without prejudice to the observance of the conditions laid down by Community provisions with regard to the time and method of the control.

4. The common organizations of the agricultural markets can only carry out their functions if the provisions which establish them are applied uniformly throughout all the Member States.

In Case 26/72

Reference to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven for a preliminary ruling in the action pending before that court between

NV VEREENIGDE OLIEFABRIEKEN, formerly H. SPITS & ZN. en H. DE HAAN & ZN., having its registered office in Rotterdam,

and

PRODUKTSCHAP VOOR MARGARINE, VETTEN EN OLIËN (Public Agency for Margarine, Fats and Oils) of The Hague,

on the interpretation of Regulation No 2403/69 of the Commission of 1 December 1969 on special conditions for granting export refunds on certain pigmeat products and of Regulation No 1041/67 of the Commission of 21 December 1967 on detailed rules for the application of export refunds on products subject to a single price system,

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore (Rapporteur), Presidents of Chambers, A. M. Donner and J. Mertens de Wilmars, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

## JUDGMENT

# Issues of fact and of law

### I — Facts and procedure

Pursuant to Article 1(1) and Article 15 of Regulation No 121/67 of the Council of 13 June 1967 on the common organization of the market in pigmeat (OJ, Special Edition, 1967, p. 46) a refund equal to the difference between the quotations or prices on the world market and prices in the Community may be granted on the export to third countries of the products referred to by the said regulation, in particular lard and other rendered pig fat (heading 15.01 of the Common Customs Tariff).

The provisions concerning export refunds for the products covered by Regulation No 121/67 were determined by Regulation No 177/67 of the Commission of 27 June 1967 laying down general rules for granting export refunds on pigmeat and criteria for fixing the amount of such refunds (OJ, Special Edition, 1967, p. 146).

Article 1(1) of Regulation No 1041/67 of the Commission of 21 December 1967 on detailed rules for the application of export refunds on products subject to a single price system (OJ, Special Edition, 1967, p. 323) states that for the purposes of determining the rate of the refund the date of exportation shall be the day on which the customs authority accepts the document by which the declarant states his intention to export the products in question and qualify for a refund. Under the terms of Article 1(2), acceptance of that document shall be considered to be the completion of the customs export formalities.

According to Article 1(3), the day on which the customs export formalities are completed shall be the operative date for determining the quantity, nature and characteristics of the product exported.

By Regulation No 2403/69 of 1 December 1969 on special conditions for granting export refunds on certain pigmeat products (OJ, Special Edition 1969, II, p. 523) the Commission laid down additional conditions intended to restrict refunds exclusively to products which, in the form in which they are exported, correspond to certain criteria of quality with regard to their composition, preparation and packaging.

Under the terms of Article 1(1) of this regulation, without prejudice to other Community provisions, and in particular those of Regulation No 1041/67, the refund shall be granted only where:

(a) the products in question comply with the conditions laid down in Annex I; and

(b) the exporter, at the time of the conclusion of customs export formalities within the meaning of Article 1(2) of Regulation No 1041/67, declares in writing that the products in question fulfil those conditions.

With regard to the products coming under tariff subheading 15.01 A II a (lard and other rendered pig fat intended for the manufacture of foodstuffs) Annex I to Regulation No 2403/60 provides the particular condition that they must have a minimum 'Bömer' value of 73.

Article 2(1) of Regulation No 2403/69 states that controls by sampling for the observance of the conditions laid down in Article 1 shall consist of:

(a) an organoleptic examination; and

(b) physical and chemical analyses carried out by applying the methods laid down in Annex II.

Annex II provides that the methods of analysis shall be those operative on the date of entry into force of the regulation.

It states that the 'Bömer' value must be

determined according to the method known as the diethyl ether method or the acetone method (Source: ISO/TC 34/SC 6/WG 3/N 73).

On 18 June 1970 the undertaking Handelsmaatschappij Stern en Spierenburg NV, of Rotterdam, the subsidiary of NV Vereenigde Oliefabrieken, declared for export a quantity 100 698 kg of refined lard packed in 6 000 tins.

The following was stated on the export form: 'Refined lard—refund of the agriculture levy—tariff heading 15.01 A II a—complies with the criteria as to quality laid down in Annex I to Regulation (EEC) No 2403/69'.

