— as meaning that, where goods exported from a Member State have perished in transit as a result of *force majeure*, the exporter is entitled to the same monetary compensatory amounts as would have been due to him if the goods had reached their destination and if customs import formalities had been completed there.

In Case 38/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht Hamburg [Finance Court, Hamburg] for a preliminary ruling in the action pending before that Court between

BUTTER- UND EIER-ZENTRALE NORDMARK E.G., Hamburg,

and

HAUPTZOLLAMT [Principal Customs Office] HAMBURG-JONAS

on the interpretation of Article 11 (2) of Regulation No 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts (Official Journal 1975, L 139, p. 37),

THE COURT

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

1. The request from the Finanzgericht Hamburg for a preliminary ruling is concerned with whether the exception in regard to the destruction of goods in transit by reason of *force majeure*, provided for in Article 6 (1) of Regulation No 192/75 on export refunds, which was applied by analogy to accession compensatory amounts in the judgment of the Court of 11 July 1978 in Case 6/78 *Union Française des Céréales* v *Hauptzollamt Hamburg-Jonas* [1978] ECR 1675, may also be applied to monetary compensatory amounts which become payable on importation into a Member State but which are granted by the exporting State.

2. The monetary compensatory amount payable in the case of exportation from a Member State the currency of which has appreciated above the margin of fluctuation to a Member State the currency of which has depreciated below that margin is composed of two elements: one, granted by the exporting State, is payable when the goods are exported and the other, granted by the importing State, is payable when the goods are imported (Article 1 (1) of Regulation No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (Official Journal, English Special Edition 1971 (I), p. 257)).

Article 2a of Regulation No 974/71, as amended by Regulation No 1112/73 of the Council of 30 April 1973 (Official Journal, L 114, p. 4), provides that:

"Where a product exported from one Member State has been imported into a Member State which has to grant a compensatory amount upon importation, the exporting Member State may, by agreement with the importing Member State, pay the compensatory amount which should be granted by the said importing Member State. In this case no compensatory amount shall be granted by the importing Member State for products originating in the Member State concerned."

The United Kingdom and the Federal Republic of Germany have taken advantage of the option given by that Article.

Article 11 (2) of Regulation No 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts (Official Journal 1975, L 139, p. 37) provides that:

"Payment by the exporting Member State of the monetary compensatory amount which should be granted by the importing Member State shall be

conditional upon the production of proof that customs import formalities have been completed and that the duties and charges having equivalent effect payable in the importing Member State have been charged.

. . ."

3. The corresponding provisions in regard to payment of accession compensatory amounts are contained in Regulation No 269/73 of the Commission of 31 January 1973 laying down detailed rules for the application of the system of "accession" compensatory amounts (Official Journal, L 30, p. 73), Article 5 (1) of which provides that:

"The compensatory amount shall be paid only upon proof that the product in respect of which customs export formalities have been completed has left the geographical territory of the Member State in which the formalities were completed."

According to the second paragraph of that Article, where the compensatory amount has to be adjusted for the amount of customs duties, or where it is higher than the export refund applicable on the day of exportation, payment of the monetary compensatory amount is made subject to ". . . proof that, further, import formalities have been completed and duties and taxes of equivalent effect payable in the Member State of destination have been collected."

4. In the field of export refunds, Article 6 (1) of Regulation No 192/75 of the Commission of 17 January 1975 laying down detailed rules for the application of export refunds in respect of agricultural products (Official Journal, L 25, p. 1) provides that:

". . . payment of the refund shall be conditional not only on the product having left the geographical territory of the Community but also — save where it has perished in transit as a result of *force majeure* — on its having been imported into a third country and where appropriate into a specific third country . . ."

Under Article 11 (1) of Regulation No 192/75 it is provided that:

"Where the rate of refund varies according to destination, payment of the refund shall, subject to the provisions of paragraph (2), be made only if the product has been imported into the third country or countries in respect of which the refund is prescribed."

