JUDGMENT OF THE COURT
28 OCTOBER 1970[1]

Coöperatieve Vereniging 'Necomout' GA v Hoofdproduktschap voor Akkerbouwprodukten and Another[2] (Reference for a preliminary ruling by the College van Beroep voor het Bedrijfsleven)

Case 16/70

Summary

Agriculture — Common Agricultural Policy — Levies and refunds — Advance fixing — Cancellation in the case of an alteration of the unit of account — Conditions (Regulation No 1134/68 of the Council, Article 7)

The second paragraph of Article 7 of Regulation No 1134/68 of the Council of the European Communities of 30 July 1968 must be interpreted as meaning that cancellation of an advance fixing of levies or refunds may relate to the balance of the quota still outstanding at the date when the application is made, but only to such balance in its entirety, and may not relate to amounts previously imported or exported.

In Case 16/70

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

COÖPERATIEVE VERENIGING 'NECOMOUT' GA

and

(1) HOOFDPRODUKTSCHAP VOOR AKKERBOUWPRODUKTEN, The Hague
(2) PRODUKTSCHAP VOOR GRANEN, ZADEN EN PEULVRUCHTEN, The Hague,

on the interpretation of Article 7 of Regulation (EEC) No 1134/68 of the Council of of 30 July 1968 laying down rules for the implementation of Regulation (EEC)

1 — Language of the Case: Dutch.
2 — CMLR.

No 653/68 on conditions for alterations to the value of the unit of account used for the common agricultural policy,

THE COURT,

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

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. The common organization of the agricultural markets frequently involves a system of import levies and export refunds, fixed periodically and varying in terms of the differences, which must be eliminated, between the price level of a specific product in one Member State and that in another or between the price in the Community and that prevailing on the world market.

2. Since the execution of contracts for the importation or exportation of agricultural products frequently extends over relatively long periods, the agricultural regulations allow importers and exporters to protect themselves against such alterations by 'fixing in advance' levies or refunds for a period and for amounts stated in a licence or certificate for this purpose.
The trader thus knows in advance what he will pay or receive but he also accepts the risk of an inaccurate forecast if when the goods actually cross the frontier the levy is lower or the refund higher than the amounts fixed in advance.

3. Although levies and refunds, like prices themselves, are calculated in units of account, they are received or paid in the national currency of the Member State which is required to implement the agricultural regulations in each case.

4. Alterations in the value of the unit of account or in the parity of the currency of a Member State or a third country are capable of causing a serious disturbance to the operation of the system by adversely affecting the harmonization of prices which is its objective. Consequently, Regulations Nos 653/68 of the Council of 30 May 1968 (OJ Special Edition 1968 [I] p. 121) and 1134/68 of the Council of 30 July 1968 (OJ Special Edition 1969 [II] p. 396) lay down provisions to remedy this. Regulation No 1134/68, which entered into force on 4 August 1968, lays down *inter alia* that

in the case of an alteration to the value of the unit of account (Article 1) or of the parity of the currency of a third country (Article 2) or of a Member State (Article 4) levies and refunds shall be recalculated so as to adapt them to the new parities and that those new amounts shall also be applied to transactions for which the trader had availed himself of the opportunity of fixing the levies and refunds in advance.

5. However, taking into account the fact that the application of the new parities to current contracts might disturb the financial arrangements of such contracts, Regulation No 1134/68 enables the persons concerned on an alteration in parities referred to in the regulation to obtain cancellation of the advance fixing and of the relevant document which means that with regard to the administration they are released from the obligation to import or export, or, if they do so, that they will pay or receive the amount of the levy or refund in force on the day of the import or export effected.

6. To the protection thus conferred on traders is added the transitional provision of Article 7 of the same regulation according to which:

> 'This regulation shall apply to all transactions carried out from the date of its entry into force.
> However, any person who before that date has obtained advance fixing or concluded an agreement with an intervention agency for a transaction still to be carried out after that date may, by written application which must reach the competent authority within thirty days of the entry into force of this regulation, obtain cancellation of the advance fixing and of the relevant document or certificate, or cancellation of the agreement.'

