JUDGMENT OF THE COURT
OF 12 NOVEMBER 1974 [1]

Sociéte Roquette Frères
v French State
(preliminary ruling requested by the Tribunal d'instance de Lille)

'Compensatory amounts'

Case 34/74

Summary

Agriculture — Common organization of the market — Short-term economic policy — Fluctuation of currencies — Monetary compensatory amounts — Objective — Derived products — Charge on products imported from third countries — Concept (Regulation No 974/71, Article 4a (2))

The sole objective of the introduction of monetary compensatory amounts is to neutralize the effect of disturbances arising in agricultural trade provoked by the fluctuation of exchange rates for the currencies of certain Member States; for derived products, the compensation of such fluctuations should be in proportion to the incidence, on the prices of the products concerned, of the application of the compensatory amount to the basic product.

The 'charge on products imported' from third countries, which, under the terms of Article 4 a (2) of Regulation No 974/71, as amended by Regulation No 509/73, determines the upper limit for compensatory amounts applicable by reason of the fall in value of a currency, consists, in respect of derived products, whose price depends on the price of basic products covered by intervention arrangements under the common organization of agricultural markets, solely of the variable component of the levy, intended to take account of the price of basic products, to the exclusion of the fixed component, intended to protect the processing industry.

In Case 34/74

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

1 — Language of the Case: French.

ROQUETTE FRÈRES, a limited liability company governed by French law having its Head Office at Lestrem (Pas-de-Calais),

and

FRENCH STATE, Customs Administration,

on the interpretation of certain provisions of Regulation No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States, as amended by Regulation No 509/73 of the Council of 22 February 1973,

THE COURT

composed of: R. Lecourt, President, C. Ó Dálaigh and Lord Mackenzie Stuart, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, P. Pescatore (Rapporteur) and H. Kutscher, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts and procedure of the case and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

Because certain foreign exchange markets within the Community had been disturbed by speculative movements involving an abnormal influx of short term capital the Council of the Communities, by resolution of 9 May 1971 (OJ C 58, p. 1), 'was prepared to envisage' that, in certain circumstances, Member States which had experienced an excessive influx of capital might, for a limited period, widen the margins of fluctuation for the exchange rates of their currencies in relation to their official parities.

In view of the fact that a perceptible margin of difference, within a Member State, between the current rate of exchange and the official parity was likely to give rise to difficulties as regards the proper functioning of the agricultural common market, since trade to which the current rate of exchange applied might then be effected at a price, in national currency, lower than the intervention or buying-in prices laid down by Community rules on the basis of the official parity, the Council, by Regulation No 974/71 of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (OJ L 106, p. 1), gave its authority, subject to certain conditions, to Member States which, for the purposes of commercial transactions, allowed the exchange rate of its currency to fluctuate by a margin wider than the one permitted by international rules, to apply compensatory amounts, to be charged on imports of certain agricultural products granted on certain exports.

According to Article 1 (2) of Regulation No 974/71 compensatory amounts are applicable, on the one hand, to products covered by intervention arrangements under the common organization of agricultural markets, and, on the other hand, to products whose price depends on the price of the products mentioned above and which are governed by the common organization of the market or are the subject of a specific arrangement under Article 235 of the EEC Treaty.

In accordance with the final recital to Regulation No 974/71 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 should be applied only in cases where this incidence would lead to difficulties.

As regards the method of calculation of the compensatory amounts, Article 2 of Regulation No 974/71 lays down that, for products not covered by intervention arrangements, that is to say 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.

At the beginning of 1973 the actual market exchange rates of the currencies of certain Member States appreciably exceeded the lower limit of fluctuation permitted by the international rules in force on 12 May 1971. By means of Regulation No 509/73 of 22 February 1973, amending Regulation No 974/71 (OJ L 50, p. 1), the council therefore provided for the grant on imports and the charge on exports of compensatory amounts by those Member States whose currencies had thus decreased in value.

Regulation No 509/73 added to Regulation No 974/71 an Article 4 a, according to which, in trade with third countries, compensatory amounts granted on imports shall be deducted from the import charge and compensatory amounts charged on exports shall be deducted from the export refund and, in trade between the Member States and with third countries, compensatory amounts due to the decrease in value of the currency concerned may not be higher than the charge on procucts imported from third countries.