5. In its judgment of 11 July 1978 in Case 6/78 *Union Française des Céréales,* the Court, in applying by analogy Article 6 (1) of Regulation No 192/75, ruled that:

"Article 5 (2) of Regulation No 269/73 of the Commission of 31 January 1973 is to be interpreted as meaning that where goods exported from an old Member State to a new Member State have perished in transit as a result of *force majeure,* the exporter is entitled to the same compensatory amounts as would have been due to him if the goods had reached their destination and if import formalities had been completed there."

6. At the beginning of November 1977, Butter- und Eier-Zentrale Nordmark e.G., the plaintiff in the main action in the present case, sold 18 160 kg of butter to a British undertaking. The sale price, which was calculated on the basis of the domestic purchase prices less the accession compensation for the United Kingdom, the monetary compensation for Germany and the monetary compensation for the United Kingdom,

was agreed cif Manchester. On 10 November 1977 the goods were loaded on board the "Hero" at the Danish port of Esbjerg. On 13 November 1977 the ship sank to the north-west of Heligoland. The insurance company reimbursed the cif price of the goods. The plaintiff received from the German customs authorities DM 14 617.63 by way of the United Kingdom accession compensation and DM 10 734.38 by way of the monetary compensation for the Federal Republic of Germany, that being in respect of the exportation of the goods. The Hauptzollamt Hamburg-Jonas, the defendant in the main action in this case, refused, however, to pay the monetary compensation of DM 27 307.56 for importation into the United Kingdom.

7. In respect of that refusal the plaintiff in the main action instituted proceedings before the Finanzgericht Hamburg.

Before the Finanzgericht the plaintiff argued, in particular, that, in accordance with the principle laid down by the Court in its aforementioned judgment in Case 6/78, Article 6 (1) of Regulation No 192/75 falls to be applied by analogy in the present case. It was submitted, moreover, that there is in Community law a general legal principle of *force majeure* which, in the case in question, relieved the plaintiff in the main action of the need to provide proof of importation.

It was contended that, if the plaintiff in the main action were obliged to insure against its not being paid the monetary compensatory amount on importation, it would be placed in an unfavourable competitive position in relation to sellers in States the currencies of which have appreciated above the margin of fluctuation.

The defendant in the main action argued before the Finanzgericht that in Community law there is no general principle of *force majeure* having the effects which the plaintiff claims. The plaintiff had not shown that, unless it were granted the monetary compensatory amount, it would be at a disadvantage compared with exporters in France. Where in Germany a monetary compensatory amount is paid on export of a product and in France a monetary compensatory amount is levied on export of a similar product, both products, after being exported, are on the same currency level. It was submitted that there is no scope for applying Article 6 (1) of Regulation No 192/75 by analogy. There is no comparability in that respect. Monetary compensatory amounts on imports are paid by the exporting State only for administrative and technical reasons and are conditional on the act of importation. In so far as Article 11 (2) of Regulation No 1380/75 requires proof of completion of customs import formalities it does not, unlike the provisions of Regulation No 192/75, do so to prevent abuses.

8. By order of 20 February 1979 the Finanzgericht stayed proceedings before it and made reference to the Court of Justice under Article 177 of the EEC Treaty for a preliminary ruling on the following question:

"Is Article 11 (2) of Regulation (EEC) No 1380/75 of the Commission of 29 May 1975 to be interpreted, by analogy with Article 6 (1) of Regulation (EEC) No 192/75 of the Commission of 17 January 1975, as meaning that, if goods exported from a Member State perish in transit as a result of *force majeure*, the exporter thereof, in the event of the monetary compensation being granted by

the exporting instead of the importing State in accordance with Article 2a of Regulation (EEC) No 974/71 of the Council of 12 May 1971, has a claim for payment by the exporting Member State of the same monetary compensation as would have been due to him if the goods had reached their destination and if customs import formalities had been completed there?"

9. It appears from the order making the reference that the Finanzgericht is of the opinion that the wording of the relevant provisions supports the argument of the defendant in the main action.