The provision regarding the additional opportunity for cancellation laid down as a transitional measure by Article 7 differs from those in Articles 1, 2 and 4 in that it does not depend on any alteration in the parity of currency (which in fact did not occur during the period from 4 August to 3 September 1968) and is connected solely with the entry into force of Regulation No 1134/68.

7. Interpretation is requested of the second paragraph of Article 7 since, as emerges from the facts which gave rise to the main dispute, the difficulty relates to the detailed rules for exercising the right thereby conferred.

8. On 29 April 1968 Necomout of Amsterdam, an undertaking exporting malt, obtained advance fixing of export refunds on 2 500 000 kg of malt at the sum of Fl 19.95 per 100 kg, increased in July 1968, after adjustment of the threshold price, to Fl. 20.31. The certificate covered the period to 31 March 1969.
On 4 August 1968, the date on which Regulation No 1134/68 entered into force, there remained a balance of 1 520 000 kg not yet exported, 330 000 kg of which were exported on 12 August 1968.

9. By a circular letter of 28 August 1968 the *Hoofdproduktschap voor Akkerbouwprodukten*, the Netherlands agency responsible for the administration of the refund system notified those concerned that applications for cancellation made under the second paragraph of Article 7 of Regulation No 1134/68 could only be granted on the following conditions:

(a) that the fixing had been obtained before 4 August 1968;

(b) that the cancellation related only to quantities which had not yet been imported or exported at the time of the application;

(c) that no import or export to which the said fixing related had been affected between 3 August and the date of lodging the application;

(d) that the written application was received at the competent Produktschap or Hoofdproduktschap by 3 September 1968 at the latest.

10. The amount of refunds on the export of malt to third countries was Fl. 20.21

for August and this was increased to Fl. 21.82 for September.

11. On 2 September 1968 Necomout requested the cancellation of the advance fixing of the balance of 1 520 00 kg of malt not yet exported at 4 August 1968, but the Produktschap voor Granen, Zaden en Peulvruchten dismissed this application maintaining that since *Necomout* had made a further exportation on 12 August 1968 the condition set out in subparagraph (c) of the circular letter of 28 August 1968 was not met.

12. Necomout brought the matter before the *College van Beroep voor het Bedrijfsleven* and requested it to give a ruling on its application. In the course of the proceedings Necomout declared that, although this restrictive condition did not appear in Article 7, it might as an alternative request a decision under the terms of which the cancellation might relate only to the quantities still in its possession when the application was lodged.

13. The College van Beroep found that the solution to the dispute depended on the interpretation of Regulation No 1134/68 and by an order of 10 April 1970 referred the following questions to the Court of Justice:

(a) Does the correct interpretation of the second paragraph of Article 7 of Regulation No 1134/68 of the Council of the European Communities imply that the cancellation provided for in this provision refers exclusively to the *entire* quota still remaining on 4 August 1968 to which the advance fixing relates?

(b) If the reply to Question (a) is in the affirmative, is cancellation also available if, between 4 August 1968 and the date of lodging the application for cancellation, the quota to which the advance fixing relates has been entirely or partially imported or exported, or is it only possible if no import or export has been effected within the framework of the said fixing between 4 August 1968 and the date of lodging the application for cancellation?

(c) If the reply to Question (a) is in the negative, does the correct interpretation of the second paragraph of Article 7 imply that cancellation of the advance fixing is permissible with regard to the balance of the quota outstanding at the date of lodging the application for cancellation or for a part thereof, even if part of the quota to which the advance fixing relates was imported or exported between 4 August 1968 and the date of lodging the application for cancellation?

(d) If the reply to Question (a) is in the negative, must the second paragraph of Article 7 be taken to mean that it is also possible to cancel the advance fixing with regard to one or more import or export transactions which were effected between 4 August 1968 and the date of lodging the application for cancellation?

