common market. Since the exclusive function of compensatory amounts is to compensate for the effect of monetary fluctuations without changing the relationships established between competing products, the Commission was legitimately entitled to consider, at least as a starting point, that all products belonging to the same group defined by the same tariff subheading must be subjected to the same compensatory amount in order to avoid disturbance of the market. From that it follows that even proof of the fact that a given product has very special characteristics from the point of view of its production, price and markets, does not permit the conclusion that the Commission is under an automatic obligation to sever that product from the rest of the group of which it forms part by placing it directly outside the system of monetary compensatory amounts.

In Case 95/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal d'Instance [District Court] of the First Arrondissement of Paris for a preliminary ruling in the action pending before that court between

SOCIÉTÉ HAVRAISE DERVIEU-DELAHAIS SA, having its registered office at Le Havre,

EUROTRANSIT SA, having its registered office in Strasbourg,

TRANSPORTS LACROIX SA, having its registered office at Lons-le-Saunier,

SOCIÉTÉ AUXILIAIRE DE L'AGRICULTURE ET DE L'INDUSTRIE DU SUD-OUEST DE LA FRANCE ("SAISOF") SA, having its registered office in Paris,

THE VERNIÈRES PARTNERS: Gabrielle Paula Marie Vernières; Claude Clémence Odette Ricard, née Vernières; Marie Céline Odette Hugounenc, née Vernières, and Marthe Clémence Léontine Vernières, all residing in Roquefort and jointly carrying on business there under the style of "Vernières Frères",

GABRIEL COULET SA, having its registered office in Roquefort,

JACQUES LOUIS MAURICE MARIE CARLES, carrying on business in Roquefort under the style of "Le Chaperon Rouge",

BENJAMIN ADRIEN JOSEPH CROUZAT, carrying on business in Roquefort under the style of "Établissements A. Crouzat et Cie.",

ROQUEFORT MARIA GRIMAL SA, having its registered office in Roquefort and carrying on business under its own name and under the style of "Société Agricole de Roquefort", and

SOCIÉTÉ ANONYME DES CAVES ET DES PRODUCTEURS RÉUNIS DE ROQUEFORT,

of the one part,

and

DIRECTEUR GÉNÉRAL DES DOUANES ET DROITS INDIRECTS [Director-General of Customs and Indirect Taxation],

of the other part,

on the interpretation 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 and several implementing regulations respecting the levying of monetary compensatory amounts on the export of Roquefort cheese,

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, Lord Mackenzie Stuart and T. Koopmans (Presidents of Chambers), A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: F. Capotorti
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

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), as amended in particular by Regulation No 2746/72 of the Council of 19 December 1972 (Official Journal, English Special Edition 1972 (28-30 December), p. 64) and by Regulation No 509/73 of the Council of 22 February 1973 (Official Journal 1973, L 50, p. 1), provides that if, for the purposes of commercial transactions, a

Member State allows the exchange rate of its currency to fluctuate, either upwards or downwards, by a margin wider than that permitted by international rules in force on 12 May 1971, a Member State whose currency increases beyond the permitted fluctuation margin shall charge on imports and grant on exports, and a Member State whose currency decreases beyond the permitted fluctuation margins shall charge on exports and grant on imports of certain agricultural products monetary compensatory amounts.

In implementation of Regulation No 974/71 the Commission, by Regulation No 1014/71 of 17 May 1971 (Journal Officiel L 110, p. 10), fixed monetary compensatory amounts in particular for products coming within tariff heading 04.04 of the Common Customs Tariff (Cheese and curd) and especially those coming within tariff subheading 04.04 C (Blue-veined cheese, not grated or powdered) which embraces all "blue", or blue-veined, cheeses, including Roquefort.

After 15 March 1976 there was a considerable fall in rates for the French franc on the exchange markets and the system of compensatory amounts was made applicable to the French Republic by Commission Regulation No 652/76 of 24 March 1976 changing the monetary compensatory amounts following changes in exchange rates for the French franc (Official Journal 1976, L 79, p. 4).

Consequently, as from 25 March 1976 the French customs authorities charged on exports of Roquefort cheese to other Member States of the EEC or to non-member countries the compensatory amounts provided for by Commission Regulation No 572/76 of 15 March 1976 fixing the monetary compensatory amounts and certain rates for their application (Official Journal 1976, L 68, p. 5).

