common agricultural policy taken individually and, where necessary, allow any one of them temporary priority in order to satisfy the demands of the economic factors or conditions in view of which their decisions are made.

In Case 29/77

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal d'Instance, Lille, for a preliminary ruling in the action pending before that court between

S.A. ROQUETTE FRÈRES, having its registered office at Lestrem (Pas-de-Calais)

and

FRENCH STATE — ADMINISTRATION DES DOUANES (Customs Administration), Lille,

on the interpretation of Article 1 of Regulation (EEC) 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 (OJ, English Special Edition 1971 (I), p. 257) and on the validity of Commission Regulation (EEC) No 652/76 of 24 March 1976 changing the monetary compensatory amounts following changes in exchange rates for the French franc (OJ L 79, 1976, p. 4),

THE COURT

composed of: H. Kutscher, President, M. Sørensen and G. Bosco (Presidents of Chambers), A. M. Donner, J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe and A. Touffait, Judges,

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

gives the following

JUDGMENT

Facts and issues

The facts, the procedure and the written observations submitted under 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

In March 1976, the French Government decided to take the French franc out of the 'European currency snake', and on 24 March 1976 the Commission adopted Regulation No 652/76 establishing monetary compensatory amounts on trade between France and Member States or third countries, with effect from 25 March 1976.

The plaintiff in the main action, which carries on business as, among other things, a manufacturer of starch products derived from maize and which exports a large part of its output thereof, has been obliged by the Administration des Douanes (Customs Administration) to pay compensatory amounts on its exports since 25 March 1976, including those to countries within the franc area.

The plaintiff in the main action considered that the imposition of compensatory amounts by Regulation No 652/76 was illegal and in conflict with Article 39 of the Treaty, and it brought an action before the Tribunal d'Instance, Lille, seeking an order for the termination of the levying of the compensatory amounts and for the restitution of the sums levied by the Administration des Douanes.

The said Tribunal found that a certain number of points arose concerning the interpretation of Community law, and by a judgment of 4 February 1977 it decided to suspend the proceedings and refer the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

1. For the institution or maintenance in force of monetary compensatory amounts, does Article 1 (3) of Regulation (EEC) No 974/71 of the Council of 12 May 1971:
   (a) require the Commission to refer to the risk of disturbances in trade;
   (b) and/or, prohibit it from fixing compensatory amounts when there is no such risk?
2. What must the disturbances in question consist in?
3. Must the risk of disturbances be assessed at the level of the basic products (referred to in Article 1 (2) (a)) or at the level of the processed products involved (referred to in Article 1 (2) (b) of Regulation No 974/71)?
4. Must Regulation No 652/76 of the Commission of 24 March 1976 and the subsequent regulations be considered as valid having regard to the basic Community legislation, in that they introduce monetary compensatory amounts on maize (10.05 B) and the products referred to in Article 1 (2) (b) of Regulation No 974/71 which depend on maize equal to the entire monetary effect on the price of the basic product adjusted merely by a standard abatement, without considering whether that general measure is strictly necessary?
5. Are the institution and maintenance in force of the monetary compensatory amounts by Regulation No 652/76 of the Commission and later instruments compatible with the provisions of Article 39 of the Treaty

of Rome even though, having been introduced for the purpose of preventing short-term changes in exchange rates from having immediate repercussions on agricultural prices in national currency, they cause, according to the Commission (Proposal for a Regulation of 5 November 1976), disturbing effects on the unity of the agricultural market and distortions of competition and though, according to Roquette, they reduce the real income of French farmers?

The judgment of the court *a quo* was received at the Court of Justice on 1 March 1977.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

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

The *plaintiff in the main action* first points out that Regulation No 652/76 does not contain any express reference to the existence of disturbances in trade in agricultural products, whereas Article 1 (3) of Regulation No 974/71 provides that the option of charging or granting compensatory amounts shall be exercised only where the application of national monetary measures would lead to such disturbances. Moreover, the Court has re-stated that principle in Cases 43/72 (*Merkur* v *Commission* [1973] II ECR 1055) and 74/74 (*CNTA* v *Commission* [1975] ECR 533).

