ognized by the national authorities in accordance with paragraph (4), but also in other specific cases which justify the application of the exemption referred to in Article 6(2).

In Case 4/68

Reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht (Administrative Court), Frankfurt-am-Main, Third Chamber, for a preliminary ruling in the action pending before that court between

FIRMA SCHWARZWALDMILCH GMBH

and

EINFUHR- UND VORRATSSTELLE FÜR FETTE

on the interpretation of Regulation No 136/64 adopted on 12 October 1964 by the Commission of the European Economic Community (Official Journal, p. 2601/64),

THE COURT

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

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts and procedure may be summarized as follows:
In accordance with Article 5 of Regulation No 136/64 of the Commission the Schwarzwaldmilch GmbH of Offenburg had lodged a deposit of DM 6 000 to guarantee the performance of its obligation to import into Germany 100 000 kg of skimmed milk powder from France.

As this undertaking had not been able to effect this importation before 28 February 1968, the date on which the term of validity of the import licence expired, the Einfuhr- und Vorratsstelle für Fette (Office for the importation and storage of fats and oils) declared this deposit forfeit by virtue of Article 6(1) of the abovementioned regulation.
Schwarzwaldmilch instituted proceedings against this decision before the Ver-

waltungsgericht (Administrative Court), Frankfurt-am-Main.

In the course of the proceedings before the German court the plaintiff maintained that it had been unable to effect the importation for reasons of *force majeure* within the meaning of Article 6(2) of Regulation No 136/64/EEC. After the conclusion of a contract for delivery with the Laiterie Centrale de Strasbourg, an engine failure occurred in the Powdered Milk Division of the latter undertaking which, on 20 November 1967, informed the plaintiff that is was unable to deliver the goods in question.

The plaintiff maintained that, by reason in particular of the brevity of the period remaining before the term of validity of the import licence expired it would have been unable to obtain the goods from another French supplier except at a considerably higher price and without any guarantee of quality. It would thus have suffered damage amounting to DM 40 000.

On the other hand, the defendant maintained that it was doubtful whether the engine failure and the failure on the part of the Laiterie Centrale de Strasbourg to perform the contract of delivery constituted cases of *force majeure* and that, in addition, even if this were so, these factors could not be regarded as the cause of the failure to import, since the applicant could have obtained the commodity elsewhere although on slightly less favourable terms.

Article 6 of Regulation No 136/64 of the Commission reads as follows:

'1. The deposit shall be forfeit in its entirety where the obligation to import has not been fulfilled during the term of validity of the licence referred to in Article 2(1). The deposit shall be partially forfeit if the quantity imported is more than 5% less than the quantity shown on the licence. The amount of deposit to be forfeited shall be calculated on the difference between the quantity shown on the licence less 5% and the quantity actually imported.

2. Where importation cannot be effected during the term of validity of the licence owing to *force majeure*, the Member State shall decide that the obligation to import is cancelled and that the deposit is not forfeit. On application by the party concerned, however, the Member State may extend the term of validity of the licence for such period as it considers necessary by reason of the circumstance invoked.

3. Cases of *force majeure* within the meaning of paragraph (2) may result from the following circumstances:
   (a) war and civil disturbance,
   (b) government ban on exports or imports,
   (c) restrictions imposed on navigation by acts of sovereignty,
   (d) shipwreck,
   (e) engine failure, damage to vessel or damage to cargo,
   (f) strikes,
   (g) shipping hold-up in periods of icing-up or low water.

4. If Member States recognize as cases of *force majeure* within the meaning of paragraph (2) cases resulting from circumstances other than those set out in the foregoing paragraph, they shall immediately notify the Commission thereof'.

By order of 17 January 1968, dispatched on 29 January 1968, the Third Chamber of the Verwaltungsgericht, Frankfurt-am-Main, decided to submit to the Court of Justice of the European Communities a series of questions, for which it gave reasons. These questions are worded as follows:

'1. Does the concept of "engine failure" (Article 6(3)(e) of Regulation No 136/64/EEC) also cover failures occurring in dairy machinery?

2. Does Article 6(4) of Regulation No 136/64/EEC empower the courts of Member States to recognize as cases of *force majeure* circumstances other than those referred to in paragraph (3) of this same regulation?

3. What interpretation must be given to the concept of "*force majeure*" as defined in Article 6(2) to (4) of Regulation No 136/64/EEC?

4. Does Article 6(2) of Regulation No 136/64/EEC require the existence of a direct causal connexion between the circumstance invoked as a case of *force majeure* and the failure to effect the importation?

5. Is it sufficient for the application of Article 6(2) of Regulation No 136/64/EEC that, as a result of *force majeure*, importation would involve the importer in considerable economic difficulties and could only take place at excessive economic sacrifice?'

On Question No 1, the Verwaltungsgericht observes that the context in which the concept of 'engine failure' is used argues in favour of a strict interpretation, while the letter of the text argues in favour of a more liberal interpretation.

As regards Question No 2, the German court raises the question whether, in order to accept circumstances other than those set out in Article 6(3), an *ad hoc* legislative measure must be required from Member States or whether national courts and administrative authorities may take a decision on the point in each particular case.

As regards Question No 3, the abovementioned court observes that the concept of *force majeure* does not have the same connotation in the legal systems of all the Member States. In particular, it emphasizes the differences which exist between the German and French systems.

As regards Question No 4, the national court observes that the direct cause of the failure to effect the importation was not the engine failure but the failure to perform the contract of delivery on the part of the Laiterie Centrale de Strasbourg.