The goods left the geographical territory of the Netherlands for Bolivia on 10 July 1970.

During packaging, the Rijkstoezicht op de Bereiding van Eetbaar Vet (the National Office for the Supervision of the Preparation of Edible Fats) continuously took samples of the product which was prepared as one quantity.

It then established an average sample on the basis of the various samples taken and arranged for its 'Bömer' value to be determined by the Central Instituut voor Voedingsonderzoek (Central Institute for the Analysis of Foodstuffs), at Zeist, according to the ether method in compliance with the provisions of the Netherlands Pharmacopoeia (Netherlands standard 1046 III/X).

The check gave a value of 74.3. On 18 June 1970, the date of the export declaration, the officials of the Netherlands customs administration took a sample consisting of two tins of the relevant goods.

This sample was analysed by the Rijkszuivelstation (National Institute for Dairy Products) at Leiden.

A first analysis gave a 'Bömer' value of 72.2 and the second produced a value of 72.5.

By letters of 5 October and 27 November 1970 NV Vereenigde Oliefabrieken requested the Produktschap voor Margarine, Vetten en Oliën to pay it the amount of the relevant refund.

By a decision of 17 December 1970, confirmed by a decision of 2 February 1971 taken in response to complaints by NV Vereenigde Oliefabrieken dated 21 and 29 December 1970 and 6 January 1971, the Produktschap refused to pay the refund in question on the ground that the 'Bömer' value was 72.5 and that consequently the goods did not satisfy the condition laid down in Annex I to Regulation No 2403/69, which requires a minimum 'Bömer' value of 73.

The matter was brought before the College van Beroep voor het Bedrijfsleven by an application lodged on 1 March 1971.

By an order of 9 May 1972 it decided to stay proceedings until the Court of Justice gave a preliminary ruling on the following questions:

1. Must Article 2 of Regulation No 2403/69, read in conjunction with Article 1 of Regulation No 1041/67 and any other relevant provisions of Community law, be interpreted to mean that the control referred to by this article must be carried out exclusively on samples taken on the day laid down in Article 1 of Regulation No 1041/67 or must Article 2 be interpreted to mean that such control may also be carried out on samples taken some time before the said day?

2. Must Article 2(1) of Regulation No 2403/69 and Annex II(1) to that regulation, read together with the footnote to that annex, be interpreted to mean that the 'Bömer' value of refined lard must be determined according to the method laid down in Annex II(1) to Regulation No 2403/69 in the following manner ISO/TC 34/SC 6/WG 3/N 73?

3. Does a correct interpretation of Article 2(1) of Regulation No 2403/69 imply the restriction of the control by sampling, understood in the sense envisaged by this provision, of the 'Bömer' value of a quantity of refined lard having a nett weight of 10 698 kg packed in 6 000 tins to the analysis of the contents of two of such tins?

4. Must Article 2(1) of Regulation No 2403/69 be interpreted to mean that only the result of an analysis based on a control by sampling, understood in

the sense envisaged by this provision, must be taken into consideration in deciding whether the condition as to the 'Bömer' value has been fulfilled or, on a correct interpretation of this provision, must account be taken in addition, or if appropriate exclusively, of the result of an analysis fulfilling the conditions laid down in this respect by the same provision and adopted thereunder, despite the fact that such analysis was not carried out on samples taken by random sampling but on the basis of a large number of samples taken continuously from the relevant quantity?

The order of the College van Beroep voor het Bedrijfsleven was received at the Court Registry on 10 May 1972.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 14 July 1972 by the plaintiff in the main action, on 25 July by the Government of the Kingdom of the Netherlands and on 27 July by the Commission of the European Communities.

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

The oral observations of the Commission of the European Communities and its replies to the questions put by the Court were heard on 28 September 1972.

The Advocate-General delivered his opinion at the hearing on 5 October 1972.

In the procedure before the Court the plaintiff in the main action was represented by Ina H. Wildeboer, Advocate, of Rotterdam, the Government of the Kingdom of the Netherlands by E. L. C. Schiff, Secretary-General of the Ministry for Foreign Affairs, and the Commission by its Legal Advisers, J. H. J. Bourgeois and P. Kalbe.

