In Case 18/72

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

NV GRANARIA GRAANINKOOPMAATSCHAPPIJ, Rotterdam,

and

PRODUKTSCHAP VOOR VEEVOEDER, The Hague,

on the interpretation of certain provisions of Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals,

THE COURT

composed of: R. Monaco (President of Chamber and Rapporteur), President, P. Pescatore, President of Chamber, A. M. Donner, A. Trabucchi and J. Mertens de Wilmars, Judges,

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. Prior to 18 July 1968 the undertaking NV Granaria Graaninkoopmaatschappij (hereinafter referred to as 'Granaria') imported from South Africa a maize product described as 'hominy chop', which was classified under heading No 23.02 A I of the Common Customs Tariff. From 18 July 1968 to 31 October 1970 inclusive it imported a product called 'hominy chop specified' from the same supplier. This product, which Granaria regarded as an improved form of 'hominy chop', was declared under heading No 23.02. As a result of this calssification it was subject to the levy provided for by the said heading in accordance with Article 14 of Regulation No 120/67 of the Council of 13 June 1967 (OJ, English Special Edition 1967, p. 33). During the same period, 'hominy chop

specified' was allegedly imported into Belgium and the Federal Republic of Germany under heading No 23.04 B, under which no levy is due. Similarly a product comparable with 'hominy chop specified' was imported into the Netherlands from the United States and likewise classified under heading No 23.04 B.
In July 1970 the competent Netherlands authorities announced that imports into the Netherlands of the product 'hominy chop specified' should no longer come under heading No 23.02 but under heading No 23.04 B and that as a result they were not liable to the EEC levy.
By a letter of 10 September 1970, Granaria applied to the Produktschap voor Veevoeder (hereinafter referred to as 'the Produktschap') for a refund of the levy paid. When the Produktschap rejected this application, the plaintiff lodged an appeal with the College van Beroep voor het Bedrijfsleven.

2. The College decided that, in order to settle the dispute, it was necessary to answer the question whether 'hominy chop specified' must be classified under heading No 23.02. In this connexion, it refers to the two descriptions of the product given by Granaria and the Produktschap respectively, which are not constested. Granaria's description is as follows:

'The maize germ is separated from grains of maize pre-treated with steam by means of appropriate machinery. In the course of this treatment, the husks (bran) and a part of the soft endosperm are also inevitably separated from the grain.
One thus obtains, on the one hand: (a) whole grains of maize separated from the straw; (b) maize rice; (c) maize meal and (d) straw and, on the other hand: (a) flour of maize germ; (b) bran.
It is intended to extract oil from the flour of maize germ and the latter is used for this purpose; its end products are oil and flour of maize germ from which the oil has been removed. That part of the flour of maize germ from which oil cannot be extracted is compressed into oilcake (mixed with bran if necessary) to make "hominy chop specified".'

The Produktschap's description reads:

'South African flour of maize germ, unsuitable for oil extraction, with or without an admixture of coarse bran with a 50% or less starch content by weight in relation to the dry matter.'
The College van Beroep voor het Bedrijfsleven found that the decision in the case depended first on the interpretation of Article 14 of Regulation No 120/67 and heading No 23.02 of the Common Customs Tariff. Secondly, the College considered that in the event of an affirmative answer the question would arise whether Community law allowed national authorities to avail themselves of provisions of national law to grant exemption from the obligation to pay the levy referred to in Article 14 of Regulation No 120/67.

In the present case, the following provisions are involved:

— Article 12(1) of the In- en Uitvoerbesluit Landbouwgoederen 1963 (Regulation concerning imports and exports of agricultural products 1963), under which the competent national authority may, on application, grant exemption from the provisions of Article 7(1). Under Article 2(c) and (g) of the In- en Uitvoerbeschikking 1963 (Ministerial Regulation on imports and exports 1963) the competent Minister delegated the power to fix and apply levies within the meaning of Articles 7 and 10 of the first-mentioned regulation to the Produktschap;

— the Beschikking Landbouwheffingen- en -restitutieregime 1968 II (Minsterial Regulation concerning agricultural levies and refunds 1968 II), which, in Article 15(1)(d), provides that, on application, total or partial exemption (in appropriate cases by means of a refund) from the obligation to pay the levy may be granted 'in certain cases on grounds of natural justice.'

