JUDGMENT OF THE COURT
OF 23 MARCH 1972[1]

E. Kampffmeyer
v Einfuhr- und Vorratsstelle für Getreide und Futtermittel[2]
(Reference for a preliminary ruling by the Hessisches Finanzgericht)

'Refunds'

Case 85/71

Summary

1. *Agriculture — Common organization of the markets — Cereals — Export refund — Export to third countries — Rates of refund less than those provided by the Community rules and varying from one country to the other — Grant by Member States — Legality*
(*Regulation No 19 of the Council, Article 20; Regulation No 90 of the Commission, Article 2*)

2. *Agriculture — Common organization of the markets — Cereals — Export refund — Export to third countries — Rates of refund less than those provided by the Community rules — Grant by the Member States in the form of import free from levy — Legality*
(*Regulation No 90 of the Commission, Article 4*)

1. The provisions of Article 20 of Regulation No 19/62 in conjunction with those of Article 2 of Regulation No 90/62 enabled Member States to fix rates of refund differing from one country to the next and lower than those provided for by the Community regulations.

2. Member States could also within the terms of Article 4 of Regulation No 90/62 apply rates of refund lower than those laid down by Regulation No 90/62 by authorizing, in respect of exports to third countries, free-of-levy imports of smaller quantities of the same product than the quantities exported.

In Case 85/71

Reference to the Court under Article 177 of the EEC Treaty by the Hessisches Finanzgericht Kassel for a preliminary ruling in the action pending before that court between

E. KAMPFFMEYER, Hamburg,

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

and

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND FUTTERMITTEL, Frankfurt am Main,

on the interpretation of certain provisions of Regulations Nos 19/62 of the Council and 90/62 of the Council relating to refunds payable on the export of cereals to third countries,

THE COURT

composed of: R. Lecourt, President, J. Mertens de Wilmars and H. Kutscher, Presidents of Chambers, A. M. Donner, A. Trabucchi, R. Monaco (Rapporteur) and P. Pescatore, Judges,

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

gives the following

JUDGMENT

Issues of fact and of law

— Facts and procedure

The facts and procedure may be summarized as follows:

1. The main action concerns the application to a particular case of the provisions of German law providing, in respect of the export of cereals to third countries, for the grant of a refund in the form of import free from levy.
These provisions have been made in implementation of certain Community regulations, and in particular:

— Regulation No 19 of the Council of 4 April 1962 (JO 1962, No 30), the second paragraph of Article 20 of which provides for the possibility of Member States' granting, in respect of exports to third countries, a refund intended to cover the difference between the exchange rates on the world market and the prices of the exporting Member State;

— Regulation No 90 of the Commission of 25 July 1962 (JO 1962, No 66) Articles 2 and 4 of which provide as follows:

'Article 2

The amount of the refund in respect of

each product on export to third countries shall not be greater than the amount of the levy in respect of third countries applicable on the day of export.

Article 4

In derogation of Article 2 the refund may be granted in the form of an authorization to import a quantity of the same product equal to the quantity exported free from levy, provided that:

(a) The export takes place before the import;

(b) The import free from levy shall be made during the same marketing year and within two months of the export.'

By Notice No 1-4537 of 11 March 1966 the Einfuhr- und Vorratsstelle für Getreide und Futtermittel Frankfurt (hereinafter called 'the defendant') granted Kampffmeyer a refund in the form laid down in Article 4 of Regulation No 90/62 referred to above. It authorized in advance the import free from levy:

— of 900 kg of maize for 1 000 kg of maize exported to Switzerland, Austria and Yugoslavia;

— of 1 000 kg of maize for 1 000 kg of maize exported to the other countries in list A and B (except Member States of the Community).

After making an unsuccessful objection to the defendant, Kampffmeyer applied to the Hessisches Finanzgericht to amend the aforesaid notice so that exports of maize to Switzerland, Austria and Yugoslavia might also give rise to the grant of a refund in the form of an authorization to import maize free from the levy in the ratio of 100:100.
In support of its application it argued that the German regulation on export refunds infringes the provisions of Community law applicable in the case in that it provides in the case of the aforesaid exports for a reduction in the conversion rate to 100:90.
The defendant on the other hand maintained that the Member States are solely required not to exceed the maximum rates of refund laid down by the EEC regulations and that they are thus allowed, if they consider it necessary, to adopt rates of refund, applicable to exports to certain third countries, lower than those applicable to exports to all the other third countries.
The Hessisches Finanzgericht, having found that the matter related to the interpretation of rules of Community law concerning refunds applicable to exports to third countries referred to in Regulation No 19/62, decided by order of 21 September 1971 to stay the proceedings and to refer the following question to the Court under Article 177 of the EEC Treaty:

'Did the provisions of Article 20 of Regulation No 19/EEC in conjunction with those of Article 2 of Regulation No 90/EEC enable Member States of the European Economic Community to fix, in connexion with the export of cereals to third countries, different rates of refund in respect of exports to certain of the said third countries?'

