3. The actual right to receive a compensatory amount on exports in the event of disturbances to trade in agricultural products by monetary measures is only created by the performance of the export transaction and only from the moment when this takes place.

4. Notwithstanding the fact that the system of compensatory amounts does not offer a guarantee for traders against the risks of alteration of exchange rates, a trader may legitimately expect that for transactions irrevocably undertaken by him because he has obtained, subject to a deposit, export licences fixing the amount of the refund in advance, no unforeseeable alteration will occur which could have the effect of causing him inevitable loss, by re-exposing him to the exchange risk. The Community is therefore liable if, in the absence of an overriding matter of public interest, the Commission abolished with immediate effect and without warning the application of compensatory amounts in a specific sector without adopting transitional measures which would at least permit traders either to avoid the loss which would have been suffered in the performance of export contracts, the existence and irrevocability of which are established by the advance fixing of the refunds, or to be compensated for such loss.

With regard to the extent of the loss to be compensated, the Community is obliged to make good the loss suffered by the applicant, by reason of the withdrawal of the compensatory amounts, in the performance of export transactions for which the refunds had been fixed.

In Case 74/74

COMPTOIR NATIONAL TECHNIQUE AGRICOLE (CNTA) S.A., Paris, represented by Jean-François Péricaud, Advocate of the Paris Bar, with an address for service in Luxembourg at the Chambers of J. Wolter, 2 rue Goethe,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, J. H. J. Bourgeois, acting as Agent, with an address for service in Luxembourg at the Chambers of P. Lamoureux, 4 boulevard Royal,

defendant,

Application for damages under the second paragraph of Article 215 of the EEC Treaty,

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 (Rapporteur) and A. O'Keeffe, Judges,

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

gives the following

JUDGMENT

Facts

The facts and the arguments of the parties set out during the written procedure may be summarized as follows;

I — Facts and procedure

1. The common organization of the market in oils and fats established by Regulation No 136/66 of the Council of 22 September 1966 (OJ, Special Edition 1965-1966, p. 221) provides for a target price and an intervention price for colza and rape seeds.

On exports to third countries a refund may be granted, the amount of which may not exceed the difference between prices within the Community and those on the world market. As the situation in this sector is characterized by high demand and low overall production, the regulation does not establish specific tariff protection for colza seed and does not therefore provide for a levy on imports.

On the other hand, the regulation provides for the grant of a subsidy for seeds harvested and processed within the Community. The subsidy is, as a general rule, equal to the difference between the target price and the world market price.

The regulation provides for the possibility of advance fixing of refunds and subsidies.

2. 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, Special Edition 1971 (I), p. 257) provides for a system of compensatory amounts. Article 1 (1) thereof, in the version in force at the time of the facts in dispute, authorizes a Member State 'If, for the purposes of commercial transactions, [it] allows the exchange rate of [its] currency to fluctuate by a margin wider than [is] permitted by international rules' to 'charge on imports from Member States and third countries, [and] grant on exports to Member States and third countries compensatory amounts' for certain products. The final sentence of that article states: 'This option shall be exercised only where application of the monetary measures referred to in

paragraph 1 would lead to disturbances in trade in agricultural products'.

Article 2 (1) of the regulation provides that the compensatory amounts are to be fixed by applying to the prices of the goods in question a certain percentage representing the difference between the parity of the currency of the Member State concerned and the arithmetic mean of the spot market rates of this currency against the US dollar.

Detailed rules for the application of the regulation are to be adopted by the Commission after abtaining the opinion of the Management Committees.

The Commission extended the application of the system to colza seed by Regulation No 1471/71 of 9 July 1971 (OJ L 154, p. 26).

As the system of compensatory amounts was extended to France, the Commission, by Regulation No 17/72 of 31 December 1971 (OJ L 5, p. 1), fixed the compensatory amounts applicable from 3 January 1972 in trade between that country and third countries at FF 3·95 per 100 kg for colza seed. The Commission increased that amount with effect from 24 January 1974 to FF 4·75 per 100 kg by Regulation No 144/72 of 21 January 1972 (OJ L 19, p. 1).

By Regulation No 189/72 of 26 January 1972 (OJ L 24 of 28 January 1972, p. 25), the Commission rescinded with effect from 1 February 1972 the compensatory amounts applicable in the sector of oils and fats, as it considered that 'the present situation of the market is such that the application of these compensatory amounts no longer proves to be essential for avoiding disturbances to trade in the abovementioned products'.

