JUDGMENT OF THE COURT
1 FEBRUARY 1978 [1]

Firma Johann Lührs
v Hauptzollamt Hamburg-Jonas
(preliminary ruling requested by the Finanzgericht Hamburg)

Case 78/77

1. *Measure adopted by an institution — Adoption foreseeable by a prudent and discriminating trader — Principle of legitimate expectation — Inapplicability*

2. *Agriculture — Common Agricultural Policy — Potatoes — Supply — Difficulties — Regulations Nos 348/76 and 890/76 — Validity*

3. *Agriculture — Common Agricultural Policy — Potatoes — Exports to non-member countries — Tax — Conversion into national currency — Exchange rate applicable (Regulations (EEC) Nos 950/68, 475/75 and 348/76 of the Council)*

1. If the adoption of a strict Community measure is to be foreseen by a prudent and discriminating trader, he cannot plead legitimate expectation in the event of that measure's being adopted.
2. Regulations Nos 348/76 and 890/76 are valid.
3. In view of the uncertainties inherent in Council Regulation No 348/76, for the purpose of converting the tax on exports into national currency, of the two exchange rates specified respectively in Regulation No 950/68 of the Council and in Regulation No 475/75 of the Council, the one should be applied which at the material time was the less onerous for the tax payer concerned.

In Case 78/77

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht (Finance Court) Hamburg for a preliminary ruling in the proceedings before that court between

FIRMA JOHANN LÜHRS, Twielenfleth,

and

HAUPTZOLLAMT (Principal Customs Office) HAMBURG-JONAS,

1 — Language of the Case: German.

on the interpretation and validity of Council Regulation (EEC) No 348/76 of 17 February 1976 on measures to be taken owing to the difficulties affecting potato supplies, and of Commission Regulation (EEC) No 890/76 of 14 April 1976 providing for exemption in certain cases from the tax on exports of potatoes,

THE COURT

composed of: H. Kutscher, President, M. Sørensen and G. Bosco, Presidents of Chambers, A. M. Donner, P. Pescatore, Lord Mackenzie Stuart and A. O'Keeffe, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

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. Owing to a decrease in the areas under cultivation and unfavourable weather conditions in 1975 production of potatoes fell sharply in the Community and in other European countries. Considerable supply difficulties and price increases resulted from this in the autumn of 1975 and especially at the beginning of 1976.

After certain Member States had spontaneously adopted protective measures, the Community itself introduced measures concerning potatoes. Thus at the end of January and the beginning of February 1976, the Council suspended import duties on potatoes. In order to prevent excessive quantities of potatoes, for which there was a pressing need within the Community, from being exported to third countries, the Council adopted Regulation No 348/76 of 17 February 1976 (OJ 1976, L 43, p. 14), which entered into force on 19 February 1976, on measures to be taken owing to the difficulties affecting potato supplies. As from 20 February 1976, that regulation introduced a tax on exports of potatoes of 25 units of account per 100 kg. Commission Regulation No 890/76 of

14 April 1976 (OJ 1976, L 101, p. 40) authorized Member States to exempt from that tax certain exports to countries which were traditional customers of theirs.

2. On 20 February 1976, Firma Johann Lührs exported in all 121 000 kg of potatoes falling within subheading 07.01-A-III of the Common Customs Tariff (CCT) to Sweden. On 3 and 9 March and also on 30 April 1976 the Hauptzollamt (Principal Customs Office) Hamburg-Jonas issued to that firm assessments to the export tax amounting to DM 108 258.60. The charge to that tax was based on the aforesaid Council Regulation (EEC) No 348/76.

In the first instance the Hauptzollamt applied for the purposes of conversion an exchange rate of DM 3.57873 per unit of account, that is to say, DM 89.47 per 100 kg. By an assessment of 8 June 1976, the Hauptzollamt amended the assessments in question and made an additional claim for tax on exports amounting in all to DM 2 456.30. It gave as its grounds for this increase that it had previously applied an incorrect exchange rate for the unit of account. It alleged that the correct exchange rate was DM 3.66 per unit of account and that accordingly the amount of the export tax of 25 units of account per 100 kg under Regulation No 348/76 came to DM 91.50 per 100 kg.