By Regulation No 218/74 of 25 January 1974 fixing the monetary compensatory amounts and certain rates for their application (OJ L 24, p. 1), the Commission recorded, in particular, that the currency of France had depreciated by more than the margin of fluctuation permitted and fixed, for that Member State, the monetary compensatory amounts to be charged on exports and granted on imports of certain agricultural products.

At the request of the French State, the compensatory amounts fixed for France were stated to be applicable as from 21

January 1974, that being the date upon which the French franc was floated.

On 13 February 1974 the Ministry for Economics and Finance published in the Official Journal of the French Republic a Notice to importers and exporters of certain agricultural products and foodstuffs concerning monetary compensatory amounts.

The company Roquette Frères, having its Head Office at Lestrem (Pas-de-Calais), is largely concerned in the manufacture of amyloid products processed from maize, mainly intended for export.

As from 28 January 1974 the French Customs Administration demanded of the Roquette company the payment of monetary compensatory amounts on its exports of amyloid products both to Member States and to third countries.

According to the Roquette company, it paid, up to the end of August 1974, the sum of FF 6 572 107·23 by way of monetary compensatory amounts.

The company was of the opinion that the payment of compensatory amounts could not be justified and filed two actions simultaneously: pursuant to Article 215, second paragraph, of the EEC Treaty it brought an action for non-contractual liability against the Commission before the Court of Justice, and it instituted proceedings before the Tribunal d'instance of Lille against the French Customs Administration, represented by the regional Director of Customs at Lille.

By decision of 30 April 1974 the Tribunal d'instance of Lille decided, in pursuance of Article 177 of the EEC Treaty, to stay the proceedings until such time as the Court of Justice has given a preliminary ruling on the following questions:

1. Must the charge on products imported from third countries referred to in Article 4 a (2) of Regulation No 974/71, amended in particular by Regulation No 509/73 of 22 February 1973, be understood, in respect of the products referred to in Article 1 (2) (b) of the aforementioned Regulation No 974/71 whose price depends on the price of the products covered by intervention arrangements under the common organization of agricultural markets,
   (a) as consisting of both the variable component intended to take account of differences in the prices of basic products and the fixed component intended for the protection of the industry, or
   (b) as consisting solely of the variable component intended to take account of the prices of basic products?
2. If the Court replies to question 1 (a) in the affirmative and given that there is no compensatory amount in respect of maize, being a basic product, is the application, at the same time, of compensatory amounts of different rates to amyloid products whose price depends on that of maize consistent
   (a) with the provisions of Article 2 (2) of the aforementioned Regulation No 974/71, clarified by the fourth and last recitals to the said Regulation, or
   (b) with the principles governing normal competitive conditions as between nationals of different Member States?

The decision of the Tribunal d'instance of Lille was registered at the Court on 16 May 1974.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 6 July 1974 by the plaintiff in the main action, on 29 July by the Commission of the European Communities and on 9 August by the Government of the Kingdom of Denmark.

Having heard the report of the Judge-Rapporteur and the opinion of the Advocate-General the Court decided to

open the oral procedure without any preparatory inquiry.

The plaintiff in the main action, the Government of the French Republic and the Commission submitted oral observations at the hearing on 1 October 1974.

The Advocate-General presented his opinion on 23 October 1974.

For the purposes of the procedure before the Court the plaintiff in the main action was represented by M. Veroone, advocate at the Lille Bar, the Government of the Kingdom of Denmark by its Ambassador, Mr Wandel-Petersen, the Government of the French Republic by G. Sidre, adviser at the Embassy, and the Commission by its Legal Adviser, J. H. J. Bourgeois.

II — Observations submitted to the Court

A — As regards the first question

The plaintiff in the main action emphasises that the EEC Treaty is intended to harmonize competitive conditions as between all undertakings within the Community; the system of monetary compensatory amounts has as its objective, by safeguarding this equality within the Community and, in certain cases, by protecting Community undertakings against undertakings in third countries, the avoidance or limitation of the adverse effects of monetary fluctuations.