Roquefort cheese was subject to the system of compensatory amounts until 3 June 1979, the date of the coming into force of Commission Regulation No 777/79 of 20 April 1979 amending Regulation No 710/79 as regards certain monetary compensatory amounts in the milk and milk products sector (Official Journal 1979, L 99, p. 9). In that regulation the Commission decided that certain cheeses obtained from milk other than cow's milk might be excluded from the list of products subject to monetary compensatory amounts and accordingly, in the annex to the Regulation, Roquefort was expressly excluded from the products falling within tariff subheading 04.04 C which were subject to the system of compensatory amounts.

The Vernières partners, Gabriel Coulet SA, Jacques Carles, Benjamin Crouzat, Roquefort Maria Grimal SA, and the Société Anonyme des Caves et des Producteurs Réunis de Roquefort are undertakings based in Roquefort-sur-Soulzon in the Department of Aveyron where they produce Roquefort cheese.

The Société auxiliaire de l'Agriculture et de l'Industrie du Sud-Quest de la France ("SAISOF") is a trading company engaged in the export and import of foodstuffs and agricultural products.

In accordance with the Community rules in force between 25 March 1976 and 3 June 1979 monetary compensatory amounts totalling the sums respectively mentioned below were charged by the French customs authorities on exports of Roquefort cheese produced or exported by:

— SAISOF: FF 1 997 912.30

— Jacques Carles: FF 67 434.00

— Benjamin Crouzat: FF 95 856.03

— Roquefort Maria Grimal SA: FF 205 724.65

— Vernières partners: FF 12 155.60

— Gabriel Coulet SA: FF 8 312.50

— Société Anonyme des Caves et des Producteurs Réunis de Roquefort: FF 87 914.00

Acting as registered customs agents, Société Havraise Dervieu-Delahais SA, Eurotransit SA and Transports Lacroix SA carried out with the French customs authorities the customs formalities relating to the exports, in particular the making of the customs declarations, and paid the monetary compensatory amounts on behalf of the various producers and exporters of Roquefort.

In the course of May, June, July and October 1979 Dervieu-Delahais, Eurotransit and Lacroix sued the Directeur Général des Douanes et Droits Indirects at the Ministry of Finance before the Tribunal d'Instance of the First Arrondissement of Paris for repayment of the compensatory amounts which they regarded as having been wrongly charged.

The seven exporting undertakings joined the proceedings as interveners.

In essence, the plaintiffs and the interveners argued before the Tribunal d'Instance that the charging of monetary compensatory amounts on the export of Roquefort cheese was contrary to Article 1 (2) of Regulation No 974/71.

For its part, the customs authorities submitted that, for the period in question, the compensatory amounts were provided for by the Commission regulations and that the disputed charges had been duly imposed.

By judgment of 19 February 1980 the Tribunal d'Instance of the First Arrondissement of Paris, pursuant to Article 177 of the EEC Treaty, stayed the proceedings until the Court of Justice should have delivered a preliminary ruling on the following question:

In view of the special nature of the Roquefort cheese compared to other products subject to the common organization of the market in milk and milk products, are the provisions in the Community regulations pursuant to which monetary compensatory amounts are levied on exports of Roquefort cheese from France to other countries, both Member States and non-member countries, valid with regard to the general body of Community law?

The judgment of the Tribunal d'Instance of the First Arrondissement of Paris was lodged at the Court Registry on 11 March 1980.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 23 May 1980 by the Commission of the European Communities, represented by its Legal Adviser, Peter Gilsdorf, acting as Agent, assisted by François Lamoureux, a member of its Legal Department, on 29 May by the Government of the French Republic and on 19 June by all the plaintiffs and interveners in the main proceedings, represented by Alain Desmazières de Séchelles of the Paris Bar.

On 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. It did, however, invite the Commission and the parties to the main action to answer a number of questions. The Commission and the

plaintiffs and interveners in the main proceedings responded to that invitation.

II — Written observations submitted to the Court

The *Société Havraise Dervieu-Delahais and the other plaintiffs and interveners in the main proceedings* regard the regulations which subjected exports of Roquefort to the levying of monetary compensatory amounts as invalid.

The special nature of Roquefort cheese

It is argued that it is appropriate, so far as the applicability of Regulation No 974/71 is concerned, to take account of the special nature of Roquefort, in terms both of fact and of national, international and Community law.

(a) Roquefort is stated to be a blue-veined cheese which is manufactured exclusively from sheep's milk produced in the south of France and which is matured in special conditions. Its designation of origin is protected by the French Law of 26 July 1925 and the Decree of 22 October 1979 which contain strict requirements regarding the composition of the product, its manner of manufacture, the place in which it is matured, the source of the sheep's milk and the place of manufacture of the fresh cheeses.