After administrative proceedings had proved unsuccessful, Lührs commenced proceedings before the Finanzgericht (Finance Court) Hamburg on 28 September 1976. It made the following submission in substantiation of its claim: On 10 and 16 February 1976 it sold potatoes at fixed prices to Sweden. The agreed delivery date was 21 February 1976. When the contract was entered into nothing was known about the introduction of a tax on the export of potatoes. Since it had learnt by hearsay of the possible introduction of a tax on exports of potatoes to third countries, the plaintiff in the main action made enquiries at the official export agencies. On 20 February 1976 these agencies — and also the trade association — were still unaware of the entry into force of Regulation No 348/76. Believing that rules for levying a tax on exports had not yet entered into force, the plaintiff exported the potatoes. Consequently, on entering into contracts with the supplier and purchaser it only based its calculations on the gross profit margin customary in the trade. It considers that the tax rate of DM 91.50 per 100 kg amounts 'virtually to expropriation', because the plaintiff itself got only DM 105 per 100 kg. Moreover, Regulation No 348/76 has a retroactive effect which is illegal, because it affects contracts for delivery already concluded before its entry into force.

The defendant in the main action on the other hand takes the view that the tax on exports has been lawfully raised. The introduction of a tax on the export of potatoes was due to supply difficulties and high potato prices in the Community. To be effective, the necessary measures had to be brought into force swiftly and the rate of tax on the exports had to be at an appropriate level. Although the regulation did enter into force at short notice, it did not have retroactive effect. If the regulation did affect contracts for delivery which had not yet been performed, the plaintiff in the main action must accept that effect as a normal commercial risk. However, the regulation has in no wise interfered with legitimate expectation, because — apart from any other consideration — the plaintiff was not taken by surprise but had already 'learnt by hearsay of' the possible introduction of a tax on exports before Regulation No 348/76 entered into force.

On the question of the level of the exchange rate, the defendant in the main action submitted that Regulation No 348/76 was not a measure relating

to agricultural policy in respect of which the representative exchange rate specified in Regulation (EEC) No 475/75 was to be applied. On the contrary it was a regulation dealing with commercial and conjunctural policy. The tax on exports is an economic customs duty charged by the Community. Therefore the exchange rate of DM 3.66 applicable to customs duty under Regulation No 950/68 is to be applied in calculating the tax.

By an order of 16 June 1977, the Finanzgericht Hamburg decided to stay the proceedings and refer the following questions to the Court of Justice of the European Communities for a preliminary ruling pursuant to Article 177 of the EEC Treaty:

1. Does Council Regulation (EEC) No 348/76 in conjunction with Commission Regulation (EEC) No 890/76, with special reference to the rate of tax levied on the export of potatoes, infringe the principle of the protection of legitimate expectation, in that it does not provide for any general rule exempting from the said tax exports of potatoes delivered under contracts concluded before 17 February 1976?
2. If the answer to Question 1 is in the negative:
   (a) For the purpose of converting the tax on exports expressed in units of account provided for in Council Regulation (EEC) No 348/76 is the exchange rate applicable to customs duty in Part I, Title 1, C. 3 of Regulation (EEC) No 950/68 or the exchange rate specified in Regulation (EEC) No 475/75 of the Council to be applied?
   (b) Does a tax on the export of potatoes fixed at 25 units of account per 100 kg, whether the exchange rate specified in Regulation (EEC) No 950/68 or in Regulation (EEC) No 475/75 of the Council is taken, infringe the prohibition on discrimination laid down in Article 7 of the EEC Treaty in so far as in this matter, the currency situation in the exporting country compared to that in the other Member States has not been offset or has been insufficiently offset?

The order making the reference was entered at the Court Registry on 4 July 1977.

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 Council of the European Communities, represented by Bernhard Schloh, Adviser in the Legal Department of the Council, and by the Commission of the European Communities, represented by Peter Kalbe, Legal Adviser to the Commission, acting as Agent, assisted by Bjarne Hoff-Nielsen, of the Legal Service of the Commission.

Upon 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 enquiry.

II — Summary of the written observations submitted to the Court

1. Question 1 (protection of legitimate expectation)

The *Council* observes first of all that the first question refers to the legal situation resulting from the combined application of Council Regulation No 348/76 and Commission Regulation No 890/76. It cannot be maintained that the Council regulation itself is not in order, because in Article 1 (2) of its regulation the Council authorized and directed the Commission to take any interim measures necessary. Consequently, if it

was necessary at all, it was for the Commission to take further account of the need to observe the principle of the protection of legitimate expectation, by laying down more detailed interim measures than those contained in Regulation No 890/76.