Accordingly, the system of compensatory amounts is directed essentially to basic products and only in a subsidiary way to processed products. It is clear, in particular from the recitals to Regulation No 974/71, that there is a close connection between levies on basic products and the variable component of the levy on processed products and that monetary compensatory amounts are applicable only in cases where the incidence of monetary measures leads to difficulties with regard to basic products.

According to Article 2 (2) of Regulation No 974/71, compensatory amounts for processed products 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 basic product on which they depend. It should be noted that because of the 'abatement' provided for by Article 4 a of Regulation No 974/71, added to the latter by Regulation No 509/73, no compensatory amount has been charged in recent months on imports of maize. In fact, the CIF price at Rotterdam for maize coming from third countries has almost always been higher than the Community threshold price, with the result that there has been no import levy and therefore no import charge. Since the compensatory amount on maize is equal to zero its incidence on derived products must also be equal to zero. Accordingly, the institution of compensatory amounts on exports of amyloid products is in direct contradiction of the basic principles of the system, since compensatory amounts should be 'limited to the amounts strictly necessary to compensate the incidence of the monetary measures on the prices of basic products'. It also displays a disregard for elementary rules of mathematics.

In contrast to the Commission's statements, Articles 2 (2), 3 and 4 of Regulation No 974/71 allow the following method of calculation to be employed in this case, having regard to the objective in view:

— calculation of the compensatory amount for maize;

— abatement to obtain the compensatory amount applied to maize;

— calculation of the compensatory amount for processed products on the basis of the amount applied to basic products;

— possible abatement for processed products: the import charge mentioned at Article 4 a should be understood, as regards processed products, as meaning merely the

variable component of the levy. In fact the extension of the rules for abatement to the fixed component of the levy on processed products would lead, where exports are concerned, to exporters of processed products supporting the existence, on import, of the fixed component intended for the protection of their industry.

This method reconciles Article 2 (2) with Article 4 a and avoids the illogical and unjust result to which the method advocated by the Commission would lead.

The Commission is alleged to be sufficiently conscious of the abnormality of the present situation to have itself proposed to the Council an amendment to Article 4 a of Regulation No 974/71.

The rules concerning monetary compensatory amounts are based upon the close connexion between the levy on basic products and the variable component of the levy on processed products. There exists, however, no connexion between the fixed component of the levy, which is intended for the protection of the industry, and the price of basic products; it is therefore logical that only the variable component should be regarded as an import charge.

The Government of the Kingdom of Denmark observes that Article 4 a (2), first paragraph, of Regulation No 974/71, which may be compared with Article 55 (6) of the Act concerning the Conditions of Accession of 22 January 1972, is intended to avoid the situation whereby, by means of the payment of compensatory amounts, the Community system is used to maintain prices in one Member State at a level lower than that, in each case, of prices in third countries or of prices within the Community. The expression 'import charge' includes both the variable component of the levy, the imposition of which serves to compensate, within the Community, differences between Community prices and prices in third countries for basic products, and the fixed component, which forms part of the whole Community system of duties imposed upon imported processed products, even if their imposition is intended to protect the processing industries.

The Government of the French Republic is at pains to point out that in publishing the Notice to importers and exporters of 13 February 1974 and charging monetary compensatory amounts on exports of amyloid products it merely applied Regulation No 218/74. It is however of the opinion that, in conformity with the principle laid down by Regulation No 974/71, compensatory amounts should not be charged on exports of cereal-based processed products when, at the same time, no such compensatory amount is charged upon exports of cereals.

(a) In the realm of principle it should be stated that the system for monetary compensatory amounts was inaugurated in order that fluctuations of currencies beyond the margins permitted by international rules should not involve a disruption of the intervention system laid down by Community rules or abnormal movements of prices jeopardizing a normal trend of business in agriculture. In view of these objectives it is clearly apparent from Regulation No 974/71 that the application of monetary compensatory amounts essentially concerns basic products and is only marginally concerned with products of first or second stage processing, whose prices should, in any event, bear only a compensatory amount equivalent to the incidence of the compensatory amount applied to basic products. In this case, no monetary compensatory amount could be applied to maize: the CIF price at Rotterdam for maize coming from third countries is higher than the Community threshold price, so that the import levy, and therefore the charge on imports from third countries, insofar as they relate to this primary product, are equal to zero.

