markets, the purpose of which necessarily involves constant adjustment to the variations of the economic situation in the various agricultural sectors.

2. Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Commission Regulation No 2604/77 introducing monetary compensatory amounts in respect of durum wheat and products derived therefrom.

3. Apart from the exception provided for by Regulation No 2792/77, the monetary compensatory amounts laid down by Regulation No 2604/77 are applicable to the exportation of pasta from Italy to the other Member States and to non-member countries as from 2 January 1978 in pursuance of contracts concluded prior to 25 November 1977.

In Case 84/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura di Trento for a preliminary ruling in the proceedings pending before that court between

ANGELO TOMADINI, S.N.C.

with UNIONE INDUSTRIALI PASTAI ITALIANI [Association of Industrial Pasta Manufacturers] as intervener

and

AMMINISTRAZIONE DELLE FINANZE DELLO STATO [State Finance Administration]

on the validity of Commission Regulation (EEC) No 2604/77 of 25 November 1977 introducing monetary compensatory amounts in respect of durum wheat and the products derived therefrom (Official Journal 1977, L 302, p. 40),

THE COURT

composed of: J. Mertens de Wilmars, President of the First Chamber, acting as President, Lord Mackenzie Stuart (President of the Second Chamber), P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

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

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of 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

A — The framework of the regulations

Article 1 (1) 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) authorizes the Member States to charge and grant monetary compensatory amounts on imports and exports of the products described in Article 1 (2):

"... products covered by intervention arrangements under the common organization of agricultural markets;

... products whose price depends on the price of the products referred to [above] and which are governed by the common organization of markets or are the subject of a specific arrangement under Article 235 of the Treaty."

Article 1 (3) of the regulation as amended by Regulation No 2746/72 of the Council of 19 December 1972 (Official Journal, English Special Edition 1972 (28-30 December), p. 64), provides that paragraph 1

"... shall apply only where application of the monetary measures referred to ... would lead to disturbances in trade in agricultural products."[1]

Article 4 of Regulation No 974/71 provides that:

"No compensatory amount shall be fixed where, in any Member State, the percentage referred to in Article 2 (1) does not exceed 2.5%" (this percentage represents the difference between the official conversion rate of the currency concerned and the so-called green rate).

The monetary compensatory amounts system was applied to durum wheat and the products derived from it until 12 August 1974. The said amounts were then abolished, because the price of durum wheat had risen on the world market above the threshold price and in addition the difference between the actual rate of the Italian lira and the rate of the green lira had fallen to 2.5%.

The price of durum wheat on the world market fell in 1975 and 1976, and the Commission introduced a levy on imports from non-member countries. In the monetary field, the lira continued to depreciate and the difference between the green lira and its actual value reached 21.6% in March 1976. Complaints were received in Brussels from traders, in particular Italian traders (importers, associations of millers and manufacturers of pasta products), and in

1 — *Translator's note:* This is a corrected version of the text appearing in the Official Journal, which is defective; cf. Mr Advocate General Warner's comments in Case 29/77 *Roquette* [1977] ECR 1835, at p. 1847.

April 1976 a proposal to reintroduce monetary compensatory amounts in respect of the products in question was submitted to the competent Management Committee. The proposal not having been adopted, a number of further representations were received (in particular from the Belgian, Luxembourg and German Governments) protesting against the failure to introduce monetary compensatory amounts for durum wheat and/or pasta products.

Stating in the preamble to Regulation No 2604/77 that the absence of monetary compensatory amounts had in recent months (that is, during summer 1977) caused difficulties as regards both durum wheat and the products derived therefrom, that deflections of trade in the case of durum wheat and distortions of competition in the case of some of the products in question had been noted, and that this state of affairs was furthermore worsened by the sharp drop in supplies of home-grown durum wheat and the increased need for imports from non-member countries, the Commission in that regulation introduced monetary compensatory amounts in respect of products under in particular tariff subheadings 10.01 B (durum wheat), 11.02 A I (a) (groats and meal of durum wheat), 19.03 A (macaroni, spaghetti and similar products containing eggs), 19.03 B I (macaroni, spaghetti and similar products containing no common wheat flour or meal) and 19.03 B II (other macaroni, spaghetti and similar products). This regulation was adopted without the competent Management Committees having delivered opinions within the time-limits set by their chairmen. It applied with effect from 2 January 1978.