(b) At international level, protection of the designation of origin is afforded by the International Convention on the Use of Registered Designations of Origin and Names of Cheeses, signed at Stresa on 1 June 1951.

(c) Roquefort cheese is an agricultural product within the meaning of the EEC Treaty. It is mentioned in Annex II which is referred to in Article 38 of the Treaty and, as a milk product, comes within Chapter 4 of the Customs Co-operation Council nomenclature. Moreover, cheese is referred to in Article 1 of Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176).

However, Roquefort is not the subject of a target price, a threshold price, an intervention price, levies or refunds. It is thus wholly independent of the Community agri-monetary system and ought never to have been subject to monetary compensatory amounts.

The invalidity of subjecting exports of Roquefort to compensatory amounts having regard to Article 1 (2) (a) and (b) of Regulation No 974/71

Article 1 (2) of Regulation No 974/71 provides for the application of monetary compensatory amounts, on the one hand, to products covered by intervention arrangements under the common organization of agricultural markets (subparagraph (a)) and, on the other hand, to products whose price depends on that of the former and which are governed by the common organization of the markets or are the subject of a specific arrangement under Article 235 of the Treaty (subparagraph (b)).

(a) In regard to the first point, it is indisputable that the common organization of the market in milk and milk products does not provide for intervention arrangements for Roquefort.

(b) In regard to the second point, it must be stated that the price of Roquefort is not dependent on the price of products subject to intervention arrangements.

The common organization provides for intervention arrangements only for butter, milk and Grana Padano and Parmigiano Reggiano cheeses. In the present case, the only issue therefore is whether the price of Roquefort cheese, a milk product, is dependent on the price of milk in the form which that price takes on the Community market within the framework of the price system resulting from the common organization. The answer to this issue must take into consideration the special nature of Roquefort cheese compared to other milk products. The fact that Roquefort is produced only from sheep's milk, its renown and the long-standing nature of its markets have the result that its price is shaped wholly independently of the price mechanisms stemming from the common organization.

In law, the common organization of the market in milk and milk products does not distinguish between the milk of various domestic animals (cows, goats, sheep, etc.). In fact, however, cow's milk represents almost the entirety of the milk which is subject to the common organization. Thus, in France in 1978 the proportion of sheep's milk to cow's milk was 0.34182% and is even less at Community level.

In practice, therefore, Community milk prices are concerned only with cow's milk. They are fixed having regard to the opportunities for disposing of the Community production of cow's milk in order to provide an adequate income for producers of cow's milk.

Producers of sheep's milk do not in fact sell sheep's milk to the Community authorities in order to obtain the intervention price since processing into cheese, especially Roquefort, is sufficient to ensure profitable markets for that production. Sheep's milk is traded on the French market at a price almost thrice that of cow's milk. In implementing the common organization, the Commission made an exception for Roquefort cheese by not granting it any export refund.

Its quantity being negligible compared to the Community "milk" production, sheep's milk has never had recourse to intervention arrangements and is traded on the market at prices which bear no relationship to Community price for "milk".

Not only does the price of Roquefort not depend on the price of "milk" in general, but that dependence is, in fact, inverse: the price of sheep's milk depends upon the price of Roquefort. The price of sheep's milk is governed by the price of Roquefort, which constitutes its principal market in France. Producers sell sheep's milk to the manufacturers of Roquefort at a price subsequently fixed, at the end of the year, according to a formula of which one parameter is the average price of Roquefort during the year in question. Far from being dependent on Community prices of "milk", Roquefort is, on the contrary,

one of the parameters used, on the market, to establish the price of sheep's milk.

The independence of the prices of Róquefort compared to Community "milk" prices justifies not making Roquefort, in contrast to other milk products, subject either to an intervention price or a target price or to levies or refunds and accounts for the Commission's having been able, by Regulation No 777/79, to abolish compensatory amounts on Roquefort cheese and other products based on sheep's milk while continuing those amounts for cow's milk and products derived therefrom.

The invalidity of subjecting exports of Roquefort to compensatory amounts having regard to the principle of strict necessity

In the last recital of the preamble, Regulation No 974/71 states that "the compensatory amounts should be limited to the amounts strictly necessary to compensate the incidence of the monetary measures on the prices of basic products covered by intervention arrangements and ... it is appropriate to apply them only in cases where this incidence would lead to difficulties". As a pre-requisite to the application of monetary compensatory amounts to a given product, this principle of strict necessity constitutes a specific application of the fundamental rule of free movement of goods. It has been disregarded in the case of Roquefort cheese.