14. The request of the *College van Beroep voor het Bedrijfsleven* was recorded in the Court register on 13 April 1970. The Necomout undertaking, the Produktschap voor Granen, Zaden en Peulvruchten, the Commission of the European Communities and the Kingdom of the Netherlands submitted written observations.
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.
The Produktschap voor Granen, Zaden en Peulvruchten and the Commission of the European Communities submitted their oral observations at the hearing on 16 September 1970.
The Advocate-General delivered his opinion at the hearing on 13 October 1970.

II — Observations submitted under Article 20 of the Statute

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

A — *Observations submitted by the Commission of the European Communities*

1 — The rationale of Article 7

The *Commission* observes that the first paragraph of Article 7 of Regulation No 1134/68 lays down a provision with regard to its application in time declaring that it applies to all legal relationships established before 4 August 1968 thus appreciably modifying the legal conditions on which the advance fixings were obtained. The second paragraph of Article 7 must be read in this context. The immediate application of new rules to current transactions — above all with regard to amounts fixed in advance — is unusual in Community law and practice which generally tend either to exclude from the application of new rules or measures the rights and duties of traders laid down in the documents and certificates providing for the advance fixing, or to prohibit advance fixing during the period preceding important amendments to the Community rules. Furthermore, if Regulation No 1134/68 had been applied immediately, it might have had adverse effects on traders who had been induced to cover themselves against the new risk of an alteration of the amounts expressed in national currenly in the relevant documents. In order to protect the vested rights of such traders, they were afforded the opportunity of terminating their legal relationships established before Regulation No 1134/68 entered into force. This was preferable to a solution which would have excluded from the new rules the advance fixings prior to 4 August 1968 which, if there were alterations in monetary parities during the period in which the certificates were in force, would have seriously disturbed the functioning of the organizations of the market. The option to cancel provided for in the second paragraph of Article 7 is thus to be distinguished, both with regard to its purpose and to the grounds on which it was based, from those in Articles 1, 2 and 4 which deal with the actual alteration of parities. Whilst those latter provisions are of a permanent nature, Article 7 is merely a transitional provision the essential object of which is to protect traders who, in accordance with the general trend of Community legislation, were entitled to rely on the permanency of advance fixings. It relates rather to a legal interest whilst the option to cancel provided by articles 1, 2 and 4 is intended to avoid the actual prejudice resulting from an alteration in monetary parities.

2 — The replies to the questions

The first question

(a) The *Commission* observes that the second paragraph of Article 7 relates to 'a transaction still to be carried out'. Only if the concept of *transaction* covers all the imports or exports necessary to exhaust this quota may it be deduced that the option to cancel the advance fixing must necessarily relate to the entire quota outstanding on 4 August 1968.
The usual concept of transaction is different. 'To carry out a transaction' does not relate to the complete exhaustion of the quota mentioned in the certificate. Traders exhaust this quota by a series of fractional transactions, that is to say, through successive importations or exportations. The word 'transaction' in Regulation No 1134/68 is a generic term encompassing the various acts laid down in the annex to the regulation and means, *inter alia* 'importation' or 'exportation'. Article 6 of Regulation No 1134/68 also implies that 'transaction' can *only be one* of the successive transactions of importation or exportation on the basis of a licence or certificate and not those transactions as a whole.

(b) The fact that the cancellation relates to the licence or certificate and thus to the legal relationship does not imply that it must necessarily relate to the entire quantity still outstanding at 4 August 1968. The opportunity afforded by the second paragraph of Article 7 of obtaining such cancellation within a period of thirty days is only meaningful, in the context of the conditions under which the transactions

are carried out, if such cancellation is also available for the amount still outstanding at the date of the application.

(c) According to the Commission, the interpretation which it puts forward has the advantage, in principle at least, of reducing the amounts to which the cancellation may relate, thus reducing as much as possible the disturbance caused by such cancellations.

