JUDGMENT OF THE COURT
OF 5 APRIL 1979 [1]

Italian Republic
v Commission of the European Communities

"Monetary compensatory amounts"

Case 11/78

1. *Agriculture — Processed products — Monetary compensatory amounts — Application — Condition — Incidence of compensatory amounts applicable to basic products on price of processed products*
   (Regulation No 974/71 of the Council, Art. 2 (2))

2. *Agriculture — Monetary compensatory amounts — Groups of products — Application — Commission — Discretion*

1. In order to justify the application of compensatory amounts to processed products, it is sufficient for the compensatory amounts applicable to the basic products to have a considerable incidence on the price of the processed products.

2. The Commission is not bound to fix compensatory amounts for all the products in a group, but may assess the need to apply compensatory amounts either by products or by groups of products.

In Case 11/78

ITALIAN REPUBLIC, represented by its Ambassador, Adolfo Maresca, acting as Agent, assisted by Ivo Maria Braguglia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Cesare Maestripieri, acting as Agent, with an address for service in Luxem-

1 — Language of the Case: Italian.

bourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

and

IRELAND, represented by J. Murray, Barrister-at-Law, with an address for service in Luxembourg at the Irish Embassy,

intervener,

Application for the annulment of:

— Commission Regulation (EEC) No 2657/77 of 30 November 1977 on the application of monetary compensatory amounts to certain products not covered by Annex II to the Treaty (Official Journal 1977, L 308, p. 48);

— Commission Regulation (EEC) No 800/77 of 20 April 1977 amending, as regards products which are subject to monetary compensatory amounts, Regulation (EEC) No 572/76 fixing the monetary compensatory amounts (Official Journal 1977, L 97, p. 18) in so far as it makes provision, through Regulation (EEC) No 2657/77, for the continued application even after 31 December 1977, of the monetary compensatory amounts to the products referred to in Part 8 of Annex I to Regulation (EEC) No 527/76 under tariff subheadings 17.04 D, 18.06 B, 18.06 C, 19.08 B and 21.07 C,

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: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case and the arguments put forward by the parties in the written procedure may be summarized as follows:

I — Facts and written procedure

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 market 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).

By Regulation No 800/77, a number of goods were brought within the system of monetary compensatory amounts. They were different kinds of sugar confectionery, ice cream and other ices, chocolate and cocoa-based products, pastry, biscuits, cakes and other fine bakers' wares and various food preparations.

The second and third recitals in the preamble to that regulation read as follows:

"... the monetary compensatory amounts do not apply to all products not covered by Annex II to the Treaty obtained from agricultural products and governed by special rules adopted under Article 235; ... on the other hand, all the relevant basic agricultural products are subject to the said amounts;

... such a situation may lead to distortion of competition having regard to the high level of the monetary compensatory amounts currently applicable; ... in the case of processed products not subject to monetary compensatory amounts, the difference in prices of the basic products has become so marked as to have a considerable effect on the conditions of competition of the processed products, having regard to the characteristics of the market in certain sensitive products."

The sixth recital provides that the list of non-Annex II products should be

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.

reviewed by the end of the year in the light of their economic situation.

Thus the second subparagraph of Article 2 (2) of the regulation provides that monetary compensatory amounts shall not apply beyond 31 December 1977 in respect of products falling within tariff subheadings 17.04 D (sugar confectionery not containing cocoa, other than liquorice extract, chewing gum and white chocolate), 18.06 B (ice cream (not including ice cream powder) and other ices containing cocoa), 18.06 C (chocolate and sugar confectionery containing cocoa), 19.08 B (pastry, biscuits, cakes and other fine bakers' wares other than gingerbread and the like) and 21.07 C (ice cream (not including ice cream powder) and other ices not containing cocoa).

The adoption of Regulation No 800/77 had been preceded by the Commission Decision of 23 March 1977 authorizing Ireland to take protective measures in respect of certain processed agricultural products under Article 135 of the Act of Accession (Official Journal 1977, L 97, p. 29). That decision authorized Ireland until 31 December 1977 to levy a charge on imports from the United Kingdom and grant a payment on exports to the United Kingdom of processed agricultural products covered by tariff headings 17.04 D, 18.06 B, 18.06 C, 19.08 B and 21.07 C. The recitals in the preamble to that decision state that:

"... the compensatory amounts charged or granted ... [on] basic products would amount to 34.7% in the case of the United Kingdom and to 10.4% in the case of Ireland; ... this situation, entailing a relative disadvantage to the manufacturers ... in Ireland on the cost of the basic products of 24.3%, may lead to distortion in the terms of competition in trade in the processed agricultural products referred to in the Irish application between the Member States concerned; ... this situation, in its present acute form since November 1976, has given rise to serious difficulties for the sectors concerned in Ireland ...'

