In Case 250/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Københavns Byret [Municipal Court, Copenhagen] for a preliminary ruling in the criminal proceedings pending before that court, brought by

ANKLAGEMYNDIGHEDEN [Public Prosecutor's Office]

v

HANS ULRICH SCHUMACHER,

PETER HANS GERTH,

JOHANNES HEINRICH GOTHMANN,

ALFRED C. TÖPFER, Hamburg,

on the interpretation of Article 5 (2) of Regulation (EEC) No 269/73 of the Commission of 31 January 1973 laying down detailed conditions for application of the system of "accession" compensatory amounts (Official Journal 1973, L 30, p. 73) as amended by Regulation (EEC) No 1466/73 of the Commission of 30 May 1973 (Official Journal 1973, L 146, p. 13),

THE COURT,

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

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

When the Community was enlarged for the first time in 1973 considerable differences existed between the prices prevailing in the original Member States and those applied in the new Member States. However, those differences were eliminated only gradually over a transitional period of five years provided for in the Act of Accession. In the meantime so-called "accession" compensatory amounts were introduced in order to avoid any distortion of the conditions on which a product originating in one Member State might be marketed within another Member State. The gradual alignment of the prices fixed for each new Member State with the common prices entailed a parallel reduction of those amounts until they were discontinued completely at the end of the transitional period.

Rules concerning the application of the abovementioned compensatory amounts were laid down in the Act of Accession (Articles 55 to 58). By virtue of Articles 73, 51 and 55 of that Act, those rules were also to be applied to cereals. They were subsequently laid down, for the cereals sector, by Regulation (EEC) No 229/73 of the Council of 31 January 1973 (Official Journal 1973, L 27, p. 25), which remained in force until 1 November 1975 when it was replaced by Regulation (EEC) No 2757/75 of the Council of 29 October 1975 (Official Journal 1975, L 281, p. 104).

Under the system introduced by the abovementioned provisions, the compensatory amounts which were to be applied to trade between the Community as originally constituted and the new Member States, and between the latter and non-member countries, were equal to the difference between the prices fixed for the new Member States concerned and the common prices.

In the case of trade between two new Member States, the compensatory amounts were equal to the difference between the amounts applicable to trade between each of the new Member States and the Community as originally constituted.

In order to ensure Community preference, the compensatory amounts were constantly reviewed so that, save in the case of a derogation accorded by the Council, they could not be higher than the import levies applied in trade with non-member countries.

Article 6 of Regulation No 229/73 made provision, were the need to arise, for the introduction of a system of advance fixing of the compensatory amount. The provisions necessary for that purpose were laid down in Regulation (EEC) No 3280/73 of the Commission of 4 December 1973 (Official Journal 1973, L 337, p. 11). The latter regulation provided *inter alia* that in the case of advance fixing of the compensatory amount a security of three units of account per tonne should be furnished, which would be released upon production of proof that the customs formalities had been completed and, in the case of exportation, upon the provision of further proof that the

product had left the geographical territory of the Member State where those formalities had been completed.

The "accession" compensatory amounts were levied or granted in trade between the new Member States or between them and the original Member States by the one of the two Member States concerned whose price-level used in determining the compensatory amounts was the higher.

The detailed rules for the application of the system of "accession" compensatory amounts were laid down by Regulation (EEC) No 269/73 of the Commission of 31 January 1973 (Official Journal 1973, L 30, p. 73).

By virtue of Article 5 of that regulation, as amended by Regulation (EEC) No 1466/73 of the Commission of 30 May 1973 (Official Journal 1973, L 146, p. 13), payment of the compensatory amount by the exporting State was subject to production of proof that the product in respect of which the customs export formalities had been completed had left the geographical territory of the Member State where those formalities had been completed.

However, in certain cases, and, *inter alia*, where the compensatory amount applied to a product for which no refund was fixed, which is the case as regards the exported product involved in these proceedings, the payment was also subject to proof that the customs formalities on importation had been completed and that duties and charges having equivalent effect payable in the Member State of destination had been collected.