By Regulation No 2792/77 of 15 December 1977 (Official Journal 1977, L 321, p. 29), the Commission added a paragraph to Article 2 of the preceding regulation, according to which the compensatory amounts introduced by the latter shall not apply "to operations carried out under cover of a certificate fixing the export refund or the import levy in advance in respect of which the application was lodged prior to 26 November 1977".

By Regulation No 2917/77 of 28 December 1977 on transitional measures concerning the application of monetary compensatory amounts to certain products in the cereals sector (Official Journal 1977, L 340, p. 37), the Commission decided that during the period from 2 January to 28 February 1978 the monetary compensatory amounts fixed for the products falling within subheadings 10.01 B and 11.02 A I (a) were to be granted on certain exports and imports only under specified terms.

B — The facts

In January 1978 the Tomadini undertaking exported to the Federal Republic of Germany 8 500 kilograms net of pasta products containing eggs. In respect of that exportation it paid Lit 724 200 as the monetary compensatory amounts referred to in Commission Regulations Nos 2604/77 and 24/78 of 5 January 1978 (Official Journal 1978, L 6, p. 1). Taking the view that the charging of this sum was unlawful, Tomadini asked the Pretura di Trento to order the Amministrazione delle Finanze dello Stato [State Finance Administration] to reimburse the sum paid, pleading in support of its claim that Regulation No 2604/77 was illegal and inapplicable to exports carried out in performance of a contract concluded in April 1977, that is to say prior to its adoption.

The Amministrazione delle Finanze raised the objection that the Pretura dealing with the case brought by Tomadini had no jurisdiction *ratione materiae* and on the substance of the case contended that Tomadini's application should be dismissed, but it did not

oppose a reference to the Court of Justice, pointing out that the Court had already been requested to consider the validity of the Community provisions at issue following the application submitted by the Italian Government in Case 12/78 *sub judice.*

The Unione Industriale Pastai Italiani [Association of Industrial Pasta Manufacturers, hereinafter referred to as "the UIPI"] intervened in the main action in support of Tomadini's case.

C — *The preliminary questions*

By an order of 16 March 1978, the Pretura di Trento referred the following questions to the Court for a preliminary ruling under Article 177 of the EEC Treaty:

1. Must Regulation (EEC) No 974/71 of the Council (as successively amended) be interpreted as meaning that the Community institutions may, following a period of three years — during which they refrained from applying compensatory amounts to a basic agricultural product (durum wheat) — introduce specific monetary compensatory amounts in relation to products derived from the said basic product (pasta products), even though within the said three years and certainly during the last year (1977), no disturbances whatever had occurred on the market in the basic agricultural product in question (durum wheat)

2. In the event of a *negative* answer to Question 1 (above), must Commission Regulation (EEC) No 2604/77 be considered invalid, at least in so far as it introduces monetary compensatory amounts on exports of pasta products?

3. In the event of an *affirmative* answer to Question 1 (above), may Regulation No 2604/77 in conjunction with Regulations (EEC) Nos 2792/77 and 2917/77 be considered to be applicable to exportations of pasta products from Italy to the other Member States and non-member countries after 2 January 1978, pursuant to contracts concluded prior to 25 November 1977, the date of the adoption of Regulation No 2604/77, during a period in which it was not possible to foresee the introduction of any compensatory amount in the sector in question?

The order of the Pretura was received at the Court on 23 March 1978.

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.

II — Summary of the written observations submitted to the Court under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — *Observations submitted by the Tomadini undertaking and the UIPI*

According to the statement of the reasons on which Regulation No 2604/77 was based, it appears to Tomadini and the UIPI that the Commission took as the foundation of the measure adopted a disturbance concerning not only the basic product (durum wheat) but also the non-agricultural product which is derived from it (pasta). According to Regulation No 974/71, the power to apply monetary compensatory amounts can be exercised only where disturbances arise in agricultural trade. Pasta is a product of

further processing: the present case even concerns pasta containing eggs, which demands much more elaborate industrial preparation. Therefore it follows that Regulation No 2604/77 is void.

