JUDGMENT OF THE COURT
15 DECEMBER 1970[1]

Deutsche Getreide- und Futtermittel Handelsgesellschaft mbH, v Hauptzollamt Hamburg-Altona[2] (Reference for a preliminary ruling by the Bundesfinanzhof)

Case 31/70

Summary

1. *Agriculture — Common agricultural policy — Common organization of the markets — Levy — Concept — Standard charge*

2. *Agriculture — Common agricultural policy — Common organization of the markets — Levy — Application to damaged products*

1. Levies are derived from the Treaty and not from national law and are simultaneously applicable in all the Member States; they act as regulators of the market within the framework of a common organization and are calculated on the basis of weighted values and having regard to standard qualities; they are therefore standard charges which do not take account of the individual characteristics of the products imported. Products of lower quality than the standard quality are therefore subject to the general levy in the same way as products of higher quality.

2. Products which have suffered damage before being imported and which have therefore lost some value may in spite of this loss in value affect the agricultural market in the same way as other products which were of a lower quality than the standard quality from the start and which are however subject to the general levy. The reasons why the condition of impaired goods is below the standard quality do not affect the grounds which justify the application of the general levy to them.

In Case 31/70

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

DEUTSCHE GETREIDE- UND FUTTERMITTEL HANDELSGESELLSCHAFT MBH, Hamburg

and

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

HAUPTZOLLAMT HAMBURG-ALTONA

on the interpretation of Regulation No 19 of the EEC Council of 4 April 1962 (OJ 1962 No 30),

THE COURT

composed of : R. Lecourt, President, A. M. Donner and A. Trabucchi, Presidents of Chambers, R. Monaco (Rapporteur), J. Mertens de Wilmars, P. Pescatore and H. Kutscher, 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. On 28 February 1963, the Deutsche Getreide- und Futtermittel Handelsgesellschaft mbH ('DGFH') sought customs clearance for maize from the United States. According to its declarations, the maize had suffered water damage in transit which had caused it to lose 25% in value. The Zollamt (Customs Office) called for the payment by way of levy of a sum calculated in accordance with the rate shown in the import licence. The objection by the DGFH to the Hauptzollamt Hamburg-Altone (Chief Customs Office) and the appeal lodged at the Finanzgericht (Finance Court) Hamburg were unsuccessful and the case is now pending before the Seventh Senate of the Bundes finanzhof (Federal Finance Court).
The latter, which considered that the result of the case was closely dependent on the application of Regulation No 19 of the EEC Council of 4 April 1962, decided by order of 4 June 1970 to stay proceedings and refer the following questions to the Court of Justice under Article 177 (b) of the EEC Treaty:

'(1) Must Regulation No 19 of the Council of the European Economic Community of 4 April 1962 concerning the progressive establishment of a common organization of markets in the cereals sector be interpreted as meaning that the same levy must be imposed on maize which has suffered water damage in transit before being imported and thus lost

some of its value as on maize which has suffered no damage?

(2) If so, is this regulation valid?

(3) If Question 1 or 2 is answered in the negative,

(a) can a levy be imposed on maize which has suffered water damage before being imported?

(b) If question 3 (a) is answered in the affirmative, according to what criteria must the levy be fixed?

2. The order referring the questions for a preliminary ruling was received at the Court Registry on 1 July 1970.

The Deutsche Getreide- und Futtermittel Handelsgesellschaft mbH, the Government of the Kingdom of The Netherlands and the Commission of the European Communities submitted written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice which is annexed to the EEC Treaty.

After hearing the report of the Judge Rapporteur and the views of the Advocate-General, the Court decided that no preparatory inquiry was necessary in this case and fixed 12 November 1970 as the date of the hearing.

The Deutsche Getreide- und Futtermittel Handelsgesellschaft mbH and the Commission of the European Communities presented their oral observations at the hearing on 12 November 1970.