The monetary compensatory amounts thus introduced by this bilateral system between the United Kingdom and Ireland were replaced by fresh amounts annexed to the Commission Decision of 4 May 1977 amending that of 23 March 1977 (Official Journal 1977, L 123, p.18). Under Article 3 thereof, this second decision as well as the decision of 23 March 1977 ceased to apply on the day on which Regulation No 800/77 took effect (that is 23 May 1977).

Regulation No 800/77 was adopted without the competent Management Committees having delivered opinions within the time-limits set by their respective chairmen. The application of Regulation No 800/77 was postponed until 4 July 1977 by Regulation No 1051/77 of 18 May 1977 (Official Journal 1977, L 125, p. 34). Then, in order to avoid speculation giving rise to deflection of trade, Regulation No 1123/77 of 27 May 1977 (Official Journal 1977, L 134 p. 51) provided that monetary compensatory amounts were not to be applied for a certain period.

By a letter of 24 October 1977, the Italian Government reminded the Commission that it was opposed to the projected prolongation of Regulation No 800/77. That prolongation, for an indefinite period, was decided by Regulation No 2657/77 of 30 November 1977. That regulation also was adopted without the competent Management Committees having delivered opinions within the time-limits set by their respective chairmen.

The application of the Italian Government, dated 25 January 1978, was lodged at the Court Registry on 2 February 1978.

Having heard 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 an application lodged at the Court Registry on 10 October 1978, Ireland sought leave to intervene in the proceedings in support of the Commission's conclusions.

By an order of 11 October 1978, the Court allowed the intervention.

II — Conclusions of the parties

The *Italian Republic* claims that the Court should:

— Annul Commission Regulation (EEC) No 2657/77 of 30 November 1977;

— Annul Commission Regulation (EEC) No 800/77 of 20 April 1977 in so far as it makes provision, through Regulation (EEC) No 2657/77, for the continued application, even after 31 December 1977, of the monetary compensatory amounts to the products referred to in Part 8 of Annex I to Regulation (EEC) No 572/76 under tariff subheadings 17.04 D, 18.06 B, 18.06 C, 19.08 B and 21.07 C;

— Order the defendant to pay the costs.

The *Commission of the European Communities* contends that the Court should:

— Dismiss the application;

— Order the applicant to pay the costs.

Ireland contends that the Court should:

— Declare the application unfounded;

— Dismiss the application.

III — Submissions and arguments of the parties

The facts

The *Italian Government* maintains that Regulation No 800/77 was adopted without there having been a precise and complete examination of the trends of trade in the products concerned at the level of the Community as a whole.

For its part the *Commission* states that between the time of the Irish application and the adoption of Regulation No 800/77, it received communications accompanied by copious statistical data from the Irish and Danish Governments, as well as information from the British and German Governments. It also received verious solicitations from traders concerned which, taken together with the information provided by its own services, provided it with a complete picture of the situation in the sector.

Admissibility

In the defence, the *Commission* expresses doubts as to the admissibility of the application inasmuch as it seeks the annulment of Regulation No 800/77 "in so far as it makes provision, through Regulation (EEC) No 2657/77, for the continued application, even after 31 December 1977, of the monetary compensatory amounts" to the products at issue. In fact the submissions relied on by the Italian Government do not concern the prolongation itself or the economic situation prevailing in November 1977, but on the contrary relate to the reasons which determined the adoption of Regulation No 800/77.

The *Italian Government* replies that Regulation No 2657/77, which re-introduced monetary compensatory amounts as from 1 January 1978 for the same reasons and the same justifications as those which had been relied on for the adoption of Regulation No 800/77, is a new act and not simply an act confirming Regulation No 800/77. Consequently, the submissions in the application may be pleaded by the Italian

Government against the reasons which determined the adoption of Regulation No 2657/77. The distinction drawn by the Commission between the situation in November 1977 and that in April 1977 is entirely artificial.

The *Commission* considers that the doubts expressed in the defence are confirmed by the fact that if the application against Regulation No 2657/77 succeeded, the interest defended by the Italian Government would be entirely satisfied inasmuch as the application of monetary compensatory amounts to the products at issue would have ceased to be lawful as from 1 January 1978.