The disturbance deemed to be sufficient to justify the introduction of compensatory amounts on durum wheat should have been noted in summer 1977. Comparison of the situation prevailing in summer 1976 with that prevailing in summer 1977 does not reveal any disturbance, or even any particular variation, in the imports and prices of durum wheat capable of being attributed exclusively to monetary fluctuation. In fact, whilst imports of durum wheat into Italy from non-member countries in summer 1976 amounted to some 143 000 quintals (from June to October 1976), they amounted to some 277 000 quintals for the same period in 1977.

As regards the prices of durum wheat, it seems that if increases of 6% had not appeared sufficient to justify the introduction of compensatory amounts in 1976, they were no more justified in summer 1977, when the price increases fluctuated around the same values and were moreover offset by increases granted in the official prices for pasta.

If the increase, or rise, in the prices of imports had been regarded as "considerable" in summer 1977 to the point of making an increase in imports from non-member countries appear necessary, a special regulation should then have been adopted in order to facilitate importation of durum wheat into the whole of the Community; that is to say a normal commercial tactic should have been used in order to facilitate all imports and not just imports into Italy.

In fact, the compensatory amounts applied to imports into Italy from non-member countries take the form of import subsidies which are deducted from the Community levies and make the imports themselves cheaper. On the other hand, as regards countries with a strong currency, those compensatory amounts take the form of actual import charges and therefore certainly do not facilitate the increase of imports from non-member countries.

The Commission has acknowledged that the disturbances of the Italian market were due to the intervention of the public authorities (the AIMA[1]), which were buying durum wheat directly on the world market and then reselling it within Italy, and to the existence of a freeze on pasta prices in Italy. However, the Commission passively accepts these breaches of the Community rules.

In summer 1977 there were no more disturbances in trade in pasta than there were in summer 1976, and therefore it was no more possible than it was in 1976 to justify the use of compensatory amounts. Exports of pasta from Italy to the other countries of the Common Market consistently increased, independently of the application of compensatory amounts, until the date of the entry into force of Regulation No 2604/77. Therefore it can be inferred that the variations in trade in Italian pasta also depend on the preferences manifested by consumers.

The Commission accepted the reintroduction of the compensatory amounts in

1 — *Translator's note:* Abbreviation for "Azienda di Stato per gli Interventi sul Mercato Agricolo" [State Agency for Intervention on the Agricultural Market].

the sector under consideration following political pressures exerted at the direct instigation of German pasta manufacturers in competition with Italian manufacturers. The Commission itself expressly admits these pressures in the document of 10 February 1978 on the "Economic Effects of the Agri-monetary System" (COM (78) 20 final): "The agri-monetary system as applied has proved itself pernicious in having over an extended period protected the agricultural sector — already to some extent sheltered from the laws of the market — from the effects which monetary events normally have on sectors of the economy".

If the Court were to hold that it does not have to declare the regulation void, it should certainly declare it inapplicable to contracts which can be shown to have been concluded prior to its entry into force. Indeed, if the existence of the disturbances relied on in Regulation No 2604/77 appears doubtful since for three years when there had been similar variations no measure had been adopted, how is it possible heedlessly to impose the adverse effects of the compensatory amounts upon traders who have concluded normal contracts which can be shown to have been concluded long before the entry into force of the contested regulation? It follows that it is necessary to protect the interests of traders who have acted in reliance upon there being no change in the legal situation prevailing at the time of the conclusion of the contract.

Tomadini then undertakes a very long analysis of the Court's case-law on the subject of the protection of acquired rights and legitimate expectations.

In Case 131/77 *Milac* [1978] ECR 1041, Mr Advocate General Capotorti emphasized that monetary compensatory amounts were introduced only with one precise aim in view, namely the need "to compensate the incidence of the monetary measures on the price of basic products covered by intervention arrangements". The measures adopted in Regulation No 2604/77 have no direct incidence in the monetary sphere. Even if the compensatory amounts were held to be lawful measures laid down in the public interest, at all events they cannot be held to present a utility so overriding and ineluctable as — in a certain context — to justify the sacrifice of the rights and expectations of individuals. Here, it was not a general interest of the Commission which was at issue, but at most the interest of certain traders who were moreover in competition with those who were prejudiced by the application of the compensatory amounts. Furthermore, the introduction of the compensatory amounts in the pasta sector was not foreseeable.