The Deutsche Getreide- und Futtermittel Handelsgesellschaft mbH was represented by Claus Brändel.

The Government of the Kingdom of The Netherlands was represented by C.W. Santen, Legal Adviser at the Ministry for Foreign Affairs.

The Commission of the European Communities was represented by its Legal Legal Adviser, Peter Kalbe.

The Advocate-General delivered his opinion on 1 December 1970.

II — Written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice

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

A — *Observations submitted by the Deutsche Getreide- und Futtermittel Handelsgesellschaft mbH*

The DGFH refers first of all to the fact that the problem concerning the rate of levy applicable to cereals which have been damaged by water has already been discussed under German law in connexion with the German national market in cereals which existed previously. In this respect it refers to two decisions of the Bundesverwaltungsgericht (Federal Administrative Court) which it claims show that the rate of levy is reduced for damaged goods and that the principal aim of the levy (or similar special charges) is to prevent importers from making excessive profits.

The DHGF then examines the *first question* and observes that Regulation No 19 does not provide explicit rules on the levies applicable to cereals which are damaged but which in spite of the damage they have suffered are still cereals for the purposes of tariff classification. The solution of this problem should therefore be sought having regard to the aims and objectives of the levy.

It claims that the first point to bear in mind from this point of view is that the common organization of the market in cereals relates to commodities which are sound and capable of being marketed normally and that this is confirmed by many provisions of Community law concerning both imports and exports.

The 'general levy' system is not incompatible with the need to make a distinction between commodities which have been damaged and commodities which have not been damaged; it only implies that the rate of levy calculated on the basis of a representative and fixed quality for cereals (Standard-Qualität) and for a fixed period of time applies quite generally to cereals of this quality, even to those 'which are of higher or lower quality than the 'standard quality'.

However, the application of this system is only justified in relation to the aims of the levy if it complies with two fundamental principles: the principle of 'fair taxation' and that of 'the proportionality of means'. Differences in quality which may exist between these cereals in comparison with the 'standard quality' and which are not taken into consideration for the purposes of and alteration in the rate of levy applicable are only those variations which are normal and customary in the trade.

On the other hand, in a case where commodities have been damaged by water and have therefore lost their customary commercial value, this system can no longer apply, for it would adversely affect the very aims of the levy and would enable the national tax authorities to gather unwarranted revenue at the expense of damaged commodities.

It is impossible to object that in this case it is for the importer of the commodities to bear the disadvantages of the system if this importer was able to insure himself against the relevant risks by means, for example, of a transport insurance policy. Firstly, in every state governed by the rule of law the problem of imposing a charge depends on whether this charge has a sufficient legislative basis and not on whether the charge can be passed on to another person. Secondly, supposing that an insurance policy against risks incurred in transporting commodities is necessary in order to avoid these disadvantages, its cost should be taken into consideration by the Commission as a normal component of the make-up of the cif price which is required in order to calculate the rate of the levy. The fact that the Commission did not take account of this cost implies that the Community legislature does not require that such an insurance policy be taken out.

The DGFH claims that the first question should be answered in the negative.

As regards the *second question*, the DGFH refers to the fact that the levy is based upon the EEC Treaty and in particular upon Article 40 (3) which provides for the regulation of prices in so far as they are 'measures required'. This is a clear and unequivocal reference to the principle of the 'proportionality of means'. Although the expression 'measures required' postulates the existence of some legislative freedom for the Community legislature, it is obvious that the Treaty did not intend by this means to confer an unlimited discretionary power and that this freedom is still subject to the principle which has been mentioned above and which is characteristic of every state which is governed by the rule of law.