(d) According to the Commission, the interpretation which it proposes cannot be rejected on the basis of an alleged parallel between the second paragraph of Article 7 and the other provisions of the regulation which provide for the cancellation of advance fixings in the case of an actual alteration in monetary parities. According to the *Produktschap*, if there is an alteration of the levy or refund fixed in advance and the trader does not instantly request cancellation of the advance fixing but continues to import or export within the framework of such advance fixing, he shows that he has not been prejudiced by the alteration and a subsequent application for cancellation would necessarily be for reasons other than those which guided the legislature. According to the *Produktschap*, the same holds good in the case of Article 7. On the other hand, the Commission considers that the second paragraph of Article 7 has a different objective since the considerations to which it is a response *relate essentially to respect for established legal relationships.*

The Commission suggests the following reply to the first question:

> The option to cancel an advance fixing provided for in the second paragraph of Article 7 of Regulation No 1134/68 does not relate to the entire amount still outstanding at 4 August 1968 of the quota to which the advance fixing relates.

The second question

The *Commission* declares that it is unnecessary to consider the second question since the reply to be given to the first question is in the negative.

The third question

The *Commission* considers that it follows from its reply to the first question that the fact that after 4 August 1968 a trader imported or exported with the benefit of an advance fixing does not prevent the cancellation of such fixing with regard to the amount still outstanding at the date of the application. It consequently suggests the following reply:

> The cancellation provided for in the second paragraph of Article 7 of Regulation No 1134/68 may be granted in connexion with the quota still outstanding under the said fixing at the date of lodging the application for cancellation, even if a quantity has already been imported or exported under the advance fixing between 4 August 1968 and the date of lodging the application for cancellation.

The fourth question

(a) The *Commission* observes that the cancellation of a document relating to an importation or exportation already carried out constitutes a retroactive, that is to say exceptional measure and consequently one which would normally require express provision to be made in the regulation if such regulation intended to provide for it.
In addition, it derogates from a basic principle of the rules with regard to the common organization of the markets and it would consequently be all the more surprising that the legislature should have conceived of such an effect *ex tunc* without making express provision for it.

(b) Furthermore, the system of licences and certificates was established in order to enable the competent authorities to obtain a permanent record of the movement of trade; the cancellation *ex tunc* of licences or certificates and advance fixings for transactions already carried out must inevitably disturb that system.

(c) Finally, a trader carrying out import or export transactions after 4 August 1968 on the terms of an advance fixing may be regarded as having renounced with regard to such transactions the protection afforded by the second paragraph of Article 7.

The Commission thus considers that the following reply should be given to the fourth question:

Cancellation of the advance fixing provided for in the second paragraph of Article 7 of Regulation No 1134/68 is not available with regard to one or more export transactions carried out between 4 August 1968 and the date of lodging the application for cancellation.

B — *The observations of the Necomout undertaking*

The *Necomout* undertaking, the plaintiff in the main action, observes that its application for cancellation was rejected because, according to the interpretation given to Article 7 of Regulation No 1134/68 by the Netherlands Minister for Agriculture and Fisheries, an application for the cancellation of an advance fixing is admissible only if it relates solely to amounts not yet imported or exported at the time of the application and moreover if no import or export has been carried out under the said fixing between 3 August and the date of lodging the application for cancellation, which conditions were not fulfilled in the applicant's particular case.

Such conditions do not appear in Regulation No 1134/68 and it is not for the competent bodies in the Member States to add to the wording of this regulation. Such additional conditions are even less appropriate since they are not laid down in Belgium, France or the Federal Republic, so that they distort competition within the Common Market.

Those conditions, result moreover, from an incorrect interpretation of Article 7, based on the notion that the amounts for which an advance fixing is obtained constitute an entity. This is an incorrect view of the advance fixing system as it is applied in the import and export trade.

In fact, in a fixing traders accumulate a large number of transactions which are unconnected with each other and span considerable periods of time; they may thus still export against the prevailing refund or with a more recent fixing if it appears more favourable and even leave the prior fixings unused, paying the fines provided for in such cases, which are, moreover, included in the production costs.