That proof was to be furnished by production of the control copy (T/5) referred to in Article 1 of Regulation (EEC) No 2315/69 relating to Community transit. The second subparagraph of Article 5 (2) of Regulation No 269/73, as amended by Regulation No 1466/73, provided that, among the special endorsements to be made on that copy, Section 104 was to be completed by the parties concerned by deleting what did not apply and adding a specific endorsement which that article set out in the languages of the various Member States. In some of the language versions that endorsement corresponded to the French expression "destiné à être mis à la consommation" [intended for entry for home use], whereas in other versions it corresponded to the expression "intended to be placed in free circulation". It is from that difference in the forms of wording that this case, the facts of which are as follows, arises.

On 29 July 1975 the Danish authorities issued Firma Alfred C. Töpfer, Hamburg, (hereinafter referred to as "Töpfer"), an international wheat-dealer, with an advance-fixing certificate for the "accession" compensatory amount to be granted in respect of the exportation of 5 000 tonnes of wheat from Denmark to the United Kingdom, at the rate of 24.05 units of account per tonne (later reduced to 20.62 units of account per tonne), a security of three units of account per tonne having been furnished. The certificate was valid until 26 September 1975.

On 27 August 1975 Töpfer secured from the Belgian authorities advance fixing of the "accession" compensatory amounts for the importation of wheat originating in Denmark and in the United Kingdom into a Member State of the Community as originally constituted. The compensatory amounts to be paid by the importer amounted to two units of account per tonne, a security of three units of account per tonne having been furnished. The certificate was valid until

25 October 1975 with respect to all the original Member States.

On 4 September 1975 Töpfer concluded a contract for the sale of 1 800 tonnes of Danish wheat to Bremer Rolandmühle, Bremen. On 15 September it sold 1 800 tonnes of Danish wheat to an English undertaking, Dalgety Franklin Ltd, from which it re-purchased the wheat on the following day.

On 17, 23 and 25 September 1975, three vessels chartered by Töpfer left Denmark carrying a total a 1 800 tonnes of wheat, the final destination being Bremen. On arrival in the United Kingdom the vessel discharged the wheat into the silos of an English company, jointly owned by the abovementioned English purchaser and by Töpfer. Once the import formalities were completed the 1 800 tonnes of wheat were re-loaded into the same vessel and re-exported to Bremen, where the various consignments arrived on 26 September, and on 1 and 13 October 1975.

Having stated in the T/5 declaration, which the English authorities subsequently endorsed, that the destination of the goods was "England" and that the goods were "bestemt til afsaetning til forbrug" (intended for entry for home use), Töpfer received in Denmark an "accession" compensatory amount of DKR 287 501.21 (20.62 units of account per tonne) and obtained release of the security which it had furnished in that country.

Upon importation into the Federal Republic of Germany Töpfer paid an "accession" compensatory amount of DM 11 611 (two units of account per tonne) on the basis of the certificate obtained in Belgium on 27 August.

By an indictment of 14 November 1979, the Statsadvokat for Særlig Økonomisk Kriminalitet [Assistant Public Prosecutor empowered to initiate proceedings for offences of an economic nature] initiated proceedings before the Københavns Byret against Töpfer and against three employees of that firm who had dealt with the abovementioned exports. The Statsadvokat accused the defendants of infringing certain provisions of Danish Law No 595 of 22 December 1972 concerning the implementation of Community regulations establishing common organizations of the markets in agricultural products, and sought an order that they should repay the "accession" compensatory amounts received in Denmark and that they should refund the security, on the ground that they had planned, even before the goods in question were exported from Denmark, to import them into the Federal Republic of Germany and that, in order to secure payment of the Danish "accession" compensatory amounts for the exports to the United Kingdom without forfeiting the security, they had intentionally made an incorrect and misleading declaration to the Danish customs authorities by indicating on form T/5, the form provided for that purpose that the goods in question were intended for entry for home use in the United Kingdom.

On 12 August 1980, in a preliminary hearing, the defendants acknowledged that they had intended from the outset to export the goods to the Federal Republic of Germany but contended that their conduct did not infringe the rules of Community law. They stated that their declaration recorded the fact that the goods had been cleared through customs in the United Kingdom, as had in fact taken place, and that nothing in the abovementioned provisions prevented re-exportation of those goods to another State after they had been cleared through customs.