(a) Specifically, it is appropriate to recall that, so far as Roquefort is concerned, neither an intervention price nor intervention arrangements exist and that Roquefort is not produced from basic products for which intervention arrangements are provided under the common organization. The levying of compensatory amounts is therefore not essential either in order to mitigate difficulties in the implementation of intervention arrangements or to compensate for the incidence of monetary fluctuations on the prices of basic products.

Moreover, since Roquefort is manufactured only in a specific and strictly limited region of a single Member State there is no reciprocal trade in Roquefort between Member States of the EEC. Compensatory amounts were accordingly not indispensable to avoiding the risk of disturbance in alleged trade in Roquefort.

(b) In broad terms, so far as milk and milk products are concerned, examination of statistics confirms the absence of any significant effect of variations in the price of Roquefort on the functioning and the objectives of the common organization of the market in milk and milk products.

In 1977 the production of Roquefort represented 0.5% of cheese production in the EEC. During the same year exports of Roquefort to other Member States represented only 0.39% of French cheese exports and 0.09% of the entire intra-Community trade in cheese. In 1977 production of sheep's milk constituted only 0.067% of the entire production of milk and milk products in the Community. Only "blue" cheeses manufactured from cow's milk are capable of competing with Roquefort which is, in general, twice as expensive as its nearest competitors.

The combination of two very different levels of price and the precision of the legal definitions and provisions prevent

the substitution of "blue" cheeses for Roquefort and therefore remove any difficulty due to alterations in the price of Roquefort in the context of monetary fluctuations.

The answer to be given to the question

The question submitted to the Court of Justice may be answered as follows:

The implementing regulations adopted by the Commission of the European Communities in application of Regulation No 974/71 of the Council were invalid where, and inasmuch as, they made exports of Roquefort cheese from France to other countries, both Member States and non-member countries, subject to the levying of monetary compensatory amounts.

The *Government of the French Republic* considers that, in the light of the case-law of the Court, Article 1 (2) and (3) of Regulation No 974/71 makes the subjecting of an agricultural product to the system of monetary compensatory amounts dependent upon two cumulative conditions precedent: on the one hand, the product must be either one governed by the common organization of the market and therefore capable of being the subject of intervention arrangements (Article 1 (2) (a)) or a product whose price is closely dependent on that of a product governed by the common organization of the market or which is the subject of specific arrangements under Article 235 of the Treaty (Article 1 (2) (b)) and, on the other hand, it must be a product the market for which is sensitive to fluctuations afecting the currencies of Member States to such an extent that, if the product were not subject to the system of compensatory amounts, trade in it would be seriously disturbed (Article 1 (3)).

Subjection to the system of monetary compensatory amounts is therefore in no way automatic in its nature but follows from a specific assessment of the economic position of the market in question.

Without prejudice to the answer to the question whether Roquefort cheese comes within one of the categories defined in Article 1 (2) of Regulation No 974/71, the nature of the market for this product is such as to preclude application of the system of compensatory amounts.

(a) Roquefort is a cheese manufactured exclusively from sheep's milk of registered designation of origin. The area of production of the sheep's milk which is used is restricted by law. Having regard to that restriction, the total production of Roquefort cheese cannot exceed 17 000 to 18 000 tonnes per anum. Hence the prices fetched by Roquefort are much higher than those of other blue-veined cheeses, whether produced in France or originating abroad. Moreover, having regard to the special nature of the product, the Roquefort market is not in significant competition with that of other blue-veined cheeses which have different customers and outlets.

Application of the system of compensatory amounts on agricultural trade to Roquefort has no practical effect upon its position on the market in view of its price characteristics and the lack of comparability, in the eyes of the consumer, with other blue cheeses.

(b) On the other hand, it must be feared that the price variations arising from the application of the system of

monetary compensatory amounts when Roquefort is released on to the market in certain countries of the Community are of such a nature as not to regulate trade in Roquefort but to affect other blue-veined cheeses adversely.

(c) It is also appropriate to note the extremely limited volume of the trade in question. Out of an annual production of 17 000 tonnes only 559 tonnes, or approximately one-third of the total exports of Roquefort, go to other Member States. The remaining exports involve non-member countries, with the American market largely predominating (USA: 770 tonnes per annum). When sent to the United States of America, Roquefort, which in contrast to other blue cheeses does not benefit from the system of refunds, is, moreover exported "ex-quota" and cannot therefore compete with other Community blue cheeses which enter that market within the framework of the quota system. The subjecting of Roquefort to the system of monetary compensatory amounts on its export to the United States has the effect of further increasing its sale price to the consumer and of handicapping its establishment on that market.

