of wine falling within tariff subheading 22.05 C I is excepted from the discontinuance of the monetary compensatory amounts.

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Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 25 May 1978.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 3 MAY 1978

Mr President,
Members of the Court,

In 1975 monetary compensatory amounts — as provided for in principle in Regulation (EEC) No 974/71 of the Council (Official Journal, English Special Edition 1971 (I), p. 257) and familiar from many other cases — were levied in trade within the Community and with third countries *inter alia* on table wine coming within tariff subheadings 22.05 C I and 22.05 C II of the Common Customs Tariff.

At first Regulation (EEC) No 539/75 of the Commission on 28 February 1975 (Official Journal 1975 L 57 of 3 March 1975, p. 2) was determining in this connexion; Part 6 of Annex I to that regulation fixed the amounts applicable to the various Member States. This regulation was then amended by Regulation (EEC) No 722/75 of the Commission of 19 March 1975 (Official Journal 1975 L 71 of 20 March 1975, p. 24). Subsequently, monetary compensatory amounts were discontinued with effect from 24 March 1975 *inter alia* on wines coming under tariff subheadings 22.05 C 1 and II "in all Member States other than Germany". Regulation No 539/75 was repealed in its entirety as from 4 August 1975 by Regulation No 2021/75 of the Commission of 31 July 1975 (Official Journal 1975 L 205 of 4 August 1975, p. 1). Annex I to that regulation fixed afresh the monetary compensatory amounts for the various Member States. Part 6 of Annex I, just as Regulation No 539/75 which was amended by Regulation No 722/75, provided for the charging of compensatory amounts only on imports of table wine into Germany, the

1 — Translated from the German.

amounts in this connexion corresponding to those fixed in Regulation No 539/75.

The abovementioned rules were applied when the plaintiff in the main action, an undertaking with its registered place of business in Bingen am Rhein, transferred Yugoslavian table wines coming under tariff subheading 22.05 C I b from its open bonded warehouse in September 1975 and put them into free circulation. At first the plaintiff lodged an objection and, when this objection was dismissed, lodged an application to the Finanzgericht Rheinland-Pfalz.

It takes the view that the special rules created by Regulation No 722/75 for the Federal Republic of Germany are invalid because the above-mentioned regulation, in breach of Article 190 of the EEC Treaty, contains no statement of the reasons for the retention of the monetary compensatory amounts in the case of Germany. In this connexion there has also been an infringement of the prohibition on discrimination contained in Article 40 (3) of the EEC Treaty. No reasonable grounds for the retention of the monetary compensatory amounts on imports into Germany can be perceived as the compensatory amounts levied at the frontier between Italy and France have been discontinued in spite of the threat to the French market. If however it is accepted that there is no disturbance to trade in this respect it is also impossible to speak of a disturbance to the German market in red table wine which is a totally insignificant market — red wine is essentially imported from Yugoslavia. In addition, the plaintiff refers to the principle of the uniformity of prices in the Community which it claims is incompatible with the creation of separate markets and the supporting of a varying level of prices which are brought about by Regulation No 722/75. It refers moreover to the prohibition against the levying of charges having an effect equivalent to customs duties. This applies in the present case because the compensatory amount does not serve to reconcile the effects of varying rates of exchange and to maintain traditional patterns of trade but aims rather to shift the patterns of trade and tends to prevent a reduction in prices. Finally, the plaintiff also takes the view that the regulation is not in conformity with Article 1 (3) of Regulation No 974/71, according to which compensatory amounts may only be charged if there is a risk of disturbances in trade. In this connexion it is particularly interesting that the Commission itself has repeatedly asked for the progressive abolition of the system of monetary compensatory amounts.

In the opinion of the defendant principal customs office the regulation in question contains a sufficient statement of the reasons upon which it is based and there are objective reasons for different treatment of the various Member States. In particular the requirements laid down in Article 1 (3) of Regulation No 974/71 are fulfilled and in this connexion it must be borne in mind that the Commission has a discretion in this respect in matters of economic policy. In any case it is necessary to acknowledge that there was a fall in the prices of Italian wines on account of the devaluation of the lira in 1973 with the result that the traditional patterns of trade were deflected by increased exports of those wines. So far as the German market in table wine was concerned the effect of a reduction in prices was in addition augmented by the tendency of the German mark to appreciate. This gave rise to a situation such as that envisaged by Regulation No 974/71.

