In Case 38/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry], The Hague, for a preliminary ruling in the proceedings pending before that court between

VERWERKINGS INDUSTRIE VREELAND BV, Vreeland,

and

HOOFDPRODUKTSCHAP VOOR AKKERBOUWPRODUKTEN [Central Board for Agricultural Products], The Hague,

on the interpretation of certain provisions of Council Regulation (EEC) No 1134/68 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 (Official Journal, English Special Edition 1968 (II), p. 396), and of Commission Regulation (EEC) No 1054/78 of 19 May 1978 laying down detailed rules for the application of Regulation (EEC) No 878/77 on the exchange rates to be applied in agriculture and replacing Regulation (EEC) No 937/77 (Official Journal L 134, p. 40), as amended by Commission Regulation (EEC) No 1509/78 of 30 June 1978 (Official Journal L 178, p. 50),

THE COURT (Third Chamber)

composed of: Y. Galmot, President of Chamber, U. Everling and C. Kakouris, Judges,

Advocate General: C. O. Lenz
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and procedure

1. The Community rules in question

Council Regulation No 653/68 of 30 May 1968 on conditions for alterations to the value of the unit of account used for the common agricultural policy (Official Journal, English Special Edition 1968 (I), p. 121) determines all the conditions under which the value of the unit of account applicable for the purposes of the common agricultural policy under Council Regulation No 129 of 23 October 1962 (Official Journal, English Special Edition 1959-1962, p. 274) may be altered. Such alteration may be made only when one or more Member States alter the parity of their currencies. In such cases the Council may, moreover, subject to certain conditions and by way of derogation from existing agricultural regulations, adopt in the general economic interest limited measures to adjust certain agricultural prices "if the particular and exceptional nature of the situation created by the alteration of the parity relationship between the currencies of Member States makes such measures seem appropriate" (fourth paragraph of Article 3).

Article 1 of Council Regulation No 1134/68 of 30 July 1968 laying down rules for 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 (Official Journal, English Special Edition 1968 (II), p. 396) fixes the consequences of an alteration in the value of the unit of account and any adjustment of agricultural prices. In that respect it provides *inter alia* as follows:

"1. In the case of an alteration to the value of the unit of account or an adjustment of agricultural prices pursuant to the fourth paragraph of Article 3 of Regulation (EEC) No 653/68:

(a) The amounts which contain the elements determined on the basis of prices on international markets, listed in the annex to this regulation under items 1 to 5, shall where necessary be recalculated and refixed without delay by the Commission in accordance with the procedure applicable in each case, using the new value of the unit of account and, where appropriate, the new agricultural prices;

(b) ...

(c) ...

2. In cases where the provisions of paragraph 1 (a) apply, any amounts referred to therein which have been fixed in advance for a transaction still to be carried out after the alteration in the value of the unit of account or adjustment of agricultural prices shall where necessary be recalculated and refixed by the Commission in like manner as laid

down in those provisions; however, any person who has obtained advance fixing of such amounts for a specific transaction may, by written application which must reach the competent authority within 30 days of the entry into force of the measures fixing the recalculated amounts, obtain cancellation of the advance fixing and of the relevant document or certificate."

By virtue of item 3 of the annex to Regulation No 1134/68 the amounts referred to in Article 1 include export refunds.

The consequences of an alteration in the relationship between the parity of the currency of a Member State and the value of the unit of account are laid down in Article 4 (1), which provides *inter alia* as follows:

"1. In the case of an alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account, the Member State concerned, using the new parity relationship and without prejudice to the application of Article 1 (2), shall adjust the following amounts, given in units of account, if they appear in national currency in the documents or certificates issued in pursuance of the common agricultural policy or the special trade systems for goods processed from agricultural products:

(a) Amounts which have been fixed in advance for a transaction or part of a transaction still to be carried out after alteration of that parity relationship;

(b) . . .

However, any person who has obtained advance fixing of such amounts for a special transaction may, by written application which must reach the competent authority within 30 days of the entry into force of the measures fixing the altered amounts, obtain cancellation of the advance fixing and of the relevant document or certificate."

For transactions to be carried out under the common agricultural policy Council Regulation (EEC) No 878/77 of 26 April 1977 on the exchange rates to be applied in agriculture (Official Journal L 106, p. 27) replaced the official parities of the national currencies by so-called representative rates ("green rates"), which are fixed by the Council and are independent of the real rates of the national currencies. Article 4 provides that the provisions of the aforesaid Regulation No 1134/68 shall also apply to alterations in the representative rates, subject to the following conditions:

"1. The provisions of Regulation (EEC) No 1134/68 in respect of an alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account shall apply.

2. However, the second subparagraph of Article 4 (1) of Regulation (EEC) No 1134/68 shall apply only if the application of the new representative rates is disadvantageous to the party concerned.

Before the date of application of the new rate it may be decided to offset this disadvantage by an appropriate measure. In this case, advance fixing and the certificate or document attesting thereto may not be cancelled."