As regards amyloid products the levy is made up, according to Article 14 of the basic Regulation concerning cereals, Regulation No 120/67 of the Council of 13 June 1967 on the common organization of the market in cereals (OJ p. 2269), of a variable component, corresponding to the incidence on their prime cost of the levies on those basic products, and of a fixed component, designed to protect the processing industry. The similarity between the terms used on the one hand in Article 2 (2) of Regulation No 974/71 for the calculation of monetary compensatory amounts on processed products and on the other hand in Article 14 of Regulation No 120/67 for the calculation of the variable component of the levy on processed products highlights the difference which exists between the variable component and the fixed component and means that the latter cannot be taken into account for the purposes of a calculation which is only concerned with the incidence of the fluctuation of prices of raw materials.

(b) In the realm of practical consequences the contrary interpretation put forward by the Commission would create serious distortions in trade with third countries and in the competitive situation of French industry in relation to that of the other Member States, which would be contrary to the spirit of the EEC Treaty and in particular to Article 40.

It appears, moreover, that the Commission has implicitly recognized these unfortunate consequences, since, on 25 February and 6 September 1974, it drew up proposals for the amendment of Regulation No 974/71. Furthermore, at its meeting of 17 and 18 September 1974 the Council decided to suspend the application of Article 4 a (2) of Regulation No 974/71.

The Commission states that because of the situation created by French monetary decisions the conditions provided for by Regulation No 974/71 were present at the beginning of 1974 and justified the fixing of compensatory amounts applicable both to basic products, including maize, and to processed products including amyloid products. The progression of world prices meant that the import charge for maize — the levy — was either reduced to zero or became insignificant. According to the rule for abatement laid down in Article 4 a of Regulation No 974/71 the compensatory amount for maize could not exceed this import charge. The French authorities, upon whom it was incumbent, under Regulation No 1463/73 of the Commission of 30 May 1973 laying down detailed rules for the application of monetary compensatory amounts (OJ L 146, p. 1), to implement the rule for abatement, therefore applied a compensatory amount reduced to the low level of the levy or even applied no compensatory amount at all. On the other hand, the import charge for processed products which, in pursuance, of Regulation No 120/67, includes a variable component, corresponding to the levy on the basic products involved, and a fixed component, intended to protect the processing industry, is in any case applicable up to an amount corresponding to this fixed component. According to the rule for abatement, the compensatory amount for amyloid products cannot exceed the import charge; the French authorities therefore reduced this compensatory amount to the level of the import charge on amyloid products, which in the event consisted only of the fixed component, in view of the reduced incidence of the variable component. Given this situation, and in accordance with the rule for abatement, the compensatory amount fixed for the basic product, maize, because of the fall in value of a currency, is not applied or only partially applied, whereas the compensatory amount fixed for amyloid products, which are processed products, is in any event applied to the extent of the incidence of the fixed component of the levy. It is this situation which is contested by the plaintiff in the main action.

The concept 'import charge' in Article 4 a must, however, since it is here a matter of processed products, refer to the full and entire levy applicable to such products as laid down by Regulation No 120/67, that is to say the levy made up both of the variable component, corresponding to the levy on the basic product involved, and of the protective fixed component.

This statement is supported by the very term 'import charge': it is a general, non-technical term, very rarely employed in Community regulations and its use in Regulation No 974/71 is clearly intended to indicate external protective amounts as the sum of the components of which they are composed.

Moreover, the overall scheme of Regulation No 974/71 does not allow the concept 'import charge' to be restricted to the variable component of the import charge on processed products: by choosing as the upper limit all the protective components of the general system rather than the variable component or, in more general terms, the protective component corresponding to the import charge on the basic product involved, the Regulation attempted to avoid serious practical difficulties of application which might have arisen out of the diversity of the variable components, due to the origin of the products, between which a choice would necessarily have had to be made.

The argument of the plaintiff in the main action might appear attractive and, at first sight, logical. It cannot however be accepted as regards its basic principle, since it allows the corrective measure — the rule for abatement — to take precedence over the system for compensatory amounts itself and would prevent the latter from attaining its essential objective.