The Community, which is composed of a collection of States governed by the rule of law, is also bound to observe this principle as regards its legislative power as well as it executive power. The legislative measures which it has adopted in the context of Article 40 (3) of the Treaty must not encroach upon the legal sphere of citizens of the Community beyond what is absolutely necessary in order to achieve the aim which is being pursued. This is why Article 10 (2) of Regulation No 19 would be without effect or meaning if it had to be applied in such a way that a levy identical in amount to that imposed on imports of sound commodities must be applied on imports of cereals which have been damaged by sea water. The DGFH claims therefore that the second question should be answered in the negative.

As regards the *third question*, the DGFH admits that it would be unwarranted having regard to the aims of the levy and to the principle of the 'proportionality of means' to exempt entirely from the levy contrary, they should still be considered as cereals which are subject to the levy but the rate applicable should be graduated and reduced in proportion to the loss in value which they have suffered as a consequence of the damage. In the present case, a reduction of 25% in the rate applicable (corresponding to a loss in value of 25%) would be quite correct and justified. This reduction would not present any difficulties in its application and would not involve the creation of a new legal rule because either:

— there is a gap in the legislation in this field and in this case it could be filled by invoking the principle laid down in the preamble to Regulation No 19 and having regard to the principle of the 'proportionality of means' laid down in Article 40 (3) of the Treaty,

— or else the legislature meant to subject goods which have been damaged and goods which are sound to the same levy and in this case, if the illegality of the imposition is not to be simply admitted, the exact amount of the levy must be fixed by having recourse to Article 40 mentioned above.

B — *Observations submitted by the Dutch Government*

As regards the *first question* the Dutch Government observes that it is impossible to give a reply based only on Regulation No 19 because the latter seen by itself makes no distinction between maize as such and maize which has been damaged in transit as regards the rate applicable.

As regards the *second question*, it considers that if this question were to be answered in the affirmative it might lead to the result, which is in its opinion undesirable, that no levy would have to be paid on damaged maize.

As regards the *third question*, finally, the Dutch Government declares that it is favourable to the solution whereby the rate of levy applicable to maize which has been seriously damaged should be lower than that fixed by Regulation No 19 for normal maize. Once the levy to be paid is higher than the residual value of the commodities, imports become impossible in practice. To insist in this case that an invariable rate of levy should be applied would amount to applying the law unfairly and unreasonably.

The Dutch Government emphasizes in this respect that in The Netherlands the decree concerning the system of levies and agricultural refunds 1968, II, provides for the possibility of reducing the rate of charge which is generally applicable on equitable grounds if the commodity has suffered damage and thus lost some value.

The Dutch Government denies that a system moving in the direction of the provisions of Dutch law mentioned above would be directly applicable from now onwards in Member States by virtue of the interpretation of Regulation No 19.

It claims that this regulation merely fixes the rate of the levies which have been envisaged without settling any of the other points involved in a complete tax system, including this problem. The same applies as regards customs duties: the tariff for these duties was fixed by Article 91 *et seq.* of the Treaty and afterwards laid down in detail by Regulation No 950/68 of the Council, but the necessary implementing rules are still for the moment provided for in national customs legislation. The Dutch Government concludes because of this that on this subject it is the national regulations which must be applied. So far as there are differences between these regulations which are contrary to the objectives of the Treaty and to the operation of the Common Market, these can only be removed by the harmonization of legislation and, where appropriate by the competent institutions of the Community by making Community regulations.

C — *Observations submitted by the Commission of the European Communities*

As regards the problem concerning the *interpretation* of Regulation No 19, the Commission observes that the absence of explicit provisions in the regulation and in the implementing regulations providing that the quality of the products whether it be higher or lower be taken into consideration when the rate of the levy is calculated does not produce an ambiguity or a gap in the system set up by this regulation, because it is a feature of this system that it is applied without having regard to the special characteristics of each consignment of imported goods.

The Commission explains that in fact the rate of levy is calculated for each category of products and for a fixed period of time on the basis of a standard quality for the products in question, the standard qualities being laid down in Regulation No 61 for the whole Community, and that the standard quality for maize is laid down in Article 5. Community law, especially the Article mentioned above, shown that there is no appreciable difference between the 'quality' and the 'condition' of the goods imported, at least within the context of the levy system laid down in Regulation No 19.