Article 1 of Commission Regulation (EEC) No 1054/78 of 19 May 1978 laying down detailed rules for the application of Regulation (EEC) No 878/77 on the exchange rates to be applied in agriculture and replacing Regulation (EEC) No 937/77 (Official Journal L 134, p. 40), as amended by Commission Regulation (EEC) No 1509/78 of 30 June 1978 (Official Journal L 178, p. 50), defines "disadvantage" for the purposes of Article 4 of the aforesaid Regulation No 878/77 as follows:

"1. For the purposes of Article 4 of Regulation (EEC) No 878/77, there shall be a disadvantage where, following the application of the new representative rate, the alteration in terms of national currency in the sum total, or where appropriate the balance, of the amounts applicable to a particular transaction results in:

— the levying of a greater amount, or

— the granting of a lesser amount

than that applicable before entry into force of the said rate.

The disadvantage shall be determined by comparing the situation of the interested party before and after the new rates and prices have taken effect. No account shall be taken in making the comparison of any alteration in the spot market rates for the currency concerned.

On application by Member States the Commission shall supply the information necessary for calculating the disadvantage.

2. Cancellation of an advance fixing and of the relevant document or certificate, provided for in the last subparagraph of Article 4 (1) of Regulation (EEC) No 1134/68, may be requested only if

(a) the representative rate of the currency concerned has been altered, and

(b) if, in the case of simultaneous alteration of the representative rate and of the price level in units of account, the disadvantage resulting from the alteration in the representative rate outweighs any advantage afforded by the effect of the alteration in the price level on the amount to be granted or levied on the goods.

3. ..."

Finally, Council Regulation (EEC) No 652/79 of 29 March 1979 on the impact of the European Monetary System on the common agricultural policy (Official Journal L 84, p. 1) replaced the unit of account by the ECU by providing that the amounts fixed in units of account for the purposes of the common agricultural policy should thenceforth be expressed in ECU by means of a specific coefficient.

2. The currency developments leading to the proceedings before the national court

The Italian lira was devalued by 6% and the pound sterling revalued by 22.64% with effect from 23 March 1981. Those

events led to a relative devaluation of the Netherlands guilder against the ECU of 2.4906%. Conversely, the ECU increased for the Netherlands from HFL 2.74632 to HFL 2.81318.

Those alterations in the value of the national currencies in relation to the ECU brought about a simultaneous alteration in the relationships between the exchange rates of those currencies and their "green" values, which had remained unchanged in the present case. Thus in the case of the Netherlands the rate of exchange before 23 March 1983 was 1.80% above and from 23 March 0.690% below the "green" value, with the result that the positive monetary compensatory amounts for the Netherlands ought to have been reduced to zero in view of the threshold of 1% (Article 2 (1) (a) of Regulation No 974/71). Nevertheless, pending an alteration in the representative rates by the Council, the Commission by Regulation (EEC) No 801/81 of 27 March 1981 concerning monetary compensatory amounts and differential amounts (Official Journal L 82, p. 17) "froze" the monetary compensatory amounts applicable for the week 30 March to 5 April 1981 at the level they were on 23 March 1981.

The adjustment of the representative rates was made with effect from 6 April 1981 in respect of dairy products by Council Regulation (EEC) No 850/81 of 1 April 1981 amending Regulation (EEC) No 878/77 on the exchange rates to be applied in agriculture (Official Journal L 90, p. 1). The representative rate of the Netherlands guilder was fixed at the central rate in force since 23 March 1981 (one ECU = HFL 2.81318).

The target prices for milk and the intervention prices for milk products were also fixed as from 6 April 1981 for the 1981/82 milk year. That measure was the subject of Council Regulation No (EEC) No 851/81 of 1 April 1981 fixing the target price for milk and the intervention prices for butter, skimmed-milk powder and Grana Padano and Parmigiano Reggiano cheeses for the 1981/82 milk year (Official Journal L 90, p. 6).

Export refunds were fixed for the products in issue with effect from the same date by Commission Regulation (EEC) No 922/81 of 3 April 1981 fixing the export refunds on milk and milk products (Official Journal L 93, p. 10).

3. Facts and procedure before the national court

On 30 December 1980, 2 January 1981 and 5 January 1981 the defendant in the main action, the Hoofdproduktschap voor Akkerbouwprodukten, issued the plaintiff in the main action, the limited liability company BV Verwerkings Industrie Vreeland, with three certificates relating to the export to non-member countries of three consignments of butter with a fat content by weight of 82% (PG 6) in the form of goods falling under tariff headings 21.07 G VII (a) and 21.07 G VIII (a). The certificates fixed in advance the refund applicable on the day of issue, that is HFL 402.30 per 100 kg in the three cases, and were valid until 31 May 1981 and 30 June 1981 respectively.

By a telex message of 21 April 1981 BV Verwerkings Industrie Vreeland requested the Hoofdproduktschap to cancel the said advance fixing and the

certificates thereof in so far as the certificates had not yet been used.

By decision of 18 June 1981 the Hoofdproduktschap rejected the request. By a decision of 25 August it also rejected a further application for the partial cancellation of the same certificates.

On 16 July and 27 August 1981 BV Verwerkings Industrie Vreeland brought an action before the College van Beroep voor het Bedrijfsleven challenging the above-mentioned decisions. It bases its claim on several provisions, including Council Regulation No 1134/68 and Commission Regulation No 1054/78. The Hoofdproduktschap, on the other hand, puts forward a different interpretation of those provisions in support of its decisions rejecting the claim.