In the alternative, the Council considers whether the arrangements for application of and exemption from the tax which are contained in Regulation No 890/76 adopted by the Commission in conjunction with the basic regulation of the Council, infringe the principle of the protection of legitimate expectation.

To argue that the application of the Council regulation to exports agreed upon before its adoption but performed subsequently amounts to retroactivity of legal rules is unreasonable. It emerges from the different judgments of the Court of Justice (paragraphs 8 and 9 of the decision of the Court in Case 143/73, *SOPAD* v *FORMA and FIRS* [1973] ECR 1433, at p. 1441, and paragraph 4 of the decision of the Court in Case 2/75, *Einfuhr- und Vorratsstelle für Getreide* v *Mackprang* [1975] ECR 607, at p. 616) that in principle no difficulty is presented by the immediate application of a legal measure to situations which in view of market trends arose before the adoption of that measure but which took final shape only subsequently.

It follows that the issue is not whether provision had to be made by means of a general system of exemption for old contracts already concluded but not yet performed, but only whether on introducing the export tax the Community legislature had occasion to adopt special interim rules designed to protect the legitimate expectation of the traders concerned.

According to the case-law of the Court of Justice, the expectations of traders who have undertaken economic obligations are justified only if the rules introducing charges to tax have been adopted without warning and with immediate effect and could not have been foreseen even by a prudent trader (paragraphs 5 and 9 of the decision of the Court of 8 June 1977 in Case 97/76, *Merkur* 1977 ECR 1063 at pp. 1077-1080 and paragraphs 41 to 43 of the decision of the Court of 15 June 1975 in Case 74/74, *CNTA* [1975] ECR 533, at pp. 549-550).

In view of the measures adopted by certain Member States and the suspensions of import duties for potatoes enacted by Community measures in January and early February 1976, the Council takes the view that a potato dealer in the Community could undoubtedly have foreseen, in early February 1976 at the latest, that the Community would adopt short-term measures to limit the exporting to non-Member countries of Community production which was already too small to meet demand in the internal market.

In answer to the allegation of the plaintiff in the main action that on 20 February 1976 it had still not been able to obtain information of the entry into force of the tax on exports it could be argued that the Council had publicized the scope of the new regulation by communications to the press on 17 and 18 February 1976 and that several German national daily newspapers published this information in their editions of 19 February 1976.

The level of the tax is not disproportionately high nor was it unforeseeable for traders in the market. It had to be such as to deprive exports of any attraction resulting from the granting of high import subsidies introduced by certain neighbouring countries of the Community. According to the information which the Community authorities had at the time, the level of those subsidies might be considerable, such as 18 units of account per 100 kg in Sweden in the case in point.

The *Commission* takes the view that a general system of exemption was established by Commission Regulation No 890/76 adopted pursuant to Article 1 (2) of Council Regulation No 348/76. That article expressly provided for the possibility of adopting such measures. The system of exemption laid down by the Commission is intended to make it possible 'to maintain certain traditional trade flows', and it was assumed that the quantities involved would not exceed the quantities usually disposed of in the course of those flows (Regulation No 890/76, first recital).

Thus the first question is solely concerned with the absence of particular exemptions in favour of exports to other European countries and in particular to Sweden.

Tha tax at issue does not have retroactive effect and is applicable only to exports carried out after its entry into force. The fact that old contracts were performed in circumstances which were less favourable for those concerned does not suffice to invalidate the provisions which introduced such taxes.

As regards protection of legitimate expectation, the Community may be bound to adopt particular interim measures if in the absence of any overriding public interest the existence of a legal relationship between traders or the performance of obligations arising from such relationship is affected with immediate effect and without warning (Case 97/76 *Merkur* v *Commission*, mentioned above).

The Council and the Commission need not have adopted particular interim rules. Only the Netherlands and France usually export an appreciable part of their potato production. Those two countries had already prohibited exports even before the tax at issue was introduced.

In comparison with the prohibitions on exports in force in the Member States, that tax has the advantage of permitting exports in principle once again. Furthermore, the Community institutions have always taken the view that it is not incumbent upon them to encourage by particular exceptions exports carried out through exporters in one Member State because of the restrictions in force in another Member State.

