ignore the risk of deflections of trade, it must nevertheless ensure that the application of monetary compensatory amounts is limited to what is strictly necessary to neutralize the effects of currency fluctuations, in particular in the case of products imported from non-member countries under a quota and free of the levy.

The Court's review is limited to examining whether the Commission's evaluation is vitiated by manifest error or by misuse of powers or whether the Commission has exceeded the bounds of its discretion.

2. There exists no general principle obliging the Community, in its external relations, to accord to non-member countries equal treatment in all respects, nor any right by virtue of which traders may rely on the prohibition of discrimination where the difference of treatment between traders is an automatic consequence of the different treatment accorded to non-member countries.

OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 11 March 1986 *

Mr President,
Members of the Court,

The question referred to the Court by the Finanzgericht Düsseldorf for a preliminary ruling concerns the legality of the fixing of monetary compensatory amounts for imports under a Community tariff quota of fresh, chilled or frozen beef and veal falling within subheading 02.01 A II a) 4 bb) and 02.01 A II b) 4 bb) of the Common Customs Tariff.

I — Legislative background and facts

As a large number of Community regulations are involved in this case it would seem appropriate to describe briefly the relevant legislation. For that purpose I propose to distinguish, for the sake of ease of comprehension and presentation, between provisions forming part of the legislation on quotas (A) and provisions governing the application of the system of monetary compensatory amounts (B).

A — *Regulations on quotas*

Within the framework of the General Agreement on Tariffs and Trade (GATT), the Community undertook, on different dates, to open three tariff quotas for beef and veal.

Those quotas have in common the two following points:

(a) the quotas are exempt from the levy payable under the common organization of the markets in beef and veal;

* Translated from the French.

(b) the quotas are subject to customs duty of 20% (the same as the autonomous Common Customs Tariff duty), which is bound under GATT.

The quotas have the following further characteristics:

(1) The first quota relates to frozen beef and veal falling within subheading 02.01 A II b) of the Common Customs Tariff, totalling 50 000 tonnes expressed as boned or boneless meat. The quota for 1982 was opened by Council Regulation No 136/82 of 19 January 1982 (Official Journal 1982, L 17, p. 1).

It was allocated between the Member States.

(2) The second quota was opened for frozen buffalo meat falling within subheading 02.01 A II b) 4 bb) of the Common Customs Tariff, totalling 2 250 tonnes. The quota for 1981 was opened by Council Regulation No 218/81 of 20 January 1981 (Official Journal 1981, L 38, p. 2) and extended to 1982 by Council Regulation No 3716/81 of 21 December 1981 (Official Journal 1981, 373, p. 2).

(3) The third quota covers high quality fresh, chilled or frozen beef and veal falling within subheadings 02.01 A II a) and 02.01 A II b) of the Common Customs Tariff, totalling 21 000 tonnes. The quota for 1981 was opened by Council Regulation No 217/81 of 20 January 1981 (Official Journal 1981, L 38, p. 1) and extended to 1982 by Council Regulation No 3715/81 of 21 December 1981 (Official Journal 1981, L 373, p. 1). The high quality beef in question is generally referred to as 'Hilton beef'. The quota was not allocated between the Member States.

In order to ensure *inter alia* equal and continuing access to that quota for all interested operators within the Community and the uninterrupted application of the rate laid down for the quota to all imports of the products in question in all the Member States up to the limit of the quota, entitlement to total suspension of the import levy is subject to the presentation, when the meat is put into free circulation, of a certificate of authenticity or, in the case of one category of meat, an import licence.

The detailed rules governing the two last-mentioned quotas are contained in Commission Regulation No 263/81 of 21 January 1981 (Official Journal 1981, L 27, p. 52), which was extended to 1982 by Commission Regulation No 3751/81 of 22 December 1981 (Official Journal 1981, No L 374, p. 14).

B — *Regulations governing the application of monetary compensatory amounts*

Commission Regulation No 2140/79 of 28 September 1979 fixing the monetary compensatory amounts and certain coefficients and rates necessary for their application (Official Journal 1979, L 247, p. 1), as amended by Commission Regulation No 2979/79 of 27 December 1979 (Official Journal 1979, L 336, p. 57), lays down in footnote 2 to Part 3 (beef and veal) of Annex I an exception in the case of products falling within tariff subheading 02.01 A II b). That footnote provides that the monetary compensatory amount normally applicable to beef and veal will not apply [emphasis added]:

'in respect of quantities coming within an annual tariff quota of 50 000 tonnes, expressed in boned meat, to be granted by

the competent authorities of the European Communities for *frozen beef and veal*;

in respect of quantities coming within an annual tariff quota of 2 250 tonnes, expressed in boned meat, to be granted by the competent authorities of the European Communities for *frozen buffalo meat*'.