In order to facilitate its consideration of those aspects of the case the College van Beroep voor het Bedrijfsleven stayed the proceedings by order of 25 February 1983 as amended by it on 27 April 1983 and referred the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

"1. Article 1 (2) of Regulation (EEC) No 1134/68 enables cancellation of the advance fixing and the relevant certificate to be obtained 'in cases where the provisions of paragraph (1) (a) apply'. Upon a proper construction of that paragraph, was there such a case when:

The value of the ECU changed on 23 March 1981;

The intervention prices for butter were refixed as from 6 April 1981 by Regulation (EEC) No 851/81; and

New export refunds for milk and milk products were introduced by Regulation (EEC) No 922/81 as from 6 April 1981?

2. Article 4 (1) of Regulation (EEC) No 1134/68 enables cancellation of the advance fixing and of the relevant certificate to be obtained 'in the case of an alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account'. Upon a proper construction of Article 4 (1), was there such a case when the value of the ECU changed on 23 March 1981?

3. Upon a proper construction of Article 1 (1) of Regulation (EEC) No 1054/78, must the monetary compensatory amounts not fixed in advance also be taken into consideration for the purposes of calculating the disadvantage referred to in Article 1 (1) when comparing the situation of the person concerned before and after the new rates and prices came into force?

4. Upon a proper construction of Article 1 (1) of Regulation (EEC) No 1054/78, must the purchase price also be taken into consideration for the purposes of calculating the disadvantage referred to in Article 1 (1) when comparing the situation of the person concerned before and after the new rates and prices came into force?"

4. Procedure before the Court

The order making the reference and the rectification thereof were received at the Court Registry on 10 March and 29 April 1983 respectively.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by the limited liability company BV Verwerkings Industrie Vreeland, represented by B. H. ter Kuile of the Hague Bar, by the Hoofdproduktschap voor Akkerbouwprodukten, represented by E. R. Kleijwegt, acting as Agent, and by the Commission of the European Communities, represented by its Legal Adviser, Robert Caspar Fischer, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and views of the Advocate General the Court, by order of 1 February 1984, decided to assign the case to the Third Chamber pursuant to Article 95 of the Rules of Procedure and to open the oral procedure without any preparatory inquiry.

II — Written observations

1. First question

(a) *BV Verwerkings Industrie Vreeland* considers that the first question calls for an answer in the affirmative since Article 1 (2) of Regulation No 1134/68 must be regarded as applicable.

The said provision refers to Article 1 (1) of the regulation which makes the right to cancellation of the advance fixing subject to either an alteration in the value of the unit of account or an adjustment in agricultural prices. In the present case both those conditions are satisfied.

As regards the first condition, the alteration of the value of the ECU which took place on 23 March 1981 is to be regarded as an alteration of the value of the unit of account within the meaning of Article 1 (1) of Regulation No 1134/68 since the ECU is the unit of account used in the common agricultural policy pursuant to Regulation No 652/79.

Although Regulation No 1134/68 entered into force before the introduction of the ECU it is still applicable. The Community legislature has not systematically replaced the expression "unit of account" by "ECU" in the various texts. Moreover, the equitable rule established by the provision under consideration still serves to protect traders against the consequences of certain financial events such as an alteration of the monetary compensatory amounts.

As regards the second condition, BV Verwerkings Industrie Vreeland takes the view that an adjustment of agricultural prices occurred as a result of the alteration in the representative rates brought about by Regulation No 850/81 and by the increase in intervention prices as a result of Regulation No 851/81.

In consequence the first question should be answered as follows:

"Article 1 (2) of Regulation (EEC) No 1134/68 must be interpreted as having been applicable when:

The value of the ECU was altered on 23 March 1981;

The intervention prices for butter were refixed with effect from 6 April 1981; and

The export refunds for milk and milk products were refixed with effect from 6 April 1981."

(b) The *Hoofdproduktschap voor Akkerbouwprodukten* proposes that the first question should be answered in the

negative. The possibility of cancelling advance fixing provided for in Article 1 (2) of Regulation No 1134/68 depends on whether Article 1 (1) thereof is applicable. The alteration of the value of the ECU which occurred on 23 March 1981 does not fall within the scope of the latter provision.

In that respect the Hoofdproduktschap considers that Article 1 of Regulation No 1134/68 refers indirectly, through Regulation No 653/68, to a special situation in which the Council decided in exceptional circumstances to adjust the agricultural prices at a time other than the beginning of a marketing year. In the present case, however, the new prices in the milk sector and the new refunds were fixed at the beginning of the new milk marketing year.

Therefore the first question should be answered as follows:

"The alteration of the value of the ECU on 23 March 1981 does not give rise to the application of Article 1 of Regulation (EEC) No 1134/68."

(c) The *Commission* takes the same view as the Hoofdproduktschap and considers that the first question should be answered in the negative. In the present case there was no "alteration to the value of the unit of account" or "adjustment of agricultural prices" within the meaning of Article 1 (1) of Regulation No 1134/68.

There was no alteration in the value of the unit of account since the unit of account had in the meantime been replaced by the ECU and the Community legislature did not expressly provide that Article 1 of Regulation No 1134/68 should apply where there was an alteration in the value of the ECU.