By order of 17 October 1980, the Københavns Byret decided to address the following question to the Court:

"Is a Member State (A) in a case where it has issued an advance-fixing certificate concerning an 'accession' compensatory amount on the export of wheat to a second Member State (B) entitled pursuant to Article 5 (2) of Regulation (EEC) No 269/73 of the Commission, as amended by Article 2 [1] of Regulation (EEC) No 1466/73, to refuse payment of the amount to the claimant if the wheat is placed in free circulation, for customs purposes in B, and the claimant submits a control document issued in B, as referred to in Regulation (EEC) No 2315/69 of the Commission, *inter alia* containing the information 'Bestemt til afsætning til forbrug' [literally 'intended for sale for use', translated as 'intended for entry for home use'] or 'Für den freien Verkehr bestimmt' [intended to be placed in free circulation] but the wheat is placed in free circulation in B for the sole purpose of its re-exportation immediately thereafter to a third Member State (C)? In this connection it is assumed that the provisions concerning the 'accession' compensatory amounts are observed in relation to the exportation from B to C."

The order making the reference was received at the Court Registry on 13 November 1980.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the defendants in the main action, represented by H. Wiltoft of the Copenhagen Bar, and by the Commission of the European Communities, represented by R. Wainwright and H. P. Hartvig, members of its Legal Department.

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.

1 — *Translator's note:* The relevant article is in fact Article 1.

II — Written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The *defendants in the main proceedings* deny that they gave the Danish customs authorities incorrect and misleading information.

They state that none of them was aware that any difference might exist between the endorsement "Für den freien Verkehr bestimmt" [intended to be placed in free circulation] used in their country, Germany, and the endorsement "bestemt til afsætning til forbrug" [intended for entry for home use] which must be entered on form T/5 in Denmark.

They emphasize, moreover, that at no time did they attempt to conceal what in fact had happened but, on the contrary, had always given the competent authorities all the information for which the latter had asked. They are furthermore of the opinion that the development of events in this case does not in any way infringe the provisions of Community law.

As regards the question raised by the court of trial, the accused maintain that the decision of the Court of Justice must be based on purely objective criteria and not on criteria connected with the subjective intentions of exporting undertakings. To support this view, they refer to a judgment delivered by the Court on 2 June 1976 (Case 125/75 *Milch-, Fett- und Eier-Kontor GmbH)*, [1976] ECR 771), in which it is stated: "Only objective criteria can be taken into account in answering the question whether goods have reached the market at their destination so that it is not necessary to ascertain whether the exporter who made the application knew at the date in question that the goods would ultimately be transported to another country".

In their opinion, the same principle should apply in this case, too.

The only decisive fact should be that the exporter takes the actual steps upon which grant of the compensatory amount is conditional. In this case, those conditions were fulfilled since the goods in question were actually put into free circulation in the United Kingdom.

There is, it is true, a linguistic divergence between the German version of declaration on form T/5, upon which the defendants relied, and the corresponding Danish version, but it is clear, with regard thereto, that the Court must adopt an interpretation of the criteria for the allocation of "accession" compensatory amounts which is uniform throughout the Member States, since a differing interpretation would involve distortions conflicting with the objectives of the Treaty of Rome.

For the purpose of that interpretation, the defendants consider it relevant to emphasize that import-export undertakings operating within the framework of European market organizations must take into account, on a totally uniform basis, the "accession" compensatory amount, loss of the security and possible charges and refunds and that it is therefore important that reliance may be placed on the wording of provisions. They state moreover that in their opinion the application of clear and consistent guidelines regarding the criteria for obtaining the monetary compensatory amount is far more important and necessary than the concern to avoid, in very special circumstances resulting from unexpected changes in market conditions, payment of a monetary compensatory amount which is in no way or only partially conducive to the objectives which usually underlie the common agricultural organizations.

For reasons of legal certainty this aspect carries even more weight where the unjustified payment of an "accession" compensatory amount involves criminal liability on the part of the exporter who received the amount.

The *Commission of the European Communities* states at the outset that in a case such as the one in point both the payment of the "accession" compensatory amounts and the release of the security are subject *inter alia*, by virtue of Article 5 (1) of Regulation No 269/73 and Article 8 of Regulation No 3280/73 respectively, to the production of proof in the form of the control copy (T/5) of the Community transit document endorsed by the competent customs office in the Member State of destination.