By order dated 2 May 1972, received at the Court Registry on 3 May 1972, the College van Beroep voor het Bedrijfsleven stayed

the proceedings and referred to the Court the following questions under Article 177 of the Treaty:

'(1) Does a true construction of Article 14 of Regulation (EEC) 120/67 and heading No 23.02 of the Common Customs Tariff referred to in Annex A to that regulation and reading as follows: "Bran, sharps and other residues derived from the sifting, milling or working of cereals" imply that a product, the mode of preparation and composition and qualities of which are as described above in respect of the product "hominy chop specified", must be classified under this heading?

(2) If this question should be answered in the affirmative:

Does any rule of the Treaty establishing the European Economic Community or of any regulation based on this Treaty and in particular of any of the EEC regulations mentioned in the present order provide for the possibility that the national authorities of a Member State may make use of a provision like that of Article 12(1) of the In- en Uitvoerbesluit Landbouwgoederen 1963 in conjunction with Article 2(g) of the In- en Uitvoerbeschikking Produktschap voor Veevoeder 1963 or like that of Article 15(1)(d) of the Beschikking Landbouwheffingen- en restitutieregime 1968 II for the granting of exemption from an obligation to pay the levy referred to in Article 14 of Regulation No 120/67/EEC in connexion with the import into the Community of a product falling under heading No 23.02 referred to in Annex A to that regulation?'

3. Written observations were submitted in accordance with Article 20 of the Protocol on the Statute of the Court of Justice by Granaria, represented by N. A. Koedam, A. Calje and D. J. J. Den Hartog, Advocates at the Rotterdam Bar, the Produktschap voor Veevoeder, represented by L. J. Schippers, the Government of the Kingdom of the Netherlands, represented by E. L. C. Schiff and the Commission of the European Communities, represented by its Legal Adviser, L. J. Van Der Burg.
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.
The parties to the main action and the Commission made oral observations at the hearing on 17 October 1972.
The Advocate-General delivered his opinion at the hearing on 7 November 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 — *Question 1*

Granaria states first of all that 'hominy chop specified' is, for the purpose of its tariff classification based on the method of preparing it and its market, a completely different product from 'hominy chop'. The first is a residuary product of maize obtained by removing the germ by a steam process whereas the second is the residue of a dry-milling process.
In comparing the description which it gives to 'hominy chop specified' and the process for removing the germ from which it results with the wording of heading No 23.02 of the Common Customs Tariff, Granaria observes that the product in question does not come under this heading. The present case is not concerned with 'bran, sharps and other residues derived from the sifting, milling or working' of maize. The word 'working' refers to operations analogous to sifting or milling; if this were not the case it would be difficult to see the reason for headings No 23.03, 23.04 and 23.06.
Heading No 23.02 is thus concerned solely with very old *dry processes* and thus does not include within its scope 'hominy chop

specified' which is a product obtained when the oil is extracted *by a steam process.*
According to the *Produktschap* 'hominy chop specified' is on the contrary covered by the definition in heading No 23.02. Referring to the explanatory note to heading No 23.04, it observes that this heading covers solid residues by *extraction* by pressing, solvents or subjecting the oil contained in the oil-seeds to centrifugal force. It does not therefore apply to 'hominy chop specified' which does not contain matter which has been subject to oil extracting processes.
This argument accords with the view of the Committee on Common Customs Tariff Nomenclature and in particular with the explanatory note which was drafted on 10 March 1972 in connexion with subheading No 23.04 B. The Produktschap concludes by proposing that an affirmative answer should be given to the first question.
The *Government of the Kingdom of the Netherlands* states that it is in favour of an affirmative reply to the first question and in this respect refers to the grounds given in the order referring the matter.
The Commission considers that the interpretation requested must be looked for on the basis of the description given by each of the parties. It observes that since the product in question was described as flour of maize, the first question which arises is whether or not it comes under headings No 11.01 and 11.02 of the Common Customs Tariff. In this respect it observes that heading No 23.02 was the subject of a more precise definition in Regulation No 360/67/EEC of the Council of 25 July 1967 (JO 1967, No 174) and that Regulation (EEC) No 1502/68 of the Council of 23 July 1968 (OJ, English Special Edition 1968 (II), p. 323) contains a note on heading No 11.01 worded as follows as far as concerns the present case:

'Inclusion under this heading is subject to the condition that the product in question has a starch content exceeding 45% and an ash content not exceeding ... 2% for products based on maize ... If either of the two conditions mentioned above is not fulfilled, the product in question shall be classified under tariff subheading No 23.02 A on the basis of its starch content.'
The Commission concludes that according to this note a produce processed from maize intended for import must as a rule be classified under heading No 23.02 when it is shown that it cannot come under heading No 11.01.
The Commission draws attention to the importance for the purposes of tariff classification of the definition given by each heading of the Common Customs Tariff. It follows from the definition relating to heading No 23.04 that its scope is limited by the concept of 'residue', a concept which may be defined in the light of the judgment given by the Court in Case 36/71 and by the words 'extraction of vegetable oils'. Although it is true that the objective characteristics of products must, as a rule, decide their tariff classification, this rule must be subject to exceptions when the definition in a tariff heading limits its scope to products resulting from a specific processing. This could be valid in particular for headings relating to residues which as a general rule are subject to low charges or none at all and by reason of this are liable to be the subject of extensive interpretation.
It is true that restrictions depending on certain production processes might lead to legal uncertainty and put difficulties in the way of speedy and certain administration. This has been precisely the position for a long time with regard to the headings in question in the present case. These headings moreover have been the subject of long discussions within the Customs Cooperation Council and within the Community where they led in 1967 to the provisional adoption of a supplemental explanatory note to heading No 23.04 (sent in a letter dated 28 August 1967 to the Permanent Representatives of the Member States).
However neither this note nor the legal measures which followed, in particular the note on heading No 11.01, resolved all the problems. At the beginning of 1972 the Committee on Common Customs Tariff Nomenclature drafted an explanatory note, likewise of a provisional nature (sent by letter dated 13 April 1972 to the Permanent Representatives of the Member States), which, like that of 1967, relates solely to

residues from the extraction of oil from maize germ, gives precise specifications and expressly excludes products which do not satisfy all the prescribed conditions and mixtures (other than those containing negligible quantities of products from maize grain which have not been subject to the process of oil extraction).
The Commission concludes that the following answer might be given to the first question:

'Products obtained on processing maize, *other* than on the extraction of vegetable oils, are excluded from heading No 23.04 of the Common Customs Tariff and may thus be classified under heading No 23.02 in Annex A to Regulation No 120/67/EEC of the Council of 13 June 1967. This likewise applies when the products result from a processing stage preceding the extraction of the vegetable oils from the maize.'

B — *Question 2*

Granaria claims that it follows from Article 5 of the Treaty and from Community regulations such as Regulation No 120/67 that national authorities may make use of provisions such as those mentioned by the national court. The protection of individual rights makes this an absolute necessity.
The *Produktschap* refers to the observations made by the Netherlands Government.
The *Government of the Kingdom of the Netherlands* observes that the question of the application of equitable criteria on the making of a levy has already been discussed in Case 31/70 [1970] ECR 1055 where the Court in paragraph 4 of the judgment stated that

'... In view of the absence of such provision this problem must be solved by reference to the system of the regulation, having regard to the principles governing the common organization of agricultural markets and the aims attributed to it by the Treaty.'