On the other hand, it considers that, despite their consisting legally and technically of two operations, the subsidies on exportation and on importation constitute a single measure designed to stimulate agricultural trade within the Community without any deflection of trade. It appears therefore to the Finanzgericht that, where goods perish in transit as a result of *force majeure*, it is illogical to grant monetary compensation on export and not on import. The Finanzgericht considers that, on the principle of equality, Regulation No 1380/75 contains a lacuna which must be made good by applying Article 6 (1) of Regulation No 192/75 by analogy. The granting of export refunds, monetary compensation on trade with non-member countries and accession compensatory amounts even where goods have perished as a result of *force majeure* is based upon the concept of equality in competition. If he had not the prospect of being granted those export subsidies, the exporter would have to insure against the risk of not being granted any subsidies in the event of the goods perishing as a result of *force majeure* and he would be at a disadvantage compared with a seller in a non-member country, who only has to insure the goods at the price level applicable in that country. The position of an exporter who sells from a Member State with higher prices to a Member State with lower prices is no different. To this must be added, according to the Finanzgericht, the fact that the very purpose of the introduction, by means of Regulation No 974/71, of monetary compensatory amounts in trade between Member States was to facilitate, without deflection of trade, trade in agricultural products even where the price levels are different. For that reason, according to the Finanzgericht, a rule which runs counter to that objective would not be compatible with that system.

10. The order making the reference was received at the Registry of the Court on 8 March 1979.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Commission of the European Communities, represented by J. Sack, a member of its Legal Department, acting as Agent, and by the plaintiff in the main action, represented by Dr Modest and Partners, Rechtsanwälte, Hamburg.

After 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 — Written observations submitted to the Court

A — Observations of the plaintiff in the main action

In the view of the plaintiff in the main action the question put by the Finanzgericht ought to be answered affirmatively.

The fact that a cif sale is involved is of crucial importance in this regard. The plaintiff stresses that in calculating its sale price it deducted from its purchase price, which was relatively high because of the high value of the German mark, both the accession compensation for the United Kingdom and the monetary compensation made up of the two partial amounts which fell to be paid on exportation and importation respectively. Upon presentation of the documentation, the purchaser had paid the purchase price thus calculated. Only that price had been reimbursed by the insurance company, the risk having passed to the purchaser at the time of the loss.

The plaintiff submits, therefore, that since, so far as it was concerned, the transaction was settled by presentation of the documents and payment of the purchase price, it has suffered the loss of a sum equal to that part of the monetary compensation which was payable on importation by reason of the fact that it was unable to provide proof of importation of the goods into the United Kingdom.

In the plaintiff's submission, Article 6 (1) of Regulation No 192/75 must be applied by analogy to monetary compensatory amounts. It submits that an undertaking in a country the currency of which has appreciated beyond the margin of fluctuation may not be obliged to bear the above-mentioned loss or to insure against the risk of such a loss, since in both cases it would be in a less favourable competitive situation compared with sellers in countries the currency of which has depreciated below the margin of fluctuation. Such a situation would not be compatible, moreover, with the prohibition on discrimination.

An application of Article 6 (1) of Regulation No 192/75 by analogy follows also from the objective of Regulation No 974/71: monetary compensation is supposed to prevent difficulties in the functioning of the common market. It is necessary therefore for it to be paid in a situation such as the one in the present case.

A rule such as that contained in Article 11 (2) of Regulation No 138/75, which omits to provide for cases of *force majeure*, is not covered by the wide discretionary power which the Court recognizes the Community authorities to have, since, here, identical situations are being treated differently.

The plaintiff in the main action submits further that, even if the application by analogy of Article 6 (1) of Regulation No 192/75 were not to be upheld in the present case, the lacuna identified in the legislation ought to be made good on the ground that the fundamental concept of *force majeure* forms part of the general legal principles which apply to Community legislation.

Finally, the plaintiff emphasizes that under Articles 32 and 36 of the Act of Accession customs duties and charges having an effect equivalent thereto may no longer be levied after 1 July 1977. Accordingly, the second condition of Article 11 (2) of Regulation No 1380/75, whereby proof is required that customs duties and charges having equivalent effect have been charged, disappears.

B — Observations of the Commission

The Commission stresses that a literal application of the provision in question

results in payment of monetary compensation being refused in this case.

Referring to the judgment of the Court in Case 6/78 *Union française des Céréales*, the Commission concedes that, were the principle of Community preference to play an essential part in the present case also, as was the position in that case, the German authorities would have to pay the monetary compensation for the United Kingdom. In its opinion, however, as between the system of accession compensation and that of monetary compensation there are important differences which make impossible the straightforward transposition to monetary compensation of the principles formulated by the Court in regard to accession compensation.