## II — Observations submitted to the Court

The written and oral observations submitted to the Court may be summarized as follows:

### A — Admissibility

The *Commission of the European Communities* expresses doubts as to the admissibility of the questions forming the subject-matter of the request for a preliminary ruling since Questions 3 and 4 in particular, as they have been worded, relate less to an interpretation of Community law than to a decision on questions of fact and on questions of the application of the law to a particular case.

### B — The substance of the case

#### 1 — *The time when the samples must be taken (Question 1)*

*NV Vereenigde Oliefabrieken*, the plaintiff in the main action, states that, although the objective of Article 1(3) of Regulation No 1041/67 is to determine the nature and characteristics of the products exported on the day of exportation, that is to say, the day on which the customs export formalities are completed, this by no means implies that the samples must always be taken on that same day.

The 'Bömer' value for a consignment of lard is invariable; its determination does not depend on the time when the sample was taken. When, as in the present case, a sample which was correctly taken some days previously is representative of the consignment as a whole and when the result of the analysis was obtained on the basis of such sample this fact establishes the 'Bömer' value applicable to the said consignment on the day of exportation.

The *Netherlands Government* observes that Article 1 of Regulation No 1041/67 provides merely that with regard to the granting of export refunds the quantity, nature and characteristics of the product exported must be determined according to the condition of the goods on the day on which the customs authority accept the export declaration; the regulation does not contain any more detailed provision on the manner in which the relevant authority shall arrive at its appraisal. It is thus for the Member States to adopt measures in this connexion.

If, in accordance with national provisions, samples must be taken, it is of little importance that the sample was taken and analysed before or after the day of exportation; the results of test must always be related to the operative day for determining the characteristics of the product. The decisive characteristics are thus those which the product must reasonably be held to have displayed on the day when the customs authority accepted the document by which the applicant stated his intention to export the products in question and qualify for a refund.

Regulation No 2403/69 does not make any amendment in this respect. Article 1 imposes a supplementary condition with regard to the granting of the refund: the exporter must declare in writing that the products in question fulfil the conditions referred to by the regulation. Article 2 contains technical instructions on the procedure of the test and the analysis and states that the control shall be carried out by sampling. Those technical instructions guarantee the uniformity of methods of control in all the Member States. The provision whereby the control shall be carried out by sampling merely imposes a minimum condition and in no way precludes a more thorough control; no information is given regarding the time when such control must be carried out.

With regard to products the characteristics of which are capable of changing with the passage of time, for example perishable foodstuffs, control by sampling must clearly take place on a date as close as possible to that of the customs formalities; for products—like those in question in the main action—the characteristics of which are not subject to alteration there is nothing to prevent control by sampling and testing of the samples at an earlier date provided, naturally, that it is ensured that the sample and the consignment submitted for export are identical.

The *Commission* considers that Community law does not expressly fix the time when control by sampling must be carried out and that the document ISO/TC 34/SC 6/WG 3/N 73 to which it refers does not specify the procedure to be followed for taking the samples.

In the present state of affairs it is thus for the Member States to ensure, with regard to the various products to be exported, the observation of the conditions prescribed for the granting of refunds and to fix the operative time for taking the samples. With regard to questions of fact it is for the administrations or the courts of the Member States to decide in each case whether the method employed in taking samples from a specific consignment of products is capable of ensuring compliance with those conditions.

Nevertheless the Member States do not enjoy complete freedom in this respect. The nature of the case as well as the wording and the objective of the relevant provisions gives rise to the following considerations:

— In view of the fact that the determining factors for granting the refund are the nature and characteristics of the goods at the time when the customs authority accepts the export declaration, every sample must necessarily be taken in such a way that it is possible to establish with certainty those characteristics at the operative time.

This condition is fulfilled first by samples taken at the time when the customs formalities are completed; it is not always possible to determine precisely the characteristics of the goods exported from samples taken some time before that day. The risk of a change occurring in the original characteristics of the goods analysed by reason of the composition of the product or after storage increases with the passage of time after taking the samples; on the other hand, the risk of disparity diminishes the closer the time of sampling is to the time of exportation.

— Since the refund is only granted on products which are actually exported and which by their nature and characteristics qualify for a refund, it is of decisive importance that the goods analysed should conform to the goods exported. Each sample should thus be taken in such a way that there is no doubt as to the real identity of the goods

analysed and the goods exported. This is the case when the sample of the relevant consigment in question is taken by the competent customs authority at the time when the customs export formalities are completed. On the other hand it is difficult to establish with absolute certainty that samples taken at an unspecified time on the premises of the undertaking by way of control of the production of foodstuffs or by the producer himself really comes from a specific consignment of products exported at a particular time.