Moreover, the provision had a specific role to play in the system in force at the time in which alterations in the parities of national currencies or in the unit of account, or both, had direct repercussions on agricultural prices, but it has become superfluous under the present system in which as a result of the "green" rates and the monetary compensatory amounts the trend in agricultural prices is no longer linked to that of currencies and which, moreover, is no longer based on fixed parities.

Finally, it is incorrect to speak of an alteration in the value of the ECU since the ECU has no fixed parity but expresses the relative rates between the currencies of the Member States.

The second case for applying Article 1 (1) is also irrelevant under the present system. The adjustment in agricultural prices referred to by the provision is that which the Council may decide to make when considering an alteration in the value of the unit of account following an alteration in the parity of the currency of one or more Member States. Such matters must, moreover, be considered within three days of the date on which a Member State first announces an alteration in parity. In the present case all the decisions on prices which were taken in April 1981 were made on the basis of agricultural regulations as part of the annual review of agricultural prices and were therefore independent of the currency events of 23 March 1981.

In conclusion the Commission proposes that the first question should be answered as follows:

"An alteration in the relationship between the central rates of the currencies of Member States *inter se* and in relation to the ECU, whether or not it is followed by an adjustment in the repres-

entative rates used in the context of the agricultural policy, cannot be regarded as a case for applying Article 1 (1) of Regulation (EEC) No 1134/68."

2. Second question

(a) *BV Verwerkings Industrie Vreeland* considers that the second question should be answered in the affirmative.

The alteration in the value of the currencies making up the ECU in relation to the ECU itself which occurred on 23 March 1981 constitutes an "alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account" within the meaning of Article 4 (1) of Regulation No 1134/68 since the ECU is to be treated as the unit of account used in the common agricultural policy pursuant to Regulation No 652/79.

Article 4 (1) of Regulation No 1134/68 must be regarded as still applicable for the reasons already set out in relation to the first question. That interpretation is supported in particular by the fact that even after the introduction of the European monetary system it is still necessary to speak of an alteration in the relationship between the unit of account and the parity, that is to say the real value, of the currency in question as regards currencies which are not part of the money "snake", which include the pound sterling, and for which therefore a central rate does not exist.

Consequently the second question should be answered as follows:

"Article 4 (1) of Regulation (EEC) No 1134/68 must be interpreted as meaning that that article was applicable to the alteration in the value of the ECU in relation to the central rates or to the parities of the currencies of the Member States of the EEC as amended on 23 March 1981."

(b) The *Hoofdproduktschap voor Akkerbouwprodukten* proposes that the second question should be answered in the negative.

Article 4 (1) of Regulation No 1134/68 is based on concepts of "parity" and "unity of account" which are no longer relevant under the present system in which owing to the existence of representative rates monetary events no longer directly affect agricultural prices.

It follows that only alterations of the representative rate are relevant for the purposes of Article 4 (1) of Regulation No 1134/68. In the present case that provision is thus relevant as regards the alteration of the representative rate which occurred on 6 April 1981 but not as regards the alteration of the central rate which occurred on 23 March 1981.

Consequently the second question should be answered as follows:

"The alteration of the value of ECU which occurred on 23 March 1981 does not enable advance fixing to be cancelled pursuant to Article 4 (1) of Regulation (EEC) No 1134/68.

Under Article 4 of Regulation (EEC) No 878/77 such a possibility of cancellation requires at least an alteration of the representative rate."

(c) The *Commission* agrees with the Hoofdproduktschap in considering that the second question should be answered in the negative.

Article 4 (1) of Regulation No 1134/68 is no longer applicable as such because under the common agricultural policy the official parities of the national currencies are replaced by the representatives rates.

Article 4 of Regulation No 878/77, however, states that the said provision is applicable to alterations of the representative rates subject to the following conditions: on the one hand the second subparagraph of Article 4 (1) of Regulation No 1134/68 applies only if the application of the new representative rates is disadvantageous to the party concerned; on the other, there can be no cancellation if before the date of application of the new rate it is decided to offset the disadvantage by an appropriate measure.

Article 4 (1) of Regulation No 1134/68 is therefore not applicable to the monetary events of 23 March 1981, which concern neither the representative rates nor parities, but the central rates.

In conclusion the Commission proposes that the second question should be answered as follows:

"The combined provisions of Article 4 (1) of Regulation (EEC) No 1134/68 and Article 4 of Regulation (EEC) No 878/77 are not applicable to the consequences of alterations of the central rates of the Member States in their relationship *inter se* or in their relationship to the ECU; they apply solely to the consequences of alterations to the representative rates in the circumstances laid down in Article 4 (2) of Regulation (EEC) No 878/77."

3. Third question

(a) *BV Verwerkings Industrie Vreeland* considers that the third question should be answered in the affirmative.

That is based primarily on the actual wording of Article 1 (1) of Regulation No 1054/78, which speaks of "the sum total ... of the amounts applicable to a particular transaction". That wording covers on the one hand, the refund expressed in ECU and converted into Netherlands guilders by application of the representative rate and the monetary coefficient and, on the other hand, the monetary compensatory amounts. Those amounts must be levied or paid in all cases and are therefore applicable to a transaction in all circumstances.