The example of pigmeat demonstrates that the application of compensatory amounts to processed products, in the absence of the same amounts on basic products, does not run counter to the objectives of Regulation No 974/71. The external protection referred to in Article 4 a as an upper limit beyond which the compensatory amount fixed cannot be applied is composed, for pigmeat, of several components, of which the levy on the basic product involved, in this case wheat, forms only one part. To apply the compensatory amount only to the extent of the incidence of the levy on wheat would mean that no compensatory amount was applied to intra-Community trade in pigmeat and, in the event of intervention, would provoke the speculative action which it is the precise intention of Regulation No 974/71 to avoid.

According to its proposal for the amendment of Article 4 a of Regulation No 974/71, submitted to the Council on 25 February 1974 (OJ C 20, p. 7) the Commission intended to maintain the rule for abatement unchanged and wished to be given the possibility of derogating from that rule as necessary in order to avoid certain of its consequences, in particular distortions of competition, in an international economic situation which had fundamentally changed.

The Commission concludes that the first question should be answered as follows:

The import charge referred to in Article 4 a (2) of Regulation No 974/71 refers to the variable component and the fixed component of the levy applicable to processed products pursuant to Article 14 of Regulation No 120/67.

B — As regards the second question

The plaintiff in the main action is of the opinion that in view of Article 2 (2) of Regulation No 974/71, according to which in respect of products whose price depends on the price of basic 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 basic products on which they depend, it can hardly be

stated that abatement of the compensatory amount is not parallel for the basic product and for processed products and that, by reason of the existence of the fixed component of the levy on processed products, the compensatory amount on the latter exceeds the incidence of the compensatory amount on the basic product.

Moreover, it is clear from the recitals to Regulation No 974/71 that the whole system of compensatory amounts is both based upon and limited by the likelihood of disorganization of the intervention system, that is to say the price system for basic products. It is difficult to understand why it should be necessary to apply a compensatory amount to processed products when the Council has not exercised, in relation to the basic product, the option offered by the second paragraph of Article 4 a (2), added to Regulation No 974/71 by Regulation No 509/73, of disregarding the rule for abatement, doubtless because it felt that the situation of the basic product does not justify this course of action.

Finally, an application of compensatory amounts which differed according to whether the basic product or processed products were involved would lead to serious distortions of competition as between nationals of the various Member States.

The Government of the Kingdom of Denmark notes that compensatory amounts on processed products are fixed by the Commission, in pursuance of Article 2 (2) of Regulation No 974/71, on the basis of the compensatory amounts applicable to the basic products contained in the relevant processed products. They are applied, however, only to the extent that such application is in conformity with Article 4 a (2) of the same Regulation. The instance in issue can be reconciled with Article 2 (2) of Regulation No 974/71.

Moreover, the objective and economic effect of the fixed component of the levy is to guarantee, within the Community, that higher prices are obtained for processed products, so that the latter may cover the higher prime costs of Community producers. This being the case, account must be taken of this component when making an indirect comparison of prices, as provided for in Article 4 a(2) of Regulation No 974/71.

A change in exchange rates normally leads to a disturbance of the balance of market prices. The initial balanced price can however be maintained on the market by means of the application of compensatory amounts, which neutralize the effects of changes in exchange rates. The economic effect of the fixed component is not impaired and protection is maintained. A diminution of the compensatory amount in pursuance of Article 4 a (2) of Regulation No 974/71 leads only to a partial neutralization of currency fluctuations.

The statement by the plaintiff company, according to which competition is distorted, is false: it could be maintained, by the same token, that the whole system of compensatory amounts has the effect of distorting competition by virtue of the fact that its object is to maintain a constant level of prices in a given sector of the economy of a single Member State. This is in fact the precise effect which is sought for the achievement of the objective consisting in the stabilizing of markets in the agricultural sector.

The arguments adduced by the plaintiff company to demonstrate that competition has been distorted do not carry conviction.

The Commission, is essentially concerned, in respect of the questions of validity referred, to make the following observations:

(a) As for whether, by reason of the rule for abatement, the application of a compensatory amount to a processed product in the absence of any application of the compensatory amount

to the basic product is in conformity with Article 2 (2) of Regulation No 974/71, it should be noted that the provision in question does not prohibit the Council from limiting the effective application of a compensatory amount on the basic product without limiting, to the same extent, the effective application of the compensatory amount on the processed product. Article 2 (2) contains the rules governing the method of calculation of the compensatory amount for the product when, as in this case, the conditions requiring the fixing of compensatory amounts are present. It does not lay down a further condition, according to which a compensatory amount can be fixed or applied to the processed product only if a compensatory amount has been applied to the basic product. The final recital to Regulation No 974/71 in fact indicates 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'.