The Finanzgericht stayed the proceedings and, by order of 4 October 1977, referred to the Court of Justice under Article 177 of the EEC Treaty the following questions for a preliminary ruling:

1. Is Regulation (EEC) No 722/75 of the Commission of 19 March 1975 (Official Journal L 71 of 20 March 1975, p. 24) valid in so far as No 1 of the Annex thereto excepts the import into Germany of wines falling within tariff subheading 22.05 C I of the Common Customs Tariff from the discontinuance of the monetary compensatory amounts?

   In particular:

   Did the conditions laid down in Article 1 (3) of Regulation (EEC) No 974/71 of the Council of 12 May 1971 (Official Journal, English Special Edition 1971 (I), p. 257) still apply in September 1975 to such imports of wine, or was the retention in force of the monetary compensatory amounts for Germany based on considerations which contravened the prohibition on discrimination and the requirement that prices be uniform, within the meaning of Article 40 (3) of the EEC Treaty, and transformed the monetary compensatory amounts into charges having an effect equivalent to customs duties?

2. Is the duty to give a statement of reasons for a regulation laid down in Article 190 of the EEC Treaty discharged by the mere reference in Regulation (EEC) No 722/5 to the difference between production and marketing conditions for table wines within the Community, or should the Commission have given a more detailed statement of the reasons for retaining the monetary compensatory amounts in force for Germany?

Before examining these questions I must point out that during the relevant period of importation (September 1975), Regulation No 722/75, which had amended Regulation No 539/75, was no longer in force. As we have seen, it was repealed, just like Regulation No 539/75, and replaced by Regulation No 2021/75. The questions which have been submitted should therefore more correctly be related to the latter regulation as far as possible and Regulation No 722/75, which certainly did not form the legal basis for Regulation No 2021/75, should be left out of consideration.

In addition, I should like to mention in this connexion — although this is not decisive with regard to the solution of the problems brought before this Court — that the application of the compensatory amounts in the market in wine was, with two exceptions, also suspended in Germany as from 29 September 1975 by Regulation No 2448/75 of the Commission of 25 September 1975 (Official Journal L 250 of 26 September 1975, p. 29) because there was no longer any need to fear disturbances in trade. On the other hand, the compensatory amounts on table wine were also reintroduced in the case of Italy and France as from 16 December 1976, by Commission Regulation No 3071/76 of 15 December 1976.

1. In examining the questions which have been raised it seems to me to be appropriate to begin with the objection that Article 190 of the EEC Treaty has been infringed because I discern the least difficulties here.

In this connexion the plaintiff considers that if special rules are created for the Federal Republic of Germany, as by Regulation No 722/75, it is necessary to give a special statement of the reasons upon which they are based. If it is stated that there is no danger of disturbances in the case of other Member States, it is necessary to indicate exactly why this does not apply to the Federal Republic of Germany. There is no such indication in the regulation; in fact it contains only a statement of reasons for its *favourable* effects but not for the retention of *charges* in the case of imports into

Germany. There is nothing in the recitals of the preamble thereto to show that the discontinuance of the compensatory amounts in Germany would result in disturbances.

However, as I have already said, in the present case Regulation No 2021/75 is of interest to us and not Regulation No 722/75.

In my opinion it certainly makes a considerable difference as regards the obligation to give a statement of reasons for a regulation whether a regulation, like Regulation No 722/75, only concerns specific products or whether, like Regulation No 2021/75, it contains comprehensive rules and the fresh fixing of all monetary compensatory amounts. In the latter case an exhaustive statement of reasons in relation to each product or group of products can certainly not be required. As far as Regulation No 2021/75 is concerned it is therefore necessary to consider as sufficient the fact that the recitals of the preamble thereto state: "Whereas in the present situation this rule [in other words, the rule on compensatory amounts] makes it possible not to fix compensatory amounts for France and for Italy, and to fix amounts in the wine sector only for Germany".