In fact the application which those traders had previously submitted to the Commission for the introduction of compensatory amounts was not even accepted. Nevertheless the monetary conditions and inflationary trends which had developed during 1975 and 1976 were characteristic features of the situation. The Commission's persistent refusal to introduce compensatory amounts in the sector in question could be taken to be the result of a deliberate choice in line with the case-law of the Court (cf. Case 74/74 *CNTA* [1975] ECR 533).

B — Observations submitted by the Italian Government

The Italian Government refers to the arguments and conclusions submitted in Case 12/78 cited above.

C — Observations submitted by the Commission

The Commission argues that it was right in fearing disturbances in trade (difficulties and deflections of trade) due to the level of prices expressed in national currency, which differed widely from one Member State to another. The existence of those disturbances is proved by the following considerations:

— Imports of durum wheat by traders into Italy were meeting with ever-increasing difficulties. The c.i.f. price of durum wheat was higher than the threshold price: owing probably to the moderating effect on prices of the sales carried out by the public authorities (the AIMA), durum wheat was sold in Italy at a price close to the intervention price and hence much lower than the target price.

— Regardless of their destination within the Community, imports of durum wheat were passing through the United Kingdom. Belgian, Netherlands and German importers in particular made substantial profits by means of these deflections of trade, because the levy expressed in units of account and converted into pounds sterling at the so-called green rate allowed a profit of approximately 30% to be made, having regard to the charge for which Belgian, Netherlands and German importers would have been liable if the imports had been carried out directly. In this way imports of durum wheat from France were penalized. Information supplied by the United Kingdom reveals that from January to November 1977 some 112 000 tonnes of durum wheat had been imported into that State, of which some 53 000 were re-exported to other Member States. In the preceding years there had been no such re-exports.

— Italy was in a special situation: On the one hand, imports of durum wheat suffered from the absence of monetary compensatory amounts, and importers had no choice but to give up imports or make them at a loss. On the other hand, the AIMA's sales of durum wheat imported from non-member countries amounted to almost 200 000 tonnes in the first half of 1977. The Italian Government also bought 300 000 tonnes of durum wheat in July 1977 on the world market and 200 000 tonnes in October 1977. The absence of monetary compensatory amounts went so far as to cause durum wheat from producer Member States to be offered for intervention buying in the north of the Community (it was a question of 3 500 tonnes of wheat from Italy warehoused in Ghent).

The circumstances described as regards durum wheat had consequences on the

market in pasta. In 1976 Italian exports increased by 50% over 1975, and would have increased even more in 1977. A crisis would thus have been provoked in the competing sectors of the other Member States.

Once the disturbances pertaining to the durum wheat market had been verified, the Commission was under a duty to turn its attention to the derived products, in particular pasta, whose value is primarily determined by the cost of the wheat used in their manufacture. This problem is not new and was examined in Case 29/77 *Roquette* [1977] ECR 1835, in which the Court held that "the Commission may assess the risks of disturbance either for trade in basic products or for trade in both basic and derived products".

The Commission points out that the reintroduction of monetary compensatory amounts in the sector at issue was not decided lightly, but on the contrary as the result of extensive examination and thorough discussions, as is shown by the laborious evolution of the contested measure.

The distortions of competition which affected the market in pasta within the Community were caused:

— By the considerable depreciation of the lira, making pasta producers in the other Member States unable to contend with competition from Italian producers;

— By the low level of the price of durum wheat in Italy, which was close to the intervention price. When production of that product within the Community is in deficit, prices ought to be close to the target price. The decision to intervene in the durum wheat market was determined by the Italian authorities' intention to freeze the maximum retail selling price of pasta;

— By the particularly favourable conditions enjoyed by exports, from the Member States with a weak currency, of pasta manufactured from common wheat and not subject to compensatory amounts, when imports of the basic product benefited from those amounts.