The plaintiff is also precluded from pleading protection of legitimate expectation in relation to the performance of the contracts which it had concluded. The alleged efforts of the plaintiff and of its supplier, the company Engh of Straelen, to obtain information as quickly as possible on the detailed rules for the Community tax on exports show that the tax did not catch them suddenly or unexpectedly, and also show that at the time of the conclusion of the contract they took into account the possibility of restrictions on exports and of the tax at issue.

When it objects that a tax of 25 units of account per 100 kg deprives it of almost the whole of the selling price, a tax which it alleges to amount virtually to 'expropriation', the plaintiff is coming on to the legal question of the proportionality of the means employed. That allegation is incorrect. The tax on exports has above all to neutralize the subsidies on imports of potatoes granted by Sweden. Those subsidies especially were encouraging many Community exporters to pay excessive prices for domestic potatoes, which only aggravates the rise in Community prices.

In view of there being a subsidy of 18 units of account per 100 kg for imports into Sweden, the tax of 25 units of account per 100 kg corresponds to a real charge of 7 units of account per 100 kg, which cannot be considered as disproportionate.

2. Question 2 (a) (the exchange rate)

The *Council* examines the question whether the 'green' exchange rate, as defined in Regulation No 475/75, can be applied only when the measure in question is directly or indirectly based on an article of the Treaty concerning the Common Agricultural Policy. The wording of the regulation seems to confirm such an interpretation. However, the Council submits that it can be argued that Regulation No 475/75 applies, at least by analogy, to the tax on exports of potatoes which is based on Articles 103 and 113. The Council bases this submission upon *inter alia* the fact that potatoes are agricultural products, the fact that measures can be regarded as dictated by considerations both of agricultural policy and of conjunctural or commercial policy, and finally the tenor of Commission Regulation No 485/76 of 3 March 1976 (OJ 1976, No L 56, p. 23), laying down detailed rules for the application of Regulation No 348/76.

The said Regulation No 485/76 made the provisions of Regulation No 645/75 (OJ 1975, No L 76, p. 16), which concern the levying of taxes on exports of products within the market organizations, applicable to the tax on exports of potatoes. For these reasons the Council inclines to the view that the exchange rates laid down by Regulation No 475/75 should be applied to the export tax.

Since Regulation No 348/76 is legally based upon Articles 103 and 113 of the EEC Treaty, the *Commission* considers that from a strictly formal legal point of view there is nothing to prevent the German customs authorities from refusing to apply the exchange rates laid down in Regulation No 475/75. However, the Common Agricultural Policy and the commercial and conjunctural policy are not mutually exclusive.

The Commission considers that although by reason of its legal basis the tax comes under the commercial and conjunctural policy, it is not impossible for it to be regarded as a measure resulting from an 'instrument relating to the Common Agricultural Policy' and for the exchange rates laid down in Regulation No 475/75 to be applied.

3. Question 2 (b) (discrimination resulting from the application of a fixed exchange rate)

The *Council* makes the point that fixed exchange rates have great advantages and above all that of enabling traders to calculate in advance the economic circumstances concerning them. Therefore inequalities which may arise as a result of differing patterns of development of the currencies of Member States are not due to discriminatory treatment.

The system of compensatory amounts was implemented in order to prevent artificial variations of price levels within the Community owing to the monetary situation of the Member States and not in order to eliminate alleged discrimination. Such a measure is not necessary for the export transactions at issue in the present case, since the exports were not such as to bring about differences in the formation of prices within the Community.

The *Commission* submits that there was no risk of deflection of trade, of the artificial deflection of trade flows due to monetary factors justifying the introduction of a system of monetary compensatory amounts.

III — Oral procedure

Firma Johann Lührs, the plaintiff in the main action, represented by Siegfried Stossno acting as Agent, the Council of the European Communities, represented by Bernhard Schloh, Adviser in the

Legal Department of the Council, and the Commission of the European Communities, represented by Peter Kalbe, Legal Adviser to the Commission, assisted by Bjarne Hoff-Nielsen, of the Legal Service of the Commission, presented oral argument at the hearing on 22 November 1977.

At that hearing, Lührs pointed out that it is not a potato-dealing undertaking and therefore not well acquainted with the vegetable-selling business. On 10 and 16 February it bought and sold quantities of potatoes to provide loads for its lorries, only in order to make a balanced use of the carrying capacity of its fleet of vehicles.