Moreover, the disadvantage may arise precisely because the monetary compensatory amounts are not fixed in advance. That was recognized *inter alia* by Commission Regulation (EEC) No 908/81 of 3 April 1981 on the advance fixing of monetary compensatory amounts in the tender system for the export of sugar (Official Journal L 91, p. 9). The regulation was intended to compensate for the disadvantages caused by the monetary events of 23 March 1981 to holders of certificates by giving them the possibility of having the monetary compensatory amounts fixed in advance even after lodging a request for an export licence.

In consequence the third question should be answered as follows:

"Article 1 (1) of Regulation (EEC) No 1054/78 must be interpreted as meaning that for the purposes of calculating the disadvantage referred to therein when comparing the situation of the person concerned before and after the new rates and prices came into force account must also be taken of the monetary compensatory amounts not fixed in advance."

(b) The *Hoofdproduktschap voor Akkerbouwprodukten* proposes that the third question should be answered in the negative.

In the first place, the monetary compensatory amount was not included in the three advance fixings in question and therefore does not come into consideration for an adjustment or cancellation pursuant to Article 4 (1) of Regulation No 1134/68. Secondly, the

abolition of monetary compensatory amounts as regards the Netherlands was the result solely of the alteration of the central rate and not of the application of the new representative rate as required by Article 4 (2) of Regulation No 878/77.

In consequence the third question should be answered as follows:

"The monetary compensatory amounts not fixed in advance are not to be taken into account in calculating the disadvantage referred to in Article 1 (1) of Regulation (EEC) No 1054/78 when comparing the situation before and after the new rates and prices came into force."

(c) The *Commission* agrees with the Hoofdproduktschap in considering that the third question should be answered in the negative.

The definition of "disadvantage" contained in Article 1 (1) of Regulation No 1054/78 falls within the scope of the basic provisions, namely Article 4 (2) of Regulation No 878/77 and Article 4 (1) of Regulation No 1134/78. Under those provisions the refunds and other amounts fixed in advance and the certificates thereof may be cancelled only if the application of the new representative rate entails a disadvantage for the person concerned.

The first paragraph of Article 1 (1) of Regulation No 1054/78 must therefore be understood as covering all amounts fixed in advance, to which the new representative rate is applied and which relate to the transaction in question, to the exclusion of all other amounts not fixed in advance relating thereto. On the other hand the second paragraph of Article 1, which states that "the disadvantage shall be determined by comparing the situation of the interested party before and after the new rates and prices have taken effect", is limited to determining when the comparison between the former and the new situation must be made without introducing fresh elements into the comparison.

Moreover, in the present case the abolition of the monetary compensatory amounts in respect of the Netherlands was not the result of an alteration of the "green" rate of the guilder but of the alteration of the central rate which occurred on 23 March 1981. That consideration is not altered by the fact that the "green" rate itself was altered on 6 April 1981, for that adjustment was made precisely for the purpose of eliminating the actual negative monetary disparity between the central rate and the "green" rate and thus avoiding any negative monetary compensatory amounts.

In conclusion the Commission proposes that the third question should be answered as follows:

"In calculating the disadvantage within the meaning of Article 4 of Regulation (EEC) No 878/77 pursuant to Article 1 (1) of Regulation (EEC) No 1054/78 it is necessary to take account only of the amounts fixed in advance relating to the transaction concerned."

4. Fourth question

(a) *BV Verwerkings Industrie Vreeland* considers that the fourth question also calls for an answer in the affirmative in that when calculating the disadvantage in accordance with Article 1 (1) of Regulation No 1054/78 it is necessary to take account of an alteration in prices caused, as a result of an increase in the intervention prices, by an alteration in the representative rates.

That view is supported primarily by the wording of the second paragraph which states that it is necessary to compare "the situation of the interested party before and after the new rates and prices have taken effect." The word "prices" must be understood as referring to the purchase or sale prices or, if relevant, the intervention prices on which such prices are based.

Furthermore, it must be borne in mind that Article 1 (1) of Regulation No 1054/78 refers to a particular transaction which must in fact entail a disadvantage as a result of monetary events. If both the refunds and the monetary compensatory amounts are fixed in advance such a disadvantage can only consist in the price alteration caused by the alteration of the representative rates.

In consequece the fourth question should be answered as follows:

"Article 1 (1) of Regulation (EEC) No 1054/78 must be interpreted as meaning that for the purpose of calculating the disadvantage referred to therein when comparing the situation of the person concerned before and after the new rates and prices came into force account must also be taken of the increase in prices caused by the increases in the intervention prices which are the result of alterations in the representative rates."

(b) The *Hoofdproduktschap voor Akkerbouwprodukten* proposes that the fourth question should be answered in the negative.

Article 1 (1) of Regulation No 1054/78 refers only to an alteration which results in "the levying of a greater amount, or the granting of a lesser amount". In conjunction with Article 4 of Regulation No 1134/68 and Article 4 of Regulation No 878/77 that provision must be understood as dealing only with the consequences of an alteration in the representative rate as regards certificates of advance fixing.

In consequence the fourth question should be answered as follows:

"The purchase price is not to be taken into account when making the comparison referred to in Article 1 (1) of Regulation (EEC) No 1054/78.

In conjunction with Article 4 of Regulation (EEC) No 1134/68 and Article 4 of Regulation (EEC) No 878/77, Article 1 (1) of Regulation (EEC) No 1054/78 deals only with the consequences of an alteration of the representative rate as regards certificates of advance fixing which may be used for import or export transactions."