2. A certified copy of the order was received at the Court Registry on 5 October 1971.
Kampffmeyer, represented by Fritz Modest of the Hamburg Bar, the defendant, represented by Albrecht Stockburger of the Frankfurt am Main Bar and the Commission of the European Communities, represented by its Legal Adviser, Peter Gilsdorf, acting as Agent, submitted written observations in accordance with Article 20 of the Protocol on the Statute of the Court.
Having heard 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.
Oral submissions were made by Kampffmeyer, the defendant, and the Commission of the European Communities at the hearing on 2 February 1972.

The Advocate-General delivered his opinion at the hearing on 15 March 1972.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court

The observations submitted under Article 20 of the Protocol on the Statute of the Court may be summarized as follows:

A — *Observations submitted by Kampffmeyer*

Kampffmeyer first of all refers to the basic provisions of Community law governing the matter in question and in particular to Articles 1, 2 and 4 of Regulation No 90/62 of the Commission. It then states that the Federal Republic of Germany, after having decided, by Regulation of 24 November 1964, to grant the refund in the form of import free of levy (Article 4 of the said regulation):

— in 1965 by the second amending regulation to the said regulation limited this benefit to exports of cereals grown in the Federal Republic or coming from the defendant's stocks;

— in 1966 by the fifth amending regulation abolished this restriction but at the same time provided for refund rates differing according to the countries to which the products had been exported. In the case of exports to Switzerland, Austria, Czechoslovakia, Hungary and Yugoslavia the import free from the levy was not granted for the same quantities which had been exported— in accordance with the first paragraph of Article 4 of Regulation No 90/62—but for 90% of these quantities.

The reasons for these amendments lies in the special situation of the market in certain cereals, in the present case maize, in the Federal Republic of Germany and more particularly in the fact that as a general rule the German cereals trade exports only foreign products, which have been released into free circulation in the Federal Republic and thus only by this means takes part in the export of cereals on the world market.

With regard to the export of maize to Switzerland, Austria, Hungary, Czechoslovakia and Yugoslavia, German trade runs up against the difficulty that the import of maize into the Federal Republic must normally be made via Rotterdam, Rotterdam/Antwerp or the German ports with the result that because of transport costs maize transported to the south or west is no longer competitive with maize from other Member States and third countries. To overcome this disadvantage certain German traders prefer to import maize from those States or countries to the south or west of the Federal Republic and then to re-export it to the said countries on payment of the levy and thus save the costs involved in the transport from *north to south* within the Federal Republic. On the other hand with regard to the import into the Federal Republic of low-priced maize from Italy and intended to be sold on the market in North Germany, the German importer tried to avoid the costs involved in the transport from the *south to the north* of the Federal Republic by making use of the possibility of exporting the product in question to Switserland and re-importing via the north German ports American maize free from levy.

The Federal Republic wrongly regarded these commercial transactions as 'triangular' transactions and thus as an abuse whereas trade circles were of the opinion that their task was to obtain all the advantages which were open to them by the use of lawful means. In any event it was to stop such transactions that the Federal Republic first adopted the second amending regulation of 19 August 1965 and then the fifth amending regulation of 3 February 1966.

After these observations Kampffmeyer considers the scope of the Community rules in question. It does not deny that Regulation No 90/62 has allowed Member States the freedom to decide whether refunds on the export of cereals to third countries should be granted and whether,

where appropriate, these refunds should be made in cash or in the form of imports free of levy.

But, where a Member State opted for this latter form of refund, it was no longer free to determine the amounts of the refund. In stating that the import free of levy 'shall be authorized' for an amount of the same product equal to that exported, Article 4 of the said regulation clearly implies that the Member States cannot fix rates of refund less than 100:100.