The intervention system has never been applied in the maize sector: since it is a cereal of which there is a deficit at the European level, the normal market price is markedly higher than the intervention price.

The changes in exchange rates for the French franc have not led to any disturbance in trade in the products at issue in the main action. On the contrary, the Commission itself has acknowledged that permanently to maintain compensatory amounts causes disturbing effects (cf. Proposal for a Regulation, OJ C 274, 1976, p. 3).

The institution of compensatory amounts by Regulation No 652/76 conflicts with Article 39 (1) (b) of the Treaty in so far as it prevents French farmers, whose production costs increase in inverse proportion to the loss in value of the franc, from passing on that increase by way of the selling price of their product, in this case maize.

Finally, it is obvious that fluctuations in exchange rates for the French franc have no effect on transactions with countries in the franc area.

The plaintiff in the main action illustrates the 'aberrant' consequences of such a system by showing, with the help of a table of figures, that maize from a third country bought in Germany costs less than the same maize bought in the Netherlands, and much less than in France.

The *Commission* points out first that in fact the concept of 'disturbance' underlies the entire philosophy of the scheme of monetary compensatory amounts. The first part of the first question amounts to asking whether the risk of disturbances can be presumed by the Commission, to the extent to which Article 1 of Regulation No 974/71 does not oblige it expressly to refer to a disturbance in trade in agricultural products when it fixes compensatory amounts. In this connexion, the Court has held that the Commission and the Management Committee enjoy a 'wide measure of discretion' in assessing a

complex economic situation justifying 'general' and 'standard' evaluations (cf. Cases 43/72 and 74/74, cited above, and Case 55/75, *Balkan-Import-Export* v *Hauptzollamt Berlin-Packhof* [1976] ECR 19); it has also been held by the Court that it is not possible to require that the statement of the reasons for a regulation should set out the various facts, which are often very numerous and complex, on the basis of which that regulation was adopted, or *a fortiori* that it should provide a more or less complete evaluation of those facts (cf. Case 5/67, *Beus* v *Hauptzollamt München* [1968] ECR 83).

For reasons pertaining both to the need to adapt quickly to currency fluctuations and to the practicability of the scheme of compensatory amounts, the Commission need consider only disturbances in relation to groups of products, and not in relation to individual products or making distinctions according to the exporting country (cf. opinion of Mr Advocate-General Reischl in Case 55/75, cited above).

The risk of disturbances in trade in agricultural products, referred to in Article 1 (3) of Regulation No 974/71, consists essentially in deflections of trade. The only motives for such deflections are speculative monetary considerations, and their effect is, among other things, to drive prices down in the market of the Member State whose currency has increased in value, and, in consequence, to upset the intervention arrangements on that market. As far as trade outside the Community is concerned, imports are deflected through the Member State in which levies are lowest, namely that having the lowest-valued currency, whereas exports are made from the Member State in which refunds are highest, namely that whose currency has increased in value. Thus in assessing the risk of disturbances, the Commission has to take into account the market conditions for those agricultural products which are subject to intervention as well as the monetary factors resulting from the value of the currencies of the Member States.

When there is a risk of disturbances in relation to the basic product, there is a presumption that the same risk can arise by extension in relation to derived products, and in the case in point in the main action the risk even had to be assessed with regard to potential substitute products (other feed-grain, and in particular barley, exports of which from France and third countries to Germany had been at a disadvantage in the absence of compensatory amounts on maize). Thus the Commission is obliged to assess the risks of disturbances in a general perspective, in relation both to geography and to groups of potential substitute products.

In drawing up Regulation No 652/76, the Commission strictly applied Article 2 (2) of Regulation No 974/71, under which compensatory amounts applicable to derived products are fixed by reference to the effect which the monetary measures have on basic products.

Regulation No 652/76 comes within a system which the Court has already held to be compatible with Article 39 of the Treaty, namely the system of Regulation No 974/71 (cf. Case 5/73). The Proposal for a Council Regulation relating to the fixing of representative exchange rates in the agricultural sector, submitted by the Commission on 5 November 1976, is directed towards a situation entirely different to that in the main action: its aim is to prevent the system of compensatory amounts from resulting in the guarantee of excessively large price differences in the Member States when the representative rates of the national currencies depart widely from their value on the foreign exchange market. Thus the application of compensatory amounts can cause the distortions of competition mentioned in the third recital of the preamble to the said Proposal for a

Regulation only in quite exceptional circumstances.