I should like however to add that Regulation No 722/75 sems to me to give no cause for objections as far as the requirement of stating the reasons for a regulation. In this connexion, it is impossible to dismiss what Mr Advocate General Warner regarded as a factor worthy of consideration in his opinion in Case 29/77 *(S.A. Roquette Frères* v *French State, Customs Authorities* ("monetary compensatory amounts"), judgment of 20 October 1977 [1977] ECR 1835), in other words, that the Commission needs state its reasons only where, having regard to Article 1 (3) of Regulation No 974/71, it is satisfied that, despite the monetary conditions, monetary compensatory amounts should be withdrawn. In addition I would recall that the judgment in this case ([1977] ECR 1843) states that "the fact that the statement of reasons for the regulation took the form of a reference to the conditions set out in Article 1 (1) of Regulation No 974/71 is not to be regarded as equivalent to a lack of any statement of reasons for the regulation".

However, since the recitals in the preamble to Regulation No 722/75 state that.

"Whereas production and marketing conditions for these wines [in other words, table wines] differ from Member State to Member State; whereas it therefore seems possible to discontinue with immediate effect the compensatory amounts in most of the Member States without thereby disturbing trade".

this should be sufficient, whilst it would be requiring too much of a statement of reason if, as the plaintiff considers, it were regarded as necessary to go further and explain in detail why the discontinuance of the compensatory amounts did not also seem justifiable in the case of the Federal Republic of Germany.

It therefore seems to me to be unjustified to accept that Regulation No 2021/75 is invalid for infringement of essential procedural requirements.

2. I shall now turn to the question whether, during the period in question, the requirements laid down in Regulation No 974/71 were still fulfilled. In this connexion of course the second subparagraph of Article 1 (2) of the above-mentioned regulation in the version contained in Regulation No 2746/72 must be considered, according to which: "Paragraph 1 shall not apply where application of the monetary measures referred to in that paragraph would lead to disturbances in trade in agricultural products", and not the technical monetary requirements, about which there is no dispute.

I shall first recall in this connexion certain decisions from the case-law of this Court.

In the judgment in Case 5/73 *(Balkan-Import-Export GmbH* v *Hauptzollamt Berlin-Packhof,* judgment of 24 October 1973 [1973] ECR 1091) the Court pointed out that the compensatory amounts were intended to preserve the normal flow of trade, a concept which is expressed in the judgment in Case 55/75 *(Balkan-Import-Export GmbH* v *Hauptzollamt Berlin-Packhof,* judgment of 22 January 1976 [1976] ECR 19) by the statement that it is necessary to take into consideration the effect of monetary measures on trade between the Member States. In the judgment in Joined Cases 67 to 85/75 *(Lesieur Cotelle et Associés SA and Others* v *Commision of the European Communities,* judgment of 17 March 1976 [1976] ECR 391) it was emphasized that the establishment of the system of monetary compensatory amounts was motivated by concern that monetary measures might create distortions in trade, and in the judgment in Case 74/74 *(Comptoir National Technique Agricole (CNTA) S.A.* v *Commission of the European Communities,* judgment of 14 May 1975 [1975] ECR 533) it was pointed out that the compensatory amounts are intended to protect the level of prices in the Member State in question.

However it is above all important that in several judgments (Case 74/74, Case 55/75 and, finally, Case 29/77) it has been emphasized that the Commission has a wide discretion in the evaluation of the problem of disturbances, and that for this reason the Court may only examine whether there has been a manifest error or misuse of powers or a clear abuse of powers. In this connexion, the latter judgment states further that the possibilities of disturbances are numerous and diverse; in this respect the Commission must take into consideration the market conditions and may find a risk of disturbance merely on the basis of an appreciable fall in the rate of exchange. It is necessary to adhere to these findings when examining in the present case whether the requirements laid down in Regulation No 974/71 are fulfilled.

The plaintiff in the main action expresses doubts as to whether those requirements are fulfilled as far as the market in wine in the Federal Republic of Germany is concerned, above all by referring to the small scale of German production of table wine, in particular red wine, which is of prime importance in its imports, and claims that it is a totally insignificant market, in particular in comparison with the imports. Moreover, the plaintiff emphasizes that, as a result of the compensatory amounts, German wine has increased its share of the market and that the share of foreign wines has decreased. In addition, it takes the view — and this refers to the case-law mentioned above — that the Commission does not in any case have a wide discretion when only *one* product and the special rules on compensatory amounts relating thereto for a *single* Member State and the ascertainment of the facts is concerned.