It should, moreover, be realized that the disturbances which may be combatted by means of a compensatory amount on processed products will not disappear merely because, for reasons falling outside the system of compensatory amounts, the compensatory amount is not applied to the basic product. The fourth recital to Regulation No 974/71 affirms that the application of a compensatory amount to a processed product, when by virtue of the rule for abatement a compensatory amount is not applied to the basic product, is not, in principle, contrary to the system. In effect neither a 'disruption of the intervention system' nor 'abnormal movements of prices jeopardizing a normal trend of business in agriculture' would be forestalled if, because the 'charge on products imported from third countries', to which Article 4 a is directed and which applies to basic products, falls to zero as a result of changes in world prices, the compensatory amount is not applied to the basic product.

Even on the hypothesis that Article 2 (2) is more than a mere rule for calculation and that it subordinates the legality of the compensatory amount on processed products to the application of a compensatory amount on basic products, Article 4 a is no less valid for that fact. Given that hypothesis, it would have to be considered as an exception laid down by the Council to a general rule — Article 2 (2) — adopted by the said Council.

(b) The assertion made by the plaintiff in the main action, according to which its competitive position has suffered and competition has been distorted, can easily be countered by observing that the solution which it proposes could also lead to disturbance. The non-application of compensatory amounts on processed products is also likely to create difficulties in intra-Community trade.

Moreover, the fact that Article 4 a has adversely affected the competitive position of the plaintiff company and distorted competition between it and undertakings in other Member States cannot, alone, entail the illegality of Article 4 a, as the Court found in its judgment of 24 October 1973 (Case 43/72, Merkur-Außenhandels-GmbH, [1973] E.C.R., 1055).

Accordingly, the answer to the second question should be that examination of the question has not disclosed factors capable of affecting the validity of Article 4 a of Regulation No 974/71.

Law

1 By judgment of 30 April 1974, registered at the Court on 16 May, the Tribunal d'instance of Lille referred, pursuant to Article 177 of the EEC Treaty, two questions on the interpretation of Articles 2 (2) and 4 a (2) of Regulation No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (OJ L 106, p. 1), as amended in particular by Regulation No 509/73 of 22 February 1973 (OJ L 50, p. 1), for the purpose of ascertaining the conformity with that Regulation of the application of compensatory amounts to exports of amyloid products, as laid down by Regulation No 218/74 of the Commission of 25 January 1974 (OJ L 24, p. 1), fixing the monetary compensatory amounts in implementation of Regulation No 974/71.

2 The first question asks whether the charge on products imported from third countries, referred to in paragraph 4 a (2) of Regulation No 974/71, as amended in particular by Regulation No 509/73, must be understood, in respect of the products referred to in Article 1 (2) (b) of Regulation No 974/71, whose price depends on the price of the products covered by intervention arrangements under the common organization of agricultural markets:

(a) as consisting of both the variable component intended to take account of differences in the prices of basic products and the fixed component intended for the protection of the industry, or

(b) as consisting solely of the variable component intended to take account of the prices of basic products.

3 In the event of the Court giving an affirmative answer to question 1 (a) the Court is asked to state whether, given that there is no compensatory amount for maize, which is a basic product, the simultaneous application of compensatory amounts of different rates to amyloid products whose price depends on that of maize is consistent

(a) with the provisions of Article 2 (2) of Regulation No 974/71, clarified by the fourth and final recitals to the said regulation, and

(b) with the principles governing normal competitive conditions as between nationals of different Member States.

4 These questions have arisen in the context of an action brought before the Tribunal d'instance by the plaintiff in the main action against the French Customs Administration for the purpose of obtaining restitution of compensatory amounts which it was obliged to pay on exports of amyloid products derived from maize, at a time when, according to the uncontested statements of the parties to the proceedings before the Court, no compensatory amount was due under the provisions of Regulation No 974/71 on imports of that basic product, following a rise in prices on the world market.