The substance of the case

A — Regulation No 2657/77: (i) misuse of powers, absence of a statement of reasons and infringement of an essential procedural requirement; (ii) breach of the principle of legitimate expectations

According to the *Italian Government*, even assuming the existence of a discretionary power to apply compensatory amounts to the products in question, by the second subparagraph of Article 2 (2) of Regulation No 800/77 the Commission intended to limit its own discretionary power itself, that is to say limit the exercise of that power to the period ending on 31 December 1977 without the possibility of any prolongation.

Consequently when the situation has not "greatly changed" (third recital in the preamble to Regulation No 2657/77) and the Commission decides that the compensatory amounts shall apply for an indefinite period, it commits a misuse of powers by abusing its discretionary power. This is all the more so as no justification was put forward. On the contrary, the penultimate recital in the preamble to Regulation No 2657/77 confirms that on 30 November 1977 the situation was essentially identical to the situation on 20 April 1977.

The same considerations lead the Italian Government to the view that the Commission committed an infringement of an essential procedural requirement, since it did not inform the interested parties, including the Member States, of the real reasons for the adoption of Regulation No 2657/77.

There is also a breach of the principle of legitimate expectations inasmuch as the fixing of the period was so categorical and limitative that it was to be expected that application of the compensatory amounts would cease on 31 December 1977. The fact that Regulation No 2657/77 entered into force one month before the expiry of this period should be sufficient to protect legitimate expectations under normal conditions but not when it has been declared that a period cannot subsequently be prolonged ("... not ... beyond ...") and when such a period is not usually stipulated in measures imposing compensatory amounts.

The *Commission* replies that the *dies ad quem* in matters of monetary compensatory amounts cannot be fixed without regard to the situation prevailing at any expiry date which may have been fixed: The Italian Government's interpretation leads to the absurd conclusion that the Commission had to abolish the compensatory amounts whatever the monetary situation prevailing at the end of the year. It is not possible to interpret the expression "not ... beyond" appearing in Article 2 of Regulation No 800/77 as representing a time-limit which cannot be derogated from. A

prudent economic observer should have concluded that the steps to be taken at the end of the year were necessarily dependent upon the situation of the money markets at the relevant time.

The *Italian Government* replies that if the Commission wishes to reserve the power to adopt such monetary measures in agricultural matters as are called for by the prevailing situation, it must not stipulate an expiry date for their application. If however, in the light of a certain situation, it sets itself a limit in time it cannot withdraw from the obligation to respect that limit unless it proves and shows that the situation has changed.

The *Commission* rejoins that at the end of November 1977, it had to consider only whether the conditions laid down in Regulation No 974/71 were fulfilled, that is to say whether the conditions which had made application of compensatory amounts necessary still existed. If such was the case, the validity of Regulation No 2657/77 could not be called in question. The Italian Government ought rather to have directed its doubts to the validity of the appointment of a time-limit in Regulation No 800/77.

In fact the Commission is not faced with the alternative described by the Italian Government: the appointment of a time-limit merely means that the amounts could not continue to be applied without being the subject of a new regulation. This solution is dictated by the very mobility and changeableness of the monetary situation in the Community.

As regards the statement of the reasons on which Regulation No 2657/77 was based and the principle of the protection of legitimate expectations, the Commission refers to the case-law of the Court.

B — Regulation No 800/77: infringement of Article 1 (3) of Regulation No 974/71 of the Council.

According to the *Italian Government*, it results from this provision that the Commission's discretionary power in assessing the risk of disturbances in trade can be exercised only at the level of agricultural products. Therefore monetary compensatory amounts can be applied to products which "are the subject of a specific arrangement under Article 235 of the Treaty" only if there is a risk of disturbances in trade in the agricultural products upon which the price of the products which are the subject of an arrangement under Article 235 depends. As emerges from the third recital in the preamble to Regulation No 800/77, the assessment of the risk of disturbances in trade was carried out at the level of processed (non-agricultural) products.

The Italian Government is aware that all the basic agricultural products were already subject to monetary compensatory amounts. Because of this it assumes that the risk of disturbances in trade in those products had already been eliminated. Doubtless an aggravation of the risk can make it necessary to apply the compensatory amounts even to derived products; but the condition, which the Commission has failed to observe in this case (cf. the third recital aforesaid), is still the risk of disturbances in trade in basic agricultural products.

The *Commission* regards the submissions which it made on the validity of Regulation No 800/77 in Case 151/77 *Peiser* (*sub judice*) as being contained by implication in its defence.

The Italian Government's reasoning amounts to forgetting, for example, that although sugar was subject to monetary compensatory amounts the sugar contained in biscuits was not. Although at the outset it had been considered that compensatory amounts should not be applied to derived products as at that time there were no disturbances in trade in those products, it was none the less still the Commission's duty to intervene once it was established that there were such disturbances (cf. the judgment of 20 October 1977 in Case 29/77 *Roquette* [1977] ECR 1835, preceded by the opinion of Mr Advocate General Warner.