It is Italian importers of durum wheat who have reason to complain that monetary compensatory amounts were not reintroduced in due time. Pasta exporters, for their part, profited from this delay, just as they benefited for a number of years from the existence of monetary compensatory amounts on common wheat whilst they were exempt from payment of those amounts on pasta which was, however, manufactured in whole or in part from the same common wheat.

The introduction of monetary compensatory amounts is justified when the differences between the green rates and the actual rates give rise to risks of disturbance. In the present case, the Commission proved the actual existence of disturbances and at the same time demonstrated the seriousness of them.

In the field of monetary compensatory amounts, it is not possible to speak of a legitimate expectation that certain rules

will be retained in force when those rules are no longer justified by the monetary situation prevailing in a specific Member State (cf. case-law of the Court, in particular Case 74/74 cited above).

The argument to the effect that the derived products taken as a reference for the assessment of possible disturbances must exclusively be agricultural products and that account must not be taken of disturbances affecting products covered by Regulation No 1059/69 of the Council of 28 May 1969 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products (Official Journal, English Special Edition 1969 (I), p. 240) is unacceptable for the following reasons:

— Regulation No 974/71 is also based on Article 235, and its provisions apply "to products ... which ... are the subject of a specific arrangement under Article 235 of the Treaty".

— Disturbances affecting the basic product and the derived agricultural products have a direct incidence on the products covered by Regulation No 1059/69. To maintain that as regards these latter products there is no need to take account of disturbances to which they are subject, even if trade in those products is precisely disturbed by the inequality of the cost of the agricultural products from which they are made, leads to blind application of the machinery provided. The following dilemma would then be posed:

  — automatically to apply the monetary compensatory amounts on the products covered by Regulation No 1059/69 whenever the conditions required for the application of such amounts to the basic agricultural products are fulfilled;

  — or, having missed the opportunity of automatic extension at the time when monetary compensatory amounts were introduced on the basic agricultural products, never again to be able to apply them.

Regulation No 2792/77 deals with operations carried out under cover of a certificate fixing the export refund or the import levy in advance. The reasons against extending the exemption to exports to the other Member States may be summarized as follows:

— The Commission's intention was well known to traders, who were not taken by surprise and consequently were able to take adequate steps.

— There is also a mandatory requirement of supervision: in order not to leave too much scope for fraud, the measure was not made applicable to intra-Community trade, in respect of which, in the absence of refunds or levies, there can clearly be no advance fixing.

— Since no advance fixing certificates could be obtained, it would not have been advisable to stop applying compensatory amounts and thus give unjustified advantages. In this connexion it suffices to think of pasta manufactured from, common wheat,

a product which has always benefited from compensatory amounts upon importation.

— Exemption from the payment of compensatory amounts would not have been justified if the products were exported to a Member State with a weak currency which was obliged, as is well known, to grant compensatory amounts on imports.

By Regulation No 2917/77, the Commission intended to prevent speculation giving rise to deflection of trade and distortion of competition.

The Commission submits that the Court can reply that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulations Nos 2604/77, 2792/77 and 2917/77.

Tomadini and the UIPI, represented by G.M. Ubertazzi and F. Capelli, Advocates of the Milan Bar, the Italian Government, represented by O. Fiumara, Avvocato dello Stato, and the Commission of the European Communities, represented by its Legal Adviser, C. Maestripieri, acting as Agent, presented oral argument at the hearing on 13 December 1978.

The Advocate General delivered his opinion at the hearing on 31 January 1979.

Decision

1 By an order of 16 March 1978, which was received at the Court on 23 March 1978, the Pretura di Trento referred several questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty on the validity of Commission Regulation No 2604/77 of 25 November 1977 introducing monetary compensatory amounts in respect of durum wheat and the products derived therefrom (Official Journal 1977, L 302, p. 40).

2 These questions were raised in the context of a dispute over the charging of monetary compensatory amounts totalling Lit 724 200 in respect of the exportation from Italy to the Federal Republic of Germany in January 1978 of 8 500 kilograms net of pasta containing eggs by the Tomadini undertaking, the plaintiff in the main action.

3 The plaintiff asked the Pretura di Trento to declare unlawful the charging of a compensatory amount on these goods pursuant to Regulation No 2604/77 by the Amministrazione delle Finanze, the defendant in the main action.

