# JUDGMENT OF THE COURT OF 17 JUNE 1975 [1]

# Pastificio Triestino v Amministrazione delle Finanze dello Stato (preliminary ruling requested by the Pretore di Trieste)

**Case 93/74**

## Summary


1. *Agriculture — Common organization of the market — Conjunctural policy — Currency fluctuations — Monetary compensatory amounts — Derived products — Charge on products imported from third countries — Meaning*
   *(Regulation No 974/71 of the Council, Article 4 (a) (2))*

2. *Agriculture — Common organization of the market — Conjunctural policy — Currency fluctuations — Basic products — Zero levy — Derived products — No compensatory amounts on exports*
   *(Regulation No 974/71 of the Council, Article 4 (1) (2))*

1. The charge on products imported from third countries referred to in Article 4 (a) (2) of Regulation No 974/71 as amended by Regulation No 509/73, must be understood — in respect of the products referred to in Article 1 (2) (b) of the same regulation, whose price depends on the price of the products covered by intervention arrangements under the common organization of agricultural markets — as consisting solely of the variable component intended to take account of the prices of basic products.

2. When the levy on the basic agricultural products is zero, no compensatory amount may be charged on exports of derived products.


In Case 93/74

Reference to the Court under Article 177 of the EEC Treaty by the Pretore of Trieste for a preliminary ruling in the action pending before that court between

PASTIFICIO TRIESTINO

and

1 — Language of the Case: Italian.

AMMINISTRAZIONE DELLE FINANZE DELLO STATO

on the interpretation of the second paragraph of Article 4 (a) (2) of Regulation (EEC) No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (OJ L 106 of 12. 5. 1971, p. 1), as amended by Regulation (EEC) No 509/73 of the Council of 22 February 1973 (OJ L 50 of 23. 2. 1973, p. 1).

THE COURT

composed of: R. Lecourt, President, J. Mertens de Wilmars and A. J. Mackenzie Stuart, Presidents of Chambers, A. M. Donner, R. Monaco, P. Pescatore, H. Kutscher, M.Sørensen and A. O'Keeffe (Rapporteur), Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

# JUDGMENT

## Facts

The judgment making the reference and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Regulation No 974/71 authorizes a Member State which allows the exchange rate of its currency to fluctuate by a margin wider than the one permitted by international rules, to charge compensatory amounts on imports and grant them on exports.

Under Article 1 (2) of the Regulation, compensatory amounts may be applied both to products covered by intervention arrangements under the common organization of agricultural markets and to products whose price depends on the price of those products and which are governed by the common organization of the market or are the subject of a specific arrangement under Article 235 of the Treaty.

Under the last recital of Regulation No 974/71, the compensatory amounts should be limited to the amounts strictly necessary to compensate for the incidence of the monetary measures on the prices of basic products covered by intervention arrangements and applied only in cases where this incidence would lead to difficulties.

As for the way in which the compensatory amounts should be calculated, Article 2 (2) of the regulation provides that in the case of products not covered by intervention arrangements, namely, processed products, the compensatory amounts shall be equal to the incidence, on the prices of the product concerned, of the application of the compensatory amount to the prices of the product on which they depend.

Regulation No 509/73 added an Article, 4 (a), to Regulation No 974/71 under which, in trade between the Member States and with third countries, the compensatory amounts applicable due to the decrease in value of the currency concerned may not be higher than the charge on products imported from third countries.

Part 8 of Annex I of Regulation No 2102/73 of the Commission of 31 July 1973 (OJ L 213 of 1. 8. 1973, p. 1) prescribed Lit. 3 365 per quintal as the compensatory amounts applicable from 1 August 1973 to exports of macaroni, spaghetti and similar products *(pasta)* manufactured from durum wheat meal of Italian origin (tariff heading 19.03).

On 6 August 1973, the plaintiff in the main action, whose registered office is at Trieste, exported to the Federal Republic of Germany a consignment of 202.05 quintals of *pasta* manufactured from durum wheat meal.