At this point I should add that in the preamble to its regulation the Commission expressed the view that it was appropriate *not to apply monetary compensatory amounts* in respect of imports under the above-mentioned quotas '*in the light of the special nature of this trade*'.

The decision not to apply compensatory amounts to those quotas was extended from 1 March 1982 by Commission Regulation No 481/82 of 26 February 1982 amending monetary compensatory amounts (OJ 1982 L 57, p. 1).

In short, therefore, monetary compensatory amounts are not applicable to the quotas opened by Council Regulation No 3716/81 (2 250 tonnes of frozen buffalo meat) and Council Regulation No 136/82 (50 000 tonnes of frozen beef and veal).

However, by virtue of the same regulation, No 481/82, which amended the monetary compensatory amounts following changes in the central rates of currencies, monetary compensatory amounts are to be charged on beef and veal imports other than those referred to above.

C — *Facts*

The circumstances which gave rise to this dispute are as follows:

In April 1982, Malt GmbH, the plaintiff, imported into the Federal Republic of Germany within the Community tariff quota of 21 000 tonnes some beef of very high quality known as Hilton beef, falling within subheadings 02.01 A II a) and b) of the Common Customs Tariff, namely *fresh* meat from Argentina and *frozen* meat from the United States of America. In addition to customs duty and import turnover tax, Malt paid monetary compensatory amounts totalling DM 210 874.64 determined on the basis of Commission Regulation No 481/82.

The plaintiff lodged an objection to the charging of those monetary compensatory amounts on the ground that it was discriminatory by comparison with the treatment enjoyed by imports within the two other quotas mentioned above.

The Hauptzollamt [Principal Customs Office] Düsseldorf rejected the objection as unfounded. Malt then brought an action concerning the charging of the monetary compensatory amounts before the Finanzgericht Düsseldorf.

The Finanzgericht took the view that there was doubt as to the interpretation of Commission Regulation No 481/82 and that a decision on that point was necessary to the resolution of the dispute. It referred the following question to the Court:

'Is the establishment in Regulation (EEC) No 481/82 of 26 February 1982 of a monetary compensatory amount for beef and veal falling within subheading 02.01 A II a) 4 bb) of the Common Customs Tariff unlawful in so far as monetary compensatory amounts are also levied on fresh, chilled or frozen beef and veal imported under a Community tariff quota (Regulation (EEC) No 3715/81)?'

The Finanzgericht's question refers only to tariff subheading 02.01 A II a) 4 bb) (*fresh* or *chilled* beef and veal). Nevertheless it is

clear from the context and indeed from the very terms of the question that *frozen* meat falling within tariff subheading 02.01 A II *b*) 4 bb) is also meant.

I should also mention that the plaintiff claimed in the alternative that the monetary compensatory amounts charged should be reduced by the amount by which the import levy would have been reduced, if it had been charged, by virtue of the application of the monetary coefficient. In its order the Finanzgericht clearly indicated that it did not seek a decision from the Court on that point and therefore did not refer to it in its question. Accordingly I shall not deal with that issue in this Opinion.

II — The question of the validity of Commission Regulation No 481/82

The Commission regulations on monetary compensatory amounts to which I referred earlier are based in particular on Council Regulation No 974/71 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), *the basic regulation for the whole system of monetary compensatory amounts.*

Council Regulation No 974/71 must therefore be taken as the basis for determining the validity of Commission Regulation No 481/82, and in particular of Article 1 (1) thereof, which refers to Annex I, Part 3 of which fixes the monetary compensatory amounts applicable to beef and veal.

The plaintiff takes the view that Article 1 is unlawful in so far as it makes monetary compensatory amounts applicable to the quota of 21 000 tonnes since the *conditions for the application of monetary compensatory amounts* laid down by Regulation No 974/71 and further defined in the judgments of the Court of Justice are not fulfilled in this case.

The three conditions referred to by the plaintiff are as follows:

(a) The existence or threat of a disturbance in trade within the Community;

(b) Observance of the principle of the 'strict necessity' of charging monetary compensatory amounts, having regard to their temporary nature;

(c) The prohibition of an additional protective component.