4 The Amministrazione delle Finanze raised the objection that the Pretura had no jurisdiction *ratione materiae* and on the substance of the case contended that Tomadini's application should be dismissed, but it did not oppose a reference to the Court of Justice, pointing out that the Court had already been requested to consider the validity of the Community provisions at issue following the application submitted by the Italian Government in Case 12/78.

5 The Unione Industriali Pastai Italiani intervened in the main action in support of Tomadini's case.

6 The dispute concerns the application of the monetary compensatory amounts system to durum wheat and certain of the products derived therefrom which are not covered by Annex II to the Treaty and are the subject of a specific arrangement under Article 235 of the Treaty according to the terms 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).

7 The Commission considered that the absence of monetary compensatory amounts had in summer 1977 caused difficulties as regards both durum wheat and the products derived therefrom, that deflections of trade in the case of durum wheat and distortions of competition in the case of some of the products in question had been noted, and that this state of affairs was furthermore worsened by the sharp drop in supplies of home-grown durum wheat and the increased need for imports from non-member countries.

8 Consequently, by Regulation No 2604/77 it introduced monetary compensatory amounts in respect of products under in particular tariff sub-headings 10.01 B (durum wheat), 11.02 A I (a) (groats and meal of durum wheat), 19.03 A (macaroni, spaghetti and similar products containing eggs), 19.03 B I (macaroni, spaghetti and similar products containing no common wheat flour or meal) and 19.03 B II (other macaroni, spaghetti and similar products).

9 A few days later, by Regulation No 2792/77 of 15 December 1977, the Commission added a paragraph to Article 2 of the preceding regulation, according to which the compensatory amounts introduced by the latter shall not apply "to operations carried out under cover of a certificate fixing the export refund or the import levy in advance in respect of which the application was lodged prior to 26 November 1977".

10 Two weeks later, by Regulation No 2917/77, the Commission decided that during the period from 2 January 1978 to 28 February 1978 the compensatory amounts fixed for the products falling within tariff subheadings 10.01 B (durum wheat) and 11.02 A I (a) (groats and meal of durum wheat) were to be granted on certain exports and imports only under specified terms.

11 The questions raised by the Pretura di Trento are as follows:

1. Must Regulation (EEC) No 974/71 of the Council (as successively amended) be interpreted as meaning that the Community institutions may, following a period of three years — during which they refrained from applying compensatory amounts to a basic agricultural product (durum wheat) — introduce specific monetary compensatory amounts in relation to products derived from the said basic product (pasta products), even though within the said three years and certainly during the last year (1977), no disturbances whatever had occurred on the market in the basic agricultural product in question (durum wheat)?

2. In the event of a negative answer to Question 1 (above), must Commission Regulation (EEC) No 2604/77 be considered invalid, at least in so far as it introduces monetary compensatory amounts on exports of pasta products?

3. In the event of an *affirmative* answer to Question 1 (above), may Regulation No 2604/77 in conjunction with Regulations (EEC) Nos 2792/77 and 2917/77 be considered to be applicable to exportations of pasta products from Italy to the other Member States and non-member countries after 2 January 1978, pursuant to contracts concluded prior to 25 November 1977, the date of the adoption of Regulation No 2604/77, during a period in which it was not possible to foresee the introduction of any compensatory amount in the sector in question?

Questions 1 and 2

12 The legal problems raised by the first two questions from the Pretura di Trento are identical to those considered in the context of the application for annulment lodged on 25 January 1978 by the Italian Government against the Commission (Case 12/78).

13 That application was dismissed by a judgment of 10 May 1979.

14 Accordingly it suffices to refer to the judgment in Case 12/78, the text of which is annexed to the present judgment, and to rule that consideration of the questions has disclosed no factor of such a kind as to affect the validity of Regulation No 2604/77.

Question 3

15 The plaintiff in the main action argues that, if Regulation No 2604/77 is valid, the monetary compensatory amounts should not be applied to exportations of pasta from Italy to the other Member States pursuant to contracts concluded prior to 25 November 1977, the date of the adoption of Regulation No 2604/77.