The *Italian Government* replies that there is no doubt as to the legality of the application of monetary compensatory amounts to biscuits if there is a risk of disturbance in trade in the agricultural product sugar owing to the fact that the sugar contained in the biscuits is not subject to those amounts. In the present case, however, the Commission assessed and proved no disturbance in trade in sugar, but only the existence of the risk of disturbance in trade in the (non-agricultural) products containing sugar.

In Case 29/77, although the Commission was acknowledged to have the power of assessing the risk of disturbances at the level of the derived product, the issue none the less concerned an agricultural product (starch products derived from maize subject to a common organization of the market).

The *Commission* rejoins that the Italian Government's argument is indefensible in that:

— Regulation No 974/71 is also based on Article 235 (cf. Article 1 (2)). The amendment made by the aforesaid Regulation No 2746/72 of the Council emphasizes even more clearly the application of the system of compensatory amounts to the products referred to in 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);

— Disturbances which affect the basic product and the derived agricultural products have a direct effect upon the products referred to in Regulation No 1059/69. However Regulation No 974/71 does not always require the application of compensatory amounts to all derived products: it empowers the Commission to assess whether there are disturbances such as to justify the application of them.

C — Regulation No 800/77: misuse of powers

According to the *Italian Government*, assuming that the Commission had the power to apply monetary compensatory amounts to the products concerned, that power was used for a purpose other than that which Regulation No 974/71 attributed to it. In Regulation No 800/77, it was not the Commission's intention to resolve a common agricultural policy problem (which is the basic purpose of the system of compensatory amounts) but to deal with difficulties complained of by Irish processing industries in their trade with the United Kingdom. This conclusion is justified by the facts that:

— on the one hand, the decision concerning Ireland ceased to apply

on the day on which Regulation No 800/77 took effect (23 May 1977);

— on the other hand, the compensatory amounts were not applied for example to white chocolate and gingerbread, which, as regards the effect which the basic agricultural product has on them, are no different from the other products to which the monetary compensatory amounts were applied.

According to the *Commission* the issue is whether the circumstances justifying application of the monetary compensatory amounts existed when Regulation No 2657/77 was adopted.

As regards Regulation No 800/77, the Commission refers to the monetary situation prevailing in the Community at the time when it was adopted and explaining why it was not possible to provide for the application of monetary compensatory amounts by regions without giving rise to distortions and discriminations.

In the beginning, the Commission adopted the principle of limiting application of compensatory amounts to products in respect of which their incidence amounted to at least. 1.5 % of the average value of the goods. In addition, no compensatory amount was to be fixed if it would amount to less than 0.25 units of account per 100 kg.

The number of products covered by monetary compensation was thus enlarged and then diminished according to the monetary situation. In 1975, a guiding principle was laid down according to which monetary compensation was to be fixed only for processed products in respect of which the average maximum incidence exceeded 5 %.

When the situation deteriorated again in 1976 (on 1 January 1977 the difference between the actual rates and the so-called green rates for the pound sterling was — 38.5 %, for the Italian lira — 19.2 % and for the French franc — 17.5 %), the Commission first of all considered it justifiable not to re-establish compensatory amounts automatically for the processed products referred to in Regulation No 1059/69. However, following repeated representations by the Irish Government, it was prompted to intervene rapidly in order to reduce the difference of 24.3 % which had arisen owing to the fixing of different green rates for the pound sterling and the Irish pound.

More thorough analysis of the economic and legal situation revealed to the Commission that the problem posed could not be resolved adequately by the decision adopted in respect of Ireland, which was replaced by Regulation No 800/77.

At the time when that regulation was adopted, the rates of difference of the various currencies taken into account for the fixing of the compensatory amounts were as follows: pound sterling, — 34.7 %; Irish pound, — 10.4 %; French franc, — 16.2 %; Italian lira, — 21.1 %; German mark, + 9.3 %; Belgian and Luxembourg francs, + 1.4 %; Netherlands guilder, + 1.4 %; Danish kroner, 0. It emerged that the difference between the pound sterling and the Irish pound was much smaller than the difference between the pound sterling and all the strong currencies; likewise that difference was less than the difference between for example the mark and the Italian lira. Thus the actual incidence of the monetary compensation as regards the products concerned exceeded the 5 % limit regarded in 1975

as a decisive factor for the abolition of the said compensation. In the light of this situation, the general application of monetary compensation was forthwith a logical and obvious solution, which moreover corresponded to the usual practice.