(c) The *Commission* considers that the answer to the fourth question is implied in the reply to the third question, in that for the purposes of Article 1 (1) of Regulation No 1054/78 it is necessary to take account only of the amounts fixed in advance to which the new "green" rate is applied.

In any event Article 1 (2) of the regulation, which applies in the present case, states that in the case of simultaneous alteration of the representative rate and of the price level in units of account (now in ECU), cancellation may be requested only if the disadvantage resulting from the alteration in the representative rate outweighs any advantage afforded by the effect of the alteration in the price level on the amount to be granted or levied on the goods.

That provision confirms, first, that the advantages or disadvantages of decisions on prices adopted under the agricultural policy may not be taken into account in calculating the "disadvantage" resulting from an alteration of the "green" rate; and secondly that provision makes it necessary to balance such a disadvantage against any advantages resulting from decisions on agricultural prices.

III — Oral procedure

Verwerkings Industrie Vreeland, represented by H. J. Bronkhorst of The Hague Bar, and the Commission of the European Communities, represented by R. C. Fischer, acting as Agent, presented oral argument at the sitting on 22 March 1984.

The Advocate General delivered his opinion at the sitting on 30 May 1984.

Decision

1 By order of the College van Beroep voor het Bedrijfsleven dated 25 February 1983, which was received at the Court on 10 March 1983, the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry], The Hague, referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty four questions on the interpretation of certain provisions in Council Regulation No 1134/68 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 (Official Journal, English Special Edition 1968 (II), p. 396), and of Commission Regulation (EEC) No 1054/78 of 19 May 1978 laying down detailed rules for the application of Regulation (EEC) No 878/77 on the exchange rates to be applied in agriculture and replacing Regulation (EEC) No 937/77 (Official Journal L 134, p. 40), as amended by Commission Regulation (EEC) No 1509/78 of 30 June 1978 (Official Journal L 178, p. 50).

2 Those questions were raised in proceedings brought against the Hoofdproduktschap voor Akkerbouwprodukten, The Hague, by the limited liability company BV Verwerkings Industrie Vreeland (hereinafter referred to as "Vreeland") whose registered office is at Vreeland, in the Netherlands. On 30 December 1980 and 2 and 5 January 1981 Vreeland obtained certificates for export to non-member countries of three consignments of butter in the form of food preparations coming under tariff subheadings 21.07 G VII (a) and 21.07 G VIII (a). The certificates fixed in advance the refund applicable on the day of issue and were valid until 31 May 1981 and 30 June 1981 respectively.

3 On 23 March 1981 the Italian lire was devalued by 6% and the pound sterling revalued by 22.64%, which led to a relative devaluation of the Netherlands guilder in relation to the ECU of 2.4906%. Those alterations brought about at the same time an alteration in the relation between the exchange rates of the currencies concerned and their representative rates, which remained unchanged in the present case. In the case of the Netherlands guilder, in particular, the new central rate was less than its representative rate. Nevertheless, the Commission did not abolish the positive monetary compensatory amounts it had previously applied to the Netherlands; on the contrary, in expectation of an adaptation of the representative rates, it kept the amounts unchanged until 5 April 1981 pursuant to Regulation No 801/81 of 27 March 1981 (Official Journal L 82, p. 17).

4 It was not until 6 April 1981 that the Council adjusted the representative rates by means of Regulation No 850/81 of 1 April 1981 (Official Journal L 90, p. 1). In the case of the Netherlands guilder the representative rate was fixed at the level of the new central rate.

5 Likewise with effect from 6 April 1981, the target prices for milk and the intervention prices for milk products were fixed for the 1981/82 milk year by Council Regulation No 851/81 of 1 April 1981 (Official Journal L 90, p. 6), and the new export refunds in the milk and milk products sector were fixed by Commission Regulation No 922/81 of 3 April 1981 (Official Journal L 93, p. 10).

6 Vreeland alleged that because of the above events it was no longer possible to export at a profit on the basis of the refunds fixed in advance and therefore on 21 April 1981 requested the annulment of the said advance fixing and the certificates thereof in so far as the certificates had not then been used.

7 When that request was rejected by the Hoofdproduktschap by decisions of 18 June and 25 August 1981, Vreeland brought an action challenging the decisions before the College van Beroep voor het Bedrijfsleven, which stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

"1. Article 1 (2) of Regulation (EEC) No 1134/68 enables cancellation of the advance fixing and the relevant certificate to be obtained 'in cases where the provisions of paragraph (1) (a) apply'. Upon a proper construction of that paragraph, was there such a case when:

The value of the ECU changed on 23 March 1981;

The intervention prices for butter were refixed as from 6 April 1981 by Regulation (EEC) No 851/81; and

New export refunds for milk and milk products were introduced by Regulation (EEC) No 922/81 as from 6 April 1981?

2. Article 4 (1) of Regulation (EEC) No 1134/68 enables cancellation of the advance fixing and of the relevant certificate to be obtained 'in the case of an alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account'. Upon a proper construction of Article 4 (1), was there such a case when the value of the ECU changed on 23 March 1981?

3. Upon a proper construction of Article 1 (1) of Regulation (EEC) No 1054/78, must the monetary compensatory amounts not fixed in advance also be taken into consideration for the purposes of calculating the disadvantage referred to in Article 1 (1) when comparing the situation of the person concerned before and after the new rates and prices came into force?