(d) The limited nature of the production of Roquefort cheese and hence the absence of any real competition between it and other Community blue-veined products because of, in particular, its special characteristics of taste and the price-gap separating it from those other products is such as to preclude the subjection of Roquefort to the system of monetary compensatory amounts. Far from re-establishing normal conditions in trade-flows in that product, that subjection leads, on the contrary, to disturbances of which the casualties are either the other blue-veined cheeses in so far as intra-Community trade is concerned or Roquefort itself in the case of its export to the United States. Such a result is contrary to the requirements of neutrality which the case-law of the Court of Justice demands of the system of monetary compensatory amounts.

(e) This assessment is confirmed by the analysis made by the Commission in Regulation No 777/79 in which it took the view that, because of the insensitivity of this market to the respective monetary positions of the various Member States, Roquefort cheese should not be subject to the system provided for by Regulation No 974/71.

Since the exclusion of Roquefort cheese from the scope of Regulation No 974/71 no disturbance has been observed in the pattern of trade in this product or that in other blue cheeses of Community origin.

The *Commission* considers the conditions laid down for the introduction of monetary compensatory amounts by Article 1 (2) (b) and (3) to have been satisfied in the case of Roquefort cheese.

The relationship of dependence between the price of Roquefort cheese and the price of products manufactured from cow's milk

(a) The dependence to which Regulation No 974/71 makes reference is a much broader concept than a mere mathematical relationship between the price of Roquefort cheese and the price of cow's milk. It suffices that the price of

a product which is not subject to the intervention system depends on that of another product subject to intervention (and which is governed by the common organization of agricultural markets) but it is not necessary for the latter product to be the raw material from which the former is derived. Products which are competitors *inter se* may also be involved provided that it may be established that prices of the product which is not subject to the intervention system are formed on the basis of the prices of the other product.

All cheeses, whether manufactured from cow's milk, goat's milk or sheep's milk, are included in the common organization of the market in milk and milk products. They come within tariff heading 04.04, which is referred to in Article 1 of Regulation No 804/68. Sheep's milk, like goat's milk, is not in practice offered for intervention since its price on the market is much higher than the intervention price. On the other hand, sheep's milk cheese is assimilated to cheeses manufactured from cow's milk in the framework of the common organization of the market in milk and milk products. The special nature of the basic product from which the final product is manufactured cannot constitute an obstacle to its assimilation, from the point of view of compensatory amounts, to other products for which it may be substituted.

(b) A general relationship exists between the price of cheeses, including those not manufactured from cow's milk, and the intervention prices for butter and milk powder. That dependence is revealed in particular through the fixing of the threshold prices for the calculation of the levies which apply to all cheeses, including Roquefort. Moreover, sales of cheese are indisputably linked, more or less directly, to all the factors governing the market in milk and assimilated products such as cheeses made from goat's milk and sheep's milk. Cheese prices benefit from the stability in the general price level on the market which results from the intervention prices for milk powder and butter. In its judgment of 24 October 1973 in Case 5/73 *Balkan-Import-Export GmbH* [1973] ECR 1091 the Court recognized a link between the price of cheese on the one hand and butter and skimmed-milk powder on the other.

The general dependence, in the context of the common organization of the market, between sheep's milk cheeses and products manufactured from cow's milk is such as to justify the inclusion of Roquefort cheese in the system of monetary compensation, which is an indispensable extension of the common agricultural policy.

(c) A special dependence between the price of Roquefort and the price of competing cheeses should also be recognized.

There exist on the Community market, and especially in France, a number of blue-veined cheeses manufactured in general from cow's milk but in accordance with maturation procedures comparable to those used for Roquefort. The taste, appearance and presentation of those cheeses are very close to those of Roquefort. Such cheeses are, in particular, Bleu des Causses and Bleu d'Auvergne, which are manufactured in France, Danish Danablu and English Stilton.

Neither the price of Roquefort, which is 30 % more than that of Bleu des Causses, nor the geographical delimitation of the area of production constitute tests for the application or non-application of monetary compensatory amounts.

The decisive test is the price relationship between Roquefort and competing cheeses. A comparison of the prices clearly reveals that the price-graph for Roquefort is always parallel with that of its most immediate competitors, Bleu des Causses and Bleu d'Auvergne; to a lesser extent price-graphs of Danish Blue and Stilton show the same similarities.