It observes that, when that proof and the other proof required by the above-mentioned regulations are furnished, the person concerned is regarded as having fulfilled the formal conditions necessary to obtain payment of the compensatory amounts and release of the security.

In the Commission's view, the fact that the endorsement which should be made in Section 104 of the control document differs in the various language versions of Regulation No 269/73, as amended by Regulation No 1466/73, is of no importance. Such a disparity constitutes a strictly linguistic problem arising from the fact that no common terminology existed at that time at Community level in the field of customs. It was therefore necessary to rely to a considerable extent on the national terms used in each Member State, which did not however

give rise to difficulties in practice. It should be emphasized in this regard that the sole function of the endorsement in question is to prove to the authority responsible for paying the compensatory amounts that the condition laid down in the first subparagraph of Article 5 (2) of Regulation No 269/73 has been fulfilled. That endorsement does not therefore constitute a condition which is supplementary to the condition that "import formalities have been completed and duties and taxes of equivalent effect payable in the Member State of destination have been collected", as set forth in the abovementioned provision.

The Commission nevertheless considers that the fact of fulfilment of the formal conditions necessary for payment of the compensatory amount and for release of the security is not a factor of relevance in determining whether exportation from one Member State to another Member State gives rise to entitlement to a compensatory amount. It is in fact a matter of rules of evidence which, in the view of the Community legislature, should in the normal course of events provide a sufficient basis for considering whether the person concerned has acquired entitlement to a compensatory amount, but those rules do not create such entitlement.

On the contrary, the Commission states that the conditions which must be fulfilled as a requirement for entitlement to a compensatory amount must be based on the wording of all the provisions governing the compensatory amounts, their context and their economic objective. In accordance with that view, it points out that since the aim of the "accession" compensatory amounts is, in particular, to promote the satisfactory circulation of products between two Member States with different price-levels, exportation from one Member State to another Member State where the level of prices is lower can only fulfil that objective if the goods in question are placed on the market in the importing country. In fact it is only at that stage that the imported product competes with other products on the basis of the lower price-level in the importing country. On the other hand, the offsetting of price-differences is not achieved if the goods merely pass through the country of destination or if they are immediately re-exported after completion of the import formalities. A precondition therefore for entitlement to a compensatory amount is that the imported product should be processed or used in the country of destination, or both, except where subsequent re-exportation of the goods in their original condition is objectively justifiable by reason of changed market conditions.

On the basis of those considerations, which it derives from a series of judgments delivered by the Court in cases relating to export refunds and which it applies by analogy to the compensatory amounts, the Commission submits that in a case such as the one in point no entitlement to a compensatory amount has been required and, consequently, no entitlement to release of the security.

Moreover, the Commission considers that no entitlement to a compensatory amount exists where there is an abuse or fraudulent exploitation of the Community system of "accession" compensatory amounts.

It points out that, of the various speculative activities to which the compensatory amounts may give rise, the practice on the part of an undertaking of exploiting differences between the rates for such amounts, by means of transactions which are devoid of any

economic objective, is certainly by far the most serious. However, the Community cannot prevent such transactions or make them more difficult without running the risk of pointlessly hindering the conduct of real commercial transactions. Likewise, a retroactive amendment of the provisions, in a case where abuses are noted, might constitute a breach of the principle of legitimate expectation as regards those undertakings which had not engaged in speculative transactions.

Faced with this difficulty of avoiding fraudulent exploitation of Community provisions, the Commission considers that it must be possible to refuse payment of a compensatory amount where it is proved that although the formal conditions for entitlement to that amount have been fulfilled a specific transaction is devoid of any economic objective and is intended only to achieve a profit by reason of the differences between the rates for the compensatory amounts fixed by the Community.

In support of its view the Commission has annexed to its observations an outline of the provisions which, in the majority of Member States, impose penalties for abuse and fraudulent exploitation of the law.

It is of the opinion that similar rules must be applicable as far as Community law is concerned and in that regard refers to a judgment delivered by the Court on 11 October 1977 (Case 125/76, *Cremer* [1977] ECR 1593) from which it appears in particular that the application of Community provisions "must in no case be extended to cover abusive practices of an exporter".