On these exports the customs authorities demanded payment of compensatory amounts totalling Lit. 679 940.

The plaintiff in the main action tried to avoid payment of this sum on the ground that, under Article 4 (a) of Regulation No 974/71, which had been added by Regulation No 509/73, these amounts could not be applied because Regulation No 2134/73 of 3 August 1973 (OJ L 216 of 4. 8. 1973, p. 1) had, for the period involved (from 4 to 7 August 1973), fixed the levy on durum wheat at zero.

In the belief that the imposition of the said compensatory amounts was illegal, it applied to the Pretore of Trieste for an order for their repayment.

Holding that it was first of all necessary to resolve certain questions of Community law, the Pretore, by order of 7 December 1974, stayed proceedings and referred to the Court of Justice under Article 177 of the EEC Treaty for a preliminary ruling on the following questions:

'1. Must the charge on imported pasta for the purposes of the application of Article 4 (a) (2) of Regulation No 509/73 be considered as constituted solely by the variable component, or by the variable component plus the fixed component, both prescribed by Regulation No 160/66?

2. If the charge on imports under question 1 above is constituted solely by the variable component, could Italy legitimately apply the monetary compensatory amount, prescribed by Regulations Nos 974/71, 648/73 and 1463/73 and consisting in a charge of Lit. 3 365 per 100 kg of the product concerned (see Regulation No 2102/73/EEC, Part 8, CCT heading No 19.03) to the export of pasta to the Member States and to third countries effected during the time when the levies on the basic agricultural product — durum wheat — (representing the variable component relating to pasta) were zero and, in any case, if the levy on the importation of the basic agricultural product were greater than zero, could the monetary compensatory amount on exportation be higher than that levy?

The reference was registered at the Court on 13 December 1974.

The plaintiff in the main action submitted written observations pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to proceed without a preparatory inquiry.

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

*(a) First question*

In the Commission's view, there is no new factor which would justify reconsideration of the question which, in its judgment of 12 November 1974, Case 34/74, [1974] ECR 1217, *S.A. Roquette Frères v French State,* the Court answered in the following terms:

The 'charge on products imported' from third countries, referred to in Article 4 (a) (2) of Regulation No 974/71, as amended by Regulation No 509/73, must be understood — in respect of the products referred to in Article 1 (2) (b) of the same Regulation, whose price depends on the price of the products covered by intervention arrangements under the common organization of agricultural markets — as consisting solely of the variable component intended to take account of the prices of basic products.

The plaintiff in the main action contends that in that judgment there is some element of support from the Court for its contention that the charge on imports referred to in Article 4 (a), as amended by Regulation No 509/73, must be related to the basic product alone.

The Court ruled, contrary to what the Commission stated in its observations, that the fixed component could not form one of the charges on imports since this would mean that exporters of derived products would have to pay a charge which was unrelated to currency fluctuations.

The same conclusion must apply in cases where the variable component, likewise, has no apparent connexion with currency fluctuations, which is the situation in the case of exports of *pasta* manufactured from basic products on which the said fluctuations have not had any real incidence.

*(b) Second question*

The *Commission* maintains that the question can be looked at from two points of view.

1. In the case where the charge on imports consists of the variable component alone, can a Member State apply that part (if any) of the monetary compensatory amount which exceeds the amount of the variable component?

The Commission claims that it is impossible for it, in fixing the compensatory amounts, to allow for the principle of subtraction every time there is a change in the charge on imports. The factors on which the compensatory amounts and the charge on imports depend are different and they occur at different times. Consequently, it is for the Member States to weigh the situation up in each specific case. On this basis the question must be answered in the negative since Article 4 (a) of Regulation No 974/71 leaves no room for discretion within which the Member States can work.