Having regard to this very clear dependence between the prices of the various Community blue cheeses, application of monetary compensatory amounts to those cheeses was justified. Not to have applied those amounts to Roquefort cheese would have created a distortion of competition since the effect of the fall in the value of the French franc compared with the green rate would have rendered the selling price of Roquefort outside France relatively less expensive compared to its immediate competitors.

The risk of disturbances in trade in agricultural products

(a) According to Article 1 (3) of Regulation No 974/71, the power to impose compensatory amounts may only be exercised in so far as the adoption of an exchange rate higher than the margin of fluctuation permitted by international rules leads to disturbance in trade in agricultural products.

In applying that provision the Commission enjoys a wide discretion in assessing the economic situation. It made proper use of that discretion in making Roquefort subject in 1976 to compensatory amounts on the basis of objective data linked especially to the need to maintain competition between the various blue-veined cheeses.

In the light of experience of the application of compensatory amounts, normal exercise of that discretionary power also led the Commission, on the basis of economic considerations which must be regarded in a wide context, especially the concern to reconsider the existing system with a view to dismantling it, to abolish in April 1979 the application of compensatory amounts to certain products, including Roquefort.

(b) The case-law of the Court of Justice has recognized that in judging whether a risk of disturbance exists the Commission enjoys a wide discretion involving the assessment of complex economic data. The exercise of that power ceases to be lawful only where the Commission has committed an obvious error or a misuse of power. That is not the case in the present instance.

A competitive relationship exists between the various Community blue cheeses. Exemption of Roquefort would therefore have entailed a risk of disturbance in trade. Not to have applied compensatory amounts to Roquefort would have had the result of placing it in a better position on its being exported, especially

to the Community markets, compared with its competitors and its price would have been at a more advantageous level on those markets than in its country of origin. In that competitive position there would have been a risk that imported Roquefort would be substituted for other brands of blue-veined cheese which were subject to monetary compensatory amounts.

There was no objective reason which could have required the Commission to exempt Roquefort cheese. In particular, Roquefort is not intended for any special use and it would have been impossible to apply to it the test of special use as a result of which Grana Padano and Parmigiano Reggiano, which are used essentially as grated or powdered cheeses, were exempted from compensatory amounts.

The Commission did not manifestly misuse its discretion in applying compensatory amounts to Roquefort in the same way as to other blue-veined cheeses. It was guided, in accordance with the objective of Regulation No 974/71, solely by the concern not to create any distortion of competition by favouring export sales of one type of cheese to the prejudice of the production of the other blue cheeses.

The contested measure was adopted, for a large number of agricultural products, following 15 March 1976 when the French franc suddenly left the monetary "snake". Such an urgent situation made impossible in practice any special, detailed examination product by product.

The Commission was not presented with a request for the abolition of the compensatory amounts applicable to Roquefort until 1978.

(c) The exemption, under Regulation No 777/79, of Roquefort cheese from the system of compensatory amounts falls within the framework of the Commission's policy of confining the application of monetary compensatory amounts to a strict minimum, as a move towards their dismantling. The Commission has proceeded by carrying out periodical "purges" with a view to exempting certain products or simplifying the method of calculating the compensatory amounts. So far as Roquefort cheese is concerned, the Commission was not only guided by the wish to take steps with a view to the progressive dismantling of monetary compensatory amounts but also took account of the specific difficulties of exporting Roquefort, particularly to the American market.

Conclusion

The question put by the Tribunal d'Instance of the First Arrondissement of Paris requires the following answer:

Consideration of the question submitted to the Court has disclosed no factor of such a kind as to affect the validity of the Commission regulations imposing compensatory amounts on Roquefort cheese in France between 25 March 1976 and 3 June 1979.

III — Oral procedure

The Société Havraise Dervieu-Delahais and the other plaintiffs and interveners in the main proceedings, represented by Alain Desmazières de Séchelles, assisted by Henry Treillet, Secretary-General of the Confédération Générale des

Producteurs de Lait de Brebis et des Industriels de Roquefort [Confederation of Sheep's Milk Producers and Manufacturers of Roquefort], and the Commission of the European Communities, represented by François Lamoureux, submitted oral argument and answered questions from the Court at the sitting on 14 October 1980.

The Advocate General delivered his opinion at the sitting on 3 December 1980.