The Federal Ministry of Finance informed the principal finance directorates of the existence of the export tax only on 24 February. They could not have informed the competent customs authorities before that date. At the time of the exportation the customs authorities were not aware of the new situation. It follows that protection of legitimate expectation must be afforded.

A prohibition on exportation, had it been introduced, would have been less onerous for the plaintiff, because such a measure would have constituted a case of *force majeure*, so that the plaintiff could have repudiated the contract without suffering any losses. It is striking that a less severe measure, namely tax on exports, has much harsher consequences for it.

The Advocate General delivered his opinion at the hearing on 11 January 1978.

Decision

1 By an order of 16 June 1977 which was received at the Court on 6 July 1977, the Finanzgericht Hamburg referred to the Court of Justice for a preliminary ruling under Article 177 of the Treaty two questions on the validity and interpretation of Council Regulation No 348/76 of 17 February 1976 on measures to be taken owing to the difficulties affecting potato supplies (OJ L 43, p. 14) and of Commission Regulation No 890/76 of 14 April 1976 providing for exemption in certain cases from the tax on exports of potatoes (OJ L 191, p. 40).

2 These questions have been raised in the context of a dispute between the Hauptzollamt Hamburg-Jonas and a haulier who after exporting 121 000 kg of potatoes to Sweden on 20 February 1976 was assessed to tax under Regulation No 348/76, to the amount of DM 108 256.60 which was subsequently increased by DM 2 456.30.

3 The first question asks whether Regulation No 348/76 in conjunction with Regulation No 890/76, with special reference to the rate of tax levied on the export of potatoes, infringes the principle of the protection of legitimate

expectation, in that it does not provide for any general rule exempting from the said tax exports of potatoes delivered under contracts concluded before 17 February 1976.

4 It appears from the case file that on 10 and 16 February 1976 the plaintiff in the main action sold at fixed prices in Sweden potatoes which it had bought in the Netherlands.

Having leant that Community prohibition or taxation on exports of potatoes was imminent, the plaintiff tried between 16 and 20 February 1976 to obtain definite information, but not having been able to obtain it, it exported the consignments at issue on 20 February 1976.

On that account, it was charged tax allegedly amounting to only slightly less than the contract selling price.

5 The Council adopted Regulation No 348/76 owing to the shortage brought about by the very poor potato harvest in 1975, which caused a very sharp increase in prices and supply difficulties in some regions of the Community and threatened to cause an increase in the cost of living.

That situation was aggravated by the export of potatoes to non-member countries, encouraged, in some non-member countries including Sweden, by import subsidies.

Consequently the regulation introduced a tax on exports to non-member countries amounting to 25 units of account per 100 kg.

According to Article 2, the regulation entered into force on the day of its publication in the Official Journal, namely 19 February 1976, and applied 'to operations in respect of which customs export formalities have been completed from the day following that of its entry into force and until 30 June 1976'.

6 It follows from the stated circumstances that Regulation No 348/76 was adopted pursuant to an overriding public interest, which required that the rules adopted should enter into force immediately.

Indeed, the proper functioning of the common market required a measure to restrain a development whereby rising prices and abnormal exports to non-member countries were stimulating each other.

Moreover that measure could not surprise trade circles which, even if they had not yet been aware of the abnormal situation, had at all events been warned by earlier Community measures (suspension of customs duties on imports) and by measures already adopted by the Member States which were traditional exporters of potatoes.

Consequently the adoption of stricter measures was to be foreseen by prudent and discriminating traders so that in the present case they cannot plead legitimate expectation.

7 Nor could the level of the export tax surprise informed circles, since at the time when Regulation No 348/76 was adopted import subsidies were already being granted by several non-member countries, such as Sweden which appears to have granted subsidies up to the equivalent of 18 units of account per 100 kg.

In order to neutralize the effect of such measures, the Community tax had to be fixed at an even higher level, so that a rate of 25 units of account per 100 kg cannot be regarded as excessive.

8 Pursuant to Article 1 (2) of Regulation No 348/76, the Commission authorized Member States by its Regulation No 890/76 to exempt from the export tax 'exports ... to the non-member countries or territories listed in the Annex hereto effected before 3 May 1976, provided that such exports are effected pursuant to contracts concluded before 17 February 1976'.

According to the preamble, that provision was adopted on the basis that it was necessary 'to permit Member States to maintain certain traditional trade flows' and that 'there is no risk that the quantities will exceed these traditional trade flows'.