The Necomout undertaking consequently considers that cancellation of the fixings within the meaning of Article 7 may not be made subject to conditions other than those mentioned directly and expressly in this provision and that *inter alia*, the conditions laid down in subparagraphs (b) and (c) of the circular letter of 28 August 1968 may not be imposed.

C — *The observations of the Produktschap*

1. The Produktschap observes that under Articles 1, 2 and 4 of Regulation No 1134/68 the amount of the refund is to be adjusted in relation to any alterations in the parities of the currencies. In order to preclude this unforeseeable factor from prejudicing traders, in such a case, to cancel the advance fixing.

Although Article 7 does not refer to an alteration in the parities, it nevertheless has a similar scope to Article 1, 2 and 4, as its objective is to ensure that persons who have obtained an advance fixing before the entry into force of the regulation are not prejudiced by the unforeseeable factor that during the interval when the fixing is applicable a regulation might be adopted making such advance fixing disadvantageous.

Articles 1, 2 and 4 deal with a 'specific transaction' and Article 7 with a 'transaction still to be carried out after that date'. Departing from the normal usage of the word, the regulation understands by transaction '*the obligations as a whole*' which a trader has undertaken within the context of the fixing, without this preventing the obligation from being fulfilled by several acts of export or import.

This interpretation is based *inter alia* on Articles 1 (2), 2 (2) and 4 (1) dealing with an advance fixing 'for a *transaction* still to

be carried out' which is only explicable if, by transaction, there is understood all the acts of import or export to be carried out, and finally on the fact that according to Article 7 itself cancellation of the fixing also involves cancellation of the relevant document, thus implying that it is legal relationship itself which is cancelled. Furthermore, the concept employed in Article 4 (2) of a 'part transaction' precludes understanding, by transaction, any part whatsoever of the amounts to be imported or exported.
It is incompatible with such an interpretation that that single transaction could be partly carried out and partly cancelled. The application for cancellation may thus relate only to the entire amount still remaining on 4 August 1968.

2. The fact that cancellation must relate to the entire balance remaining on 4 August 1968 means that, if exports have been effected between that date and the date of the application, cancellation is thereby precluded. The application for cancellation may not relate to amounts already exported as, by effecting an importation or an exportation for which a fixing has been obtained and no application made for its cancellation, the person concerned has shown that he has not been prejudiced and he has made an immutable choice. A similar situation obtains in the case of alteration of the parity of the currency (Articles 1, 2 and 4) and in the case of Article 7. When there is a devaluation, an exporter who exports on the terms of the advance fixing prior to the alteration of parity is considered to have acted in his own interests and consequently not to have been prejudiced; the same is true of a trader who exports on the terms of the fixing after 4 August 1968. If he applies for cancellation, it is thus no longer to avoid being prejudiced but for reasons other than those underlying Article 7.
For example, an exporter may not apply for cancellation because the refund applicable on the day of exportation might increase sharply before the expiry of the period of thirty days.

3. Alternatively, the Produktschap considers that the application for cancellation made during the period of thirty days and relating to the entire quota remaining outstanding at 4 August 1968 cannot in any circumstances cover importations and exportations effected before the date of the application for cancellation.
On the basis of the above considerations the Produktschap suggests that an affirmative reply be given to the first question, a negative reply to the first part of the second question and an affirmative reply to the second part thereof, and, as an alternative, a negative reply to the third and fourth questions.

D — *The observations of the Netherlands Government*

1 — The scope of Article 7

The *Netherlands Government* observes that Article 7 must be applied strictly and in a manner analogous to that implied by Articles 1, 2 and 4 if devaluation of the currency occurs. On such devaluation an exporter will undoubtedly refrain from exporting within the framework of an advance fixing before the alteration of parity in order subsequently to apply for the cancellation of such fixing for the remaining quantity. In order to limit the loss the exporter will instantly apply for this cancellation.
Cases of the type envisaged by Article 7 must be viewed as though devaluation had occurred when the provision entered into force: the loss to be avoided in the present case is the risk that a trader might have to comply with the cancellation system laid down by the regulation. If the trader wishes to avoid such loss, he must immediately apply for cancellation without continuing to export.
Article 7 was not framed to enable traders to make exceptional profits.

