be different to that with regard to levies; furthermore, in practice and in the absence of any better means of analysis and examination no other choice is open.

The material interests and constraints affecting the system of monetary compensation are not fundamentally different from those applying with regard to levies. The regulations laying down the monetary compensatory amounts use the same nomenclature as is used for levies. The two systems are set in motion by importation into a Member State. In respect of imports from third countries, levies are increased or reduced by monetary compensatory amounts in order to ascertain the definitive import charge; in this field it is not really possible to calculate the milk product content other than by applying the provisions of Regulation No 823/68. *A priori*, monetary compensation in intra-Community trade cannot be subject to other standards: responsibility for the correct classification of products cannot be withdrawn from the competent customs authorities and in order to determine the milk product content they must, in so far as they are able, have regard to the characteristics and composition of the products submitted for importation. The determination of the milk product content of identical products in a different way for trade between Member States and for trade with third countries would hardly be compatible with the objective of the uniform application of Community law.

Therefore in 1975 it was not contrary to Community law for the German customs authorities to determine the milk product content of an animal feeding-stuff under tariff subheading 23.07 B I a by applying a standard weighting to the lactose content in order to calculate the monetary compensation in trade with the Netherlands. Moreover this view, which is in accordance with practical necessities, was also adopted by the Committee on Common Customs Tariff Nomenclature.

(b) In order to guarantee legal certainty and the uniform application of Community law it is desirable not only that the customs authorities of a Member State should treat the same product in the same way when it is imported from a third country and when it is imported from other Member States, but also that the customs authorities of the various Member States should classify the same product in a uniform manner on importation and on exportation. The Commission has not yet succeeded in ensuring that each Member State recognizes the tariff

classification made in another Member State as binding. At present each Member State retains the power to determine itself the correct tariff classification of products imported into its territory or exported therefrom.

III — Oral procedure

Milchfutter, the plaintiff in the main action, represented by Dietrich Ehle, Advocate of the Cologne Bar, and the Commission, represented by its Legal Adviser, Peter Kalbe, presented oral argument at the hearing on 11 May 1978.

In the view of Milchfutter account must be taken, with regard to the dispute in the main action, of the judgment of the Court of Justice of 3 May 1978 in Case 131/77 *(Milac)*, where it was ruled that Article 1 of Regulation No 539/75 is invalid in so far as it fixes compensatory amounts in respect of trade in powdered whey; it follows, at the least, that the higher lactose content of powdered whey cannot be taken into consideration for the tariff classification of compound feeding-stuffs containing milk powder.

The Advocate General delivered his opinion at the hearing on 15 June 1978.

Decision

1 By an order of 29 September 1977 which was received at the Court on 5 January 1978 the Finanzgericht Münster referred to the Court for a preliminary ruling, pursuant to Article 177 of the EEC Treaty, questions relating in particular to the interpretation of Regulation No 823/68[1] of the Council of 28 June 1968 determining the groups of products and the special provisions for calculating levies on milk and milk products (Official Journal, English Special Edition 1968 (I), p. 199) and Regulation No 1216/68 of the Commission of 9 August 1968 laying down the method for determining the lactose content of compound feeding-stuffs imported from third countries (Official Journal, English Special Edition 1968 (II), p. 421) in connexion with the application of subheadings B I a 3 and B I a 4 of tariff heading 23.07 of the Common Customs Tariff.

2 It appears from the order making the reference that the plaintiff in the main action imported into Germany from the Netherlands between January and March 1975 several consignments of compound feeding-stuffs under tariff subheading 23.07 B I a.

With a view to payment of the monetary compensatory amounts the plaintiff declared that the goods came under subheading B I a 3 of tariff heading 23.07, distinguished by a milk product content by weight of not less than 50% but less than 75%.

3 On the basis of Article 11 (1) of Regulation No 823/68, according to which "the milk product content of products falling within tariff subheading No ex 23.07 B shall be determined by applying a coefficient of 2 to the lactose content per 100 kg of the product in question", the German customs authorities classified the product under subheading B I a 4 of heading 23.07, distinguished by a milk product content by weight of not less than 75% and subject to a higher monetary compensatory amount than products under subheading B I a 3.

4 The plaintiff in the main action challenged that classification, arguing that as it is contained in a regulation relating to the calculation of levies on products from third countries the coefficient laid down by Regulation No 823/68 is not applicable to intra-Community trade.