Having explained the method of determining the rate of levy within the context of

the system set up by Article 10 (2) of Regulation No 19, the Commission observes that in this context, Member States have no discretionary power to alter the amount of the levy according to the quality or the condition of the goods imported since, after the regulation setting up a common organization of agricultural markets had come into force, they had been divested of all powers in this respect (see the Judgment of the Court in Case 74/69 on their 'powers as regards tariffs').

The Commission claims that the first question should be answered in the affirmative.

As regards the problem of the *validity* of Regulation No 19, the Commission observes first of all that no conclusions with regard to the present case can be drawn from the case-law of the Bundesverwaltungsgericht. This case-law exclusively concerns the application and the interpretation of provisions which governed the German organization of the market before Regulation No 19 came into force and is explained by the special nature of Article 8 of the German law on cereals.

The Commission dismisses the argument based on the claim that there has been a breach of Article 12 of the Treaty which imposes on Member States the obligation to maintain the status quo with regard to intra-Community trade and observes that this case concerns the levies imposed with reference to third countries and that there is no *breach of the general principles* of a State governed by the rule of law, in particular of the principle of the 'proportionality of means'. Imposing an identical levy whatever the quality of the maize imported produces, it is true, a difference in the burden of the charge, which is heavier in case of lower quality maize, but this difference is not prohibited by the principles mentioned above, since these only prohibit differences which are not in accordance with the purposes of the system or which are based on considerations which are unconnected with it.

Moreover, the Community legislature disposed of wide discretionary powers in setting up the system of the common agricultural policy. It was for that legislature to determine the aims and objectives which were to be pursued and to find the appropriate means to attain them and, this being so, the assumption that there has been a breach of the abovementioned principles can only be accepted if there no longer seems any valid reason to justify the measure adopted. The difference in the burden of the charge which is a result of imposing an identical levy per unit of weight is only the logical consequence of the 'general' nature of the system of levies which has been adopted.

The Commission states that no valid objections can be made to this system as such and that in addition the Court has not questioned its validity. First of all, it was legitimate within the framework of the concrete objectives of the common agricultural policy and for the purposes of a common policy based on quality to promote imports of high quality products and to make imports of low quality products economically less advantageous through an appropriate system of levies. Further, the system in question enables the best balance to be obtained between the interests of the organization of the market from the point of view of the public authorities and the economic interests of importers. Since the detailed rules of this system are known to all parties concerned, the correct amount of the charge can be checked by everyone, and quite apart from that the difficulties and uncertainties inherent in a method of calculating the levy individually are avoided through standardization of the levy. Finally, it was just as necessary to align the price of damaged maize as that of cereals imported in good condition and of good quality, since it is precisely cheap imports which are likely to disturb the price system on the domestic market.

Moreover, imposing a single general charge does not have a discriminatory effect, since this is precisely the type of charge which ensures the impartiality of the common system of imports with regard to competition, and this impartiality would not be guaranteed if the charge were calculated individually. On the one hand, if the levy had to be calculated also on the basis of the actual cost price, out of two importers of the same product the one who had bought at a lower price would have to pay a higher levy and would therefore be deprived of the