3. The applicant, which purchases, grinds and sells colza seed, considered that the abolition of the compensatory amounts disturbed the implementation of current delivery contracts and caused it serious damage, and called upon the Commission to make reparation for such loss. It calculated it at FF 967 375·74 by applying the compensatory amount of FF 3·95, which was applicable at the time of advance fixing, both to the quantities fixed in advance before 1 February 1972 but exported after that date (8 000 metric tones) and to the quantities relating to subsidy certificates fixed in advance before 1 February 1972 and subjected to control after that date (16 490·525 metric tones).

The Commission refused to comply with that demand.

4. This application was lodged on 1 October 1974. The written procedure followed the normal course.

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

II — Conclusion of the parties

The *applicant* claimed that the Court should:

— order the Commission to pay the sum of FF 955 130·47 together with all other compensation, legal interest, interest under the contracts and costs.

The *Commission* contended that the Court should:

— dismiss the application as inadmissible or, in any event, as unfounded;

— order the applicant to pay the costs.

III — Submissions and arguments of the parties

Admissibility

In the opinion of the *Commission,* the action is inadmissible by reason of the

defects by which the application is vitiated. It does not satisfy the requirements of Article 38 (1) of the Rules of Procedure of the Court, whereby an application is to state the subject-matter of the dispute and the grounds on which the application is based.

The Commission recalls that the applicant claims compensation for damage, basing its claim soleley on the following factors: subjection to control by it of certain quantities of colza seed, the issue of a certain number of export licences and the monetary compensatory amount applicable to colza seed. It maintains that this is obviously insufficient not only in order to grasp the precise subject-matter of the dispute but also in order to understand the applicant's submissions.

After listing the basic factors which are thus missing, the Commission adds that conclusions such as those advanced in this case, seeking payment of a sum of x times the compensatory amounts abolished, cannot be sufficient for an action in respect of non-contractual liability. It follows from the case-law of the Court that an action for damages may not take the place of an action for payment. The existence of damage, distinct from the loss of advantages in money resulting from the abolition of the compensatory amounts, is an essential element of the action.

The Commission particularly emphasizes that with regard to the damage in respect of 16 800 metric tonnes of colza seed subjected to control the application does not indicate how the abolition of the compensatory amounts not applicable to the subsidy for those seeds results in such damage.

The *applicant,* in its reply, maintains that the preliminary objection of inadmissibility based on Article 38 (1) of the Rules of Procedure must be rejected as the application satisfies the requirements of that article as interpreted by the Court.

The subject-matter of the dispute is clearly stated. The applicant complains of the damage which the Commission has caused it by abolishing, by Regulation No 189/72, the monetary compensatory amounts, and claims compensation.

The submissions relied on are not only put forward but are numerous.

With regard to the damage, the applicant points out first of all that Article 38 of the Rules of Procedure does not mention damage and goes on to contend that it is in fact presupposed by the subject-matter of the dispute and underlies the submissions relied on. The applicant has defined the nature and amount of the damage. It complains, on the one hand, of not having had the compensatory amounts on its exports granted and, on the other hand, of the fact that the abolition of the compensatory amounts subjected it to abnormal competition because imports no longer had to bear the omentary compensatory amount. Such a remission of tax on imports has the effect of lowering the price and thus involves a loss for the Community trader. It is true that the damage has been calculated in an abstract way but the method of its calculation is a question relating to the substance of the case.

After reviewing the case-law of the Court, the applicant contends that the Commission's allegation as to the necessity to show the existence of loss distinct from the damage caused by the legislative measure must be rejected.

In its rejoinder, the *Commission* maintains its conclusions on the inadmissibility of the application.

The substance of the case

In its application, the *applicant* points out that the justification for the abolition of the compensatory amounts was that those amounts no longer proved indispensable for avoiding disturbances. According to the applicant, in the five days separating Regulations Nos 144/72

and 189/72 no particular event occurred in the oils and fats sector which could justify such abolition. On the contrary, the rate of the US dollar showed a deterioration in relation to that of the French franc during that period. The Commission's decision, which was taken on the basis of biased information that the marketing of the harvest was completed and no longer justified maintaining compensatory amounts, is ill-considered and hasty. The applicant maintains that the decision is contrary to Article 7 of Regulation No 974/71, which provides that partial or temporary use may not be made of the authorization given to fix compensatory amounts. In addition, the decision is contrary to the attitude of the Commission in the matter, as it wishes aid and refunds to be calculated taking into account the actual value of the US dollar.