After stating that, for reasons of legal certainty, the operation of a rule enabling payment of a compensatory amount to be refused where there is an abuse or fraudulent exploitation of Community law should of course be limited to those cases where it had been possible to prove that a commercial transaction was purely speculative, the Commission proposes that the following answers should be given to the questions raised by the Københavns Byret:

"1. The provisions relating to the 'accession' compensatory amounts, including Regulation No 269/73, must be interpreted as meaning that entitlement to the 'accession' compensatory amount and to release of the security in the case of advance fixing is subject to the condition that exportation from one Member State to another Member State fulfils the purpose for which the system was established, namely the offsetting of differences between price-levels in those Member States. Accordingly, the imported goods should actually be placed on the market in the importing country.

2. Exportation from one Member State to another Member State, which is proved to be devoid of any economic objective by reason of the fact that its sole purpose is to exploit differences existing between the compensatory amounts fixed by the Community, constitutes a fraudulent practice or an abuse of the Community system and does not give rise to entitlement to a compensatory amount or to release of a security furnished in the case of advance fixing."

III — Oral procedure

The defendants in the main action, represented by H. Viltoft of the Copenhagen Bar, and the Commission of the European Communities represented by H. P. Hartvig, a member of its Legal Department, acting as Agent, presented oral argument at the sitting on 30 June 1981.

The Advocate General delivered his opinion at the sitting on 29 September 1981.

Decision

1 By order of 17 October 1980 received at the Court on 13 November 1980 the Københavns Byret [Municipal Court, Copenhagen] referred to the Court of Justice a question for a preliminary ruling under Article 177 of the EEC Treaty on the interpretation of Article 5 (2) of Regulation No 269/73 of the Commission of 31 January 1973 laying down detailed rules for the application of the system of "accession" compensatory amounts (Official Journal 1973, L 30, p. 73) as amended by Article 2 of Regulation No 1466/73 of the Commission of 30 May 1973 (Official Journal 1973, L 146, p. 13).

2 The question arose in proceedings brought by the Statsadvokat for Særlig Økonomisk Kriminalitet [Assistant Public Prosecutor empowered to institute proceedings for offences of an economic nature] against an international wheat-dealer and three of its employees, who were charged with infringement, on the occasion of the exportation of wheat from Denmark intended for the Federal Republic of Germany, of certain provisions of Danish law relating to the implementation of Community provisions establishing a common market for agricultural products, and the Danish prosecuting authority sought reimbursement both of the "accession" compensatory amounts paid in respect of that export and of the security which had been released without justification.

3 Regulation No 269/73 of the Commission, of which the national court requests interpretation, provides in Article 5 (1) that the "accession" compensatory amount "shall be paid only upon proof that the product in respect of which customs export formalities have been completed has left the geographical territory of the Member State in which the formalities were completed". It adds in paragraph (2) that "where the compensatory amount is applicable for a product for which no refund is fixed, it shall be paid only

upon proof that, further, import formalities have been completed and duties and taxes of equivalent effect payable in the Member State of destination have been collected".

4 The last subparagraph of that paragraph, as amended by Regulation No 1466/73 of the Commission, provides additionally that the proof "shall be furnished by production of the control copy referred to in Article 1 of Regulation (EEC) No 2315/69", namely the intra-Community transit document known as T/5. Finally, in (b) of the same subparagraph it is provided that, among the special endorsements to be made on the control copy, Section 104 must be completed by deleting as necessary and inserting one of the following:

"intended for entry for home use"

"Bestemt til afsætning til forbrug"

"Für den freien Verkehr bestimmt"

"Destiné à être mis à la consommation"

"destinato ad essere immesso in consumo"

"Bestemd om in het vrije verkeer te worden gebracht".

5 It is apparent from the file on the case and from the order making the reference to the Court for a preliminary ruling, that a wheat-dealer, one of the accused in the main action, obtained pursuant to Article 6 of Regulation No 229/73 of the Council of 31 January 1973 (Official Journal 1973, L 27, p. 25) by a certificate issued on 29 July 1975 advance fixing of an "accession" compensatory amount in its favour for the exportation of 5 000 tonnes of wheat to the United Kingdom from Denmark, at the rate of 24.05 units of account per tonne — which was subsequently reduced to 26.62 units of account pursuant to Article 4 (2) of Regulation No 3280/73 (Official Journal 1973, L 337, p. 11) — and for that purpose furnished a security of three units of account per tonne.