2. If the charge on imports consists of the variable component alone, is Article 4 (a) of Regulation No 974/71 to be interpreted in such a way as to permit application to a processed product of a compensatory amount higher than the levy imposed on imports of the basic product effected on the same date or, in any event, the application of any monetary compensatory amount in circumstances where the levy imposed on imports of the basic product on the date in question is *nil?*

On 6 August 1973, the import levy on durum wheat was nil (Regulation No 2134/73), the compensatory amounts applicable to exports out of Italy of the same product were Lit. 20 151 per metric ton (Part 1 of Annex I of Regulation No 2102/73), the variable component applicable to imports into Italy of *pasta* was Lit. 3 612 per quintal (Annex I of Regulation No 2210/73), the fixed component was 12 % (Annex to Regulation No 1/73), and the compensatory amounts applicable to exports from Italy of these commodities was Lit. 3 365 per quintal (Part 8 of Annex I of Regulation No 2102/73).

Thus the compensatory amounts applicable to *pasta* were not in excess of the amount of the variable component, and this accords with the Court's ruling in *Roquette* (Case 34/74).

In principle of course, when the levy on durum wheat is nil, the variable component which is intended to allow for the incidence on the price of the finished product of the difference in, on the one hand, the price of the basic product within the Community and, on the other, on the world market, should also be nil, but the question cannot be answered in such general terms. While the levy applicable to imports of durum wheat can be fixed daily, the variable component applicable to the processed product is fixed for each quarter by applying Article 6 (2) of Regulation No 159/69 (OJ L 141 of 12. 6. 1969, p. 1), which replaced the regulation (No 160/66) cited by the national court, and under whose terms 'the variable component shall be calculated on the basis of the differences, for the quantity of each basic product to be taken into consideration, between:

(a) the average threshold price for each of the three months of the quarter for which the variable component is fixed; and

(b) the average cif price (excluding special cif prices) or the free-at-frontier price used when fixing the levies on each of the basic products in question, calculated for a period consisting of the first fifteen days of the month preceding the quarter for which the variable component is fixed and the two months immediately preceding'.

This system is necessary because of:

1. the need to take into account the period which elapses between the time when the processed product is imported into the Community and the earlier date when the basic product was used for its manufacture;
2. compelling reasons of an administrative nature;
3. commercial considerations, which means a guarantee that the charges remain stable.

When the question is put in this form the reply must be that the appropriate import charge is that applicable to the processed product and not to the basic product.

The *plaintiff in the main action* stresses that the effectiveness of regulations made by the Commission under Article 155 of the EEC Treaty depends wholly and exclusively on the interpretation placed on the regulations made by the Council. So, in order to demonstrate that only levies imposed upon the basic product are meant to be included in the import charge, the applicant endeavours to interpret the regulations of the Council from several points of view.

*1. Interpretation on the basis of objective*

The application, during the period after 1 August 1973, of the compensatory amounts laid down by Regulation No 2102/73 of the Commission to *pasta* produced results which were contrary to the objective which the Council was hoping to achieve in Regulations Nos 974/71 and 509/73, which was to ensure normal development of market conditions in agriculture. An example

illustrating this is that durum wheat imported from third countries or Member States into Italy on 6 August 1973 and re-delivered in the form of semolina into the Federal Republic of Germany was, in accordance with Article 4 (a); as modified by Regulation No 509/73, not subject to any compensatory amount. Consequently the price of semolina processed into *pasta* in the Federal Republic did not include any compensatory amount. On the other hand, if the semolina had been processed into *pasta* in Italy, it would have been exported into the Federal Republic of Germany at a price enhanced by the compensatory amount.

The outcome is the same when durum wheat used for processing into semolina comes from Italy itself and is exported direct to the Federal Republic.

In both cases competition is distorted and the objectives of Regulation No 974/71 ignored.

*2. Interpretation on the basis of wording*

The last recital, as well as Article 2 (2), of Regulation No 974/71 is concerned with the price of the basic product. In circumstances where there is no variation of price in the basic product, to proceed to apply a compensatory amount is not only pointless but, in view of the final phrase of the recital, prohibited. According to the judgment in *Roquette* (Case 34/74), 'this provision therefore imposes a parallelism between the application of compensatory amounts to basic products and their application to derived products'.