As regards the principle of proportionality, the Commission points out that the monetary compensation machinery was conceived from the outset as a general system in which the compensatory amounts, determined by the monetary situation of a particular Member State, were closely geared to one another. This is proved by Article 4 (1) of Regulation No 974/71, which lays it down as a condition for the fixing of compensatory amounts in all the Member States that the difference should exceed 2.5 % in at least one Member State.

In most cases regional application of monetary compensation would lead to distortions and deflections of trade to the advantage or to the detriment of other commercial trends. Thus, in such a case, British producers would have turned increasingly towards countries with a strong currency, in relation to which the advantage which they enjoyed would have had a particularly pronounced effect.

The limitation of monetary compensation to the pound sterling would have resulted, for example, in exports to the United Kingdom from countries with a weak currency being given an advantage over exports from countries with a strong currency, because the corrective effect of charges on exports levied by some and aid granted by others would have been lacking.

Moreover regionalization of the compensatory amounts would have infringed the principle of equality of treatment.

As formulated by the Italian Government. The submission makes no reference to the monetary situation prevailing in November 1977, and is not apt to prove that that situation did not justify the measure in question.

The *Italian Government* replies that the Commission has not put forward any factor showing that there was no misuse of powers consisting in using a power which was legitimate in itself but had ceased to be so because it was used for a purpose other than that for which it was granted.

As to the conditions under which the Court's review of legality should be exercised in relation to Regulation No 2657/77, the conclusion is reached that both for the purposes of the application and for the purposes of the review of legality, reference must be made to the conditions which prompted the Commission to adopt Regulation No 800/77. In brief it is submitted that Regulation No 2657/77 has purportedly been withdrawn to a large extent from the Court's review of legality, which is unacceptable.

The *Commission* rejoins that Regulation No 2657/77 is valid in so far as it was adopted under the conditions laid down in Regulation No 974/71. In the statement of the reasons on which Regulation No 2657/77 is based, according to which the situation had not greatly changed since the entry into force of Regulation No 800/77, reference is made to those conditions, which were already mentioned in the preamble to Regulation No 800/77 and were deemed to be fulfilled on 30 November 1977.

D — Regulation No 800/77: breach of the principle of proportionality

According to the *Italian Government*, the products at issue involve a high degree of processing, and trade in them, which is limited, is independent of the markets in the basic agricultural products, over which they do not exert any influence even of an indirect kind. In order to resolve the difficulties encountered in Ireland, a provision adopted under

Article 14 of Regulation No 1059/69 would have been proportionate and adequate, whereas this is not the case of the application of monetary compensatory amounts.

According to the *Commission*, the Irish Government's application was not and could not have been the cause of the adoption of Regulation No 800/77. Furthermore, the Commission could not lay down a more limited measure such as the application of Regulation No 974/71 on a regional scale.

The appropriate measures which the Council may adopt under Article 14 (3) of Regulation No 1059/69 require that "special measures" should have been adopted as regards the prices of certain basic products. That provision has its specific ambit, just as Regulation No 974/71 has a specific ambit. Since the fear of disturbances arising is based on the monetary situation of the Member States and not on "special measures which may be adopted under the common organization of agricultural markets as regards the prices of certain basic products", it is quite clear that it was necessary to apply the specific regulation adopted in order to deal with any such disturbances.

The *Italian Government* points out that the provisions of Article 14 (3) and (4) of Regulation No 1059/69 also refer to measures pertaining to the fixing of the value of the green currencies of the Member States.

The *Commission* replies that the said provisions refer to a particular product's situation on the market (surplus or shortage), but that the existing examples of their application show the they have never been relied on to resolve difficulties due to the monetary situation.

E — Ireland's intervention

The *Irish Government* supports the position defended by the Commission and mentions that it submitted written observations in Cases 151/77, cited above, 95/78 *Dulciora* and 157/78 *Trawigo (sub judice)*.

With particular reference to the validity of Regulation No 2657/77, it maintains that, far from constituting a bar to the extension of the period of validity of Regulation No 800/77, the uninterrupted existence of the conditions which led to its adoption not only justified that extension but also made it necessary.

The Italian Government, represented by I. M. Braguglia, Avvocato dello Stato, the Irish Government, represented by J. Murray, Barrister-at-Law, and the Commission of the European Communities, represented by its Legal Adviser, C. Maestripieri, acting as Agent, presented oral argument at the hearing on 12 December 1978.

The Advocate General delivered his opinion at the hearing on 1 February 1979.