Decision

1 By a judgment of 19 February 1980, which was received at the Court on 11 March, the Tribunal d'Instance [District Court] of the First Arrondissement of Paris submitted for a preliminary ruling pursuant to Article 177 of the EEC Treaty a question relating to the validity of provisions in Community regulations which subjected exports of Roquefort cheese from France to the levying of monetary compensatory amounts — in particular Commission Regulation No 652/76 of 24 March 1976 changing the monetary compensatory amounts following changes in exchange rates for the French franc (Official Journal 1976, L 79, p. 4).

2 This question has been put in the context of an action brought before the Tribunal d'Instance by several companies and natural persons who are producers and exporters of Roquefort cheese against the Directeur Général des Douanes et Droits Indirects with a view to obtaining reimbursement of monetary compensatory amounts paid during a period between 1976 and 1979.

3 It should be remembered that following a marked fall in exchange rates for the French franc in the course of the month of March 1976 and the fixing of a new representative rate for that currency the Commission, by Regulation No 652/76, introduced a set of compensatory amounts for France by way of a supplement to Annex I to Regulation No 572/76 of 15 March 1976 fixing the monetary compensatory amounts and certain rates for their application (Official Journal 1976, L 68, p. 5).

4 The list of those amounts includes, *inter alia*, tariff subheading 04.04 C, blue-veined cheese, which embraces all the "blue" cheeses. Consequently, exports of Roquefort bore a compensatory amount until the coming into force of Commission Regulation No 777/79 of 20 April 1979 amending certain monetary compensatory amounts in the milk and milk products sector

(Official Journal 1979, L 99, p. 9), which, by introducing in regard to tariff subheading 04.04 C the words "with the exception of Roquefort", had the effect of granting an exemption for that cheese.

5 The plaintiffs in the main proceedings contend that Roquefort cheese was wrongly included, under Regulation No 652/76, in the system of compensatory amounts. In their view, none of the conditions laid down by Regulation No 974/71 of 12 May 1971 (Official Journal, English Special Edition 1971 (I), p. 257), which introduced the system of compensatory amounts, as amended in particular by Regulation No 2746/72 of the Council of 19 December 1972 (Official Journal, English Special Edition 1972 (28-30 December), p. 64), was satisfied. According to the plaintiffs, Roquefort cheese, which is a product obtained from sheep's milk through special processes unique to its manufacture and which is sold at a price significantly higher than that of other blue cheeses, does not display the relationship of dependence upon other milk products subject to intervention arrangements which is required by Regulation No 974/71 as a condition of the inclusion of a given product in the system of compensatory amounts. Moreover, by reason of the highly special nature of this product it is claimed that there did not exist any disturbance or any risk of disturbance in the sector of the market concerned; all the more so since Roquefort is produced only in a well-defined region so that it is not possible to speak of reciprocal trade, in the proper sense of the term, in this product within the Community. It is therefore the case that Roquefort is and always has been "wholly independent of the Community agri-monetary system". In the absence of any relationship of dependence and any risk of disturbance inclusion of Roquefort in the system of compensatory amounts therefore constitutes disregard of the "principle of strict necessity" for the introduction of those amounts which is laid down in Regulation No 974/71.

6 The plaintiffs' position has been supported by the French Government which draws attention to the very special characteristics of the market for Roquefort cheese, to the strict conditions placed upon its manufacture affecting its price, which is significantly higher than that of other blue cheeses, and also to the extremely limited volume both of the production itself and of exports to other Member States, a significant part of the production finding an outlet on the United States market. According to the French Government, the characteristics of this sector of the market are such as to preclude Roquefort's being subject to the system of monetary

compensatory amounts. Far from eliminating any disturbance, the application of those amounts has been the source of difficulty for the sale of this high-quality product on the market in both the Community and non-member countries.

7 Under Article 1 (2) and (3) of Regulation No 974/71 the introduction of monetary compensatory amounts is subject to a threefold condition so far as products which are not directly covered by intervention arrangements are concerned. Those products must be governed by the common organization of the market or be the subject of a specific arrangement under Article 235 of the Treaty; their price must be dependent on that of one or more products which are covered by intervention arrangements and disturbances in trade in the agricultural products concerned must have been discerned or be foreseeable.

8 It is not disputed that Roquefort, like other cheeses coming under tariff heading 04.04, falls within the framework of the common organization of the market in milk. The fact that this product is obtained from sheep's milk does not take it outside that organization, which encompasses all cheeses irrespective of the raw material used for their manufacture — cow's milk, goat's milk or sheep's milk. On this matter it is sufficient to refer to Article 1 (d) of Regulation No 803/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176) pursuant to which products falling within the aforementioned tariff heading are covered by that organization. The dispute is accordingly only concerned with, on the one hand, the question of the dependence of the price of Roquefort on that of milk products to which intervention arrangements apply and, on the other hand, the question of the existence or the foreseeability of a disturbance affecting the sector of the market concerned, in this case, the market in cheese and, more particularly, that of blue-veined cheeses coming within tariff heading 04.04.