2. *The method of analysis (Question 2)*

*NV Vereenigde Oliefabrieken* emphasizes that, although Annex II to Regulation No 2403/69 prescribes exclusively the ether method or the acetone method for determining the 'Bömer' value, it only mentions as a mere source, but not as the only one admissible, the ISO/TC 34/SC 6/WG 3/N 73 method. It is clear from the wording of the provision specifying the means for determining the other characteristics listed in Annex II that this method is not the only one which may be employed. This is confirmed by the fact that at present the ISO/TC 34/SC 6/WG 3/N 73 method has not yet been fixed officially but still remains at the stage of a draft recommendation.

The *Netherlands Government* considers that the ISO/TC 34/SC 6/WG 3/N 73 method is the only one admitted by the Community provision for determining the 'Bömer' value of refined lard.

The *Commission* observes that a provision laying down conditions regarding uniform quality which products must fulfil in order to qualify for a refund would become largely meaningless if the Member States failed to check in the same way the observation of those conditions and if it were uncertain whether the analysis of the same goods would give the same results at the same time throughout the Community. Since the 'Bömer' value is difficult to calculate and the results depend to a large extent on the method employed, Annex II to Regulation No 2403/69 prescribes that it shall be determined by uniform methods applicable in all the Member States. For practical reasons it was considered preferable to have recourse, even in applying Community law, to the methods of analysis already formulated at international level within the framework of the IOS (International Organization for Standardization) and to refer to the relevant document of that agency.

Since at the time the methods of analysis for determining the 'Bömer' value had not yet been adopted and published by the IOS in the form of official recommendations, the Commission had to be satisfied with a reference to the document in which the competent commission of the IOS provides a definitive description of those methods. In order to avoid any subsequent amendment of those methods which might be effected by the IOS becoming automatically applicable as a provision of Community law, a footnote to Annex I to Regulation No 2403/69 contains an express reservation to the effect that the methods of analysis to be applied are restricted to 'those operative on the date of the entry into force of this Regulation'.

Article 2(1)(b) of Regulation No 2403/69 leaves no room for doubt that a product may only be taken into consideration for the granting of a refund on the sole basis of the methods prescribed and that the results obtained by any other method are invalid. It is of little material importance that reference is made to a document of the IOS rather than to the methods published in the form of recommendations: the methods prescribed are provided in the document cited with as detailed and definitive a description as they would receive in a recommendation.

3. *The extent of the sample (Question 3)*

*NV Vereenigde Oliefabrieken* states that the IOS method—which is still in draft—must contain in particular provisions on the number of samples to be taken and on the method of taking them; the text of the draft recommendation in its present state thus cannot be used in this case.

The control must be effected by sampling. There are two possible interpretations:

— It is unnecessary to check every consignment declared for export; it is sufficient that a consignment taken in isolation for sampling be checked; the control itself must be carried out on the basis of a representative sample.

— The sample itself is arrived at on the basis of random samplings; nevertheless such random sampling taken together must provide a representative sample.

