OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 9 NOVEMBER 1978 [1]

Mr President
Members of the Court,

The facts giving rise to the reference for a preliminary ruling with which we are today concerned are as follows:

Article 1 of Regulation (EEC) 2448/75 of the Commission of 25 September 1975 suspending the monetary compensatory amounts for certain wines (Official Journal L 250 of 26 September 1975, p. 29) provides that with effect from 29 September 1975 the application of monetary compensatory amounts to those wines (which amounts had most recently been fixed by Regulation (EEC) 2021/75 of the Commission of 31 July 1975 fixing the monetary compensatory amounts and certain rates for their application — Official Journal L 205 of 4 August 1975, p. 1) should be suspended, save that in Germany such amounts should continue to apply in respect of the following wines:

"...

Table wines of types A II and A III within the meaning of Regulation (EEC) 945/70 and white wines presented for importation under the name of the Riesling or Sylvaner vine variety".

Article 2 of Regulation (EEC) 945/70 of the Council of 26 May 1970 determining the types of table wines (Official Journal, English Special Edition 1970 (I), p. 267) provides:

"The types of white table wine shall be as follows:

(a) white table wine, other than that referred to under (b) and (c), with an actual alcoholic strength of not less than 10° and not more than 12°, which shall be known as 'Type A I';

(b) white table wine from vine varieties of the Sylvaner or Müller-Thurgau type, which shall be known as 'Type A II';

(c) white table wine from vine varieties of the Riesling type, which shall be known as 'Type A III' ".

Between 3 and 15 October 1975 the plaintiff and respondent to the appeal in the main action, Firma Kendermann, exported to Canada wine produced by the coupage of the German vine varieties Müller-Thurgau and Sylvaner with Italian or French wines. Particulars of the composition of the wines exported are as follows:

1. Müller-Thurgau/Sylvaner approximately 70%; table wine of the vine variety Cépagne Chenin approximately 30%;
2. Müller-Thurgau/Sylvaner 99.9%; Italian table wine of the wine variety Trebiano approximately 0.1%;
3. Müller-Thurgau/Sylvaner 99.8%; Trebiano 0.2%;
4. Müller-Thurgau/Sylvaner 98.7%; French table wine of the vine variety Chenin approximately 1.3%.

The plaintiff applied for monetary compensation for those exports on the basis of Regulation 2021/75. The Hauptzollamt Hamburg-Jonas, defendant and appellant in the main action, in reliance on Regulation 2448/75 rejected that application, alleging that table wine of Type A II was not involved.

After lodging unsuccessful objections the plaintiff brought proceedings in the Finanzgericht Hamburg, which ordered the defendant to pay the monetary compensatory amounts demanded. The

1 — Translated from the German.

defendant appealed to the Bundesfinanzhof.

By order dated 28 February 1978 the Bundesfinanzhof stayed the proceedings and referred the following questions to the Court for a preliminary ruling under Article 177 of the EEC Treaty:

1. Do wines being a blend of table wines of "Type A I" and "Type A II", the latter being the component part giving them their essential character, belong to "Type A II" within the meaning of Article 2 (b) of Regulation (EEC) 945/70 of the Council of 26 May 1970?
2. Does the blended wine mentioned in Question 1 then belong in any case to "Type A II" within the meaning of Article 2 (b) of Regulation (EEC) 945/70 if the proportion of wine of "Type A I" in it is negligible? If the answer to this question is in the affirmative, what are the conditions under which the proportion if "Type A I" in it may be regarded as negligible?
3. If Question 1 is answered in the negative, is the blended wine mentioned in Question 1, taken as an entity, to be treated as wine of "Type A I" within the meaning of Article 2 (a) of Regulation (EEC) 945/70 or may it, in so far as it contains "Type A II" wine, at least be treated as table wine of A II type within the meaning of Annex I, Part 6, to Regulation (EEC) 2021/75 of the Commission of 31 July 1975 and within the meaning of Article 1 of Regulation (EEC) 2448/75 of the Commission of 25 September 1975, in respect of which (proportionate) monetary compensatory amounts may be granted on its being exported from Germany?
4. Is Regulation (EEC) 2448/75 valid if it has to be interpreted as meaning that monetary compensatory amounts shall not be paid when blends of the type specified in Questions 1 and 2 are exported and that they shall not be paid either in respect of that proportion of such blends which falls within "Type A II"?

Before considering these questions it would seem to be expedient to discuss the problems of principle.

I — The central issue in the present case is the question whether blends of table wines of Types A II and A I also come under wines of Type A II within the meaning of Article 2 (b) of Regulation 945/70 of the Council and, if so, how high the proportion of wine of Type A I may be for the blend still to come under the said classification. The reason is that only table wines of Type A II from the Federal Republic of Germany could at the time of the export of the wines in question by the plaintiff still enjoy the monetary compensatory amounts under Article 1 of Regulation 2448/75 of the Commission.

The question, which has been raised by the Commission but in the absence of the necessary particulars has not been answered, whether the blends exported by the plaintiff are "table wines" at all within the meaning of Article 26 of Regulation 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (I), p. 234) can, in my view, be disregarded here. First, neither party disputes it, although in public law this is not decisive, and secondly, the Finanzgericht Hamburg, as the forum concerned with the facts, has found as a fact that it is "table wine". In any event, this is a question of fact which the national courts have to decide. We are not asked to interpret *that* concept.

We are concerned with the interpretation of the concept "wine of Type A II" as determined by Article 2 (b) of Regulation 945/70.