2 — Reply to the questions

The first question

The *Netherlands Government* claims that by the words 'a transaction still to be carried out after that date' the regulation

means all the importations and exportations still to be carried out by the trader, as is shown by the use of the word 'transaction' in the singular. The only possible splitting of the transaction, except in the special case of Article 4 (1), is thus between the amounts imported or exported prior to the entry into force of the regulation and the quota still outstanding after its entry into force.
The Netherlands Government also emphasizes the fact that the licence or certificate itself must be cancelled which implies that it is impossible partially to annul the quantity mentioned in the certificate as respects the amount not yet exported.
If it were permissible to export a further portion and subsequently to lodge an application for cancellation with regard to the remainder, this would entail failure to observe the requirement that the cancellation should relate to the entire quota still outstanding.

The second question

According to the *Netherlands Government* the second question has been wrongly drafted. The first part of the question (whether cancellation is still possible if, between 4 August 1968 and the date of lodging the application for cancellation, the quota fixed in advance has been entirely or partially imported or exported) presupposes that a negative answer has been given to the first question.
The second part of the question (whether cancellation is possible only if no exportation or importation has been effected within the framework of the said fixing between 4 August 1968 and the date of lodging the application for cancellation) is, according to the Netherlands Government, merely a repetition of the first question.

The third and fourth questions

The *Netherlands Government* observes that since it has suggested an affirmative reply to the first question it is unnecessary to reply to the third and fourth questions.

Grounds of judgment

1 By a decision of 10 April 1970, which was received at the Court Registry on 13 April 1970, the College van Beroep voor het Bedrijfsleven, The Hague, has put various questions under Article 177 of the Treaty establishing the EEC, concerning the interpretation of Article 7 of Regulation (EEC) No 1134/68 of the Council of 30 July 1968 laying down rules for the implementation of Regulation (EEC) No 653/68 on conditions for alterations to the value of the unit of account used for the common agricultural policy.

2 Regulation No 1134/68, which entered into force on 4 August 1968, provides that in the case of an alteration in the value of the unit of account or in the parity of the currency of a Member State or of a third country the amounts fixed under the provisions relating to the agricultural policy, and in particular the amounts of levies and refunds, may be adjusted to the new parities, even as regards levies and refunds for which traders had exercised the right conferred upon them by the various regulations establishing the organization of the agricultural markets to have the amounts fixed in advance.

3 In order not to prejudice persons having previously obtained an advance fixing, the regulation enables them to obtain the cancellation of such fixing in the event of circumstances' requiring adjustment of the amounts fixed in advance.

4 In addition, the transitional provision of the second paragraph of Article 7 of the same regulation, which with regard to such fixing was based on essentially legal considerations relating to the effects on pending contracts of a change in legislation, confers the same right on traders who had obtained before 4 August 1968 an advance fixing the effects of which extended beyond the entry into force of the new provisions laid down by Regulation No 1134/68.

5 Under the terms of the said Article 7 the written application for cancellation was required to reach the competent authority within thirty days of the entry into force of the regulation, that is to say, not later than 3 September 1968.

6 The national court asks first whether the application for cancellation must necessarily relate to the entire amount still outstanding on 4 August 1968 of the quota to which the advance fixing relates.

7 On the one hand, this question must be considered in relation to the argument expounded by Necomout before the court in the main proceedings to the effect that a trader may at any time during the thirty days allotted him apply for the cancellation of the advance fixings relating to the whole of the amount outstanding at 4 August 1968, even if a part of this balance has already been imported or exported in the meantime so that the cancellation might thus have retroactive effect in whole or in part.

8 On the other hand, it must be considered in relation to the argument propounded by the Produktschap to the effect that an application for cancellation may only be made with regard to the quantity outstanding at 4 August 1968 and that in the meantime no part of this amount may be imported or exported.