9 The concept of dependence to which Regulation No 974/71 makes reference describes not only the direct derivation of the price of a given product from that of a product subject to intervention arrangements but also the dependence of the price of a product on prices which prevail as a whole on the market concerned and of which the level is sustained by the various intervention arrangements. That dependence may result from, *inter alia*, a relationship of competition between a given product and other products forming part of the same organization of the market.

10 In this case it must be observed that the majority of cheeses are manufactured from cow's milk and the prices of all of the products falling within that group are, because of the competitive relationship subsisting between them, in a relationship of dependence as regards a product for which intervention arrangements are laid down. That relationship of dependence also exists in the case of Roquefort which, despite its special characteristics and its price, is in competition with all cheeses and, more particularly, with the other blue cheeses. Moreover, it appears from statistics, which have not been disputed, that the prices of all blue cheeses have experienced parallel changes, albeit at different levels, during the period under consideration and this confirms the existence of a bond of dependence between the prices of those cheeses. Therefore, in laying down in 1976 compensatory amounts for French agricultural products the Commission was entitled to accept that for all cheeses, including blue cheeses, and amongst them Roquefort, there existed a relationship of dependence with products subject to intervention.

11 In regard to the assessment of the existence or the risk of disturbances affecting the sector of the market in question, that examination may not be confined to the position of a given product without other competing products' being taken into consideration at the same time, and that throughout the whole of the common market. Since the exclusive function of compensatory amounts is to compensate for the effect of monetary fluctuations without changing the relationships established between competing products, the Commission was legitimately entitled to consider, at least as a starting point, that all cheeses belonging to the same group defined by tariff subheading 04.04 C must be subjected to the same compensatory amount in order to avoid disturbance of the market. From that it follows that even proof of the fact that a given product, such as Roquefort cheese, has very special characteristics from the point of view of its production, price and markets, does not permit the conclusion that the Commission is under an automatic obligation to sever that product from the rest of the group of which it forms part by placing it directly outside the system of monetary compensatory amounts.

12 In this regard the Commission has stated, without being contradicted by the other parties, that at the time when the monetary compensatory amounts were introduced the fact of exempting Roquefort cheese from them would have had the result of bringing the price of that product appreciably closer to that of the other blue cheeses and that consequently there would have been a

risk of substitution due to a purely monetary factor and therefore a disturbance detrimental to the other competing products. For that reason the Commission considered itself justified in treating Roquefort in the same way as other blue cheeses.

13 From the foregoing it appears that in examining in a complex economic context the question of a possible disturbance in the sector of the market concerned the Commission did not exceed the limits of the discretion which it exercised at the time of adopting the disputed regulation.

14 It may therefore be concluded, on the one hand, that it was not without justification that the Commission accepted the existence of a relationship of dependence, within the meaning of Regulation No 974/71, between Roquefort cheese and the other products covered by an organization of the market guaranteed by intervention arrangements and, on the other hand, that the Commission did not overstep the margin of discretion which it enjoys by accepting the existence or the prospect of economic disturbances in the sector most directly concerned when it fixed in 1976 a uniform rate of monetary compensatory amounts for all blue-veined cheeses.

15 The answer should accordingly be given that consideration of the question put by the Tribunal d'Instance has disclosed no factor of such a kind as to affect the validity of Commission Regulation No 652/76 inasmuch as it fixed monetary compensatory amounts applicable without distinction to all cheeses falling within tariff subheading 04.04 C, including Roquefort cheese.

Costs

16 The costs incurred by the Government of the French Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question submitted to it by the Tribunal d'Instance of the First Arrondissement of Paris by a judgment of 19 February 1980, hereby rules:

Consideration of the question put by the Tribunal d'Instance of the First Arrondissement of Paris has disclosed no factor of such a kind as to affect the validity of Commission Regulation No 652/76 of 24 March 1976 changing the monetary compensatory amounts following changes in the exchange rates for the French franc inasmuch as it fixed monetary compensatory amounts applicable without distinction to all cheeses falling within tariff subheading 04.04 C of the Common Customs Tariff, including Roquefort cheese.

Mertens de Wilmars Pescatore Mackenzie Stuart

Koopmans O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 3 February 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President