The different classification of various types of table wine in Regulation 945/70 was undertaken, as appears from the preamble, mainly for the purpose of

fixing the guide prices for representative types of table under Article 2 of Regulation 816/70. As the Commission adds, it has in addition a bearing on the other relevant prices in the context of the common intervention system. An interpretation of the provisions of Regulation 945/70 must therefore be based on its objective in relation to prices.

As regards that objective it is solely a question of the relevant characteristics determining prices of the particular types of wine and vine variety or, as the Commission briefly explains, what wines of which vine varieties can be marketed and sold as the same type of wine. This does not require precise tariff classification according to organoleptic characteristics and peculiarities and accordingly this is not undertaken by Regulation 945/70. Thus Article 2 (b) of that regulation already mentions two vine varieties which are closely related as regards price, Müller-Thurgau and Sylvaner, as belonging to Type A II; and even those two varieties, as Article 3 of the regulation shows, are to be understood only as being distinctive varieties. Until now it has been for the individual Member States to determine more precisely which other vine varieties should be classified with Müller-Thurgau and Sylvaner under Type A II due to their low acidity.

Since Regulation 945/70, as explained, is closely connected with Regulation 816/70, then in my opinion reference may also be made, as the Commission rightly does, to the principles according to which it was drafted for the definition of wine and its varieties. Regulation 816/70 always expressly provides when a wine must be produced *exclusively* from certain vine varieties to satisfy a particular definition. Therefore in my view since Regulation 945/70 does not contain such a restriction it is possible without hesitation to assume that blends can also come within the various types of wine, providing only that the character of the decisive vine variety relevant to classification of a wine under a particular type is preserved.

The only question which remains to be decided in this connexion is the extent to which other wines may be added without the classification of the blend in Type A II being placed in doubt. Since 1 September 1976 Regulation 2133/74 of the Council of 8 August 1974 laying down general rules for the description and presentation of wines and grape musts (Official Journal L 227 of 17 August 1974, p. 1) has governed the lawfulness and amount of additives and allows 15% of other wines to be added. Before that regulation entered into force it was necessary in the absence of Community provisions to apply the relevant provisions of the particular Member States, and thus in the present case Article 8 of the German wine regulation of 15 July 1971 (Bürgerliches Gesetzblatt I, p. 926) which provides that the additive may not exceed 25% of the blend. When the plaintiff, who itself makes reference to that provision, asserts that in the case of a wine having a neutral flavour the additive may be of a higher percentage, it disregards the fact that the question of neutrality of taste is difficult to ascertain and that therefore it is necessary to provide for a definite percentage of additive, as the German wine regulation did previously and as now is done by Regulation 2133/74. Only in this way is it possible to obtain clear and unambiguous results in the classification of blends under the various types of wines laid down by Regulation 945/70.

The foregoing determines the basis on which Questions 1 and 2 of the national court must be answered. When the plaintiff asserts that it is possible to justify a higher proportion of additives on the basis of customs regulations, it disregards the fact the Regulation 2448/75 refers expressly to Regulation 945/70, which in the light of its objectives can be interpreted and supplemented only according to

principles relating to the rules on wine and prices.

II — According to the wording of Regulation 2448/75 the exported wine must belong as such to Type A II to justify a claim for a monetary compensatory amount. I agree with the Commission that Article 6 of Regulation 1380/75 of the Commission of 29 May 1975 laying down detailed ruls for the application of monetary compensatory amounts (Official Journal L 139 of 30 May 1975, p. 37) in conjunction with Article 8 of Regulation 192/75 of the Commission of 17 January 1975 laying down detailed rules for the application of export refunds in respect of agricultural products (Official Journal L 25 of 31 January 1975, p. 1) does not justify *pro rata* payment. Although, according to Article 6 of Regulation 1380/75, the provisions concerning the granting of export refunds also apply to the payment of monetary compensatory amounts, according to Article 8 of Regulation 192/75 the refund is payable in respect of a particular component of a product only where a refund has been fixed on the basis of one or more components. This however cannot apply here since no monetary compensatory amount is provided for table wine of Type A II which is exported as an *ingredient* of a blend with its own character.

From this it is clear that Question 3 can be answered only in the negative.

III — Finally, I have no doubts regarding the validity of Regulation 2448/75 in the interpretation which I have proposed. That regulation retains the monetary compensatory amount only for wines of Type A II and A III and this was brought about (in this respect I refer to the judgment in Case 136/77 *Firma A. Racke* v *Hauptzollamt Mainz* of 25 May 1978) in exercise of the Commission's wide discretion but taking account of all the relevant economic factors. At that time the Commission considered that it was still necessary to protect German wines of Types A II and A III and *only* wines or blends coming under those types. What wines came thereunder was to be decided, as explained, only on the basis of considerations concerning wine and price. In view of the objectively justified grounds of the regulation it could not be regarded as constituting discrimination.

IV — I therefore propose that the questions of the Bundesfinanzhof should be answered as follows:

1. Wines which are the result of a blend of Types A II and A I also come under Type A II within the meaning of Article 2 (b) of Regulation (EEC) 945/70 of the Council. How far the essential character of such a blend was still of Type A II was determined until the entry into force of Regulation (EEC) 2133/74 of the Council by the provisions of national law relating to wine, in the present case Article 8 of the German wine regulation of 15 July 1971, which allowed an addition of 25% of other wines.
2. A *pro rata* payment of monetary compensatory amounts in respect of blended wine of Type A II is not possible.
3. Nothing has been revealed in the proceedings such as to cast doubt on the validity of Regulation (EEC) 2448/75 of the Commission.