The original purpose of Article 4 (a) was to ensure that compensatory amounts on imports coming from third countries were the same as those applied on exports to any country whatever. It must be applied in a manner which is consistent with economic reality, and to make the application of compensatory amounts on the enormous volume of exports of Italian *pasta* subject to the same treatment as the minute quantity of *pasta* imported into Italy would be to fly in the face of reality.

*3. Interpretation by analogy*

A series of other Community measures, interpreted by analogy, show that the basic product must, in all cases, be used as the basis on which common mechanisms are applicable.

*4. Interpretation on an economic basis*

The machinery of Community agricultural legislation and the very wording of the agricultural market organization identify derived products with the basic product.

As regards the second half of the second question, Article 4 (a) lays down that the compensatory amounts chargeable on exports cannot be higher than the charge on imports of the product coming from third countries, regardless of whether this charge is nil or more.

The applicant in the main action, represented by G. M. Ubertazzi and F. Capelli, of the Milan Bar, and the Commission, represented by G. Marenco, submitted their oral observations at the hearing on 29 April 1975.

The Advocate-General delivered his opinion on 14 May 1975.

## Law

1 By judgment of 7 December 1974, lodged at the Registry on 13 December 1973, the Pretore of Trieste referred to the Court for a preliminary ruling

under Article 177 of the EEC Treaty two questions of interpretation concerning the first paragraph of Article 4 (a) (2) of Regulation (EEC) No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (OJ L 106 of 12. 5. 1971, p. 1), as amended by Regulation (EEC) No 509/73 of the Council of 22 February 1973 (OJ L 50 of 23. 2. 1973, p. 1).

2 The first question asks whether, for the purposes of the application of Article 4 (a) (2) of the said regulation, the charge on imports of macaroni, spaghetti and similar products *(pasta)* must be considered as constituted solely by the variable component, or by the variable component plus the fixed component, both prescribed by Regulation No 160/66.

3 The second question asks whether, if the charge on imports is constituted solely by the variable component, Italy could legitimately apply the monetary compensatory amount, prescribed by Regulation Nos 974/71, 648/73 and 143/73 and consisting in a charge of Lit. 3 365 per 100 kg of the product concerned (see Regulation No 2102/73/EEC, part 8 CCT heading No 19.03) to the export of pasta to the Member States and to third countries effected during the time when the levies on the basic agricultural product — durum wheat — (representing the variable component relating to pasta), were zero and, in any case, if the levy on the importation of the basic agricultural products were greater than zero, could the monetary compensatory amount on exportation be higher than that levy?

4 These questions were raised in the course of proceedings for an injunction brought before the Pretore of Trieste by the applicant in the main action against the Amministrazione delle Finanze dello Stato (Italian Finance Authorities) with the object of obtaining repayment of the compensatory amounts which it had been compelled to pay on exports of pasta at a time when, as there was no charge on imports, no compensatory amount was, by virtue of the provisions of Regulation No 974/71, applicable to the basic product, durum wheat.

First question

5 By judgment of 2 November 1974, in Case 34/74, the Court ruled that the charge on products imported from third countries, referred to in Article 4 (a)

(2) of Regulation No 974/71, as amended by Regulation No 509/73, must — in respect of the products referred to in Article 1 (2) (b) of the same regulation, whose price depends on the price of the products covered by intervention arrangements under the common organization of agricultural markets — be understood as consisting solely of the variable component intended to take account of the prices of basic products.

Second question

6 In order to neutralize the effect on the working of the agricultural markets of the widening of the margins of fluctuation for the currencies of certain Member States, Regulation No 974/71, as supplemented subsequently, introduced compensatory amounts to be charged on imports of agricultural products and granted on exports.

7 The final recital of the preamble to the said regulation emphasizes that the compensatory amounts should be limited to the amounts strictly necessary to compensate the incidence of the monetary measures on the prices of basic products covered by intervention arrangements and that it is appropriate to apply them only in cases where this incidence would lead to difficulty.