The Commission reminds the Court in this regard, first, that the objectives of the two systems are different: the system of monetary compensation seeks to prevent currency fluctuations from disturbing the market or deflecting traditional trade, whereas the aim of the system of accession compensatory amounts is that of permitting free movement of agricultural products in the enlarged Community before the entry into force of uniform agricultural prices and therefore of facilitating such a deflection within that larger Community. In the granting of accession compensatory amounts fundamental importance is thus attached to the principle of Community preference, while that principle does not play an essential part in the system of monetary compensatory amounts.

The Commission points out further that accession compensatory amounts are applied only by the original Member States of the Community. Consequently, the accession compensatory amounts for a specific product are the same for all the original Member States and there is only one accession compensatory amount, not an accession compensatory amount on exportation, for example from Germany, and also an accession compensatory amount on importation, for example on arrival in the United Kingdom. The Commission adds that the entitlement to the grant of an accession compensatory amount arises at the moment of exportation from a country having a higher price level. The fact that in certain cases, where the features of the system make fraudulent practices possible, the granting of accession compensatory amounts is also made conditional upon proof of importation into the Member State with the lower price level does not alter matters in that respect.

The Commission considers that, in these circumstances, it is proper to recognize an entitlement to an accession compensatory amount in a situation such as that underlying Case 6/78, where the product had been exported from a Member State having a higher price level. In order to prevent possible abuses in such cases, it is sufficient to require proof that the product was in fact destined for the specified new Member State.

The Commission goes on to state that the legal position with regard to monetary compensatory amounts is totally different. Two independent amounts, for which different qualifying conditions apply, are involved. The matter is not merely one of preventing, by means of the obligation to provide proof of importation, the perpetration of fraudulent practices in certain cases; quite simply, in the absence of importation, there is no entitlement to the compensatory amount.

According to the Commission, there are yet more forceful arguments against an interpretation based upon the principle of Community preference. If a common agricultural market which operates without monetary compensatory amounts is assumed, and if, on that assumption, a ship carrying a given product from Germany to the United Kingdom is lost at sea, the competitive position of a German exporter, compared with a trader in a non-member country, is just as unfavourable. An exporter trading within the Community is always, in that regard, in a less favourable competitive position than an exporter in a non-member country by reason of the higher level of agricultural prices in force in the Community. That handicap to which exporters in the Common Market are subject cannot be offset unless due account is taken in the fixing of the levy of the fact that the basis of calculation for transport insurance is higher.

Where goods which have been sold are transported without crossing any of the frontiers within the Common Market, the trader concerned must insure the goods at Community agricultural prices if he does not wish to suffer any loss should those goods perish. According to the Commission, it is difficult to see why goods which are the subject of a transaction between Hamburg and Munich and which also have to compete with goods coming from non-member countries must bear higher insurance costs than those which have to be borne by goods sold for dispatch from Hamburg to London. The Common Market rests upon the principle that it is essential to eliminate the disadvantages arising in trade between Member States simply through goods crossing a frontier. However, conversely, to give certain goods an unjustified advantage for the simple reason that they cross a frontier would be equally incompatible with the Common Market. In the present case, there is no justification for applying a different treatment, since the function of monetary compensatory amounts is only that of neutralizing the discrepancy between the "green rate" of a national currency and the rate at which it is actually exchanged.

The Commission observes finally, in this section of its argument, that were goods to perish before being exported from Germany, the German exporter would not receive any monetary compensatory amount, even if those goods had been intended for importation into the United Kingdom. If the exporter wishes to avoid suffering a loss, he must therefore on any view insure, in German currency, for the full value of those goods up to the time of exportation.