According to the applicant, when grinders or exporters of colza seed fixed in advance aid and refunds between 19 December 1971 and 1 February 1972, they did so in a specific context. In its opinion, they were able honestly to consider that in addition to the amount of aid they would be protected against abnormal competition from seeds from third countries by a fixed and published compensatory amount and that in addition to the amount of the refunds they would receive the compensatory amounts on exports to third countries.

The applicant considers that the Commission's liability is all the more evident in that in similar cases it decided to indemnify traders. It refers to Regulation No 2041/73 of 27 July 1973 making transitional provisions consequential upon the application on 4 June 1973 of the new system of differential amounts for colza and rape seed (OJ L 207, p. 33).

In its statement of defence, the *Commission* describes the legislative framework within which the application is made. It emphasizes that the system of compensatory amounts confers on it a wide discretionary power to decide on the application of the system and that that system is limited purely to monetary compensation on and at the time of trade in products. It is not intended to adapt price guarantees within the Community to monetary alterations.

With regard to the action, the Commission states that the application is silent on the relationship of cause and effect between the fact complained of and the damage. It goes on to contend that the fact complained of is not capable of giving rise to liability on its part as Regulation No 189/72 is perfectly legal and the abolition of the compensatory amounts is not wrongful.

According to the Commission, the regulation is a 'legislative measure involving choices of economic policy'. According to the case-law of the Court, liability on the part of the Community for the loss suffered through the effect of such a measure can only arise in the event of a sufficiently flagrant infringement of a higher rule of law protecting individuals. However, the applicant alleges no such infringement.

Furthermore, the Commission refutes the applicant's allegations as to the illegality of the regulation.

The argument based on Article 7 of Regulation No 974/71 is irrelevant, in particular by reason of the fact that according to the case-law of the Court (Judgment of 24 October 1973, *Merkur-Außenhandels-GmbH* v *Commission of the European Communities* [1973] ECR 1055) that rule is addressed to Member States alone.

Contrary to the applicant's statement, the Commission never maintained that the marketing of colza was completed by 26 January 1972. It refers to the abovementioned second recital of the preamble to Regulation No 189/72. It was possible to abolish the compensatory amounts in view of the fact that they were no longer indispensable having regard to the advanced stage of disposal of the harvest. In fact at the time of the

adoption of the regulation, the marketing of colza seed was for the most part completed. The maintenance of the compensatory amounts would, moreover, have involved certain disadvantages: first, they encumbered imports of a deficit product and, secondly, in view of the fact that they were not applied in respect of competing products such as soya, there was a real risk of substitution on the market.

The Commission further disputes the claim that it had an obligation to lay down transitional measures. First, the applicant was not entitled to the maintenance of the compensatory amounts at the rate fixed. The system of compensatory amounts does not provide for advance fixing of the amounts. Secondly, the applicant is not entitled to the permanent application of the compensatory amounts. It follows from the provisions of Regulation No 974/71 that the compensatory amounts may be withdrawn. A distinction must be made between the rules as to the introduction or withdrawal of the compensatory amounts and the rules altering the amounts. Introduction and withdrawal are decided in relation to the need to protect the common organizations of the market, whilst alteration of the compensatory amounts is made 'automatically' by application of precise rules of calculation. The objective sought by the introduction of compensatory amounts is thus not, at least directly and primarily, the protection of the interests of individuals.

The Commission considers that the argument based on Regulation No 2041/73 is irrelevant. It emphasizes the differences between the situations.

With regard to the applicant's argument based on the fadt that only a few days separate the alteration of the compensatory amounts and their withdrawal, the Commission refers to its observation on the fundamental distinction between an alteration and a withdrawal of compensatory amounts. The only valid comparison to be made is that between the decision in July 1971 to introduce the compensatory amounts for the products in question and that at the end of January 1972 withdrawing them.

With regard to the alleged damage, the Commission points out that, taking into account the circumstances of the application, it is to a large extent reduced to suppositions as to its nature and existence. It considers that the applicant has neither invoked nor established the existence of actual loss and that loss calculated in an abstract manner, as in this case, cannot be the basis of an action for damages under the second paragraph of Article 215 of the Treaty.

In its reply, the *applicant* first examines 'the infringement of a superior rule of law'. It contends that in general any infringement of a law or of a general principle of law may, according to the case-law of the Court, constitute an infringement of a superior rule of law protecting individuals. In its view, Regulation No 189/72 is illegal for infringement of Regulation No 974/71 and the principle of legal certainty.