Decision

1 By an application lodged on 25 January 1978, the Italian Republic, pursuant to the first paragraph of Article 173 of the EEC Treaty, claimed the annulment of Commission Regulation No 2657/77 of 30 November 1977 on

the application of monetary compensatory amounts to certain products not covered by Annex II to the Treaty (Official Journal 1977, L 308, p. 48) and of Commission Regulation No 800/77 of 20 April 1977 amending, as regards products which are subject to monetary compensatory amounts, Regulation No 572/76 fixing the monetary compensatory amounts, (Official Journal 1977, L 97, p. 18) in so far as it makes provision, through Regulation No 2657/77, for the continued application, even after 31 December 1977, of the monetary compensatory amounts to the products referred to in Part 8 of Annex I to Regulation No 572/76 under tariff subheadings 17.04 D, 18.06 B, 18.06 C, 19.08 B and 21.07 C.

2 The dispute concerns the application of the monetary compensatory amounts system to certain products 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).

3 The said products, to which Regulation No 800/77 relates, come under tariff headings 17.04 D (sugar confectionery not containing cocoa, other than liquorice extract, chewing gum and white chocolate), 18.06 B (ice cream (not including ice cream powder) and other ices containing cocoa), 18.06 C (chocolate and sugar confectionery containing cocoa), 19.08 B (pastry, biscuits, cakes and other fine bakers' wares other than gingerbread and the like) and 21.07 C (ice cream (not including ice cream powder) and other ices not containing cocoa).

4 It emerges from the second and third recitals in the preamble to Regulation No 800/77 that, since all the basic agricultural products from which those goods are derived were subject to monetary compensatory amounts of a high level, "the difference in prices of the basic products had become so marked as to have a considerable effect on the conditions of competition of processed products, having regard to the characteristics of the market in certain sensitive products".

5 The second subparagraph of Article 2 (2) of Regulation No 800/77 provided that in respect of the said processed products "monetary compensatory amounts shall not apply beyond 31 December 1977".

6 The adoption of that regulation, which applied with effect from 23 May 1977, had been preceded by the Commission Decision of 23 March 1977

authorizing Ireland to take protective measures in respect of certain processed agricultural products under Article 135 of the Act of Accession and allowing that Member State until 31 December 1977 to levy a charge on imports from the United Kingdom and grant a payment on exports to the United Kingdom of the processed agricultural products coming under the above-mentioned tariff headings (Official Journal 1977, L 97, p. 29).

7 The recitals in the preamble to this decision stated that:

"... the compensatory amounts charged or granted ... [on the] United Kingdom and to 10.4% in the case of Ireland; ... this situation, entailing a relative disadvantage to the manufacturers ... in Ireland on the cost of the basic products of 24.3%, may lead to distortion in the terms of competition in trade in the processed agricultural products referred to in the Irish application between the Member States concerned; ... this situation, in its present acute form since November 1976, has given rise to serious difficulties for the sectors concerned in Ireland ..."

8 The monetary compensatory amounts introduced by these bilateral arrangements between the United Kingdom and Ireland were altered by the Commission Decision of 4 May 1977 (Official Journal 1977, L 123, p. 18), according to which this second decision as well as the preceding one ceased to apply on the day on which Regulation No 800/77 took effect.

9 By a letter of 24 October 1977, the Italian Government informed the Commission that it was opposed to the prolongation of Regulation No 800/77.

10 This prolongation, for an indefinite period, was decided by Regulation No 2657/77 of 30 November 1977.

Admissibility of the application as regards Regulation No 800/77

11 In its application the Italian Government claims that the Court should:

— Annul Commission Regulation No 2657/77 of 30 November 1977;

— Annul Commission Regulation No 800/77 of 20 April 1977 in so far as it makes provision, through Regulation No 2657/77, for the continued

application, even after 31 December 1977, of the monetary compensatory amounts to the products referred to in Part 8 of Annex I to Regulation No 572/76 under tariff subheading 17.04 D, 18.06 B, 18.06 C, 19.08 B and 21.07 C.

12 In the light of the provisions of Article 173 of the Treaty and Article 81 (1) of the Rules of Procedure on the limitation period for the commencement of proceedings, the Commission challenges the admissibility of the application in so far as it seeks the annulment of Regulation No 800/77.

13 The Commission alleges that the submissions made by the Italian Government do not concern the prolongation in itself or the economic situation prevailing in November 1977 but on the contrary relate to the reasons which decided the adoption of Regulation No 800/77.

14 In fact, however, the application relates only to the legal situation existing as from 1 January 1978 by virtue of the provisions of Regulation No 2657/77 which prolonged Regulation 800/77 for an indefinite period.