This interpretation accords not only with the wording of Article 4 but also with the purpose and objectives of the organization of the market and the rules relating to the system of refunds which it contains. Since the Member States remained free under the terms of Regulation No 19/62 to decide upon the grant of refunds and to fix the applicable rate up to a specific maximum rate, they retained their fiscal sovereignty in the matter of levies and refunds and the institutions of the Community did not control the sums due to these States. But where the refund was authorized in the form of imports free of levy and not as reimbursement in cash, the application of different rates was no longer justifiable.

Kampffmeyer concludes that an interpretation of Article 4 such as suggested by the defendant would lead to unacceptable consequences since it would involve discrimination with regard to certain third countries. After pointing out that the answer to the question depended above all on the afore-mentioned provision and not on Article 2 of Regulation No 90/62, which is not decisive on this point, it proposes the following answer to the question raised:

'The Member States of the European Economic Community were not entitled to fix, in connexion with the export of cereals to third countries, different rates of refund in respect of exports to certain countries where they had made use of the power provided for in Article 4 of Regulation No 90 of the Commission of 25 July 1962 and granted the export refund for cereals in the form of an authorization to import the products in question free from levy.'

B — *Observations submitted by the Einfuhr- und Vorratsstelle für Getreide und Futtermittel*

The defendant states that the implementation of the provisions of Article 4 of Regulation No 90/62 in the Federal Republic was the subject in 1965 and 1966 of two of the regulations, namely the second and fifth respectively, which amended the regulation of 24 November 1964 on refunds. The problem which these legislative amendments were intended to resolve was to put an end to the 'triangular transactions' entered into by traders and it was thus sought to avoid deflections of trade in the case of certain cereals such as maize.

These traders imported large quantities of fodder from Italy paying in the process the amount of the intra-Community levy and then exported the same to third countries in southern Europe placed favourably from the point of view of transport costs claiming on the basis of these exports to be entitled to a refund corresponding to the highest rate of the extra-Community levy. Such trade was in particular stimulated by the level of free-at-frontier prices in force at the time in respect of imports from Italy into the Federal Republic and more particularly by the fact that the intra-Community levy did not completely compensate for the disparity in prices in this respect existing between these two Member States.

To counteract this trend the Federal Republic first (by the second amending regulation) refused to grant a refund in respect of fodder not harvested in Germany. Later by the fifth amending regulation the said restriction was abolished since the criteria in fixing the free-at-frontier prices had been adapted to the actual conditions of the Italian market. Since, however, fodder originating from Italy continued to show a difference in prices of some 10% in relation to the refunds granted with regard to third countries, the Federal Republic found itself obliged at the same time to lower by

some 10% the rate of refund for exports of these foreign products to neighbouring third countries in southern Europe. This measure was not applied to exports intended for distant third countries since the difference in prices of fodder imported from Italy into the Federal Republic was not in this case substantial.

The defendant then deals with the question at issue and refers to the judgment of the Court of 27 October 1971 in Case 6/71, *Rheimühlen* v *Einfuhr, und Vorratsstelle*, and observes that during the transitional period the financial burden involved in the grant of the refunds was borne essentially by the budgets of the Member States. The Community legislature had therefore limited itself to laying down minimum conditions and the general framework of the system calculated to ensure price stability in the markets of the Member States. The provisions of Community law adopted pursuant to Regulation No 19/62 thus laid down upper limits for the refund (maximum rates) in order to prevent refunds at too high a rate from being a means of avoiding the levy: Article 2 of Regulation No 90/62 is one of the provisions laying down this limit. Below this limit Member States retained their freedom to fix refund rates.

The fact that the refund is granted in cash or in the form of imports free from levy can in no way affect this principle. The rate provided for by Article 4 of Regulation No 90/62 was also a maximum rate below which the Member States could apply different rates.

It thus follows that the Federal Republic at the beginning of 1966 had the right to fix in a general way the rate of refund applicable to exports of cereals to third countries to the extent of 90% of the maximum rates provided for by Articles 2 and 4 of Regulation No 90/62. *A fortiori* it also had the right to fix lower rates for exports to certain third countries. The criticisms made on this subject by trade circles are all the less justified since the Federal Republic has not ignored the trade interests which a general application of the reduced rate would have affected to a greater degree.