It alleges that the Commission does not have the power to withdraw authorizations for compensatory amounts. Regulation No 974/71 only provides for authorization to apply compensatory amounts and not for withdrawal of the authorization. No article of that provision refers to the abolition of the compensatory amounts. Once they have been authorized, only their alteration is provided for. This is understandable, as these amounts, which compensate for monetary fluctuations, must remain in operation until the Member States again apply the international rules relating to the margins of fluctuation in the rates of exchange.

The applicant points out, in addition, that the compensatory amounts are instruments of monetary trends and not of economic policy intended to influence the markets. When the Commission states the reasons on which Regulation

No 189/72 is based, which it did, it does not take into account the monetary situation but in reality makes market policy.

With regard to the violation of the principle of legal certainty, the applicant considers that the principle, in Community law, also covers the principle of non-retroactivity of laws and the principle of the protection of the legitimate expectations of persons concerned ('Vertrauensschutz').

The immediate application of the provisions of Regulation No 189/72 adversely affects the applicant's vested rights. In the relationship between it and the Community, the advance fixing of aid and refunds and the issue of import licences is tantamount to the complete achievement between the parties of a legal transaction to which the rules of law then in force apply. The use of the licences is only a suspensive condition included in that legal relationship complete in itself. The sanction of the failure to carry out the condition, that is to say, forfeiture of the deposit, shows that for the public agencies concerned it is not a question of a mere expectation but of a firm undertaking.

In any event, there is in this case violation of the legitimate expectations of traders. The applicant points out in this connexion that the prejudicial decision of the Commission was adopted simply because the application of the compensatory amounts no longer appeared indispensable in order to avoid disturbances. Their maintenance therefore would have been in no way prejudicial to the Community interest, whereas their abolition seriously affected traders.

The applicant states that the Commission's conduct was wrongful because it adopted its decision:

— without taking into account the quantity of colza seed remaining to be marketed, a quantity which constituted nearly half of the colza harvest;

— without taking into account the monetary imbalance which at that time was increasing;

— by taking into account first the problem of imports, and in doing so to the detriment of exports, which is contrary to the purpose of the system of compensatory amounts; in so doing it also intended to bear down on prices, which were actually lowered, judging from the statement of prices for colza oil f.o.b. Dieppe;

— by erroneously assessing the foreseeable market trends; from the end of the 1971-1972 marketing year, the Council had needed to provide for special measures for colza seed;

— by ignoring the interests of traders and

— by failing to adopt transitional measures.

The applicant recalls in this connexion the transitional measures adopted by the Commission in Regulation No 2042/73 of 27 July 1973 making transitional provisions consequential upon the application on 4 June 1973 of the new system of monetary compensatory amounts (OJ L 207, p. 34) as well as the Judgment of the Court of 28 October 1970 in Case 16/70, *Coöperatieve Vereniging Necomout GA* v *Hoofdproduktschap voor Akkerbouwprodukten and Produktschap voor Granen, Zaden en Peulvruchten* (Rec. 1970, p. 921).

With regard to the loss, according to the applicant it is actual and certain. The actual damage suffered at the time of exportation is indisputable. As to the exact amount of such loss, the applicant has calculated it by taking as the compensatory amounts due those applicable to the date of the advance fixing of the refund. The applicant has no objection to a calculation of the compensatory amounts on the basis of those which should have been applied at the time of exportation, in view of the fact that they are necessarily higher than those in force on the date of advance fixing.

The actual existence of the loss suffered by the quantities of colza submitted to the system of advance fixing of aid is also indisputable, even if its assessment may give rise to argument. The lowering of prices resulting from the abolition of the compensatory amounts is in the order of 10 %. The applicant has therefore suffered a certain loss of profit. Methods of assessment other than that chosen by the applicant may certainly be put forward. This question does not come within the field of a lawyer but of an expert who must calculate the fall in the applicant's receipts.

In its rejoinder, the *Commission* emphasizes not only that the applicant has not alleged in due time that Regulation No 189/72 has infringed a higher rule of law intended to protect its interests but, in addition, that it was unable to establish it at the stage of the reply.

According to the Commission the applicant's argument that Regulation No 974/71 did not permit the abolition of the compensatory amounts leads to the absurd result that, once instituted, compensatory amounts must necessarily continue even if they are no longer necessary in order to avoid the disturbances for which they were instituted. None of the provisions relied upon by the applicant can support its argument.