In its view, as the method of calculation laid down by Article 11 of Regulation No 823/68 is not applicable, the product should be classified having regard to its actual milk product content, which is less than 75% by weight, and therefore assigned to subheading 23.07 B I a 3.

5 In order to resolve that problem the Finanzgericht asked four questions worded as follows:

1. Is the "milk product content" which results from the application of Article 11 (1) of Regulation (EEC) No 823/68 of the Council of 28 June 1968 and of Article 1 of Regulation (EEC) No 1216/68 of the Commission of 9 August 1968 decisive with regard to the amount of the monetary compensatory amounts which it was necessary to impose during the period from January to March 1975 on compound feedingstuffs coming under tariff subheadings 23.07 B I a 3 or 23.07 B I a 4 of the Common Customs Tariff which were imported from the Netherlands into the Federal Republic of Germany?

2. If Question 1 is answered in the negative:

   Is the "actual" milk product content decisive?

3. If Question 2 is answered in the affirmative:

   Does it follow from Community law which method is to be used for determining the actual milk product content?

4. Within the context of the system of monetary compensatory amounts, is the tariff classification made by the exporting Member State of the European Communities binding upon the importing Member State?

Questions 1, 2 and 3

6 The questions contained in the order making the reference should be answered in the light of the provisions of the regulation which forms the basis for and the general framework of the system of compensatory amounts, namely Regulation 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 (Official Journal, English Special Edition 1971 (I), p. 257).

7 Under Article 1 (1) of that regulation Member States are to be authorized to:

"(a) charge on imports from Member States and third countries,

(b) grant on exports to Member States and third countries,

compensatory amounts for the products referred to below under the conditions determined hereinafter."

The second paragraph of that article states that those provisions are to apply to "products covered by intervention arrangements under the common organization of agricultural markets" and to "products whose price depends on the price of the products referred to .. and which are governed by the common organization of markets".

8 Those provisions thus involve a general reference to the rules relating to the common organization of agricultural markets as regards the determination of the "products" subject to the system of monetary compensatory amounts.

Therefore the rules governing the determination of the products subject to the system of compensatory amounts are to be sought in the provisions of the regulations on the organization of the various agricultural markets and, in the present instance, in the provisions concerning the organization of the market for milk, given that the products in question are designated according to the headings and subheadings of the Common Customs Tariff to which reference is made both by the agricultural regulations and by the regulations fixing the monetary compensatory amounts, such as Commission Regulation No 539/75 (Official Journal L 57, p. 2), which was applicable at the time of the facts underlying the main action.

9 In view of that general reference no exception can be made in respect of the application, to a particular product, of a specific rule relating to classification, such as that contained in Article 11 of Regulation No 823/68, or of Regulation No 1216/68 of the Commission.

Such an exception cannot be justified by the argument that the aforesaid provisions were introduced for the sole purpose of regulating trade with third countries, as the particular object of the reference in Article 1 of Regulation No 974/71 is to render applicable to the system of monetary compensatory amounts all the determining factors relating to the products in question, including those which were laid down in relation to the external trade of the Community, since those provisions form an integral part of the "common organizations of the market" referred to by the aforesaid regulation.

10 The argument derived by the plaintiff in the main action from what it regards as the protective nature of the coefficient laid down by Article 11 of Regulation No 823/68 must also be rejected as, according to the sixth recital in the preamble to that regulation, the only aim of the coefficient is to emphasize the proportion, in compound feeding-stuffs consisting of cereals and milk products, of milk ingredients because they "have a much greater effect on price formation than cereal ingredients".

11 Nor, finally, can any argument be derived from the provisions and structure of Commission Regulation No 1463/73 of 30 May 1973 laying down detailed rules for the application of monetary compensatory amounts (Official Journal L 146, p. 1) since that regulation, in accordance with the provisions of Article 6 of Regulation No 974/71 on which it is based, principally lays down the detailed financial and administrative rules for the application of the system of compensatory amounts.

In those circumstances that regulation was not required to restate the provisions of Article 1 of Regulation No 974/71 with regard to the determination of the products subject to monetary compensatory amounts and their classification in the headings of the Common Customs Tariff.

Thus it appears that the purpose of Article 6 of Regulation No 1463/73 on which the plaintiff in the main action relies is merely to link the payment of monetary compensatory amounts to the other operations carried out in trade with third countries at the frontier pursuant to the customs tariff and the agricultural rules, while Articles 7 to 15 provide, in respect of intra-Community trade, a certain number of specific provisions of a financial or administrative nature which have no bearing on the classification of goods for the purpose of the application of monetary compensatory amounts.