advantage that he had gained over his competitor because of his ability and skill. On the other hand, if national authorities were allowed to alter the levy in accordance with the special characteristics of each consignment of goods imported this would amount to introducing doubts as to the uniform application of the levies and therefore their impartiality with regard to competition.
Besides, the fact that low quality cereals are in theory put at a disadvantage by the general levy system does not have an excessive or intolerable effect on importers.
The Commission explains that the common system of imports gave importers themselves the freedom to determine the ratio of the value of the goods to the import levy (see in particular Article 17 (2) of Regulation No 19) and concludes that the DGFH has not therefore been unduly affected by the imposition of the general levy on maize even if it had quite unexpectedly and involuntarily found itself in possession of damaged goods of little value. Since the Community had left traders practically total freedom of decision in commercial matters, it was for the latter to bear the full sales risk. Generally an insurance policy covering the risk of transporting goods, this being an insurance policy which is in accordance with customary commercial practice, covers at least the loss in value of the damaged consignment in relation to the original world market price. On the other hand, the DGFH had not been in any way obliged to import the damaged maize but could have sold it or used it in some other way. In addition, it could have chosen between using the original licence with the amount of levy shown therein by importing other products of higher value and obtaining a new licence with a levy which might possibly have been more favourable.
If he is no longer able to do this because the remaining period before the licence expires is too short to buy replacement goods and the damages suffered in transit are so great that the goods can no longer be imported within the required time or this would be impossible in practice, the importer is no longer obliged to import the goods because of the intervention of force majeure; he can request that his licence be annulled or the time limit set therein extended.
The Commission contends that the second question should be answered in the affirmative. Since therefore the first two questions have been answered in the affirmative it considers that it is unnecessary to examine the third question.

Grounds of judgment

1 By an order of 4 June 1970, received at the Court on 1 July 1970, the Bundesfinanzhof of the Federal Republic of Germany has referred in accordance with Article 177 of the EEC Treaty, several questions regarding the interpretation and validity of Regulation No 19 of the EEC Council of 4 April 1962 (OJ 1962, No 30).

The first two questions

2 In the first question the Court is asked to rule whether Regulation No 19/62 must be interpreted as meaning that the same levy must be imposed on maize which has been damaged in transit by water before being imported and thus lost some value as on undamaged maize. If this question is answered in the affirmative, the Court is asked to rule whether the regulation is valid in this respect.

3 Since these two questions are closely connected, they must be examined together.

4 Neither Regulation No 19 nor the implementing regulations issued thereunder contain provisions whereby the rate of the levy applicable to a specified category of cereals can be reduced because of damage and loss of value suffered by these cereals before being imported. In view of the absence of such provisions 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.

5 Regulation No 19 and the other provisions made to establish a common organization of agricultural markets have introduced a system of regulated prices in this sector in order to attain the objectives laid down in Articles 39 and 40 of the Treaty.

Within the framework of this system Regulation No 19 has imposed levies on imports from third countries corresponding to the difference between the prices prevailing on the world market and the prices prevailing in the importing Member State.

These levies are derived from the Treaty and not from national law, are simultaneously applicable in all the Member States and not within only one of them and they act as regulators of the market not within the national framework but within that of a common organization; they are determined by reference to a price level fixed according to the objectives of the Common Market and to fluctuating rates which are capable of variation with changes in the economic situation.

In particular, under the provisions of Article 10 (2) of Regulation No 19 the amount of the levy on each product is the difference between the cif price determined on the basis of the most favourable prices at which the goods can be bought on the world market and the threshold price in the importing Member State.

The latter price is fixed annually by the Member States for a standard quality for the category of cereals in question, whilst the cif price is fixed on the basis of international prices adjusted by reference to differences in quality which may exist by comparision with the standard quality for which the threshold price is fixed.

6 The result of the system which has thus been established is that the levies, which have been calculated on the basis of weighted values and having regard to standard qualities, are standard charges which do not take account of individual characteristics of the products imported.

Products of a quality lower than the standard quality are therefore subject to this levy in the same way as products of a higher quality.

7 The reasons why the condition of goods is below the standard quality do not affect the grounds which justify the application of the general levy to them.

Products which have suffered damage before being imported and which have therefore lost some value may in spite of this loss in value affect the agricultural market in the same way as other products which were of a lower quality than the standard quality from the start and which however are subject to the general levy.