Apart from the plaintiff, only the Commission has lodged observations in these proceedings. In the Commission's view there can be no doubt as to the validity of the fixing of a monetary compensatory amount for the meat imported by the plaintiff.

I shall now consider the merits of the arguments on either side, following the order adopted by the plaintiff in its observations.

A — *Existence of a disturbance in trade within the Community*

The plaintiff states that by virtue of Article 1 (3) of Council Regulation No 974/71, which was substituted for the second subparagraph of Article 1 (2) by Council Regulation No 2746/72 of 19 December 1972 (Official Journal, English Special Edition 1972 (28-30 December), p. 64), 'paragraph 1 [which imposes the monetary compensatory amounts] shall not apply where application of the monetary measures

referred to in that paragraph would lead to disturbances in trade in agricultural products'.

It argues that although, as the Court of Justice has confirmed in a large number of cases, the Commission enjoys a broad discretion in appraising disturbances or the threat of disturbances justifying the application of monetary compensatory amounts, in this case it manifestly exceeded the limits of that power, at least on the narrow definition of those limits adopted since the Court's judgment of 15 October 1980 in Case 4/79 *Providence Agricole de la Champagne* v *ONIC* [1980] ECR 2823. In the plaintiff's view, 'any disturbance or threat of disturbance in the form of any conceivable adverse effect on the intervention system for beef and veal is ruled out, in particular having regard to the threefold quantitative restriction (Community quota, bilateral quotas for the exporting countries and national quotas), the price and the quality of the product and, finally, the nature of the customers' (p. 13 of its written observations dated 10 December 1984).

The *Commission* states that if monetary compensatory amounts were not charged, disturbances in intra-Community trade would result, both as regards beef and veal in general and in the specific case of Hilton beef. Were Hilton beef to be exempt from the application of monetary compensatory amounts, it is likely, in the Commission's view, that the whole quota would be imported into the Member State with the strongest currency. In those circumstances, the Commission is not required to demonstrate the existence of a specific disturbance or threat of disturbance in each individual case since the Court has held that it may fix monetary compensatory amounts 'at a flat rate and in a general way for products or groups of products' (judgment of 9 March 1978 in Case 79/77 *Kühlhaus Zentrum* v *Hauptzollamt Hamburg-Harburg* [1978] ECR 611, at p. 620).

Because the plaintiff's arguments are based in the first place on the judgment in *ONIC*, cited above, which it interprets as imposing a significant restriction on the Commission's powers of appraisal, it is necessary in my view to examine briefly the parts of that judgment which may be applicable in this case.

The passages in *ONIC* more specifically cited by the plaintiff in support of its contention are paragraphs 20 and 24 of the decision. According to the plaintiff (p. 12 of its written observations dated 10 December 1984), the Court has emphasized the restrictive nature of Article 1 (1a) and Article 3 of Council Regulation No 974/71 (paragraph 24) and has held that disturbances in trade can arise *only if* the system of intervention laid down for the relevant products is jeopardized (paragraph 20).

However, a careful reading of those two paragraphs shows that that is not an objective interpretation of the Court's judgment.

In paragraph 20 of the decision, the Court clearly states that 'the introduction of monetary compensatory amounts is intended to correct the effects of unstable variations in the rates of exchange which, within a system of organization of the markets in agricultural products based on common prices, are capable of causing disturbances in trade and in particular of jeopardizing the system of intervention laid down in respect of such products. The introduction of monetary compensatory amounts is thus essentially intended to maintain the system of single prices within

the common organization of agricultural markets'.

Instead of adopting the effect on the intervention system as the sole criterion for a disturbance in trade, as the plaintiff seems to be arguing, the Court confirmed that the decisive factor, as defined by Article 1 (3) of Regulation No 974/71, was in fact the existence of disturbances (or the threat of disturbances) in trade in agricultural products. An effect on the intervention system was but one of the possible manifestations of such disturbances. Thus, in paragraph 24 of its judgment in *Roquette* (Case 29/77, [1977] ECR 1835, at p. 1843), the Court stated: 'disturbances in trade in agricultural products frequently take the form of deflections of trade'.

However, I also propose to show in due course that in this case the system of single prices would have been jeopardized if monetary compensatory amounts had not been charged.

In paragraph 27 of its decision in *ONIC*, the Court confirmed that the Commission enjoys a wide margin of discretion, 'in particular with regard to the existence or the threat of disturbances in trade'.