15 Therefore this head of claim is admissible.

The submission relating to Regulation No 2657/77

16 The Italian Government submits that by the second subparagraph of Article 2 (2) of Regulation No 800/77 the Commission intended to limit its own discretionary power itself, that is to say limit the exercise of that power to the period ending on 31 December 1977 without the possibility of any prolongation.

17 It argues that consequently, when the situation has not greatly changed and the Commission decides that the compensatory amounts are to be applied for an indefinite period, it is guilty of misuse of powers.

18 The Italian Government submits that there is also a breach of the principle of legitimate expectations inasmuch as the fixing of the period laid down in Regulation No 800/77 was so imperative that it was to be expected that the compensatory amounts would "not apply beyond 31 December 1977".

19 It submits that the fact that Regulation No 2657/77 entered into force a month before that period expired is not sufficient to protect legitimate expectations since it had been declared that the period could not be prolonged, the terms of Regulation No 800/77 providing that "monetary compensatory amounts shall not apply beyond 31 December 1977".

20 The Commission replies that at the end of November 1977 it had to consider only whether the conditions laid down in Regulation No 974/71 were fulfilled, that is whether the conditions which had required the compensatory amounts to be applied still prevailed.

21 If such was the case, the validity of Regulation No 2657/77 cannot be called in question.

22 The Commission submits that it was not in fact faced with the alternative described by the Italian Government, as the appointment of a time-limit merely meant that the amounts could not continue to be applied without being the subject of a new regulation.

23 The Commission submits that the purpose of the Community provisions in force in the agri-monetary sector and the recitals in the preamble to the regulation at issue should lead those concerned to the conclusion that the measures to be taken at the end of the year — continuation, abolition or alteration of the system provided for in Regulation No 800/77 — would necessarily be dependent upon the situation of the money markets at the relevant time.

24 Even if Article 2 (2) of Regulation No 800/77 had the meaning which the Italian Government attributes to it, it could not relieve the Commission from its obligation to review the situation by the end of the year.

25 The sixth recital in the preamble to Regulation No 800/77 had provided that "the list of ... products subject to monetary compensatory amounts should be reviewed by the end of the year in the light of the economic situation of those products".

26 In the light of that recital it could not be inferred that, if the situation remained unchanged, the application of the compensatory amounts would

necessarily be brought to an end; on the contrary it could be inferred that if their applications were to continue after 31 December 1977 a new regulation would be necessary.

27 Accordingly the submission must be dismissed as unfounded.

The submission relating to Regulation No 800/77

28 The Italian Government submits that by adopting Regulation No 800/77, the Commission infringed the provisions of Article 1 (3) of Regulation No 974/71, according to which "paragraph 1 shall apply only where application of the monetary measures referred to in that paragraph would lead to disturbances in trade in agricultural products".

29 The Italian Government submits that by virtue of that provision compensatory amounts on products not covered by Annex II to the Treaty and forming the subject of a specific arrangement under Article 235 of the Treaty could not have been introduced except in order to avoid the risk of disturbances in trade in the basic agricultural products (sugar, cereals and so on) on which the processed products, namely ice cream, chocolate, biscuits and so on, depend.

30 The Italian Government submits that, according to the recitals in the preamble to Regulation No 800/77, the Commission assessed not the risk of disturbances in trade in agricultural products but the risk of distortions in competition in the products at issue.

31 The Italian Government also submits that the statement of the reasons on which Regulation No 800/77 was based is defective inasmuch as it fails to take account of the risk of disturbances in trade in agricultural products and in that it confines itself to establishing the risk of disturbances in the conditions of competition in trade in the processed products.

32 It is true that in order to justify Regulation No 800/77 the Commission stated that "in the case of the processed products not subject to monetary compensatory amounts, the difference in prices of the basic products has become so marked as to have a considerable effect on the conditions of competition of the processed products . . .".

33 The wording of Article 1 (3) of Regulation No 974/71 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) requires that for the application of compensatory amounts to basic agricultural products, the monetary measures referred to in paragraph 1 (namely the fluctuation of the exchange rate of a Member State's currency) should lead to disturbances in trade in agricultural products.

34 As regards the processed product, it emerges from the provisions of Article 2 (2) of Regulation No 974/71 that the compensatory amounts applicable shall be equal to the incidence, on the price of the product concerned, of the application of the compensatory amount to the price of the basic product on which it depends.

35 It follows that in order to justify the application of compensatory amounts to processed products, it is sufficient for the compensatory amounts applicable to the basic products to have a considerable incidence on the price of the processed products.