6 On 27 August 1975 it also obtained from the Belgian authorities advance fixing of "accession" compensatory amounts to be paid by it for the importation of the wheat, which originated from Denmark and the United Kingdom, into a Member State of the Community as originally constituted. The compensatory amount to be paid amounted in the case of the United Kingdom to two units of account per tonne and the security to be furnished

was three units of account per tonne. The certificate in respect of the advance fixing was valid until 25 October 1975.

7 On 4 September 1975 the dealer concluded a contract for the sale of 1 800 tonnes of Danish wheat to an undertaking in Bremen in the Federal Republic of Germany. On 15 September 1975 it sold an identical quantity of the same goods to an English undertaking and on the following day re-purchased the same tonnage from that undertaking at an increased price of UKL 3.35 per long ton. In the meantime, by telex messages of 15 and 19 September 1975 the defendant in the main action chartered three vessels from a British shipowner, giving the following instructions: "for destination Lowestoft" — "discharging and reloading into the same vessel" — "final destination: Bremen".

8 Those vessels left Denmark on 17, 23 and 25 September 1975 and transported the abovementioned 1 800 tonnes of wheat belonging to the exporter in question to Lowestoft, in the United Kingdom, where it was discharged. Once the import formalities were completed it was reloaded and re-exported to Bremen where it arrived on 26 September, 1 and 13 October 1975.

9 Since the "accession" compensatory amount in question applied to a product for which no refund was fixed, the exporter was obliged — by virtue of Article 5 (2) of Regulation No 269/73 — to complete control copy T/5. For that purpose, it specified the United Kingdom in that document as the destination of the product in question and stated in Section 104 that the product was "Bestemt til afsætning til forbrug" ("intended for entry for home use"). By virtue of that copy, which had been duly endorsed by the British import authorities, the exporter received a compensatory amount in Denmark of 20.62 units of account per tonne and his security was released. On effecting the importation into the Federal Republic of Germany on the other hand, he paid, on the basis of the importation certificate obtained in Belgium, an "accession" compensatory amount of two units of account per tonne and the security in respect thereof was released.

10 Having regard to the particular features of this exportation and to the statements made on the T/5 control copy submitted to the Danish authorities, the Statsadvokat for Særlig Økonomisk Kriminalitet, by

indictment of 14 November 1979, charged the exporter and three of its employees with making an incorrect and misleading declaration to those authorities by indicating on the control copy that the exportation was to the United Kingdom whereas the goods had been immediately re-exported from that Member State after completion of the customs import formalities.

11 The accused, whilst admitting that even before the exportation from Denmark to the United Kingdom it had been envisaged that the goods in question would be delivered to a customer in the Federal Republic of Germany, contended that such a transaction did not conflict with Community rules. In support of that assertion they relied on the German wording of the second subparagraph of Article 5 (2) of Regulation No 269/73, as amended by Regulation No 1466/73, and in particular the endorsement to be made in Section 104 of the T/5 control copy, from which it appeared, in their opinion, that the proof required by the second subparagraph of paragraph (2) is that "import formalities have been completed and duties and taxes of equivalent effect payable in the Member State of destination have been collected", a condition which, they contend, they fulfilled by completing customs clearance in the United Kingdom.

12 In view of those arguments and having regard to the discrepancy in that respect between the various language versions of the second subparagraph of Article 5 (2) and of the fourth recital in the preamble to Regulation No 269/73, the Københavns Byret, considering that the decision to be given in the case involved an interpretation of the applicable Community law, referred the following question to the Court:

"Is a Member State (A) in a case where it has issued an advance-fixing certificate concerning an "accession" compensatory amount on the export of wheat to a second Member State (B) entitled pursuant to Article 5 (2) of Regulation (EEC) No 269/73 of the Commission, as amended by Article 2 [1] of Regulation (EEC) No 1466/73, to refuse payment of the amount to the claimant if the wheat is placed in free circulation, for customs purposes in B, and the claimant submits a control document issued in B, as referred to in Regulation (EEC) No 2315/69 of the Commission, *inter alia* containing the information 'Bestemt til afsætning til forbrug' [literally 'intended for sale for use', translated as 'intended for entry for home use'] or 'Für den freien Verkehr bestimmt' but the wheat is placed in free circulation in B for the sole purpose of its re-exportation immediately thereafter to a third Member State (C)? In this connection it is assumed that the provisions concerning the

1 — *Translator's note:* The relevant article is in fact Article 1.