It follows from this judgment, which moreover confirms the argument maintained at the time by the Netherlands Government, that the absence of provision by the common organizations of the market does not *completely* prevent the Member States from waiving where appropriate the strict application of the common organizations in a particular case where the aim and structure of the organizations and the objectives of the Treaty allow it. In Case 31/70 the Court considered that there could be no reason to depart from a strict application of the Community rules. In considering the question submitted to it the Court must adopt the same criterion of interpretation and not give a general answer to the Netherlands court since the answer required depends on the facts of the particular case and the law applicable. In the present case the nature of the facts, judged in the light of the applicable rules, does not allow an exemption from payment of the import levy to be granted either.
Finally the Netherlands Government points out that the Commission has meanwhile submitted to the Member States (on 12 April 1972) the draft of a proposal for a Council regulation relating to the refund or waiver of customs duties on imports, charges having equivalent effect and levies.
The *Commission*, after also citing the case-law of the Court from which it appears that the forms and national procedures to be followed in the implementation in national law of Community regulations cannot affect the content of these measures or prejudice their uniform application in all the States, observes that neither the Treaty nor any Community regulation allows the possibility referred to by the national court. On the contrary the provisions referred to of Regulation No 120/67 state clearly and without exception the obligation to pay the levy on import. The possibility referred to by the national court would moreover be incompatible with Community law and in particular with Regulation No 120/67 for reasons relating to the basic objectives of import levies, having regard above all to the requirement to ensure the stabilization of national agricultural prices.
In cases such as the present where the result of the import into the Community is to put goods into free circulation and onto the market there is as a rule an effect on price

formation in the Common Market and the rules provided for in this sphere by Community law must therefore apply.
To make use in these cases of national provisions providing for the grant of individual exemptions or waivers would mean affecting the scope of the Community regulation and would considerably exceed the scope of the national forms and procedures intended to ensure the implementation of this regulation in national law. Even if it appeared that in other comparable situations the Community law was not correctly applied, only measures taken at a Community level and not on the basis of unilateral intervention on the part of a Member State could put an end to it.
As regards, on the other hand, the case where the import into the Community does not have the result of putting goods into free circulation or, since it relates to goods which are not used or re-exported, does not have any influence on price formation, the Commission in a recommendation of 20 December 1963 expressed the opinion that in particular circumstances the destruction or re-export of the goods may on application by the importer lead to the refund or waiver of the import duties. A draft Council regulation submitted in April 1972 adopts this solution likewise in cases where duties or levies have been wrongly assessed. The situations referred to in this draft are, however, different from those in question in the present case. In any event the refund or waiver provided for therein would result from rules of Community law and would not be on the basis of national provisions derogating from Community law.

On the basis of these considerations the Commission concludes:

'When the result of the import of a product coming under heading No 23.02 of the Common Customs Tariff referred to in Annex A to Regulation No 120/67/EEC is that the product is put into free circulation and becomes effectively available in the Community so that it may affect price formation in the Common Market, Member States cannot avail themselves of national provisions relating to exemption or waiver, even by means of refund, to grant exemption from the obligation to pay the levy referred to in Article 14 of the above-mentioned regulation.'

Grounds of judgment

1 By order dated 2 May 1972, received at the Court on 3 May 1972, the College van Beroep voor het Bedrijfsleven asked the Court in accordance with Article 177 of the EEC Treaty to give a preliminary ruling on the interpretation of Article 14 of Regulation No 120 of the Council of 13 June 1967 (OJ, English Special Edition 1967, p. 33) and on questions concerning the application of certain provisions of Community law in the national law of a Member State.

Question 1

2 The first question asks whether Article 14 of Regulation No 120/67 and tariff heading No 23.02, defined in both Annex A to that regulation and in the Common Customs Tariff as 'bran, sharps and other residues derived from the sifting, milling or working of cereals', must be interpreted as applying to products called 'hominy chop specified'.

3 Granaria, relying on the nature and method of preparation of the products referred to by the said tariff heading, maintains that it applies only to products obtained by dry processes.

4 On the other hand, products obtained by humid processes come under other headings of the same chapter of the Common Customs Tariff and in particular residues resulting from the extraction of vegetable oils, which come under heading No 23.04.

5 Thus the question posed comes down in the first place to whether the true construction of Article 14 of Regulation No 120/67 implies that, for products coming under heading No 23.02, the method of preparation employed is decisive.

6 The words 'working of cereals' in the description in heading 23.02 cover, by reason of their general scope, all possible processes for working cereals including wet processes.

7 Confirmation of this statement is found in Regulation No 1052 of the Council of 23 July 1968, which, in the annex thereto, contains a note on heading No 11.01 providing that, if a processed product based on maize does not satisfy the required conditions for classification under heading No 11.01, it is to be classified under tariff subheading No 23.02 A on the basis of its starch content, from which it is clear that the classification of products under this heading is not in principle determined on the basis of the process of working employed.