8 According to Article 2 (1) of that Regulation, the compensatory amounts shall be fixed in relation of the currency fluctuations recorded for basic products covered by intervention arrangements under the common organization of agricultural markets.

9 According to Article 2 (2) compensatory amounts for derived products shall be equal to the incidence, on the prices of the products concerned, of the application of the compensatory amounts to the prices of the basic product on which they depend.

10 With a view to avoiding, in the case of a fall in value of the currency of a Member State, the application of excessive compensatory amounts likely to disturb markets within the Community, Regulation No 509/73, which supplemented Regulation No 974/71, contains an Article, 4 (a), of which paragraph (2) provides that 'in trade between the Member States and with third countries, the compensatory amounts applicable due to the decrease in value of the currency concerned may not be higher than the charge on products imported from third countries'.

11 The result of the application of this provision, following the increase in price of cereals on the world market, was that compensatory amounts ceased to be charged in respect of trade in durum wheat from the moment when the cif price reached the threshold price, although those amounts remained in force.

12 Regulation No 2102/73 of the Commission of 31 July 1973 (OJ L 213, p. 1) fixed at Lit. 20 151 per metric ton the compensatory amounts applicable from 1 August 1973 to durum wheat (tariff heading 10.01 B) and at Lit. 3 365 per quintal those applicable to macaroni, spaghetti and similar products (tariff heading 19.03), notwithstanding that during the same period the levy on durum wheat had, pursuant to Regulation No 2031/73 of the Commission of 27 July 1973 (OJ No L 207 of 28. 7. 1973, p. 3), since 28 July 1973 been zero, whereas the levy on pasta was for the third quarter of 1973 fixed at Lit. 3 612 per quintal by Regulation No 2210/73 of the Commission of 27 July 1973 (OJ L 231 of 20. 8. 1973, p. 1).

13 It appears that in view of the fact that 167 kg of durum wheat are required for the manufacture of 100 kg of pasta, the compensatory amounts thus prescribed for pasta were necessary to compensate the incidence on these products of the application of compensatory amounts at the rate prescribed in the regulation for the basic product on which they depend.

14 As no compensatory amount had, pursuant to Article 4 (a) (2) of Regulation No 974/1971, been granted on imports or levied on exports of the basic product (durum wheat) as at 6 August 1973, the imposition of compensatory amounts on the derived products would have been contrary to the objective pursued in the final recital of the preamble and to Article (2) of Regulation No 974/71, which require that the compensatory amounts to be applied to the derived product by reason of depreciation of the currency concerned shall be equal to the incidence on the product concerned of the application of the compensatory amount to the prices of the basic product on which it depends.

15 In consequence, Article 4 (a) (2), which was added by Regulation No 509/73, must be taken as meaning that, if no compensatory amount has been charged on the basic product, no compensatory amount may be charged on the derived product.

16 The answer to the second question must, therefore, be that when the levy on the basic agricultural products is zero, no compensatory amount may be charged on exports of derived products.

## Costs

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

18 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, costs are a matter for that court.

On those grounds,

## THE COURT

in answer to the questions referred to it by the Pretore of Trieste, by order of that court dated 7 December 1974, hereby rules:

1. **The charge on products imported from third countries referred to in Article 4 (a) (2) of Regulation No 974/71, as amended by Regulation No 509/73, must be understood — in respect of the products referred to in Article 1 (2) (b) of the same regulation, whose price depends on the price of the products covered by intervention arrangements under the common organization of agricultural markets — as consisting solely of the variable component intended to take account of the prices of basic products.**

2. **When the levy on the basic agricultural products is zero, no compensatory amount may be charged on exports of derived products.**

Lecourt Mertens de Wilmars Mackenzie Stuart Donner Monaco

Pescatore Kutscher Sørensen O'Keeffe

Delivered in open court in Luxembourg on 17 June 1975.

A. Van Houtte — Registrar

R. Lecourt — President