The application of the system is only justified in so far as the monetary measures of the Member States are likely to lead to a 'disruption of the intervention system' and to 'abnormal movements of prices jeopardizing the normal trend of business in agriculture'. As soon as these conditions are no longer met, the compensatory amounts are no longer justified, even if they offer some of the traders in the Community additional protection. When the Commission assesses the situation in order to decide whether it is necessary to maintain compensatory amounts or to revert to the normal system, it must necessarily take into account factors which may compensate the pernicious effects of the monetary measures of the Member States.

With regard to the alleged violation of the principle of legal certainty, the Commission emphasizes that the question of 'vested rights' cannot even arise for the quatities of colza for which the aid was fixed in advance. Even supposing that the compensatory amounts had been maintained, the applicant would in no way have had any right to compensatory amounts for the quantities receiving aid. The result is the same with regard to the quantities in respect of which the refund was fixed in advance. The Commission refers to the Judgment of the Court of 4 July 1973 in Case 1/73, *Westzucker GmbH* v *Einfuhr- und Vorratsstelle für Zucker* [1973] ECR 73, which is perfectly clear in this connexion.

With regard to the alleged violation of the principle of legitimate expectation, the Commission emphasizes, *inter alia,* that it is not possible to fix compensatory amounts in advance and that this very fact must indicate that the Community did not intend to give any guarantee that the compensatory amounts would be maintained for current transactions.

The Commission then points out — in order to show that its conduct was not wrongful — the factors of the situation as they appeared at the time it adopted Regulation No 189/72. It observes in particular that it appeared that the application of compensatory amounts had in fact little effect on the market in colza. It refers to certain figures from which it appears that the abolition of the compensatory amounts was not followed by a lowering of prices. It was therefore necessary to abolish them, as soon as the marketing of the harvest permitted it.

After establishing that the certificates for the advance fixing of refunds and aid issued covered 84 % of the harvest of colza seed, the Commission was

therefore able and obliged to abolish the compensatory amounts.

With regard to the reference made by the applicant to Regulation No 2042/73, the Commission observes that it adopted such transitional measures for reasons of fairness and that the absence of a measure of fairness does not constitute a wrongful act or omission.

With regard to the damage, the Commission states that it has still not been informed of what it consists. It is necessary to know whether or not the applicant had concluded contracts, whether those contracts were made in dollars or in French francs and whether it had included the receipt of the compensatory amounts in its calculation of the prices at which it undertook to make delivery. In any event, the Commission disputes that the abolition of the compensatory amounts caused a lowering of the prices of colza seed in France; it further questions the fact that the loss of profit for a trader, consisting in the lowering of the value of the products which he holds and arising from the action of the Community in the exterior protection of the Community market, constitutes damage for which the Community should make reparation.

The Commission does not dispute that the assessment of the loss is a distinct problem which may be held in abeyance. In the absence of a reply to the questions put with regard to the incidence of the abolition of the compensatory amounts on exports, it maintains that the applicant has not established the existence of actual damage. The Court cannot therefore accept the request inviting it to declare by means of an interlocutory judgment that the Community is obliged to make reparation for the damage.

After the closure of the written procedure, the Court asked the Commission to give an explanation on the general considerations which in its practice are decisive in assessing whether the withdrawal or reduction of financial advantages must be subject to delays before implementation or to transitional provisions in favour of current transactions.

In reply the Commission pointed out in particular that these general considerations come into play when it makes an assessment case by case in situations of fact which are complex and variable. Thus the practice with regard to financial advantages provided for by the regulations concerning the market cannot be transposed without further ado to the field of advantages arising from the regulations concerning the fixing of monetary amounts for agriculture. These two sets of regulations differ in both their cause and their objective.

Furthermore, the Commission bases its decisions broadly on the following general considerations:

In principle, in respect of provisions of public interest, the amendment of rules applies to the future effects of situations arising under the aegis of the former rules. The abolition of financial advantages has immediate effect. However, there are cases in which the abolition of financial advantages affects more particularly current transactions, for example when such abolition arises from a basic alteration which the trader should not normally have expected. In such cases, the Commission takes into consideration current transactions and balances the various interests coming into play.

The protection of individual interests tied to current transactions often runs counter to limits in respect of the public interest which the Commission considers predominant. Thus implementation in the shortest possible time is the condition on which the very efficacy of a measure abolishing financial advantages or achieving an economic objective sought by such abolition depends. Furthermore, when it envisages the possibility of transitional measures in favour of current transactions, the Commission takes into account two

considerations of public interest. The first deals with the efficacy of such transitional measures. The second consideration concerns the applicability of transitional measures, in other words the possibility of applying side by side two systems, the transitional and the new.