At the hearing on 29 June 1977 the plaintiff in the main action, represented by Mr Veroone, and the Commission of the European Communities, represented by its Legal Adviser, Mr Gilsdorf, acting as Agent, assisted by Mr Delmoly, presented oral argument.

The Advocate General delivered his opinion at the hearing on 27 September 1977.

Decision

1 By a judgment of 4 February 1977, which was received at the Court on 1 March 1977, the Tribunal d'Instance, Lille, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty several questions on the interpretation of Article 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 (OJ, English Special Edition 1971 (I), p. 257) and on the validity of Commission Regulation No 652/76 of 24 March 1976 changing the monetary compensatory amounts following changes in exchange rates for the French franc (OJ L 79, 1976, p. 4).

2 In March 1976, the French Government decided to take the franc out of the system under which the currencies of certain Member States float in relation to outside currencies while maintaining certain margins of fluctuation in relation to each other (the 'snake'), and the Commission adopted the aforementioned Regulation No 652/76, which established monetary compensatory amounts on trade between France and the Member States or third countries, with effect from 25 March 1976.

3 The questions referred for a preliminary ruling have been raised in the context of a dispute over the payment by the plaintiff in the main action of monetary compensatory amounts on its exports of starch products derived from maize since the date on which Regulation No 652/76 entered into force.

4 The first question asks whether, for the institution or maintenance in force of monetary compensatory amounts, Article 1 (3) of Regulation No 974/71 of the Council of 12 May 1971 requires the Commission to refer to the risk of disturbances in trade and prohibits it form fixing compensatory amounts when there is no such risk.

5 The second question asks what the disturbances in question must consist in.

6 The third question asks whether the risk of disturbances must be assessed at the level of the basic products (referred to in Article 1 (2) (a)) or at the level of the processed products involved (referred to in Article 1 (2) (b) of Regulation No 974/71).

7 The fourth question asks whether Regulation No 652/76 of the Commission of 24 March 1976 and the subsequent regulations must be considered as valid having regard to the basic Community legislation, in that they introduce monetary compensatory amounts on maize (10.05 B) and the products referred to in Article 1 (2) (b) of Regulation No 974/71 which depend on maize equal to the entire monetary effect on the price of the basic product adjusted merely by a standard abatement, without considering whether that general measure is strictly necessary.

8 The last question asks whether the institution and maintenance in force of the monetary compensatory amounts by Regulation No 652/76 of the Commission and later instruments are compatible with the provisions of Article 39 of the Treaty of Rome even though, having been introduced for the purpose of preventing short-term changes in exchange rates from having immediate repercussions on agricultural prices in national currency, they cause, according to the Commission (Proposal for a Regulation of 5 November 1976), disturbing effects on the unity of the agricultural market and distortions of competition and though, according to Roquette, they reduce the real income of French farmers.

9 In substance, these questions are designed to ascertain whether or not Regulation No 652/76 of the Commission and the subsequent regulations are valid.

10 The system of monetary compensatory amounts instituted by Article 1 (1) of Regulation No 974/71 as amended by Regulations Nos 2746/72 of the Council of 19 December 1972 (OJ, English Special Edition 1972 (28-30 December), p. 64) and 509/73 of the Council of 22 February 1973 (OJ L 50, 1973, p. 1) provide that if a Member State allows the exchange rate of its currency to fluctuate by a margin wider than that permitted by the international rules in force on 12 May 1971, (a) the Member State whose

currency increases in value beyond the permitted fluctuation margin shall charge on imports and grant on exports, (b) the Member State whose currency decreases beyond the permitted fluctuation margin shall charge on exports and grant on imports, compensatory amounts for the products referred to in paragraph (2), in trade with the Member States and third countries.