4. Upon a proper construction of Article 1 (1) of Regulation (EEC) No 1054/78, must the purchase price also be taken into consideration for the purposes of calculating the disadvantage referred to in Article 1 (1) when comparing the situation of the person concerned before and after the new rates and prices came into force?"

The first and second questions

8 With the first and second questions, which it is convenient to take together, the national court seeks essentially to know whether, and if so subject to what conditions, Articles 1 and 4 (1) of Council Regulation No 1134/68 of

30 July 1968 gives a right to cancellation of the advance fixing of export refunds and the certificate thereof in the event on the one hand of an alteration in the value of the currencies composing the ECU *inter se* and in their relation to the ECU and on the other of a fresh fixing of the target and intervention prices and the export refunds in the sector concerned.

9 In that respect the plaintiff in the main action maintains in substance that the ECU represents the unit of account used in the common agricultural policy pursuant to Council Regulation No 652/79 of 29 March 1979. It follows that an alteration in the value of the currencies composing the ECU *inter se* or in relation to the ECU constitutes both an "alteration to the value of the unit of account" within the meaning of Article 1 of Regulation No 1134/68 and an "alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account" within the meaning of Article 4 (1) of the said regulation. Moreover, the increase in intervention prices and the reintroduction of export refunds in the sector which occurred on 6 April 1981 constitute an "adjustment of agricultural prices" within the meaning of Article 1 of the aforesaid regulation.

10 The Hoofdproduktschap voor Akkerbouwprodukten and the Commission on the other hand, consider that the terms "unit of account" and "parity" are no longer relevant. The unit of account, based on the concept of fixed parities and defined in relation to a specific quantity of fine gold, has been replaced by the ECU which expresses the relative rates between the currencies of the Member States fluctuating *inter se* within certain margins. In addition, monetary events no longer directly affect agricultural prices, which are fixed under the present system by means of representative rates. Further, the concept of adjustment of agricultural prices within the meaning of Article 1 of Regulation No 1134/68 covers only an adjustment which the Council decides to make when dealing with an alteration in the value of the unit of account following an alteration in the parity of the currency of one or more Member States. That concept thus does not cover decisions in relation to prices such as those taken on 6 April 1981 on the basis of the agricultural regulation as part of the annual review of agricultural prices.

11 In that respect it must be remembered that Article 1 of Regulation No 1134/68 gives a right to cancellation of the advance fixing of *inter alia* export refunds and the relevant certificate in two cases, namely on the one hand "in the case of an alteration to the value of the unit of account" and on the other in the case of "an adjustment of agricultural prices pursuant to the fourth paragraph of Article 3 of Regulation (EEC) No 653/68". Article 4 (1) thereof gives a right to cancellation moreover "in the case of an alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account".

12 In the first place, in so far as the questions relate to the currency alterations which occurred on 23 March 1981 it must be observed that the aforesaid provisions refer expressly only to alterations in the value of the unit of account or in the relationship between that value and the parity of the currency of a Member State.

13 Further, the aforesaid provisions of Regulation No 1134/68 are intended to allow the Community institutions and the competent national authorities to take the appropriate measures to deal with currency alterations which have a direct effect upon agricultural prices. That is not the case, however, with alterations in the value of the ECU or the currencies composing it, because since the entry into force of Council Regulation No 878/77 of 26 April 1977 agricultural prices have ceased to depend on the official parities and central rates or effective exchange rates respectively and are based on the representative rates of the national currencies, which in the present case remained unchanged during the period from 23 March to 5 April 1981. Under the present system set up by the aforesaid Regulations Nos 878/77 and 652/79 the conversion of the ECU into a national currency for the purposes of the common agricultural policy is made on the basis of the representative rates, the difference in which in relation to the central rates and effective exchange rates respectively is compensated for by the payment of monetary compensatory amounts.

14 That conclusion is confirmed by the fact that Article 4 of Regulation No 878/77 states, albeit subject to certain reservations, that the provisions of Regulation No 1134/68 in respect of an alteration of the relationship between the parity of the currency of a Member State and the value of the

unit of account are to apply to alterations in the representative rates, whereas there is no such reference in the rules substituting the ECU for the unit of account for the purposes of the common agricultural policy.

15 In the second place, as regards the questions relating to the agricultural decisions taken with effect from 6 April 1981, it suffices to observe that Article 1 of Regulation No 1134/68 is concerned only with an adjustment of agricultural prices pursuant to the fourth paragraph of Article 3 of Regulation No 653/68, that is to say, an adjustment necessary as a result of an alteration in monetary matters having a direct effect on the level of agricultural prices and effected, in derogation of the existing agricultural regulations, outside the normal decisions adopted under the common organization of the markets. That is not so in the present case since the decisions in question have been adopted not as a result of the monetary events of 23 March 1981 but as part of the annual review of prices at the beginning of the new milk marketing year.

16 That is confirmed by the fact that the measures adjusting the agricultural prices under the fourth paragraph of Article 3 of Regulation No 653/68 can be adopted only after a lapse of three days following the announcement by the Member State concerned of an alteration in the parity in question. In the present case the target and intervention prices were increased and new refunds established only after the expiry of a period of two weeks following the monetary events of 23 March 1981.