A sample of two tins taken from a consignment of 6 000 tins (0·0333%) cannot constitute a representative sample for determining the 'Bömer' value and it is consequently impossible for it to form the basis of a proper and acceptable control.
The *Netherlands Government* considers that Article 2 of Regulation No 2403/69 does not bring about any change in the legal position of exporters *vis-à-vis* the authority entrusted with granting them refunds. If one or more controls other than those prescribed in the regulation were carried out this could not give rise to the unjustified granting of refunds. Likewise, the question whether a refund was properly refused is purely factual.
Provision of control by sampling cannot be considered as preventing the person concerned from proving, if necessary, by means of evidence to the contrary, that a consignment which he has put forward for export fulfils the requisite conditions. Likewise, the absence of any other provision relating to the extent of the control to be exercised and the consequences relating to it show that it is not intended that the Community provision should be substituted for the complex body of national provisions on controls and tests.
The *Commission* considers that, since the products for which the refund is requested must as a whole fulfil the prescribed conditions as to quality, each sampling must of necessity be carried out in such a way that the analysis of the samples taken provides reliable evidence as to the presence of the required characteristics in the entire consignment exported.
Furthermore, account must be taken of the fact that the tins of lard from which the samples were taken must be opened and that consequently it may be that they can no longer be exported and used as goods in perfect condition. Moreover, the methods of analysis prescribed are relatively stringent. This is why it is necessary, having regard to the costs involved, that the sample should be restricted to a few tins and why Article 2(1) of Regulation No 2403/69 authorizes a control by sampling.
In addition, the number of samples necessary to be sufficiently certain of the characteristics of the consignment under consideration depends to a large extent on the nature of the products and on the conditions under which they are sent and exported. If the competent customs administration is correct in supposing, on the basis in particular of the declarations made by the exporter when the customs formalities are completed, that the products which make up a specific consignement do not display uniform characteristics, it is difficult to consider that it is sufficient to take only two samples from a consignment having a total nett weight of 100 598 kg.
On the other hand, if the consignment intended for export is composed exclusively of products which are obtained in the course of one and the same manufacturing process and display uniform characteristics and, moreover, if the goods in question, like lard, by their nature neither mix nor dissociate after manufacture and if, because the goods are packed in hermetic containers, they cannot alter appreciably as to their rancidity and other chemical properties, it may be considered that analysis of a few tins only is sufficient.
The question whether the samples taken may be considered as sufficiently representative to provide a complete guarantee as to the contents of the whole consignment intended for export in a specific case is a question of fact and of the particular application of the law, which is a matter respectively for the competent customs authority or the national courts.

4. *The nature of the sample to be analysed (Question 4)*

*NV Vereenigde Oliefabrieken* considers that, if the sample itself must be taken by

random sampling a sample representing the average of a large number of samples taken continuously must be considered as a sample obtained through numerous random samplings. In any case, there can be no objection to a better means of taking a sample than merely selecting two tins from a consignment of 6 000.

Nevertheless, the control should only be carried out from time to time. The term 'by sampling' appearing in Article 2 of Regulation No 2403/69 relates to control and not to the taking of samples.

The *Netherlands Government* remarks that in accordance with the rules applicable to this sphere in the Netherlands the exporter may demand, when the samples are taken, either that more samples are taken and tested or that a certain number of extra samples are taken and put aside for a supplementary test should the first test prove unsatisfactory.

The *Commission* maintains that the reply to the question whether, in order to verify that the relevant products fulfil the requisite conditions for granting the refund, a separate analysis should be made of each of the samples taken or an analysis should be made of an average sample obtained from all the various samples taken in isolation depends on the nature of the products in question and on the form in which they are exported.

If the products were sent in bulk in large containers, it might be proper to verify the state of the consignment as a whole by analysing an average sample composed of various separate samples taken at various points in the same container, particularly if it is not *a priori* clear that the quantity is homogeneous.

Nevertheless, in the main action the product exported does not consist of an undivided consignment of lard which might vary insignificantly in quality at certain points; on the contrary the consignment for export consisted of separate tins in which the lard was packed and thus set apart as an individual export so that the plaintiff in the main action could only claim an export refund for the tins the contents of which fulfilled the minimum conditions as to quality. In those circumstances, the samples taken should have been tested separately, since an average sample indicates a product which does not exist in that form in the tins analysed and which consequently does not afford a sufficient guarantee with regard to the contents of the tins considered separately.

## Grounds of judgment

1 By an order of 9 May 1972 which reached the Court on 10 May 1972 the College van Beroep voor het Bedrijfsleven requested the Court, in accordance with Article 177 of the EEC Treaty, to give a preliminary ruling on the interpretation of certain provisions of Regulation No 2403/69 of the Commission of 1 December 1969 on special conditions for granting export refunds on certain pigmeat products (OJ, Special Edition, 1969 II, p. 523), together with Regulation No 1041/67 of the Commission of 21 December 1967 on detailed rules for the application of export refunds on products subject to a single price system (OJ, Special Edition, 1967, p. 323), with regard to conditions for granting export refunds on the exportation of refined lard and to the methods of control applicable.

## Question 1 (the time of taking samples)

2 In the first question the Court is asked to rule whether Article 2 of Regulation No 2403/69—read in conjunction with Article 1 of Regulation No 1041/67 and any other relevant provisions of Community law—must be interpreted to mean that the control of the conditions as to quality laid down by this regulation must be carried out exclusively on samples taken on the day when the customs export formalities are completed or whether the control may be carried out on samples taken earlier.