11 Paragraph (3) of the said Article 1 provides that 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.

12 The Commission must establish that this situation exists after obtaining the opinion of the Management Committees.

13 The possibilities of disturbances in trade in agricultural products are so numerous and so diverse that it would be difficult, if not impossible, for the Commission to list all those possibilities in a regulation.

14 Consequently, the Commission may find that there is a risk of disturbances merely on the basis of an appreciable fall in the rate of exchange of a currency.

15 The recitals of the preamble to Regulation No 652/76 contain no express reference to any disturbances which might arise in the absence of monetary compensatory amounts, but only a statement to the effect that 'the rates on the foreign exchange markets for the French franc have fallen appreciably since 15 March 1976; accordingly the conditions set out in Article 2 (1) (b) of Regulation (EEC) No 974/71 justifying the application of monetary compensatory amounts are met'.

16 It is clear that this statement is intended to refer to the conditions set out in Article 1 (1) (b) of the regulation at issue and is to be read as doing so.

17 Although it is true that the Commission did not expressly state that in the absence of monetary compensatory amounts there would be reason to fear disturbances in trade in agricultural products, it is clear that the insertion of such a recital would have been of a purely formal nature.

18 Consequently, 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.

19 As the evaluation of a complex economic situation is involved, the Commission and the Management Committee enjoy, in this respect, a wide measure of discretion.

20 In reviewing the legality of the exercise of such discretion, the Court must confine itself to examining whether it contains a manifest error or constitutes a misuse of power or whether the authority did not clearly exceed the bounds of its discretion.

21 Article 1 (3) of Regulation No 974/71 cannot be interpreted as obliging the Commission to decide case by case, or in respect of each product individually, and making distinctions according to the country of export, whether there is a risk of disturbance.

22 The very terms of that provision show that evaluations of a general nature may be made in this respect.

23 In particular, compelling reasons relating to the practicability of the system of compensatory amounts enable groups of products to be taken into consideration in assessing the possibility of disturbances in trade in agricultural products.

24 Since disturbances in trade in agricultural products frequently take the form of deflections of trade, the Commission may take into consideration, in its assessments of the risk involved, the state of the market as well as the monetary factors resulting from the value of the currencies of the Member States.

25 The Commission may assess the risks of disturbance either for trade in basic products or for trade in both basic and derived products.

26 The monetary compensatory amounts on products derived from maize were calculated strictly in accordance with Article 2 (2) of Regulation No 974/71 which provides that for the other products referred to in Article 1, the compensatory amounts shall be equal to the incidence, on the prices of the product concerned, of the application of the compensatory amount to the prices of the product referred to in paragraph (1), on which they depend.

27 The standard abatement which is mentioned refers to the 1·50 point reduction in the average of the percentage differences recorded in the case of a currency which has depreciated, which was laid down in Article 4 of Council Regulation No 557/76 of 15 March 1976 on the exchange rates to be applied in agriculture (OJ L 67, 1976, p. 1).

28 Thus the Commission has done nothing other than strictly apply the regulations of the Council.

29 As regards the validity of the basic regulation, Article 39 of the Treaty sets out various objectives of the common agricultural policy.

30 In pursuing those objectives, the Community Institutions must secure the permanent harmonization made necessary by any conflicts between these objectives taken individually and, where necessary, allow any one of them temporary priority in order to satisfy the demands of the economic factors or conditions in view of which their decisions are made.

31 If, owing to developments in the monetary situation, preference happens to be given to the requirements of stabilizing the market, Regulation No 974/71 does not in doing so contravene Article 39.

32 As regards the argument based on the Commission's Proposal of 5 November 1976, that proposal was directed at the danger that the system of monetary compensatory amounts might be turned from its purpose by the maintenance in force of inadequate representative exchange rates.

33 The plaintiff in the main action has not claimed that this applied to the French franc at the material time.

34 Consequently, that argument must be dismissed.

35 It follows from the foregoing that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of the regulation in issue and the subsequent regulations.

Costs

36 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

37 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court concerned, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tribunal d'Instance, Lille, by a judgment of 4 February 1977, hereby rules:

Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Commission Regulation No 652/76 of 24 March 1976.

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 20 October 1977.

A. Van Houtte
Registrar

H. Kutscher
President