Lastly the Commission adds that it must also take into account that the adoption of measures enabling current transactions to be taken into consideration may, where necessary, involve the necessity of balancing the interests of two different categories of transaction. The financial advantages to be decreased or abolished for a category of current transactions may be the counterpart of financial burdens for another category of current transactions.

During the oral procedure on 18 March 1975 the parties introduced new factors as hereinafter summarized:

In reply to a question put by a member of the Court, the *applicant* explained, in respect of 8 000 metric tonnes for which refunds on export had been fixed in advance, that this quantity formed part of an annual contract concluded on 15 June 1971 with an Algerian buyer and covered 70 000 metric tonnes of colza seed of any origin. The contract was concluded in French francs or in dollars at the option of the buyer. The contract was performed in essence in seeds of extra-Community origin. During the period between 3 January and 26 January 1972 the existence of the compensatory amount enabled and even induced the applicant to perform part of the contract in seeds of French origin. It was for that reason that the applicant fixed in advance the refunds during the period in question. The sale was in fact made in March and April with an actual loss because the applicant had not received the compensatory amount, as his profit margin varied between 1 % and 2 % and the compensatory amount represented more than 2 %.

In addition, the applicant emphasized that although the price of colza seed remained relatively constant after the abolition of the compensatory amounts the price of oils, that is to say finished products, fell appreciably.

The *Commission* replies to this last observation that the applicant does not show the link between the abolition of the compensatory amounts and the fall of prices and it wonders whether such a link exists. It refers in this connexion to the fact that between November and December 1971 there was also an appreciable fall in the price of oils. In its opinion, the price of colza oil merely reflects the prices of other products which were not affected by compensatory amounts.

It emphasizes that the abolition of the compensatory amounts was decided upon because their application solely to colza and rape seeds and to the oils from those seeds seemed ill-adapted and inefficient, the reason being that the products in direct competition which influence the price of colza etc. on the Community market were not covered by the system of compensatory amounts.

The Advocate-General delivered his opinion on 23 April 1975.

Law

1 The application lodged on 1 October 1974 seeks an order that the European Economic Community should pay the sum of FF 955 130·47 in reparation for the damage which the applicant claims to have suffered as a result of

the withdrawal, by Regulation No 189/72 of the Commission of 26 January 1972, of the monetary compensatory amounts applicable to colza and rape seeds and to the oils obtained from those seeds.

Admissibility

2 The Commission, the defendant, objects that the application is inadmissible in that the originating application does not contain the necessary information, according to Article 19 of the Statute of the Court and Article 38 (1) of the Rules of Procedure, as to the subject-matter of the dispute and the grounds on which the application is based.

3 It alleges that, as it is an action for damages under Articles 178 and 215 of the Treaty and not an action for payment, the application is defective in particular in that it contains no factor relating to the existence of damage distinct from the loss arising from the abolition of the monetary compensatory amounts

4 The alleged defects have not been such as to prevent the Commission from effectively defending its interests or to hinder the Court in the exercise of its judicial review, and the applicant has moreover provided all relevant information during the proceedings.

5 In its reply, the applicant has in particular defined its original conclusions by asking the Court to rule in an interlocutory judgment that the Community is obliged to make reparation for the loss allegedly suffered and not to rule on the exact extend of the loss and the amount of the compensation until after receiving an expert's report.

6 The application is therefore admissible.

The substance of the case

7 The applicant claims that the withdrawal of the compensatory amounts applicable to colza and rape seeds by Regulation No 189/72 has caused it loss first with regard to certain quantities of seed receiving aid fixed in advance in accordance with the provisions of Regulation No 136/66 of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats and, secondly, with regard to certain other quantities intended for export to a third country, for which refunds had been fixed in advance in accordance with the same regulation.

8 The system of compensatory amounts instituted by Regulation No 974/71 of the Council of 12 May 1971 involves, under the version in force at the time of the facts in dispute, an option for 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 on imports and to grant on exports compensatory amounts for specified agricultural products in so far as the application of that exchange rate would lead to disturbances to trade in the products in question.

9 It is for the Commission, after receiving the opinion of the Management Committees, to establish the existence of such a situation.