3 Article 2 of Regulation No 2403/69 does not expressly fix the time when the control must be carried out on the goods submitted for the refund.

4 On the other hand, Article 1 of the same regulation states that the refund shall be granted only where the exporter, 'at the time of the conclusion of the customs export formalities within the meaning of Article 1(2) of Regulation No 1041/67/EEC' declares in writing that the products in question fulfil the conditions referred to by the regulation.

5 In its turn Article 1(3) of Regulation No 1041/67 provides that 'The day on which the customs export formalities are completed shall be the operative date for determining the quantity, nature and characteristics of the product exported'.

6 Those provisions preclude a control carried out before the conclusion of the customs formalities from taking precedence over a control effected at the time when the goods are submitted to the customs, which affords the best guarantees as to the identity of the product exported and the prevention of any fraud.

7 The answer to the first question must thus be that control of the conditions as to quality laid down by Regulation No 2403/69 must be carried out on samples taken at the time of the conclusion of the customs export formalities.

## Question 2 (method of analysis)

8 The second question asks whether Article 2(1) of Regulation No 2403/69 and Annex II(1) to that regulation, read together with the footnote to that annex is to be interpreted to mean that the 'Bömer' value of refined lard must be determined according to the method laid down by the International Organization for Standardization (Document ISO/TC 34/SC 6/WG 3/N 73).

9 Under Article 2 of Regulation No 2403/69 controls for the observance of the conditions to which the payment of the refund is subject shall consist *inter alia* of 'physical and chemical analyses carried out by applying the methods laid down in Annex II'.

10 According to Annex I to the same regulation the goods in question must have *inter alia* a minimum 'Bömer' value of 73.

11 Pursuant to Annex II to the regulation the 'Bömer' value must be determined 'according to the method known as the diethyl ether method or the acetone method'.

12 With regard to the method of analysis, reference is made to the document ISO/TC 34/SC 6/WG 3/N 73 of the International Organization for Standardization.

13 The aim of the provisions the interpretation of which is requested is to restrict the payment of the refund to products of good quality with a high standard of purity.

14 The common organizations of the agricultural market, of which Regulation No 2403/69 forms an integral part, can only function if the provisions in implementation thereof are applied uniformly throughout all the Member States.

15 When in the regulation a specific method of analysis is selected, intended to establish a criterion as to the quality of the goods in question the results obtained by any other method may not be taken into consideration.

16 That this is the conclusion which must be accepted emerges even more clearly from the fact that, according to the explanations given to the Court, the 'Bömer' value is difficult to determine and the result of the analyses varies appreciably according to the method employed.

17 The plaintiff in the main action claims that employment of the method indicated by Regulation No 2403/69 is not obligatory, since the document of the International Organization for Standardization, which is quoted as a 'source' by Annex II, has not been officially adopted and remains merely at the stage of a draft recommendation.

18 The method described by the document of the International Organization for Standardization has been completely established as a method of physical and chemical analysis.

19 The fact that this method has not yet been finally approved by the said Organization did not prevent the Commission from rendering it now and henceforth legally binding within the Community.

20 In accordance with the foregoing, recourse to this method alone in the form of a reference to a document of the International Organization for Standardization must thus be interpreted as constituting a binding obligation and not a mere recommendation.

21 The reply to Question 2 must thus be that, with regard to payment of the refund, only the method of analysis described in Annex II to Regulation No 2403/69 is valid.

## Questions 3 and 4 (Method of taking samples)

22 The third question asks whether a correct interpretation of Article 2(1) of Regulation No 2403/69 allows the restriction of the control by sampling, referred to in that provision, of the 'Bömer' value of a quantity of refined lard having a nett weight of 100 698 kg packed in 6 000 tins to the analysis of the contents of only two such tins.

23 The fourth question asks in addition whether Article 2(1) of Regulation No 2403/69 must be interpreted to mean that only the result of an analysis based on a control by sampling must be taken into consideration or whether account must be taken in addition, or if appropriate exclusively, of the result of an analysis fulfilling the conditions laid down by the regulation despite the fact that such analysis was not carried out on samples taken by random sampling but on the basis of a large number of samples taken continuously from the relevant quantity.