This submission, and I must say this at once, is in my opinion insufficient to prove a wrongful application of the system of monetary compensatory amounts.

The plaintiff incorrectly contests in very principle that the Commission has a wide discretion in cases in which the application of the system is limited to a particular market. No such thing can be deduced from the case-law of this Court. This point of view is also unjustified since even the evaluation of a single market often represents an extraordinarily complex venture in particular in so far as essential prognoses on future developments are involved. In addition I must once more recall that the decisive regulation which

is of interest in this case concerned not only compensatory amounts for wine but also the fixing of compensatory amounts for all products coming into consideration in this respect.

However, after all the Court has heard, in particular after the submissions made by the Commission in the oral procedure, it is also difficult to state that there has been a manifest error so far as a risk of disturbance is concerned.

It is certain that the plantiff's references to the small scale of the German market in table wine are insufficient. Even a small market can in fact be disturbed and then requires protection. In addition, according to the figures produced to this Court on the production of table wine in the Federal Republic of Germany — many harvests exceed one million hectolitres — it is necessary to acknowledge that this market is not, as the plaintiff considers, completely insignificant, quite apart from the fact that the effects on the market in quality wines could be taken into consideration because in this connexion there are no rigid divisions and therefore it is impossible to speak of completely separate markets.

In the same way it is insufficient for the plaintiff to state with regard to the actual development of the German market that the share of sales of German wine on the domestic market increased from 67 % in 1973 to 75 % in 1975 whilst the share of foreign wines fell from 33 % to 25 % during this period. In my opinion these changes do not justify the finding that all compensatory amounts, which were 12 % in the period in question, could have been dispensed with. In addition, the prognosis reasonably made at the date on which the compensatory amounts were fixed, in other words, solely the question whether *at that time* it was possible seriously to fear disturbances in the market, is decisive, and not of course a retrospective examination.

It results from the statements made by the Commission, particularly in the oral procedure, that there was every reason in the autumn of 1975 for the retention of the compensatory amounts in the Federal Republic of Germany. Thus the Court was told, and this is of fundamental interest, that the organization of the market in wine (Regulation No 816/70, Official Journal, English Special Edition 1970 (I), p. 234) is characterized by a relatively weak intervention system. It applies only to table wine, in other words wine which does not correspond to the requirements for quality wines, and if the market price falls to below a certain level it consists in the adoption of distillation measures, not, it is true, for large quantities, or in the grant of aids for private storage which naturally does not finally take the wine off the market but only postpones its sale. It is also important that in the case of table wine, a considerable proportion of which is used let us say "industrially", there is relatively great international convertibility and that precisely this market is considerably more liable to disturbances from imports than the market in quality wines.

Against this background an important factor, and with this I come to the actual market data, is that at the beginning of 1975 there were large stocks of table wines in Italy and France and that in particular they gave rise to very substantial exports from Italy to France which led to the levying in that country of an import charge which is the subject-matter of another case. On the other hand, the Commission speaks of sales difficulties which existed at that time on the German market too. The Commission considers that the relatively high proportion of table wine in the previous vintage was partly the cause but that the considerable pressure of imports from France and Italy was also a contributory factor. The favourable production conditions, in particular in

Italy, had enabled the wine to be sold at a price which covered costs even at lower prices and in addition the fall in the rate of exchange of the lira had given an incentive to increase exports.

In view of these facts it is really impossible to state that the Commission committed a manifest error in the evaluation of the problem of disturbances and wrongly fixed monetary compensatory amounts for the German market in wine. However at the same time it is certain that the system of compensatory amounts cannot be regarded as being aimed at the grant of additional protection and for that reason it is not therefore incompatible with the prohibition against the levying of charges having an effect equivalent to customs duties.

3. It is in addition necessary to examine whether the regulation in question has infringed the prohibition against discrimination laid down in Article 40 (3) of the EEC Treaty.