8 Moreover it appears also from Article 3 of Regulation No 302 of the Council of 18 February 1969, according to which 'cereal germ, whether milled or not, shall in all cases fall within tariff heading No 11.02', that the dry or wet process used in the preparation of these products is not decisive for the purpose of their classification in the Common Customs Tariff.

9 Thus products of the type of those referred to by the order referring the matter are not excluded, by reason of the process of working employed, from heading No 23.02.

10 Next it is necessary to consider whether heading No 23.04 referring to 'oilcake and other residues (except dregs) resulting from the extraction of vegetable oils' may, where appropriate, be interpreted as applying to products of the kind referred to.

11 It appears from the clear and express words of the description in heading No 23.04 of the Common Customs Tariff that it covers only residues resulting from the extraction of vegetable oils.

12 It cannot therefore apply to residues which may result from the working of basic products other than that consisting in the extraction of vegetable oils.

13 It follows from the above that Article 14 of Regulation No 120/67 of the Council must be interpreted as meaning that tariff heading No 23.02 makes no distinction regarding the process employed in working cereals since tariff heading No 23.04 refers only to residues resulting from the extraction of vegetable oils.

Question 2

14 The second question asks whether any provision of the Treaty establishing the European Economic Community or a regulation adopted on the basis of this Treaty and in particular one of the EEC regulations referred to in the present order allows the competent national authority of a Member State to avail itself, in particular for purposes of natural justice, of a provision of national law to exempt the importer from the obligation to pay the levy referred to in Article 14 of Regulation No 120/67/EEC on the import into the Community of a product coming under heading No 23.02 of the Common Customs Tariff referred to in Annex A to the said Regulation No 120/67/EEC.

15 Neither Regulation No 120/67 nor any other provisions of Community law envisage the possibility of the national authorities of a Member State granting exemption from the obligation to pay the levy.

16 Since, in accordance with Article 189 of the Treaty, this regulation has general application and is binding in its entirety, Member States may not, in the absence of a provision of Community law to the contrary, have recourse to national measures capable of modifying its application.

17 Where the import of agricultural products subject to the levy system involves their being put into free circulation in the Community, exemption from the levy granted by a Member State by national measures is contrary to the distribution of powers between the Member States and the Community.

18 Therefore it must be concluded that no provision of the Treaty or of the rules relating to its application envisages the possibility of the national authorities granting exemption from the levy provided for in Article 14 of Regulation No 120/67 in connexion with the import into the Community of products coming under heading No 23.02 of the Common Customs Tariff, defined in Annex A to that regulation.

Costs

19 The costs incurred by the Government of the Kingdom of the Netherlands and by the Commission of the European Communities, which have 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, a step in the action before the national court, costs are a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the undertaking NV Granaria Graaninkoopmaatschappij, the Produktschap voor Veevoeder and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation No 120/67 of the Council of 13 June 1967 (OJ, English Special Edition 1967, p. 33);
Having regard to Regulation No 1052 of the Council of 23 July 1968 (OJ, English Special Edition 1968 II, p. 4323);
Having regard to Regulation No 302 of the Council of 18 February 1969 (OJ, English Special Edition 1969 (I), p. 47);
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the College van Beroep voor het Bedrijfsleven by order of that court dated 2 May 1972, hereby rules:

1. **Article 14 of Regulation No 120/67 of the Council must be interpreted as meaning that tariff heading No 23.02 makes no distinction regarding the process employed in working cereals since tariff heading No 23.04 refers only to residues resulting from the extraction of vegetable oils;**

2. **No provision of the Treaty or of the rules relating to its application envisages the possibility of the national authorities granting exemption from the levy provided for in Article 14 of Regulation No 120/67 in connexion with the import into the Community of products coming under heading No 23.02 of the Common Customs Tariff, defined in Annex A to that regulation.**

Monaco Pescatore

Donner Trabucchi Mertens de Wilmars

Delivered in open court in Luxembourg on 30 November 1972.

A. Van Houtte
Registrar

P. Pescatore
(President of Chamber)
President