The fact that the Commission has a wide margin of discretion had been acknowledged in a number of previous judgments of the Court, notably in *Roquette*, cited above. In paragraphs 21 to 23 of the decision in that case, the Court stated that:

'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.

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

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.'

In my view there can be no doubt that the Commission has taken this course as regards the beef and veal sector. In the series of regulations fixing or amending monetary compensatory amounts which made those amounts *generally* applicable to beef and veal imports, the Commission was clearly actuated by the view that, because of the variations in exchange rates, failure to apply monetary compensatory amounts would give rise to disturbances in the trade in beef and veal. The plaintiff does not in fact deny this.

However, taking the view that there was no risk of disturbances in trade in the case of frozen buffalo meat imported within a Community tariff quota of 2 250 tonnes or frozen beef and veal imported within a Community tariff quota of 50 000 tonnes, the Commission exempted such imports from the charging of monetary compensatory amounts.

Furthermore, the Commission expressly gave grounds for those exceptions in the second recital of the preamble to Regulation No 2979/79 by emphasizing the 'special nature of this trade'.

In fact, the quota for frozen buffalo meat comprises a very limited quantity and is intended to preserve traditional imports of such meat into the Federal Republic of Germany. It appears to be the case that buffalo meat has until now never been imported into a Member State other than Germany. The risk of deflection is therefore very slight.

The quota for frozen beef and veal, on the other hand, is allocated between the Member States in proportion to their requirements. It is not therefore necessary to apply monetary compensatory amounts in order to prevent deflections in trade, since the quantities imported must in principle be consumed or processed in the importing country.

The plaintiff has not disputed that in those two cases there was no risk of disturbances in trade.

The situation is quite different in the case of the beef and veal imported by the plaintiff within the Community tariff quota of 21 000 tonnes. That quota does not display the characteristics which I have just noted in regard to the other two quotas. For that reason the Commission did not exempt the quota from the general rule applicable to beef and veal. In accordance with the Court's judgments cited above, it was not required to demonstrate specifically that the non-application of monetary compensatory amounts to those particular products would provoke disturbances in trade. Thus an examination of the arguments put forward by the Commission in response to the Court's request that it give specific details of the threat of disturbances in trade in the case of the high-quality meat imported by the plaintiff, cannot, in law, add anything to the factors which the Court will have to weigh up in its deliberations.

Nevertheless I should like to say that I find the Commission's arguments on that point persuasive.

Even if an 'additional price' close to the amount of the suspended levy is in fact charged in the exporting country, as the plaintiff states, the meat in question still arrives in the Federal Republic of Germany at a price not higher than the Community price because the levy is equal to the difference between the world market price and the Community price.

The Community price, however, is *lower* than the German market price. The difference is precisely equal to the monetary compensatory amount for Germany. Meat imported free of monetary compensatory amounts therefore has a competitive advantage equal to that amount on the German market. But that matter is not of concern to us here because the Community is ready to assume that risk in certain limited cases.

The Commission states that what causes a disturbance in intra-Community trade is the fact that the meat, once put into free circulation in Germany (without payment of monetary compensatory amounts), may at any time be re-exported to a Member State with a guaranteed price, expressed in national currency, lower than the common price. For instance, that was the case in Belgium at the material time.

A trader in such a situation would have been entitled to payment of the sum of the Belgian negative monetary compensatory amount and the German positive compensatory amount (although this was not paid when the meat entered German territory). He would therefore have been in a position to reduce his selling price in Belgium below the price obtaining in that

country for meat of comparable quality produced in the Community *or imported direct within the same tariff quota.*

It was therefore to be expected that there would be disturbances in trade in the form of deflections of trade, that the system of common prices would be jeopardized and that the European Agricultural Guidance and Guarantee Fund would have to make payments which were unjustified economically but in no way illegal.

It is therefore wrong to state, as the plaintiff does, that 'above all its price and quality virtually rule out any disturbance in the market'.

The plaintiff also argues that German health legislation prohibits the importation into Germany of meat originating in a non-member country which has been in transit through another Member State. However, it is far from certain that that German legislation is compatible with Community law, and in any event what is at issue here is the possibility of deflections of trade through Germany to countries with negative monetary compensatory amounts, and not the reverse.

Furthermore, the Commission has submitted to the Court a statistical table showing that in the course of 1982 and 1983 there were imports within the quota in question into Community countries other than the Federal Republic of Germany.