Consequently, no argument may be derived from an alleged insufficiency in Regulation No 1463/73 as, by virtue of the reference by Article 1 of the basic Regulation No 974/71 to the common organizations of the market and the reference by the latter to the headings of the Common Customs Tariff, a complete legal framework is established which enables the classification of goods for the purposes of the application of monetary compensatory amounts to be determined.

12 Support may be found for these conclusions in the fact that, in the absence of any express provision, it would be inappropriate for the headings of the Common Customs Tariff to be applied in different ways to the same product depending on whether they are used for the classification thereof in connexion with the levying of customs duties, the application of the system of the common organizations of the market or the application of the system of monetary compensatory amounts.

13 The answer to the first question should be that the method of calculating the "milk product" content which results from the application of Article 11 (1) of Regulation No 823/68 of the Council is decisive with regard to the amount of the monetary compensatory amounts which must be charged on compound feeding-stuffs coming under tariff subheadings 23.07 B I a 3 or 23.07 B I a 4 of the Common Customs Tariff which were imported from the Netherlands into the Federal Republic of Germany during the period from January to March 1975.

14 In these circumstances it is not necessary to reply to the second and third questions.

The fourth question

15 The fourth question asks whether, within the context of the system of monetary compensatory amounts, the tariff classification made by the exporting Member State is binding upon the importing Member State.

It appears from the file on the case that that question was raised in view of the fact that, according to the plaintiff in the main action, the goods in question, which originated in the Netherlands, were classified by the Netherlands authorities under tariff subheading 23.07 B I a 3 in connexion with the granting of compensatory amounts on exportation, while the German customs authorities hold that they come under subheading 23.07 B I a 4.

16 On the basis of Community law as applicable at the time of the dispute there was no obligation on the relevant authorities of one Member State to accept a tariff classification decision made in respect of a given product in another Member State.

In those circumstances the customs authorities of the importing country were free to determine the classification of a product if they considered that in the exporting country the classification of the product was not in conformity with the relevant Community provisions.

17 The answer to the fourth question should therefore be that within the context of the system of monetary compensatory amounts, the tariff classification made by the exporting Member State was not binding upon the importing Member State at the time of the dispute.

Costs

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

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

On those grounds,

THE COURT (Second Chamber)

in answer to the questions referred to it by the Finanzgericht Münster by order of 29 September 1977, hereby rules:

1. **The method of calculating the "milk product" content which results from the application of Article 11 (1) of Regulation No 823/68 of the Council of 28 June 1968 determining the groups of products and the special provisions for calculating levies on milk and milk products is decisive with regard to the amount of the monetary compensatory amounts which must be charged on compound feeding-stuffs coming under tariff subheadings 23.07 B I a 3 or 23.07 B I a 4 of the Common Customs Tariff which were imported from the Netherlands into the Federal Republic of Germany during the period from January to March 1975.**

2. **Within the context of the system of monetary compensatory amounts, the tariff classification made by the exporting Member State was not binding upon the importing Member State at the time of the dispute.**

Sørensen Pescatore Mackenzie Stuart

Delivered in open court in Luxembourg on 4 July 1978.

A. Van Houtte
Registrar

M. Sørensen
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 15 JUNE 1978 [1]

Mr President,
Members of the Court,

1. The present case concerns the question whether a standard criterion laid down by the Council for the calculation of the amounts of the levy on agricultural products from third countries is applicable for the purposes of the determination of the monetary compensatory amounts in intra-Community trade. Is it permissible for the national customs authorities to apply that criterion by analogy, even though the resultant amounts may be greater than those necessary to compensate the incidence of currency fluctuations on the prices of the basic products which in fact make up the product?

The facts giving rise to the question are very simple. Between January and March 1975 the German undertaking Milchfutter imported into the Federal Republic of Germany from the Netherlands several consignments of calf fodder consisting of feeding-stuffs containing milk powder in substitution for other protein. When applying for customs clearance in the Federal Republic of Germany the undertaking declared that the feeding-stuffs fell under tariff subheading 23.07 B I a of the Common Customs Tariff, and specifically under No 3 of that subheading (products containing not less than 50% but less than 75% by weight of milk products). That was in fact the classification made by the customs authorities of the Netherlands for the purposes of calculating the monetary compensatory amounts on exportation. The German customs authorities, on the other hand, held that Article 11 of Regu-

1 — Translated from the Italian.