'accession' compensatory amounts are observed in relation to the exportation from B to C."

13 Having regard to the disparity between the various language versions of the abovementioned provisions of Regulation No 269/73, it is appropriate, in order to answer the national court's question, to place those provisions and the regulation of which they form part within the context of the totality of the Community rules concerning the system of "accession" compensatory amounts and to interpret them with particular regard to the objectives of that system.

14 The legal basis of the system of "accession" compensatory amounts is to be found in Articles 55 to 58 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties. It may be seen from Article 55 (1) that the system in question is intended to offset differences of price-levels in trade between the new Member States and between those States and the Community as originally constituted and that it provides, to that end, for the payment of compensatory amounts levied by the importing State or granted by the exporting State. By making such provision, Article 55 of the Act of Accession thus indicates that the system of "accession" compensatory amounts is applicable only if there is actual trade in the products in question between the exporting State and the importing State.

15 In laying down the general rules relating to application of the above-mentioned system for cereals and other products, Regulation No 229/73 of the Council states in addition, in the ninth recital of its preamble, that the object of the "accession" compensatory amounts in intra-Community trade is "to promote the satisfactory circulation of products between Member States with different price levels" and thus confirms that the system in question operates only if the goods concerned actually move between the two States and if, by reason of the marketing of those goods within the State designated as the importing State, such price-difference as may exist between that Member State and the exporting Member State constitutes an economic factor which really affects trade between the two States.

16 It may be seen therefore from those rules that the mere fact that a product originating in a new Member State or in the Community as originally

constituted has remained on the territory of the Member State designated as the importing State solely for the purpose and for the duration of completion of the customs formalities and, without being marketed in that State, has immediately been re-exported so as to be marketed in a third Member State, is insufficient to justify the application between the exporting State and the importing State of an "accession" compensatory amount. Since in such circumstances the objective of offsetting prices has not been attained, an essential condition for application of an "accession" compensatory amount has not been fulfilled.

17 In view of all the foregoing considerations, the disparity between the various language versions of the control copy referred to in the second subparagraph of Article 5 (2) of Regulation No 269/73 is not to be considered as compelling acceptance of the view that the proof which must be provided by the control copy in question for the purposes of payment of the "accession" compensatory amount is limited to completion of customs formalities in the Member State of destination, whether or not the product in question is actually marketed in that State. On the contrary, the very fact that Regulation No 1466/73 of the Commission supplemented the original wording of that article by means of a provision requiring submission of the T/5 control copy with the endorsements provided for in Section 104, indicates that the abovementioned proof goes beyond mere completion of the customs formalities prescribed by the unamended wording of that provision and must be understood, in the light of the objectives and the system of the provisions governing the scheme in question, as including marketing of the product in question in the Member State designated as the State of destination.

18 For those reasons, it is therefore appropriate to state in reply to the national court's question that Article 5 (2) of Regulation (EEC) No 1466/73 of the Commission of 30 May 1973, must be interpreted as meaning that an exporter who sends agricultural products to a new Member State from a Member State which applies higher prices may not claim payment of "accession" compensatory amounts if the completion of customs formalities in the Member State declared to the competent authorities in the exporting Member State as the State of destination is not followed by the effective release of those products on to the market of the latter State.

Costs

The costs incurred by the Commission of the European Communities, which has 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 action 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 Københavns Byret, by order of 17 October 1980, hereby rules:

Article 5 (2) of Regulation (EEC) No 269/73 of the Commission of 31 January 1973, as amended by Regulation (EEC) No 1466/73 of the Commission of 30 May 1973, must be interpreted as meaning that an exporter who sends agricultural products to a new Member State from a Member State which applies higher prices may not claim payment of "accession" compensatory amounts if the completion of customs formalities in the Member State declared to the competent authorities in the exporting Member State as the State of destination is not followed by the effective release of those products on to the market of the latter State.

Mertens de Wilmars Bosco Touffait

Due Pescatore Mackenzie Stuart O'Keeffe

Koopmans Everling Chloros Grévisse

Delivered in open court in Luxembourg on 27 October 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President