The Commission examines finally whether, and if so, to what extent, Article 6 (1) of Regulation No 192/75 may be invoked in regard to the grant of monetary compensatory amounts in cases of *force majeure*. In this context, the Commission emphasizes that no parallel may be drawn between export refunds and monetary compensatory amounts. The granting of export refunds and the granting of accession compensatory amounts have a common objective, namely, that of opening the markets of non-member countries and of Member States which are not yet fully integrated into the Community to certain goods which could not be sold on those markets because their basic price is too high. However, the purpose of monetary compensatory amounts is not to encourage exports, but merely to neutralize the negative effects on the Common Agricultural Policy of currency fluctuations. The Community institutions

are in fact free to decide for virtually all agricultural products whether, and for what countries, they wish to fix export refunds, which is not the case with monetary compensation. Export refunds, like accession compensatory amounts, are amounts the right to payment of which arises at the moment of exportation. It is only in certain cases that the right to payment is made subject to certain additional conditions, for example, importation into a specific non-member country. In the case of monetary compensatory amounts, that position only obtains where the monetary compensatory amount to be paid on export is concerned; and that amount the plaintiff has duly received.

Having regard to the radical differences which exist between the objectives of and the conditions giving rise to the two rights, the Commission considers that it is impossible to compare export refunds and monetary compensatory amounts to be paid on importation.

III — Oral procedure

1. The Commission stated in reply to a written question from the Court that, apart from the butter sold by the plaintiff in the main action, agricultural products from Denmark were aboard the shipwrecked vessel. According to information given to the Commission by the Danish customs authorities no monetary compensatory amounts were paid in respect of those other goods, despite the fact that the United Kingdom and Denmark had made use of the option provided in Article 2a of Regulation No 974/71 of the Council to have the monetary compensatory amount to be granted on import paid by the exporting Member State.

2. At the sitting on 11 December 1979 the plaintiff in the main action, Butter- und Eier-Zentrale Nordmark e.G., represented by B. Festge, and the Commission, represented by J. Sack, a member of its Legal Department, acting as Agent, submitted oral argument.

3. The plaintiff in the main action supplemented its written observations by stating that, if Article 2a of Regulation No 974/71 had not been put into effect, it would have calculated its sale price at the level of the authorized margin of fluctuation so that the seller would not have been affected in that event by the fact that the goods perished.

The Commission stressed in particular that application by analogy of Article 6 (1) of Regulation No 192/75 was excluded by reason of the absence of any lacuna in the legislation on monetary compensatory amounts. The ommission from Article 11 of Regulation No 1380/75 of any provision concerning cases of *force majeure* is due to the Commission's intention not to attribute to monetary compensatory amounts the function of an insurance against an exporter's actual losses.

4. The Advocate General delivered his opinion at the sitting on 16 January 1980.

Decision

1 By order of 20 February 1979, which was received at the Court on 8 March, the Finanzgericht Hamburg submitted for a preliminary ruling under Article 177 of the EEC Treaty a question concerning the interpretation of Article 11 (2) of Regulation No 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts (Official Journal, L 139, p. 37).

2 The question is put in the context of litigation between, on the one hand, an undertaking which exported from the Federal Republic of Germany 18 160 kg of butter which, following a shipwreck in the North Sea, failed to arrive at its destination in the United Kingdom and, on the other hand, the German customs authorities who refused to pay to the exporting company the monetary compensatory amounts in respect of importation into the United Kingdom on the ground that that company had failed to furnish proof, as required by the above-mentioned provision, that customs import formalities had been completed. As the price which was to be paid by the British purchaser, and which was reimbursed by the insurance company, had been calculated on the basis of the price level in the United Kingdom, the exporting firm suffered a loss equivalent to those amounts.

3 The exporting company, the plaintiff in the main action, particularly contended before the Finanzgericht that, in accordance with the principle laid down by the Court in its judgment of 11 July 1978 in Case 6/78 *Union française des Céréales* v *Hauptzollamt Hamburg-Jonas* [1978] ECR 1675, Article 6 (1) of Regulation No 192/75 of the Commission of 17 January 1975 laying down detailed rules for the application of export refunds in respect of agricultural products (Official Journal, L 25, p. 1) should be applied by analogy in the present case. That Article 6 provides that, in certain cases, payment of the refund is subject to the condition that the product has been imported into a third country, and, where appropriate, into a specific third country, but it provides at the same time an exception for goods which have perished in transit as a result of *force majeure.*

4 In Case 6/78 the Court applied that clause on *force majeure* by way of analogy in interpreting Regulation No 269/73 of the Commission of

31 January 1973 laying down detailed rules for the application of the system of "accession" compensatory amounts (Official Journal, L 30, p. 73), Article 5 (2) of which provides that, in certain cases, payment of the compensatory amount is subject to proof that import formalities have been completed in the Member State of destination. In its judgment the Court proceeded, in particular, on the principle of Community preference, the observance of which principle, in trade between the Community as originally constituted and the new Member States before the full and complete integration of the latter into the common organization of agricultural markets, the temporary system of accession compensatory amounts was intended to ensure.