16 In order better to dispose of their products on the markets of the other Member States, Italian exporters concluded long-term contracts.

17 The plaintiff argues that at the time of the conclusion of the contract under which the exports at issue in the main action were carried out, the Italian producer could not reasonably have foreseen the introduction of monetary compensatory amounts on pasta.

18 In 1976 the Italian pasta producers requested that monetary compensatory amounts on durum wheat and pasta should be reintroduced, but by a letter of 9 August 1976 the Commission refused this request.

19 The plaintiff submits that the adoption of Regulation No 2604/77 without any transitional arrangements being laid down for intra-Community trade breaches the principle of legitimate expectations, all the more so as Regulation No 2792/77 of 15 December 1977 exempted operations carried out under cover of a certificate fixing the export refund or the import levy in advance in respect of which the application had been lodged prior to 26 November 1977, an exemption which applies only to trade with non-member countries.

20 In the context of economic rules such as those governing the common organization of agricultural markets, if in order to deal with individual situations

the Community institutions have laid down specific rules enabling traders in return for entering into certain obligations with the public authorities to protect themselves — as regards transactions definitively undertaken — from the effects of the necessarily frequent variations in the detailed rules for the application of the common organization, the principle of respect for legitimate expectations prohibits those institutions from amending those rules without laying down transitional measures unless the adoption of such a measure is contrary to an overriding public interest.

21 On the other hand, the field of application of this principle cannot be extended to the point of generally preventing new rules from applying to the future effects of situations which arose under the earlier rules in the absence of obligations entered into with the public authorities.

22 This is particulary true in a field such as the common organization of markets, the purpose of which necessarily involves constant adjustment to the variations of the economic situation in the various agricultural sectors.

23 In order to comply with the principle of respect for legitimate expectations, the Commission provided in the last paragraph of Article 2 of Regulation No 2604/77, as amended by Article 1 of Regulation No 2792/77 of 15 December 1977, that on application by the parties concerned the newly introduced monetary compensatory amounts were not to apply to operations carried out under cover of a certificate fixing the export refund or the import levy in advance in respect of which the application was lodged prior to 26 November 1977, the date of the publication and entry into force of Regulation No 2604/77.

24 It is true that this exemption is linked to the trader concerned having applied for and obtained a certificate fixing the levy or refund in advance, which restricts the benefit of the exemption to trade with non-member countries and excludes from such benefit intra-Community trade, in respect of which there is no refund or levy and consequently no advance fixing.

25 However, for the reasons stated above, neither the general principle of respect for acquired rights nor that of respect for legitimate expectations required such exemption to be extended to all contracts in progress on 26 November 1977.

26 Furthermore, by publishing Regulation No 2604/77 on 26 November 1977 when it was to apply only with effect from 2 January 1978, the Commission mitigated the effects of the new rules on operations in the course of being performed, to the extent consistent with maintaining the aims pursued by the reintroduction of monetary compensatory amounts.

27 The submission based on the failure to respect legitimate expectations must therefore be dismissed.

28 Accordingly the answer to Question 3 should be that, apart from the exception provided for by Regulation No 2792/77, the monetary compensatory amounts laid down by Regulation No 2604/77 are applicable to the exportation of pasta from Italy to other Member States and to non-member countries as from 2 January 1978 in pursuance of contracts concluded prior to 25 November 1977.

Costs

29 The costs incurred by the Italian Government and the Commission, which submitted observations to the Court, are not recoverable.

30 Since 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 Pretura di Trento, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Pretura di Trento by an order of 16 March 1978, hereby rules:

1. **Consideration of the first two questions raised by the Pretura di Trento has disclosed no factor of such a kind as to affect the validity of Regulation No 2604/77.**

2. **Apart from the exception provided for by Regulation No 2792/77, the monetary compensatory amounts laid down by Regulation No 2604/77 are applicable to the exportation of pasta from Italy to the**

other Member States and to non-member countries as from 2 January 1978 in pursuance of contracts concluded prior to 25 November 1977.

Mertens de Wilmars Mackenzie Stuart Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 16 May 1979.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber
Acting as President

OPINION OF MR ADVOCATE GENERAL WARNER
(see Case 12/78, p. 1751)