It is therefore legitimate to suppose that once monetary compensatory amounts ceased to be charged, those imports would be routed through the Federal Republic of Germany in order to benefit from the unjustified 'payment' of the German monetary compensatory amount in the manner described above. Moreover, the prospect of obtaining monetary compensatory amounts in countries with strong currencies might encourage new and additional imports of Hilton beef into countries with weak currencies, involving transit through countries with strong currencies.

In theory, trade on that basis would undoubtedly be equally possible in the case of goods imported within the other two quotas. That, however, does not happen in practice because the 50 000 tonne quota is allocated between the Member States, whilst in the case of buffalo meat there is a lack of interest on the part of consumers in the other Member States. That is one of the reasons why those two quotas are not comparable.

Whether the Council would have been better advised also to allocate the 21 000 tonne quota between the Member States and to ask the Commission to end the charging of monetary compensatory amounts is a question for the Council to decide. Perhaps it took the view that to adopt an unallocated quota was more 'Community-minded' than to adopt an allocated quota and that it was simpler to apply the usual rule for monetary compensatory amounts rather than create an exception to it.

Should the Court declare the Commission regulation void in so far as it provides for the charging of monetary compensatory amounts in respect of Hilton beef, the Council would no doubt decide to allocate that quota between the Member States.

In conclusion it may therefore be said that, as far as the plaintiff's arguments on that point are concerned, the plaintiff has not shown that, by not suspending the charging of monetary compensatory amounts in favour of Hilton beef, the Commission manifestly committed an error or exceeded the limits of the general power of appraisal

which it enjoys according to the Court's judgments.

On the contrary, the Commission has shown in its answer to the question put to it by the Court that the abolition of monetary compensatory amounts in respect of the quota for Hilton beef would be likely to cause disturbances in trade, jeopardize the single price system and lead to unjustified payments by the European Agricultural Guidance and Guarantee Fund.

Although it is not required to consider case by case whether disturbances in intra-Community trade exist or are threatened, the Commission is clearly under a duty not to exercise its discretion in a discriminatory fashion since to do so would be contrary to Article 40 (3) of the EEC Treaty. It appears from the order making the reference that the plaintiff put forward an argument based on discrimination before the Finanzgericht. Its argument on that point is somewhat contradictory because it first contended that discrimination arose from the fact that imports of beef and veal of comparable quality were not all exempt from the application of monetary compensatory amounts, and then proceeded to state that discrimination arose from the fact that meat consignments which, although different, were all imported within Community tariff quotas negotiated within GATT, were not all exempt from such application.

Before the Court, however, the plaintiff has not specifically relied on the principle of non-discrimination; however, that principle reappears in a different form in connection with its second submission, namely that the principle of 'strict necessity' must be observed.

B — *Observance of the principle of 'strict necessity'*

In the plaintiff's view, even if there is a disturbance or the threat of disturbances, the application of monetary compensatory amounts is lawful only in so far as they are strictly necessary for the protection of the intervention system in the beef and veal sector.

The plaintiff therefore claims that the concept of strict necessity constitutes an independent legal principle.

In that regard it first cites the last recital in the preamble to Council Regulation No 974/71, which reads as follows:

'Whereas 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 whereas it is appropriate to apply them only in cases where this incidence would lead to difficulties'.

It then cites the decided cases of the Court of Justice, in particular the judgment in *ONIC*, cited above.

It argues that monetary compensatory amounts are not strictly necessary in regard to Hilton beef because of the 'special nature' of trade under a Community tariff quota, just as in the case of the frozen beef and veal and frozen buffalo meat exempted from the application of compensatory amounts within their tariff quotas. In other words, if my understanding of the plaintiff's arguments is correct, discrimination therefore arises from the fact that the Commission has recognized the 'special

nature' of trade within the two last-mentioned quotas, so that the application of compensatory amounts is not strictly necessary, whereas it wrongly failed to recognize the special nature of trade within the first quota. The Court itself, in *Kühlhaus Zentrum*, cited above (paragraph 8 of the decision), expressed doubts as to whether it is appropriate to apply the system of monetary compensatory amounts in the case of a quota permitting duty-free importation from a non-member country.

The *Commission* states that this cannot be a case of discrimination because the quotas in question are not comparable; first, their characteristics are different, as shown earlier, particularly as regards the existence or the threat of disturbances in trade, and in the second place the commercial policy objectives pursued by the Community within GATT are different, as is specifically emphasized by the reference to the 'special nature of this trade' (second recital in the preamble to Commission Regulation No 2979/79).

1. It should first of all be acknowledged that the applicability of the principle of 'strict necessity' to monetary compensatory amounts cannot be disputed.