5 In the present case the Finanzgericht considers that Regulation No 1380/75 displays the same lacuna and has therefore invited the Court to rule upon the following question:

"Is Article 11 (2) of Regulation (EEC) No 1380/75 of the Commission of 29 May 1975 to be interpreted, by analogy with Article 6 (1) of Regulation (EEC) No 192/75 of the Commission of 17 January 1975, as meaning that, if goods exported from a Member State perish in transit as a result of *force majeure*, the exporter thereof, in the event of the monetary compensation being granted by the exporting instead of the importing State in accordance with Article 2a of Regulation (EEC) No 974/71 of the Council of 12 May 1971, has a claim for payment by the exporting Member State of the same monetary compensation as would have been due to him if the goods had reached their destination and if customs import formalities had been completed there?"

6 In its observations the Commission has contended in particular that although there was a marked similarity capable of justifying an analogy between refunds on exports to non-member countries and the accession compensatory amounts granted during the transitional period on exports to the new Member States, such is not the case in regard to monetary compensatory amounts. Above all, the principle of Community preference, which was the basis both of accession compensatory amounts and refunds on exports to third countries, does not play an essential part in the system of monetary compensatory amounts.

7 In fact, the system of refunds on exports to non-member countries was introduced in order to ensure that, subject to special considerations relating to the different products, Community exporters would enjoy a level of prices similar to that within the Community market and accordingly, for certain products, significantly higher than the level of prices on the world market. As the Court stressed in the judgment which it gave in Case 6/78 in relation to accession monetary compensatory amounts, it would be incompatible with the principle of Community preference for the exporter in the Community to be refused the refund after the goods had perished in transit as a result of *force majeure*. Whether he bore that loss himself or whether he had insured against that risk, the exporter would be in an unfavourable competitive position in relation to a seller in a non-member country, which is precisely what the system of refunds is intended to prevent.

8 On the other hand, the function of the system of monetary compensatory amounts is wholly different. That system was introducted in order to remedy, in a general manner, a monetary situation which threatens the existence of the Community system of prices for agricultural products. It was not conceived in order to give individual traders security against all the risks which flow from fluctuations in exchange rates or to indemnify them for any loss suffered as a result of these fluctuations.

9 Having regard to these differences between the system of refunds on exports to non-member countries and the system of monetary compensatory amounts, there is no reason to apply by analogy a rule expressly laid down for refunds in order to indemnify the plaintiff in the main action for a loss which normally constitutes one of the commercial risks which traders must themselves assume, by taking out, where appropriate, a suitable insurance.

10 Thus the answer to the question submitted by the Finanzgericht Hamburg should be that Article 11 (2) of Regulation No 1380/75 of 29 May 1975 is to be interpreted as meaning that where goods exported from a Member State have perished in transit as a result of *force majeure*, the exporter is not entitled to the same monetary compensatory amounts as would have been due to him if the goods had reached their destination and if customs import formalities had been completed there.

Costs

11 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 grounds,

THE COURT

in answer to the question submitted to it by the Finanzgericht Hamburg by order of 20 February 1979, hereby rules:

Article 11 (2) of Regulation No 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts is to be interpreted as meaning that where goods exported from a Member State have perished in transit as a result of *force majeure,* the exporter is not entitled to the same monetary compensatory amounts as would have been due to him if the goods had reached their destination and if customs import formalities had been completed there.

Kutscher O'Keeffe Touffait Mertens de Wilmars Pescatore

Mackenzie Stuart Bosco Koopmans Due

Delivered in open court in Luxembourg on 5 March 1980.

A. Van Houtte
Registrar

H. Kutscher
President