24 According to Article 1 of Regulation No 2403/69 the exporter must, in order to obtain the refund, declare in writing that the products in question fulfil the conditions laid down by the regulation.

25 The fulfilment of those conditions can only be appraised on the basis of the provisions as to quality and the methods of analysis laid down by Annexes I and II.

26 According to Article 2 of the regulation the declaration by the exporter shall be followed by a control 'by sampling' carried out by the competent authority.

27 Although the conditions prescribed by the Community provisions must be observed with regard to the time and method of the control, only the national court may appraise the validity of a control carried out in a particular case taking into account, on the one hand, the nature, the characteristics and the packaging of the goods and, on the other hand, any rights of complaint and re-testing conferred on the exporter under the national legal system, and to decide the consequences to be drawn therefrom.

## Costs

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

29 As the 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 College van Beroep voor het Bedrijfsleven, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral observations of the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation No 2403/69 of the Commission of 1 December 1969 on special conditions for granting export refunds on certain pigmeat products and Regulation No 1041/67 of the Commission of 21 December 1967 on detailed rules for the application of export refunds on products subject to a single price system;
Having regard to the Protocol on the Statute of the Court of Justice of the European Communities, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the College van Beroep voor het Bedrijfsleven by order of 9 May 1972, hereby rules:

1. **Article 2 of Regulation No 2403/69 of 1 December 1969 on special conditions for granting export refunds on certain pigmeat products, read in conjunction with Article 1 of Regulation No 1041/67 of 21 December 1967 on detailed rules for the application of export refunds on products subject to a single price system, must be interpreted to mean that control of the conditions as to quality laid down by Regulation No 2403/69 must be carried out on samples taken at the time when the customs export formalities are concluded.**
2. **Article 2(1) of Regulation No 2403/69 together with Annex II(1) thereto, read in conjunction with the footnote to that annex, must be interpreted to mean that the 'Bömer' value of refined lard must be determined solely in accordance with the method laid down by the International Organization for Standardization referred to in the said annex.**
3. **In a specific case the national court must appraise the validity of a control carried out 'by sampling' and decide the consequences resulting from its appraisal.**

Lecourt Monaco Pescatore

Donner Mertens de Wilmars

Delivered in open court in Luxembourg on 26 October 1972.

A. Van Houtte
Registrar

R. Lecourt
President

# OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 5 OCTOBER 1972[1]

*Mr President,*
*Members of the Court,*

## I — *The facts*

The preliminary questions submitted to the Court by the College van Beroep het Bedrijfsleven (the Netherlands Court of Appeal in economic matters) in accordance with Article 177 of the Treaty of Rome lead the Court to interpret certain provisions of secondary Community law. Consideration of these questions also requires the Court to make an incursion into the realms of organic chemistry.

This dispute in fact relates to the application of certain methods of chemical analysis of a product intended for human consumption which was brought before the Netherlands court in circumstances of which I shall briefly remind the Court.

On 18 June 1970 the undertaking Handelsmaatschappij Stern en Spierenburg, the subsidiary of the limited company Vereenigde Oliefabrieken of Rotterdam, declared for export to Bolivia a consignment of 100 698 kg of refined lard packed in 6 000 tins each weighing 16.680 kg.

In order to benefit from the export refund provided for this product, the undertaking gave an assurance that the lard conformed to the standards of quality prescribed by the Community regulations. The refund, which is equal to the difference between the price on the world market and the price in the Community, may in fact be granted at the time of the exportation to a third country of lard and other rendered pig fats coming under tariff heading 15.01 A II in implementation of Regulation No 121/67 of the Council of 13 June 1967 on the common organization of the market in pigmeat. The general rules for granting export refunds and the criteria for fixing the amount of such refunds were laid down by Regulation No 177/67 of the Commission of 27 June 1967 whilst the Commission in Regulation No 2403/69 of 1 December 1969 laid down special conditions intended to restrict refunds to products complying with certain criteria as to quality with regard to their composition, preparation and packaging. Annex I requires, amongst other criteria, that the lard shall have a minimum 'Bömer' value of 73 and stipulates that controls for the observance of this condition shall be carried out according to the method known as the diethyl ether method or the acetone method. To describe this method the provision refers to a draft recommendation of the IOS (International Organization for Standardization) concerning the sampling and analysis of animal fats.

1 — Translated from the French.