5 The Government of the French Republic stated at the hearing that by charging compensatory amounts on export of the product in question the French authorities merely undertook a precise application of Regulation No 218/74 of the Commission, although, fundamentally, they considered that Regulation to be contrary to the principles of Regulation No 974/71 of the Council.

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

8 According to Article 2 (2), compensatory amounts for derived products 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 basic product on which they depend.

9 Regulation No 509/73, which supplemented Regulation No 974/71, contains an Article 4 a 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'.

10 The compensatory amounts applicable at the time of the exports in question were fixed by Regulation No 218/74 of the Commission and, more particularly, by Annex I to that Regulation.

11 It is clear from information given during the proceedings that, in implementing Article 4 a of Regulation No 974/71, the Commission interpreted the term 'charge on products imported' to refer to the levies laid down by Regulation No 120/67 of 13 June 1967 on the common organization of the market in cereals (OJ p. 2269), Article 13 of which provides that a single levy shall be charged on imports of basic products, fixed by reference to the difference between prices on the world market and prices within the Community, whereas Article 14 provides that a levy shall be charged on the importation of derived products, consisting of two components, that is to say a 'variable component' corresponding to the incidence, on the prime cost of processed products, of the levies on the basic products and a 'fixed component', designed to protect the processing industry.

12 As a consequence of this interpretation, in spite of an economic situation in which no levy was imposed on the basic product involved, that is to say maize, Regulation No 218/74 of the Commission nevertheless maintained, on derived products, and in particular amyloid products, a compensatory amount corresponding to the 'fixed component' laid down by Article 14 of Regulation No 120/67.

13 The interpretation of the concept 'charge on products imported', taken by the Commission as the basis of Regulation No 218/74, is not in conformity with the provisions of Articles 2 (2) and 4 a (2) of Regulation No 974/71, as interpreted in the light of the objective sought by that Regulation.

14 In fact, the sole objective of the introduction of compensatory amounts was to neutralize the effect of disturbances arising in agricultural trade provoked by the fluctuation of exchange rates for the currencies of certain Member States, as emphasized in the final recital of the preamble to Regulation No 974/71, according to which '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'.

15 In pursuance of Article 2 of Regulation No 974/71 the fluctuations should be entirely compensated for basic products, whereas under paragraph (2) of the

same Article, for derived products, the compensation should be in proportion to the incidence, on the prices of the product concerned, of the application of the compensatory amount to the basic product.

16 This provision therefore imposes a parallelism between the application of compensatory amounts to basic products and their application to derived products.

17 However, 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, Article 4 a (2), first paragraph, imposed an upper limit upon compensatory amounts, at the level of the 'charge on products imported' from third countries.

18 The result of the application of this provision, following the increase in price of cereals on the world market, was the abolition of compensatory amounts in respect of trade in maize from the moment when the cif price reached the threshold price fixed pursuant to Regulation No 120/67.

19 In such a situation, it was contrary to the objective of Regulation No 974/71 to take account, by way of a 'charge on products imported', of the fixed component of the import levy on products derived from cereals, fixed by reference to considerations — the protection of the processing industry — which were totally extraneous to the objective of Regulation No 974/71.

20 The result of taking account of this factor in calculating the rates fixed in Annex I to Regulation No 218/74 was to impose on exporters of derived products a charge which bore no relation to monetary fluctuations and, in consequence, worsened their competitive position.

21 The first question should therefore be answered to the effect 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 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.

22 Since the answer to question 1 (a) referred by the Tribunal d'instance is therefore answered in the negative the second question does not require an answer.

Costs

23 The costs incurred by the Government of the Kingdom of Denmark, the Government of the French Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

24 Since these proceedings are, insofar as the parties to the main action are concerned, a step in the action pending before the Tribunal d'instance of Lille, costs are a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Tribunal d'instance of Lille by judgment of 30 April 1974, hereby rules:

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.

Lecourt Ó Dálaigh Mackenzie Stuart

Donner Mertens de Wilmars Pescatore Kutscher

Delivered in open court in Luxembourg on 12 November 1974.

A. Van Houtte — Registrar

R. Lecourt — President