Moreover, and independently of the aforementioned provisions, the discretion left to the Member States in this field is a logical consequence of the system of the organization of the market during the transitional period. It is only in respect of *levies*, that is, of the import of cereals from third countries, that a uniform cif price, having to serve as basis for the calculation of the amount of the levy, was compulsorily fixed by the Community under Article 10 (paragraph 2–4) of Regulation No 19/62. The reasons for the establishment of such a price were inherent in the system of levy which was based on the necessity of compensating for the differences between the prices on the world market and the threshold prices. On the other hand these reasons played no part in the case of *refunds* (or of exports) since the refund at the time did not exactly reflect the levy and the necessity to compensate even partially the differences in the said prices was not a logical consequence of the system.

These conclusions do not contradict the provisions of Article 7 of Regulation No 90/62 according to which the Member States had to give 'global' information, as regards exports to third countries, on export certificates issued, on refunds paid or fixed in advance and on quantities of cereals exported. It could not be inferred from this fact that refunds in respect of experts to third countries were necessarily uniform and that the application of different rates with regard to certain Member States was not therefore authorized. That is not the meaning and objective of Article 7. Although, in order to have a general view of the development of intra-Community trade, the Commission had to have detailed information enabling it to appreciate in what manner the grant of refunds was affecting exports to each Member State, all it needed on the other hand in the case of exports to third countries was to know the quantities of cereals which had left the Community.

In view of these considerations the defendant proposes that the Court should reply to the question raised to the effect that the Federal Government was entitled, with regard to the export of cereals to third countries, to fix different rates of

refund for certain countries. The provisions of Community law, in particular Article 20 of Regulation No 19/62 and Article 2 of Regulation No 90/62 authorized the fixing of such refunds during the transitional period.

C — *Written observations submitted by the Commission of the EC*

The *Commission* states first of all that since the facts giving rise to the proceedings occurred at a time when Regulation No 19/62 was still in force, the question to be resolved is the distribution of powers between the Community and the Member States with regard to the application of the rules relating to refunds during the transitional period and before the establishment of the final organization of the market.

(a) *The question whether the rates of refund are maximum rates*

After referring to the main provisions of Community law and German law relevant to the proceedings, the Commission considers in the first place the, in its opinion, preliminary question whether the rates of refund provided for by the Community regulations must be regarded as maximum rates or not.
It argues in this respect that the rates laid down by the regulations were 'maximum' rates. Its opinion is based in particular on:

— if not the wording of the basic regulation, then that of the rules relating to its application;

— the fact that during the transitional period and until the establishment of the final organization of the market the system established by Community law in the present case and the manner in which the powers were distributed in this field between the Community and the Member States were such that the latter were free to decide whether and with regard to which products or which States the rules with regard to refunds should be applied;

— the principle confirmed by the Court in Case 6/71 that during the transitional period, since the Member States 'were free to forego making any grant, *a fortiori* they were entitled to add further conditions to the minimum conditions for a grant provided for by the Community rules' (this principle implicitly allows the inference that the Member States were entitled to grant refunds at rates lower than those laid down by the Community rules).

This conclusion applies likewise in the case of refunds granted in the form of an authorization to import free from levy, a possibility which, moreover, no longer exists within the framework of the final organization of the market. The wording of Article 4 of Regulation No 90/62 is not, it is true, very illuminating on this subject, but it must not be forgotten that this latter form of refund has from the economic point of view effects equivalent to those of a refund in cash of the amount of the levy applicable with regard to third countries. It is, moreover, a form of refund which was provided for for the benefit of the Federal Republic of Germany where it had already been applied in the context of the national organization of the market and the maintenance of which had proved useful on budgetary grounds.

(b) *The fixing of different refund rates*

The Commission considers that since the refund rates laid down by the Community rules were maximum rates, the Member States were entitled to vary the rates below these limits from one third country to another. There is no legal rule to be found which might stand in the way of such a right, since the Member States had retained during the transitional period their own powers with regard to refunds. A prohibition on fixing different rates cannot be inferred from the *ratio legis* and the purpose of the Community rules applicable at the time, for these rules were simply intended:

— to facilitate the sale of surpluses on the world market by means of the refund

mechanism and having regard to the practices existing in the Member States;

— to prevent these States from competing with one another in the grant of refunds;

— to establish minimum conditions for the grant of refunds.

Purely economic and commercial considerations, moreover, spoke in favour (and they still do so today) of the system criticized, because the application of uniform rates of refund in respect of all third countries does not allow account to be taken of the special circumstances and the requirements of each export market. The necessity sometimes to apply different rates has, furthermore, been recognized by provisions of Community law relating to the final organizations of the market.