It is referred to in the recital in the basic Council Regulation which I cited earlier and has been reaffirmed on many occasions by the Court.

In the *ONIC* case, on which the plaintiff in the main proceedings has placed so much reliance, the Court stated as follows at paragraph 25 of its decision:

'Monetary compensatory amounts fixed at a level which clearly *over-compensates* for the margin between the prices expressed in national currency and those expressed in units of account by the application of representative rates of exchange (green rates of national currencies) would be contrary to the nature of monetary compensatory amounts as a temporary expedient and the requirement *that their introduction should be strictly necessary*, which is a condition of their lawfulness' (emphasis added).

The Court thus defined in a single sentence the two-fold application of the requirement of strict necessity:

'A monetary compensatory amount may be introduced only if it is strictly necessary and the level at which it is fixed must meet the same criterion.'

But when is a monetary compensatory amount strictly necessary? The last recital in the preamble to Council Regulation No 974/71, cited at paragraph 24 of the decision in *ONIC*, gives the answer: 'only in cases where [the incidence of the monetary measures on the prices of basic products . . .] would lead to difficulties'.

And when are such difficulties present?

When there is a risk that the monetary measures will result in 'a disruption of the intervention system laid down by Community rules and abnormal movements of prices' (fourth recital of the preamble to Regulation No 974/71) or 'disturbances in trade in agricultural products' (Article 1 (3) of that regulation).

Nowhere, therefore, is any basis to be found for the plaintiff's assertions that 'the concept of "strict necessity" constitutes an independent legal principle inherent in the purpose of the system of monetary compensatory amounts and is not concerned

merely with the risk of disturbances in trade. Even if there is such a disturbance or the threat of such a disturbance, the application of monetary compensatory amounts to imports may prove, in the light of other legal considerations, not to be strictly necessary for the purpose of protecting the intervention system in the beef and veal sector'.

It is the opposite view which is true. The existence or threat of a disturbance in trade and the requirement of strict necessity are indissolubly linked, and by virtue of the principle of strict necessity the Commission is required to introduce monetary compensatory amounts if there are disturbances or threatened disturbances in trade and to withdraw them if that ceases to be the case.

Again, in a recent judgment, (judgment of 12 December 1985 in Case 208/84 *Vonk's Kaas Inkoop* [1985] ECR 4025), the Court has confirmed that the Commission 'is therefore not only empowered but under a duty to amend its existing legislation if it finds that improper transactions of the type described above have occurred or that there is a risk that they may occur'.

2. With regard to the question of *discrimination*, it must be noted first of all that the case of Hilton beef is not comparable to that of meat imported within the other two quotas.

Thus

(a) the meat in the various categories is not of the same quality; the plaintiff demonstrated this in the course of the oral procedure;

(b) there is a threat of disturbances in trade in the case of Hilton beef, whereas there is no such threat in the case of the 50 000 tonne quota or the buffalo meat quota;

(c) the Community's partners within GATT are not opposed to the charging of monetary compensatory amounts under the tariff quotas opened in the last few years.

The plaintiff, however, places considerable emphasis on its contention that there is discrimination because, in so far as all three quotas were negotiated within GATT, they are all of a 'special nature' and should therefore be treated alike as regards monetary compensatory amounts.

However, the Commission has rebutted that objection by citing judicial decisions which are relevant and persuasive: both in its judgment in Case 55/75 (*Balkan-Import-Export* v *Hauptzollamt Berlin-Packhof* [1976] ECR 19), and in its judgment in Case 52/81 (*Faust* v *Commission* [1982] ECR 3745), the Court states that 'there exists in the Treaty no general principle obliging the Community, in its external relations, to accord to non-member countries equal treatment in all respects'.

In the first of those judgments, which also concerned the validity of certain monetary compensatory amounts, the Court stated (paragraph 14 of the decision) that: 'Although Article 2 of Council Regulation No 974/71, by specifying the method of calculating the compensatory amounts, determines the amounts which cannot be exceeded, it does not follow that the Commission could not undertake to apply lower amounts or to grant negotiated exemptions in respect of certain third countries and for reasons relating to the exercise of other powers which it holds under the Treaty'. In the second judgment, it further stated (paragraph 25 of the decision) that 'if different treatment of non-member countries is compatible with Community law, different treatment

accorded to traders within the Community must also be regarded as compatible with Community law, where that different treatment is merely an automatic consequence of the different treatment accorded to non-member countries with which such traders have entered into commercial relations'.