The plaintiff refers to this by mentioning the fact that the compensatory amount has been incorporated into the common agricultural policy. It takes the view that it is possible to speak of discrimination because the compensatory amount was discontinued in the case of Italy and France, in other words in the case of countries whose wine production is much greater than that of the Federal Republic of Germany. On the other hand it is obvious to speak of discrimination against German consumers, for example in relation to Belgian consumers, because imports could be effected into Belgium without a compensatory amount causing an increase in price.

In this connexion the plaintiff is obviously first overlooking the fact that France and Italy were countries which had devalued their currency. In those countries the compensatory amount resulted in the grant of subsidies on imports and the levying of charges on exports. Precisely if it is assumed that there were production surpluses in those countries and that the market was for that reason in difficulties it must also have been obvious not to subsidize imports and not to restrain exports. In addition, the compensatory amounts applicable to Italy and France had evidently approximated one another to such an extent that the system acted only as an administrative barrier. Thus although the compensatory amounts were for those reasons abolished in the market in wine in the case of those countries, it is impossible to conclude from this that the retention of the compensatory amounts in one country, such as the Federal Republic of Germany, which was in a completely different situation from a monetary point of view and in which the compensatory amount had the effect of restraining imports, is discriminatory.

As far as imports into countries such as Belgium are concerned, in my opinion the fact that market conditions are different there because there is no wine production is sufficient to dismiss the allegation of discrimination. The statement that there is no danger of a disturbance in the market in the case of these countries therefore certainly does not immediately justify the conclusion that that same applies to a country whose production of table wine is considerable and which has certain sales difficulties perceptible at the time in question.

Moreover, it should be observed in this connexion that no objection can be made to the rules adopted as regards the uniformity of the common market and the prices prevailing there. In this connexion the Commission has explained that in the past action was always taken for each Member State separately and that a compensatory amount applied to all Member States for only two years. In fact it may

repeatedly occur that different systems apply in this connexion in the Community because market conditions are the important factor with regard to the compensatory amount and compensatory amounts are only permissible in so far as they seem necessary to avert a risk of disturbance. This naturally also applies, because of the circumstances which must be taken into consideration in this case and in order to avoid discrimination against Community products, to the rules to be applied in relations with third countries. This may be considered regrettable; however there is certainly no reason for a fundamental criticism so long as the monetary situation makes the monetary compensatory amounts seem indispensable.

4. Finally, I can deal very briefly with a few additional arguments put forward by the plaintiff with regard to the question of the permissibility of the compensatory amounts. The plaintiff considers that the compensatory amount may only be regarded as a transitional measure since its task is merely to check the sudden short-term effects of monetary measures. In addition the plaintiff refers in this connexion to the fact that in Italy and in France higher cost inflation may be recorded, which it claims makes the compensatory amounts superfluous, and it recalls that the Commission has for years been asking for the progressive abolition of the monetary compensatory amounts.

In my opinion the Commission correctly observes that this criticism relates to the permissibility in principle of the monetary compensatory amounts for a long period and has also been made already in earlier cases. At that time — I recall only the judgments in Case 5/73 *(Balkan-Import-Export GmbH* v *Hauptzollamt Berlin-Packhof,* judgment of 24 October 1973 [1973] ECR 1091), Case 9/73, *(Carl Schlüter* v *Hauptzollamt Lörrach* judgment of 24 October 1973 [1973] ECR 1135) and Case 10/73 *(Rewe Zentral AG* v *Hauptzollamt Kehl,* judgment of 24 October 1973 [1973] ECR 1175) — the Court did not acknowledge its validity. Since however no fresh and in particular no sufficiently substantiated arguments have emerged there is certainly no reason to examine this question of principle afresh in the present proceedings.

5. Accordingly it only remains to state in conclusion that none of the arguments put forward by the plaintiff gives rise to serious doubts as to the validity of the compensatory amounts charged in September 1975 on imports of wine into the Federal Republic of Germany. Therefore the reply should be given to the questions put by the Finanzgericht Rheinland-Pfalz that no reasons have appeared which might give rise to doubts as to the validity of Regulation No 2021/75, which is determining in relation to the main action.