10 The system of compensatory amounts, which initially was not applied to products in the oils and fats sector, was extended to colza and rape seeds and to the oils from those seeds by Regulation No 1471/71 of the Commission of 9 July 1971, covering the harvest the marketing of which was to begin at the start of the 1971/1972 marketing year.

11 As a result of the alteration of the exchange rates in relation to the dollar in December 1971, the system of compensatory amounts applicable formerly in the Federal Republic of Germany, Belgium, Luxembourg and the Netherlands was extended to the other Member States, including France.

12 The amounts applicable as from 3 January 1972, including the amounts applicable in France for colza and rape seeds, were fixed by Regulation No 17/72 of the Commission of 31 December 1971.

13 New compensatory amounts, taking into account the exchange rates recorded between 13 and 19 January, were fixed by Regulation No 144/72 of the Commission of 21 January 1972, which entered into force on 24 January 1972.

14 Finally, by Regulation No 189/72 of 26 January, which was published in the Official Journal on 28 January and entered into force on 1 February 1972, the Commission abolished the compensatory amounts applicable to colza and rape seeds and to the oils from those seeds in view of the fact that the market situation was such that the application of those amounts no longer appeared indispensable in order to avoid disturbances to trade in those products.

15 The advance fixing of aid and refunds on exports, on which the applicant relies to support its request for compensation, was granted to it between 6 and 21 January 1972, that is to say, during the period in which the compensatory amounts for colza and rape seeds were applicable in France.

16 Since the disputed measure is of a legislative nature and constitutes a measure taken in the sphere of economic policy, the Community cannot be liable for any damage suffered by individuals as a consequence of that measure under the provisions of the second paragraph of Article 215 of the Treaty, unless a sufficiently flagrant violation of a superior rule of law for the protection of the individual has occurred.

17 In this connexion the applicant contends in the first place that by abolishing the compensatory amounts by Regulation No 189/72 the Commission has infringed basic Regulation No 974/71 of the Council.

18 That regulation, it contends, while conferring on the Commission the power to ascertain that the conditions for the application of the compensatory amounts are met, does not allow it to take a decision withdrawing compensatory amounts once instituted and it requires in any event that the Commission's decision be taken on the basis of an assessment of solely monetary factors to the exclusion of economic factors which in this case the Commission has taken into consideration.

19 It follows from the last sentence of Article 1 (2) of Regulation No 974/71 that the option for Member States to apply compensatory amounts may only be exercised where the monetary measures in question would lead to disturbances to trade in agricultural products

20 As the application of compensatory amounts is a measure of an exceptional nature, this provision must be understood as enunciating a condition not only of the introduction but also of the maintenance of compensatory amounts for a specific product.

21 The Commission has a large area of discretion for judging whether the monetary measures concerned might lead to disturbances to trade in the product in question.

22 In order to judge the risk of such disturbances, it is permissible for the Commission to take into account market conditions as well as monetary factors.

23 It has not been established that the Commission exceeded the limits of its power thus defined when it considered towards the end of January 1972 that the situation on the market in colza and rape seeds was such that the application of compensatory amounts for those products was no longer necessary.

24 The applicant claims in addition that the withdrawal of the monetary amounts by Regulation No 189/72 was incompatible with Article 7 of Regulation No 974/71 which provides that partial or temporary use may not be made of the authorization provided for in the regulation.

25 According to Article 1 (1) of Regulation No 974/71, any Member State which adopts certain monetary measures is 'authorized' to apply compensatory amounts.

26 Article 7, echoing the term 'authorization', is addressed solely to Member States and does not concern the powers of the Commission.

27 Regulation No 189/72 cannot therefore be considered to be illegal in the light of the provisions of Regulation No 974/71.

28 The applicant contends secondly that the withdrawal of the compensatory amounts from 1 February 1972 violated the principle of legal certainty, on the one hand, in that it had retroactive effect and, on the other hand, in that it ignored the legitimate expectation of persons concerned that the compensatory amounts would be maintained for current transactions.

29 With regard first to the problem of retroactivity, it must be recalled that the compensatory amounts are levied on imports and granted on exports of the goods concerned and that no advance fixing of the amounts is possible.

30 It follows that the actual right to receive a compensatory amount on exports is only created by the performance of the export transaction and only from the moment when this takes place.

31 Regulation No 189/72 of 26 January 1972, which was published in the Official Journal on 28 January and entered into force on 1 February 1972, is applied solely to exports and imports carried out from that date, whilst those carried out before that date continued to be subject to the previous rules.