17 The first and second questions must therefore be answered to the effect that Articles 1 and 4 (1) of Council Regulation No 1134/68 of 30 July 1968 give no right to the cancellation of the advance fixing of export refunds and of the certificate attesting thereto either in the case of an alteration in the value of the currencies composing the ECU *inter se* and in relation to the ECU, or in the case of the fixing afresh of the target and intervention prices or export refunds in the sector concerned in so far as the new rates and prices are fixed as part of the annual review of agricultural prices under the common organization of the markets.

Third and fourth questions

18 The third and fourth questions, which must be taken together, ask in substance whether in calculating the disadvantage, for the purpose of cancelling the advance fixing, referred to in the combined provisions of Article 4 of Council Regulation No 878/77 of 26 April 1977 and Article 1 (1) of Commission Regulation No 1054/78 of 19 May 1978, it is also necessary to take account of the monetary compensatory amounts which have not been fixed in advance and the purchase price.

19 In that respect the plaintiff in the main action points out that the definition of "disadvantage" contained in the first paragraph of Article 1 (1) of Regulation No 1054/78 as amended by Regulation No 1509/78 refers to "the sum total ... of the amounts applicable to a particular transaction". It thus also covers monetary compensatory amounts not fixed in advance especially as a disadvantage may result from such amounts not being fixed in advance. Furthermore, the wording of the second paragraph of the aforesaid provision, which stipulates that the disadvantage should be determined "by comparing the situation of the interested party before and after the new rates and prices have taken effect" shows that a disadvantage may also result from an alteration in the level of the market prices caused, through an increase in intervention prices, by an alteration of the representative rates.

20 The Hoofdproduktschap voor Akkerbouwprodukten and the Commission, on the other hand, maintain that Article 1 (1) of Regulation No 1054/78 defining what constitutes a disadvantage falls within the scope of Article 4 of Regulation No 878/77. That provision refers only to amounts fixed in advance and applicable to the transaction concerned, to which the new representative rate is applied to the exclusion of any amounts not fixed in advance such as monetary compensatory amounts not fixed in advance and prices.

21 In that respect it must be observed that, as the Hoofdproduktschap and the Commission maintain, Commission Regulation No 1054/78 must be interpreted in the light of the basic Council Regulation. Article 4 of Council Regulation No 878/77 states that the provisions of Council Regulation No 1134/68 on alterations in the relationship between the parity of the currency of a Member State and the value of the unit of account — in the present case Article 4 (1) thereof — are to apply to alterations in the representative

rates. As far as the present case is concerned Article 4 applies only to "amounts which have been fixed in advance for transaction". In the light of the relationship between those provisions, neither monetary compensatory amounts not fixed in advance nor the purchase price may be taken into account in calculating the disadvantage as there defined.

22 That consideration is not altered by the fact, to which the plaintiff in the main action referred, that according to Article 1 (1) of Regulation No 1054/78 as amended by Commission Regulation No 1509/78 "the disadvantage shall be determined by comparing the situation of the interested party before and after the new rates and prices have taken effect", since it is apparent from the place of that provision in the context of the rules in question that it is confined to stating the situations to be compared for the purpose of determining the disadvantage without introducing new factors relating to the basis of that comparison.

23 That conclusion is, moreover, borne out by the very wording of Article 1 (1) of Regulation No 1054/78, as amended, which refers only to an alteration in the amounts applicable to the transaction which "results in the levying of a greater amount, or the granting of a lesser amount, than that applicable before entry into force" of the new representative rate. It is well known that the purchase price is not taken into account in calculating the amounts to be levied or granted.

24 The third and fourth questions must therefore be answered to the effect that in calculating the disadvantage, with a view to cancelling advance fixing, for the purposes of Article 4 of Council Regulation No 878/77 of 26 April 1977 in conjunction with Article 1 (1) of Commission Regulation No 1054/78 of 19 May 1978, no account must be taken either of monetary compensatory amounts not fixed in advance or of the purchase price.

Costs

25 The costs incurred by the Commission of the European Communities, which has submitted 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 national court, the decision on costs is a matter for that court.

On those gounds,

THE COURT (Third Chamber)

in answer to the questions submitted to it by the College van Beroep voor het Bedrijfsleven, The Hague, by Order of 25 February 1983, hereby rules:

1. **Articles 1 and 4 (1) of Council Regulation No 1134/68 of 30 July 1968 give no right to the cancellation of the advance fixing of export refunds and of the certificate attesting thereto either in the case of an alteration in the value of the currencies composing the ECU *inter se* and in relation to the ECU, or in the case of the fixing afresh of the target and intervention prices or export refunds in the sector concerned in so far as the new rates and prices are fixed as part of the annual review of agricultural prices in the common organization of the markets.**

2. **In calculating the disadvantage, with a view to cancelling advance fixing, for the purpose of Article 4 of Council Regulation No 878/77 of 26 April 1977 in conjunction with Article 1 (1) of Commission Regulation No 1054/78 of 19 May 1978, no account must be taken either of monetary compensatory amounts not fixed in advance or of the purchase price.**

Galmot Everling Kakouris

Delivered in open court in Luxembourg on 27 September 1984.

For the Registrar

H. A. Rühl

Principal Administrator

Y. Galmot

President of the Third Chamber