9 The interim measure thus adopted can also not be regarded as being more restrictive than is required by the principle of the protection of legitimate expectation, since only traders who had been relying upon the continued existence of well-established, customary economic relations could have had any such expectation.

It has not been alleged that Sweden is one of the non-member countries with which there are traditional export flows in potatoes and that it should therefore have been mentioned in the Annex to Regulation No 890/76.

10 Therefore the appropriate answer is that consideration of the first question raised had disclosed no factor of such a kind as to affect the validity of Regulations No 348/76 and No 890/76.

11 Question 2 (a) asks whether, for the purpose of converting the tax on exports expressed in units of account, the exchange rate applicable to customs duty in Part I, Title 1, C. 3 of Regulation No 950/68 of the Council of 28 June 1968 on the Common Customs Tariff, (JO, L 172) or the exchange rate specified in Regulation No 475/75 of the Council of 27 February 1975 on the exchange rates to be applied in agriculture (OJ L 52, p. 28) is to be applied.

The reason for the question is that at the material time the exchange rate applicable under Regulation No 950/68 was slightly higher than the exchange rate applicable under Regulation No 475/75 for instruments relating to the Common Agricultural Policy.

12 Regulation No 348/76 does not contain any express provision as to the exchange rate to be applied for the purpose of converting into national currency the tax of 25 units of account which it laid down.

On the one hand, the fact that it was adopted pursuant to Articles 103 and 113 of the Treaty marks it out as a measure coming under the conjunctural policy and the economic policy rather than under the Common Agricultural Policy.

On the other hand, potatoes are an agricultural product within the meaning of the Treaty, and the export tax was devised by the Commission's Directorate General for Agriculture and adopted by the Council composed of the Ministers of Agriculture in order to keep prices within the Community at a reasonable level and to ensure supplies; these are the objectives mentioned in Article 39 (1) (d) and (e) of the Treaty as objectives of the Common Agricultural Policy.

Furthermore confusion was increased by the fact that in its implementing Regulation No 485/76 of 3 March 1976 (OJ L 56, p. 23) the Commission itself declared applicable to the charging of the tax at issue its Regulation No 645/75 of 13 March 1975 laying down common detailed rules for the application of the export levies and charges on agricultural products (OJ L 67, p. 16).

Thus although formally Regulation No 348/76 cannot be regarded as coming under the Common Agricultural Policy, it was closely related to it in substance.

13 Thus the appropriate answer is that in view of the uncertainties inherent in Regulation No 348/76, natural justice demands that for the purpose of converting the tax on exports into national currency the exchange rate which at the material time was less onerous for the taxpayer concerned should be applied.

14 Question 2 (b) asks whether the fixing of the tax at 25 units of account per 100 kg infringes the prohibition on discrimination laid down in Article 7 of the Treaty in so far as in this matter the currency situation in the exporting country compared to that in the other Member States has not been offset or has been insufficiently offset.

15 There is no need to examine in greater depth the general question thus raised and to consider the extent to which it can and must be taken into account in Community legislation, because it appears from the information supplied by the Commission that as the introduction of the export tax had a general prohibitive effect the tax was applied only in a few isolated instances.

It follows that the question is purely theoretical and that in fact the application of Regulation No 348/76 has not infringed any prohibition on discrimination.

16 Thus consideration of this question has also disclosed no factor of such a kind as to affect the validity of Regulation No 348/76.

17 In view of the foregoing, it does not appear feasible within the framework of the existing rules to statisfy the requirements of natural justice in possibly a few special cases, since provision can be made for such requirements only by the Community legislature through appropriate hardship clauses (Härteklauseln) of the kind found in German revenue law and in that of other Member States.

Costs

18 The costs incurred by the Council and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

As these proceedings are, 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 as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Finanzgericht Hamburg by an order of 16 June 1977, hereby rules:

1. **Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulations Nos 348/76 and 890/76.**

2. **In view of the uncertainties inherent in Council Regulation No 348/76, for the purpose of converting the tax on exports into national currency, of the two exchange rates specified respectively in Regulation No 950/68 of the Council and in Regulation No 475/75 of the Council, the one should be applied which at the material time was the less onerous for the taxpayer concerned.**

Kutscher Sørensen Bosco

Donner Pescatore Mackenzie Stuart O'Keeffe

Delivered in open court in Luxembourg on 1 February 1978.

A. Van Houtte
Registrar

H. Kutscher
President