32 The regulation does not therefore have retroactive effect in the proper sense of the expression.

33 The applicant claims in addition that the withdrawal of the compensatory amounts with immediate effect destroyed the expectation which he had of their maintenance when he sought the advance fixing of aid and refunds on exports, thus definitively undertaking with the competent authorities to carry out commercial transactions from which he could not withdraw save under pain of forfeiting the deposit lodged.

34 It is appropriate in this connexion to examine separately the situation with regard to advance fixing of aid on the one hand and refunds on exports on the other.

35 With regard to the quantities of seed for which aid was fixed in advance and which because of this was not intended for export, the applicant was not able directly to benefit from any compensatory amount.

36 Although it is true that the system of compensatory amounts is intended in particular to protect the level of prices in the Member State in question against disturbances which might result from monetary instability, it is nevertheless common ground in this case that the withdrawal of compensatory amounts in the oils and fats sector as from 1 February 1972 did not appreciably affect the price of colza seed on the French market.

37 It must be concluded that no loss was caused to the applicant by Regulation No 189/72 with regard to the quantities of seed which were not intended for export.

38 With regard, secondly, to the quantities intended for export and for which the applicant obtained the advance fixing of the refunds, it must be noted that the objective of the system of compensatory amounts, as it appears from the Community rules, is to ward off difficulties which monetary instability might create for the proper functioning of the common organizations of the markets, rather than to protect the individual interests of traders.

39 The conditions governing the application and abolition of the system of compensatory amounts in a specific sector do not take into account the individual situations of traders and do not guarantee to them a continuous application of the system.

40 It follows that the system of compensatory amounts cannot be considered to be tantamount to a guarantee for traders against the risks of alteration of exchange rates.

41 Nevertheless the application of the compensatory amounts in practice avoids the exchange risk, so that a trader, even a prudent one, might be induced to omit to cover himself against such risk.

42 In these circumstances, a trader may legitimately expect that for transactions irrevocably undertaken by him because he has obtained, subject to a deposit, export licences fixing the amount of the refund in advance, no unforeseeable alteration will occur which could have the effect of causing him inevitable loss, by re-exposing him to the exchange risk.

43 The Community is therefore liable if, in the absence of an overriding matter of public interest, the Commission abolished with immediate effect and without warning the application of compensatory amounts in a specific sector without adopting transitional measures which would at least permit traders either to avoid the loss which would have been suffered in the performance of export contracts, the existence and irrevocability of which are established by the advance fixing of the refunds, or to be compensated for such loss.

44 In the absence of an overriding matter of public interest, the Commission has violated a superior rule of law, thus rendering the Community liable, by failing to include in Regulation No 189/72 transitional measures for the protection of the confidence which a trader might legitimately have had in the Community rules.

45 With regard to the extent of the loss to be compensated, it is necessary to take into consideration the fact that the maintenance of the compensatory amounts was in no way guaranteed to the applicant and that it could not therefore legitimately expect under all circumstances to make the profits which would have accrued to it from the contract under the system of compensatory amounts.

46 The protection which it may claim by reason of its legitimate expectation is merely that of not suffering loss by reason of the withdrawal of those amounts.

47 As the amount of the compensation due to the applicant cannot be determined at the present stage of the proceedings, it must be held by interlocutory judgment that the Community is obliged to compensate the applicant for the loss which it has suffered, by reason of the withdrawal of the compensatory amounts, in the execution of export transactions for which the refunds had been fixed by the certificates of 6 January 1972, while reser-

ving the fixing of the amount of compensation either by agreement between the parties or by the Court in the absence of such agreement.

On those grounds,

THE COURT

By interlocutory judgment,

1. **Rules that the Commission of the European Communities must compensate the Comptoir National Technique Agricole for the loss suffered, by reason of Regulation No 189/72 of 26 January 1972, in the execution of export transactions for which the refunds had been fixed by the certificates of 6 January 1972;**

2. **Orders the parties to produce to the Court within six months of the date of this judgment figures of the amount of the compensation arrived at by agreement between the parties;**

3. **In the absence of agreement, orders the parties to produce to the Court within the same period their conclusions with detailed figures;**

4. **Reserves the costs.**

Lecourt Mertens de Wilmars Mackenzie Stuart Donner Monaco
Pescatore Kutscher Sørensen O'Keeffe

Delivered in open court in Luxembourg on 14 May 1975.

A. Van Houtte
Registrar

R. Lecourt
President