9 The system of advance fixing, as it has been implemented in the various agricultural regulations, establishes a connexion between such advance fixing and the obligation to import or to export the entire quota of goods to which the advance fixing relates.

10 Article 7 of Regulation No 1134/68 exempts from this obligation 'a transaction still to be carried out' after 4 August 1968 thereby providing for the division of the quota mentioned in the licence or certificate into one part for which the advance fixing is valid and another part for which it may be cancelled.

11 Nevertheless, the wording of Article 7 does not necessarily imply that such division must be made between the part of the quota exhausted prior to 4 August 1968 and the balance remaining at that date.

12 Furthermore, the provision of a period of thirty days granted to the trader cannot imply that the person concerned is prohibited from continuing to import or to export between 4 August 1968 and the date on which he chooses to lodge his application.

13 This must apply with even greater force in view of the fact that the traders concerned may be bound by contractual delivery dates and that the regulation should not be interpreted in such a way as to increase the difficulties of implementing such obligations.

14 In any event, since the article does not lay down those conditions and they do not arise from the grounds which form the basis of the disputed provision, there is no reason to add to the legal text conditions which it does not contain either expressly or by implication.

15 Consequently the application for cancellation need not necessarily refer to the entire quota still outstanding at 4 August 1968.

16 An application for cancellation must thus be considered even if a tracer has before the date of his application imported or exported a part of the balance remaining on 4 August 1968 to which the advance fixing relates.

17 The reply thus given to the first question makes the second irrelevant.

18 The third question asks whether a trader who lodges an application for cancellation after continuing to import or export *after 4 August 1968* may apply for the cancellation of all or part of the balance of the quota fixed in advance which is outstanding at the date of lodging the application.

19 It is clear from the wording of Article 7, in accordance with which the application relates to the cancellation of the certificate or document certifying the advance fixing, that only the complete cancellation of the certificate can be envisaged consequently involving the cancellation of the entire balance.

20 Furthermore, this interpretation corresponds to the restricted scope of the exception made by the said Article 7 to the principle of the immutability of advance fixings.

21 Moreover, since such cancellations disturb the proper functioning of the systems of organization of the markets, there can be no justification for favouring their increase when they exceed the legal grounds on which Article 7 was based.

22 Consequently, the cancellation of the advance fixing must refer to the entire quota outstanding at the date of lodging the application.

23 The fourth question asks whether if the reply to the first question is in the negative, it is also possible to cancel the advance fixing with regard to one or more importations or exportations which were effected between 4 August 1968 and the date of the application for cancellation.

24 Retroactive cancellation would preclude the forward planning on which the authorities responsible for the administration of the agricultural markets may properly rely in assessing their charges or revenues and in determining market trade.

25 Such an interpretation would, furthermore, exceed the objectives of Article 7 which aim at protecting traders against violation of the principle of the immutability of advance fixings.

26 In those circumstances the application for cancellation can only relate to the quota outstanding at the date of the application.

Costs

27/28 The expenses incurred by the Commission of the European Communities and by the Netherlands Government, which have submitted their observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the College van Beroep voor het Bedrijfsleven, the decision on costs is a matter for that court;

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;

Upon hearing the oral observations of the Produktschap voor Granen, Zaden en Peulvruchten and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulations No 19, No 139/67/EEC, (EEC) No 653/68 and (EEC) No 1134/68;
Having regard to the Protocol on the Statute of the Court of Justice of the European Communities, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the College van Beroep voor het Bedrijfsleven, by order of that court of 10 April 1970, hereby rules:

The second paragraph of Article 7 of Regulation No 1134/68 of the Council of the European Communities of 30 July 1968 must be interpreted as meaning that cancellation of an advance fixing of levies or refunds may relate to the balance of the quota still outstanding at the date when the application is made, but only to such balance in its entirety, and may not relate to amounts previously imported or exported.

Lecourt Donner Trabucchi

Monaco Mertens de Wilmars

Delivered in open court in Luxembourg on 28 October 1970.

A. Van Houtte R. Lecourt

Registrar President