It is true the Community legislature had also adopted certain provisions allowing Member States to exceed in certain well-defined circumstances the maximum refund rates (cf. in respect of cereals Article 5 of Regulation No 90/62 and Article 5(a) of the same regulation inserted by Regulation No 163/62). But these provisions are simply concerned with the special case where the maximum rates have proved insufficient in relation to the special conditions of demand in certain third countries and cannot be used to justify the claim that, as regards the rest, Member States did not have the right to lay down different rates of refund less than the maximum rates.

The Commission states that it does not know the reasons which led the Federal Republic of Germany to lower the rates of refund in respect of exports to certain third countries. It is, moreover, not for it to assess the validity of this since the right to make such a reduction comes within the power of the national authorities. Nevertheless the choice of third countries in respect of which the rate of refund has been reduced in the present case does not appear to be arbitrary having regard to the geographical position of these countries in relation to the Federal Republic of Germany and the latter's interest in preventing dealers from obtaining unfair advantages and abusing the possibility of importing free from levy.

Furthermore, not only the Federal Republic of Germany but also other Member States, such as France in the case of exports to Great Britain and Ireland, have made use of their right to apply different rates of refund with regard to certain third countries.

Finally the fact that under Article 7(2) of Regulation No 90/62 the information provided for in subparagraphs (a), (b) and (c) of paragraph (1) had to be given according to the destination of the exports, separately where Member States were the countries of destination, and 'globally' in respect of exports to third countries, is in no way incompatible with these conclusions.

The 'global' figures in question were for basically statistical purposes for the period in question since the only interest the Commission had in respect of trade with third countries was to know the quantity of cereals delivered by the Community as a whole and the total amount of refunds granted.

The Commission concludes by proposing to reply as follows to the question raised:

'According to Article 20 of Regulation No 19/EEC Member States of the EEC were entitled with regard to the export of cereals to third countries to fix in respect of certain countries rates of refund lower than those laid down by Community law.'

The Commission adds that it does not seem to it either useful or relevant in the present case to refer to Article 2 of Regulation No 90/62 since this article does not cover the case of refunds granted in the form of free-of-levy imports.

Grounds of judgment

1 By order dated 21 September 1971, received at the Court on 5 October 1971, the Hessisches Finanzgericht raised under Article 177 of the EEC Treaty the question whether the provisions of Article 20 of Regulation No 19 of the Council of 4 April 1962 (JO 1962, No 3) in conjunction with Article 2 of Regulation No 90 of the EEC Commission of 25 July 1962 (JO 1962, No 66) enable Member States to fix, with regard to the export of cereals to third countries, rates of refund differing from one country to another.

2 Article 20(2) of Regulation No 19/62 provides that 'in order to allow export to th rd countries on the basis of world market rates the difference between the prices of the exporting Member State may be covered by a refund'. Under the express terms of this provision Member States were free to forego making any grant and this freedom implies the entitlement to add further conditions for the grant of the refund provided for by the Community rules.

3 It appears, moreover, from the second and third recitals to Regulation No 90/62 on refunds applicable to exports of cereals that the conditions under which they could be granted were on the one hand to make possible the export of these products to third countries and on the other to avoid competition between producers in Member States from being distorted on the world market. To this end the aforesaid regulation laid down a general rule limiting the amount of refund so as to prevent Member States from outbidding one another in the matter of refunds, without, however, affecting the freedom of each Member State to use in fixing the refund rates more restrictive criteria than those provided for by the Community rules.

4 Although under Article 7(2) of Regulation No 90/62 particulars of export refunds 'shall be notified according to the destination of the exports separately in respect of Member States and as a total in respect of exports to third countries', it cannot be inferred from this that in the latter case the Member States did not have the right to grant refunds at rates other than those laid down by the Community rules. The notifications served only statistical purposes and were intended to enable the Commission to follow trends on the cereals market during a period in which the measures establishing the common organization of the market were gradually being implemented. Although during this implementation period the Commission had an interest in knowing the course of trade within the Community by reference to each State separately, it was enough on the other hand for it to know the total quantities of cereals exported to third countries and the total amount of refunds granted in respect of these exports.

5 The discretion left to Member States whether or not to grant refunds or to make the grant subject to additional conditions implied during the transitional period, during which the Member States remained competent in matters of commercial policy, the possibility of granting refunds differing from one third country to another. It is therefore right to reply that the provisions of Article 20 of Regulation No 19/62 and in conjunction with those of Article 2 of Regulation No 90/62 enable Member States to fix rates of refund differing from one country to another and lower than those provided for by the Community regulations.