36 As regards the basic agricultural products from which the processed products referred to in Regulation No 800/77 are derived, the risk of disturbances had been established at the time when the monetary compensatory amounts were applied to those basic products.

37 The statement of the reasons on which the regulation at issue was based clearly indicates that the application of those compensatory amounts to the basic products can have a considerable incidence on the prices of the processed products, and accordingly this submission must be dismissed as unfounded.

38 The Italian Government submits that the Commission applied monetary compensatory amounts to the products at issue not in order to deal with the difficulties to which monetary instability might give rise for the proper functioning of the common organizations of the market, but in order to deal with the difficulties complained of by Irish processing industries in trade with the United Kingdom.

39 It submits that application of monetary compensatory amounts to the products at issue in respect of trade between Member States and with non-member countries is not justified by the small incidence which the monetary differences might have on the prices of the processed products.

40 It submits that this conclusion is supported by the fact that compensatory amounts were not applied for example to white chocolate (tariff subheading 17.04 C) and gingerbread (tariff subheading 19.08 A) which, as regards the incidence which the basic agricultural product has on them, do not differ from the other products concerned, to which on the contrary compensatory amounts were applied.

41 It submits that under Article 14 of Regulation No 1059/69, the Council could have taken appropriate measures either to deal with the possible effect on trade between Member States and with non-member countries of special measures adopted under the common organizations as regards the prices of certain basic products, or to deal with a special situation which may arise in respect of certain goods.

42 It submits that, in the part concerning the products to which this application refers, Regulation No 800/77 breaches the principle of proportionality because a measure taken under the said Article 14 would have been adequate and sufficient to deal with the difficulties encountered by the Irish processing industries in the limited sector of trade with the United Kingdom, whereas the application of compensatory amounts was neither necessary nor in proportion to the aim pursued.

43 The Commission states that in 1975 it adopted a practice whereby monetary compensation was to be fixed only in respect of processed products on which the maximum average incidence of the compensation exceeded 5%.

44 On 1 January 1977 the difference between the so-called green rates for the pound sterling and the Irish pound was 24.3%, which gave rise to repeated representations by the Irish Government and, following those representations, to the decision of 23 March 1977 authorizing Ireland to take protective measures.

45 The Commission states that more thorough analysis of the legal and economic situation revealed that the problems posed could not be adequately dealt with by the decision adopted in respect of Ireland.

46 It states that at the time when Regulation No 800/77 was adopted, the rates of difference of the various currencies taken into account for the fixing of the compensatory amounts were as follows: pound sterling, — 34.7%; Irish

pound, — 10.4%; French franc, — 16.2%; Italian lira, — 21.1%; German mark, + 9.3%; Belgian and Luxembourg francs, + 1.4%; Netherlands guilder, + 1.4%; Danish kroner, 0.

47 It emerged from this that the difference between the pound sterling and the Irish pound was munch smaller than the difference between the pound sterling and all the strong currencies and between the German mark and the Italian lira.

48 Furthermore the actual incidence of the monetary compensation on the products at issue exceeded the 5% limit which was regarded in 1975 as a decisive factor for the abolition of the said compensation.

49 Article 14 of Regulation No 1059/69 refers to the Council's adopting "appropriate measures" only "to deal with the possible effect on trade between Member States and with third countries of special measures which may be adopted under the common organization of agricultural markets as regards the prices of certain basic products".

50 The Commission submits that consequently this provision is not appropriate to deal with the risk of disturbances in trade in processed products caused by the monetary situation of the Member States.

51 On the point that the compensatory amounts were not applied to certain other products, the Commission states that it reached the conclusion that it was not necessary to bring those products under the monetary compensatory amounts system after having weighed up the appropriate factors, such as the limited competition and the fact that no request for the introduction of compensatory amounts had been submitted.

52 The Italian Government has not called in question the statistical data supplied by the Commission.

53 Moreover, the Commission is not bound to fix compensatory amounts for all the products in a group, but may assess the need to apply compensatory amounts either by products or by groups of products.

54 Accordingly, this submission must be dismissed as unfounded.

55 Since the Italian Government has failed in its submissions, the application must be dismissed.

56 Ireland, the intervener, contended in support of the position defended by the Commission that the application should be rejected, but did not ask for the applicant to be ordered to bear its costs.

Costs

57 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

58 The applicant has failed in its submissions.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application;**
2. **Orders the Italian Republic to pay the costs incurred by the defendant.**

Mertens de Wilmars Mackenzie Stuart Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 5 April 1979.

J. A. Pompe
Deputy Registrar
For the Registrar

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