8 The application of the same general levy to products whether they are damaged or not is in accordance with the objectives pursued by the price system introduced by Regulation No 19

Even if there is no doubt that an importer of products which have been damaged may because of the damage, be subject to a charge higher than that which he would normally have to pay, compensation for the loss thereby incurred cannot be sought by altering the standard charge applicable as this would not be justified either by reference to the purposes of the levy or by reference to the method whereby it is calculated.

9 Finally, the standard nature of the system of levies described above appears to be in accordance with the objectives of the Treaty.

10/11 The first two questions must be answered to the effect that Regulation No 19 which provides for the progressive establishment of a common organization of the markets in the cereals sector must be interpreted as meaning that the same levy must be imposed on imported maize which has been damaged in transit and has therefore lost some value as on maize which has not been damaged.

12 The examination of the questions which have been submitted has not revealed any factors which might affect the validity of Regulation No 19 in this respect.

The third question

13 This question was only posed by the Bundesfinanzhof in case either one or other of the previous questions was answered in the negative. Since these have been answered in the affirmative, the third question becomes superfluous.

Costs

14 The costs incurred by the Commission of the European Communities and by the Government of the Kingdom of The Netherlands, which submitted their observations to the Court, are not recoverable.

15 As regards the parties to the action, these proceedings are a step in the action pending before the Bundesfinanzhof of the Federal Republic of Germany and costs are therefore a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the Deutsche Getreide- und Futtermittel Handelsgesellschaft mbH 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 39, 40 and 177;
Having regard to Regulation No 19 of the EEC Council of 4 April 1962;
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 Bundesfinanzhof of the Federal Republic of Germany by an order made by that court on 4 June 1970, hereby rules:

1. **Regulation No 19/62 which provides for the establishment of a common organization of markets in the cereals sector must be interpreted as meaning that the same levy must be imposed on imported maize which has been damaged in transit and therefore lost some value as on maize which has not been damaged.**

2. **The examination of the questions which have been posed has not revealed**

any factors which might affect the validity of Regulation No 19/62 in this respect.

Delivered in open court in Luxembourg on 15 December 1970.

Lecourt Donner Trabucchi

Monaco Mertens de Wilmars Pescatore Kutscher

A. Van Houtte R. Lecourt

Registrar President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 1 DECEMBER 1970[1]

Mr President,
Members of the Court,

The plaintiff in the main action, an import firm which has its registered office in Hamburg, applied in January 1963 for customs clearance for maize which had been imported from the USA. According to its declarations, the goods had been damaged in transit by moisture and had lost 25% in value. Regardless of this, the customs office responsible, on the basis of Regulation No 19 of the Council on the progressive establishment of a common organization of the market in cereals (OJ 1962 p. 933), which was then in force, imposed a levy according to the rate shown in the import licence, that is, in the full amount.

The import firm considers that this is not justified; it claims rather that the levy should be reduced in proportion to the loss in value. For this reason, having made an unsuccessful appeal, it took the matter right up to the Bundesfinanzhof. In the proceedings, it takes the view that although according to Regulation No 19 differences in the quality of the goods imported are not to be taken into consideratio in calculating the levy, this case involves defects in *condition* which must be assessed differently. In this respect, Regulation No 19 contains no provisions and in particular it does not provide that special features of this kind cannot be considered. It claims that this is a gap in the levy system which needs to be filled by means of an amplifying interpretation to the effect that where there are defects in the condition of imported goods only a reduced levy is payable. If an amplifying interpretation is held to be impossible and on the basis of Regulation No 19 it is considered necessary to impose the full levy on goods damaged in transit, its validity in this respect would have to be questioned. This is because there would be a breach of the principle of the equality of taxation, an infringement of the principle of the equality of taxation, an infringement of the principle of proportionality and a disregard of the prohibition on the imposition of duties which is derived from Article 12 of the EEC Treaty.

In view of these problems, the Bundesfinanzhof stayed proceedings by an order of 4 June 1970 and referred the following questions to the Court of Justice for a

1 — Translated from the German.