It was therefore open to the Commission to decide, by virtue of the powers conferred upon it in particular by Article 113 of the EEC Treaty — which, moreover, is the basis for all the Council regulations opening the quotas at issue in this case — to exempt the quotas opened by Regulations Nos 3716/81 and 136/82 from the application of monetary compensatory amounts for reasons connected with the Community's relations with its GATT partners.

3. In my view the conclusions I have reached cannot be called in question by reference to the judgment in *Kühlhaus Zentrum*, cited above, in which the Court stated (paragraph 8 of the decision) that 'it may be doubted whether it is *appropriate* to apply the system of monetary compensatory amounts in the case of a quota from a third country admitted into the Community free from imposition of the levy'.

In that case the Court did not consider that question in greater detail but went straight on to say that: 'The plaintiff in the main action has not called in question the application of the system of monetary compensatory amounts to the imports in question'.

If monetary compensatory amounts were a component contributing to the external protection of the Community, it might indeed be asked why they could not be abolished at the same time as the levy. If the central part of the protective barrier is taken away, it might be asked, why retain that residual component?

It so happens that, as I shall show shortly, the Court's subsequent judgments expressly state that monetary compensatory amounts do not and cannot have a protective character. Their justification resides solely in the fact that they enable the common price system within the Community to be safeguarded. It was shown earlier that their abolition may lead to disturbances in the case of products capable of being re-exported from the Member State of first importation.

There remains the question of the merits of the third argument relied upon by the plaintiff in the main proceedings, which is that there is overprotection.

C — *Prohibition of an additional protective component*

The plaintiff contends that a whole range of protective components applied to Hilton beef, namely a quantitative quota reinforced by bilateral quotas allocated between the exporting countries and by national quotas, tariff protection of the order of 20% and a monetary compensatory amount, together constitute excessive and unjustified protection which is therefore illegal. The Commission, it claims, has admitted as much by abolishing monetary compensatory amounts in respect of imports of frozen beef and veal and of frozen buffalo meat. The plaintiff adds that that overprotection is real despite the fact that the import levies have been suspended (under Article 2 of Commission Regulation No 263/81), having regard to the fact that an amount equivalent to the levy is charged by the country of origin at the time of export.

I shall now examine those arguments one by one.

1. *The quotas*

In this instance the use of the term 'quantitative quota' is incorrect.

There is a quantitative quota only if total imports of a given product into the Community are not permitted to exceed a specified quantity.

However, where the importer is prepared to pay customs duty, the import levy and the monetary compensatory amount, he is free to import into the Community as much high-quality beef and veal as he likes.

The quota in this case is a 'tariff quota'.

The products covered by that quota in fact benefit from a reduction in the protection afforded to Community products (there is no levy) and it is only that reduction in the protection normally applicable which is subject to a quantitative restriction. The 'quota' therefore does not provide any greater protection than that normally provided. It is merely intended to ensure that not all imports of that product benefit from the reduced protection.

As for the allocation of the 21 000 tonnes between the exporting countries, namely 5 000 tonnes for Argentina, 5 000 for Australia, 1 000 for Uruguay and 10 000 for the United States of America (which results from the definition of the different categories of meat in Commission Regulation No 263/81), its purpose is to guarantee each exporting country a fair proportion of the total quota. It therefore merely constitutes a way of applying the total quota and not an independent quantitative restriction.

Finally, it is quite incorrect to describe a tariff quota which has not been allocated between the Member States as a 'national quota'.

2. *Tariff protection*

The 20% customs duty applicable to Hilton beef is the same as the autonomous Common Customs Tariff duty.

It has merely been 'bound', which means that the Community has undertaken not to increase it even if it should at some future date increase the Common Customs Tariff duty.

Thus there is no additional protection in that regard either.

3. *The suspension of the levy*

Imports of Hilton beef within the quota are exempt from the levy.

In that respect they therefore benefit from reduced protection.

The costs incurred in obtaining a 'certificate of authenticity' in the exporting country are not comparable to levies even if they are equal in amount to the levy which would normally be applicable and whose collection has been suspended. The Community legislation has given a clear and legally incontestable definition of the levies in question.

That indeed is why the Finanzgericht did not refer to the Court a question dealing with the plaintiff's alternative claim for a reduction of its monetary compensatory amounts by the amount by which the levy would be reduced as a result of the application of the monetary coefficient in the case of imports subject to a Community

levy. Furthermore, the Hauptzollamt Düsseldorf, the defendant in the main proceedings, had already rejected the claim, which the plaintiff had made in its objection, on the ground that the latter had in fact imported the goods free of the levy.