6 It appears from the order making the reference that the question in dispute which the national court has referred to the Court relates to refunds granted in the form provided for by Article 4 of Regulation No 90/62. Since the Federal Republic of Germany authorized the import free from levy of a quantity of maize less than the quantity exported, the plaintiff objected that under the terms of the aforementioned Article 4 this authorization could be granted only in respect of the import of a quantity of the same product equal to the quantity exported. In order to enable the national court to resolve the problem which is before it it is necessary also to examine the question raised in the light of Article 4 of Regulation No 90/62.

7 Under this provision the refund may, in derogation from Article 2, be granted in the form of an authorization to import free from levy a quantity of the same product equal to the quantity exported provided that the export takes place before the import and the free-from-levy import is effected during the same marketing year and at the latest before the expiration of the second month following that during which the export was made.

8 The wording of this provision makes it clear that the derogation from Article 2 refers only to the form in which the refund may be granted and does not affect the general system of the refund as defined by Regulations Nos 19/62 and 90/62. Although the refund in the form of a free-of-levy import does not involve, unlike that referred to in Article 2, any payment in cash, both follow the same objectives and lead to the same result from the economic view. There is therefore nothing to justify in the case of Article 4 a limitation on the discretion left to Member States by Regulations Nos 19/62 and 90/62 to add to the conditions for the grant of the refund which were prescribed by the Community regulations.

9 Member States were therefore entitled to apply rates of refund lower than those laid down by Regulation No 90/62 by authorizing, in respect of exports to third countries, free-of-levy imports of smaller quantities of the same product than the quantities exported.

Costs

10 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable, and 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,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties in the main action and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 40 and 177;
Having regard to Regulation No. 19 of the Council of 4 April 1962 (JO 1962, No 30) and Regulation No 90 of the Commission of 25 July 1962 (JO 1962, No 66);
Having regard to the Protocol on the Statute of the Court of Justice of the EEC, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the Hessisches Finanzgericht by order of that court dated 21 September 1971, hereby rules:

1. **The provisions of Article 20 of Regulation No 19/62 in conjunction with those of Article 2 of Regulation No 90/62 enabled Member States to fix rates of refund differing from one third country to another and lower than those provided for by the Community regulations;**

2. **Member States could in the context of Article 4 of Regulation No 90/62 apply rates of refund lower than those laid down by Regulation No 90/62 by**

authorizing, in respect of exports to third countries, free-of-levy imports of smaller quantities of the same product than the quantities exported.

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 23 March 1972.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 15 MARCH 1972[1]

Mr President,
Members of the Court,

To facilitate the export 'to third countries on the basis of world market prices' it was provided in the first sentence of Article 20(2) of Regulation No 19/62 (JO 1962, p. 933 *et seq.*) on the gradual establishment of a common organization of the market in cereals that 'the difference between these prices and the prices in the exporting Member State' could under certain conditions be the subject of a refund. Accordingly Article 1 of Regulation No 90/62 of the Commission (JO 1962, p. 1902) on export refunds for cereals (as amended by Regulation No 163/62 of the Commission of 20 December 1962, JO 1962, p. 2944) provided: 'Subject to the conditions in Articles 2, 3, 4, 5 and 5(a) of this regulation Member States may grant a refund on the export to third countries of the products (which included maize) mentioned in Article 1(a) and (b) of Regulation No 19 of the Council'. Regulation No 90 further provided that 'the refund on export to third countries shall not exceed the amount of the levy applicable to the product on the day of export in respect of third countries'. Article 4 of Regulation No 90 provided 'In derogation of Article 2 the refund may be granted in the form of levy free import of the same quantity of the same products as are exported ...'.
These rules also applied in the Federal Republic of Germany. The relevant authority with regard to the present proceedings was the Law implementing Regulation No 19 of 26 July 1962 (as amended by the Law of 30 June 1965) in conjunction with the Cereals and Rice Refunds Regulation of 24 November 1964 (as amended by the Regulation of 3 February 1966). According to Article 5(4) of the Refunds Regulation, however, only 90% of the maximum rates prescribed in Community regulations for refunds applied to exports of maize to Switzerland, Austria, Czechoslovakia, Hungary and Yugoslavia, whereas the maximum rates of refund

1 — Translated from the German.