I might mention in passing that, as regards the substance of the case, the Hauptzollamt and the Finanzgericht have in my view drawn the proper inferences from the Court's judgments, in which, particularly in *Kühlhaus Zentrum*, cited above, the Court held that the regulation applicable in that case was not to be interpreted as meaning that the monetary compensatory amount on such imports should be reduced by multiplication by a monetary coefficient, precisely because they were exempt from imposition of the levy.

4. *The monetary compensatory amount*

The Court has held on a number of occasions, in particular in *ONIC* (Case 4/79), that 'monetary compensatory amounts are not intended to supplement the protection provided by levies and refunds in trade with non-member countries'; instead, their objective, 'which is unrelated in any way to protection, is to maintain the system of single agricultural prices within the common market . . .' (paragraph 38 of the decision). It went so far as to add: 'By eschewing the maximum possible neutrality of monetary compensatory amounts in intra-Community trade — which is a fundamental objective of the system — in favour of the objective of protection which in certain trading relations with non-member countries it is sought to ascribe to the same monetary compensatory amounts [for instance, by making them operate as an extra levy], the Commission has exceeded the discretion which it is recognized to enjoy in this field and has disregarded not only the principles which form the basis of Regulation No 974/71 but also the rule set out in Article 43 (3) of the Treaty, according to which the common organization of the markets must ensure conditions for trade within the Community similar to those existing in a national market' (paragraph 40 of the decision).

However, that case concerned processed agricultural products to which monetary compensatory amounts calculated on an excessively uniform basis had been applied in such a way as to create additional protection.

This case, on the other hand, concerns basic agricultural products, and the plaintiff has not even sought to establish that the monetary compensatory amount applicable to Hilton beef contains a protective component in the sense that it is fixed at a level which does more than compensate for the margin between the prices expressed in national currency and those expressed in ECU by the application of representative rates of exchange (green rates). Nor is there any indication in the other documents before the Court that such an over-compensation has taken place.

The combined effect of the monetary compensatory amount and the reduced protection applied within the tariff quota certainly does not, therefore, constitute 'over-protection'.

Nor is it true that the quota has, as it were, been 'withdrawn from the common organization of the market', since all the constituents of the common organization of the market, with the sole exception of the levy, continue to apply.

At this point it is also worth repeating that neither the 'quota component' nor the residual element of protection, namely the customs duty of 20%, can prevent disturbances in intra-Community trade arising from currency fluctuations.

Finally, it should on no account be forgotten that whereas the compensatory amount is charged on importation into a country with a strong currency, it is *paid to the importer* at the time of importation into a country with a weak currency (with negative monetary compensatory amounts), even if the import in question has come direct from a non-member country.

That indeed is an additional reason why monetary compensatory amounts cannot be included in the category of charges having an effect equivalent to customs duties.

Before concluding, I should briefly mention a question which was discussed at the hearing, namely whether at the material time there was comparable production of high-quality beef and veal in the Community and, if so, on what scale (the Commission has indicated that there was comparable production of approximately 50 000 tonnes annually).

That question undoubtedly played an important part in the decision on the introduction of the tariff quota for Hilton beef and on the size of the quota.

It seems, however, to be of somewhat secondary importance in the context of a dispute centred on monetary compensatory amounts.

As was pointed out earlier, such amounts should not contain any protective component and they do not in this case. Even if there were no Community production of high-quality beef and veal at all the imposition of monetary compensatory amounts might nevertheless be justified for the purpose of preventing disturbances in the trade in imported meat between Member States.

III — Conclusions

In view of the foregoing considerations I propose that the Court should give the following answer to the question referred to it for a preliminary ruling by the Finanzgericht Düsseldorf:

Consideration of the question referred to the Court for a preliminary ruling has disclosed no factor of such a kind as to affect the legality of a monetary compensatory amount fixed by virtue of Commission Regulation No 481/82 of 26 February 1982 for beef and veal falling within subheadings 02.01 A II a) 4 bb) and 02.01 A II b) 4 bb) of the Common Customs Tariff in so far as it entails the charging of monetary compensatory amounts also on fresh, chilled or frozen beef and veal imported within a Community tariff quota opened by Council Regulation No 217/81 of 20 January 1981, as amended by Council Regulation No 3715/81 of 21 December 1981.