Finally, in the context of Question No 5, the national court puts forward certain questions as regards Article 6(2) of Regulation No 136/64. Is it necessary, for the purposes of this provision, for the importation to have become absolutely impossible for any importer, or is it sufficient that the particular importer was unable to effect it?

The reference for a preliminary ruling was lodged at the Court Registry on 13 February 1968.

In accordance with Article 20 of the Statute of the Court, the Einfuhr- und Vorratsstelle für Fette, Schwarzwaldmilch and the Commission of the European Communities submitted observations.

The Einfuhr- und Vorratsstelle für Fette was represented by Mr Euler, Schwarzwaldmilch by Fritz Morstadt and Werner Morstadt and the Commission by Bernard Paulin and Peter Kalbe.

The Schwarzwaldmilch undertaking and the Commission submitted their oral observations at the hearing on 27 May 1968.

The Advocate-General delivered his opinion at the hearing on 12 June 1968.

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

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

A — *Admissibility*

The *Commission* observes that all the questions submitted concern the interpretation of rules of Community law and that there are, therefore, no fundamental objections to the request for a preliminary ruling.

B — *The questions submitted to the Court*

I. Generally

Before considering the various questions the *Commission* observes that Article 11 of Regulation No 13/64/EEC and the provisions of Regulation No 136/64/EEC provide in respect of skimmed milk powder a system of import licences which are intended to give an overall view which is as accurate as possible of the volume of imports to be made during a specific period, and also of the situation in the market which must result therefrom and of the probable development of this situation.

This information was necessary to enable Member States and the Commission to take any necessary protective measures in good time in accordance with Article 16 of Regulation No 13/64. By reason of this duty to protect the public interest, the issue of an import licence not only permits but actually requires the importation during its term of validity of the indicated quantity of the goods specified. For this reason Article 11(2) of Regulation No 13/64 and Article 5 of Regulation No 136/64 provide for the lodging of a deposit in order to ensure the performance of this obligation.

During the oral procedure *Schwarzwald-*

milch questioned the validity of Regulation No 136/64 of the Commission to the extent to which, by means of the lodging of a deposit, it imposes excessive burdens on importers which are not justified by the need to ensure a precise knowledge of the market.

This undertaking suggested that the Court might also consider this point which is linked to the questions submitted by the court making the reference.

In addition, the undertaking emphasized the need to coordinate the action of the State bodies responsible for receiving the security and the contractual relations between the importer and his supplier under the national law applicable. In the absence of such coordination there is a danger that, after the occurrence of the event which has temporarily prevented the imports being made, the importer may lose his deposit although he is still bound by the contract concluded with his supplier.

II. Question No 1: The concept of engine failure mentioned in Article 6(3) of Regulation No 136/64

Schwarzwaldmilch considers that the list of situations constituting cases of *force majeure* in Article 6 of Regulation No 136/64 cannot be claimed to be complete and must not be interpreted restrictively. The concept of engine failure is of a general nature and thus covers any sort of engine failure, in so far as it is the fundamental reason for the failure to perform a contract.

On the other hand, the *Commission* considers that in Regulation No 136/64 this concept refers only to failures occurring in the engines of the ships carrying the goods in question, but not to failures of machinery used in production. It bases this restrictive interpretation, first, on the context (Article 6(3)(c), (d) and (g)) which deals with other typical obstacles to navigation and, secondly, on the text of Article 6(3)(e) which deals only with damage affecting ships.

Moreover, this particular case of *force majeure* was referred to in Regulation No 87 of the Commission concerning the trade in cereal products and referring to obstacles affecting carriage by sea.

III. Question No 2: The consideration of other cases of *force majeure*

Schwarzwaldmilch observes that technical or economic development never ceases to create new problems, with the result that it is impossible to set out a complete catalogue or list of the cases of *force majeure*. It should therefore be concluded that in principle the courts of Member States are empowered to recognize as cases of *force majeure* circumstances other than those expressly set out in Regulation No 136/64.

The *Commission* observes that, by enabling Member States to take into consideration cases of *force majeur* other than those referred to in paragraph (3), Article 6(4) clearly shows that the list contained in this provision is in no way exhaustive.

The purpose of the question submitted by the national court is, however, to clarify whether the administrative authorities or the courts to which application has been made may, in each individual case, decide for themselves, without the need for an *ad hoc* legislative measure, whether a case of *force majeure* other than those referred to in Article 6(3) removes the obligation to import. The Commission considers that, although public interest demands as precise a knowledge as possible of the market, it must not be concluded that the exemption from the obligation to import can be limited to specific cases expressly determined in advance, whilst under national law, the person under the obligation can always put forward this plea without meeting any such limitation. Moreover an obligatory and fixed list can never be exhaustive, as it would have to be if it were necessary to avoid taking into consideration other cases than those enumerated.

So far, none of the Member States has amplified the list appearing in Article 6(3) by an exhaustive list of its own. On the other hand, the competent administrative authorities whose action is subject in the ordinary course to review by the national courts, have always informed the Commission when they acknowledged that a plea of *force majeure* was justified in any specific case on the basis of its particular circumstances.

By virtue of Article 6(4) it is not the decision of the courts themselves, but only the recog-

nition of the plea of *force majeure* by the administration concerned, which must be notified to the Commission.

IV. Question No 3: The interpretation of the concept of *force majeure*

Schwarzwaldmilch maintains that, in order to interpret this concept, it is first necessary to consider the manner in which it is formulated in the various Member States. It observes, furthermore, that the decision declaring the deposit forfeit in accordance with Article 6(1) of Regulation No 136/64 is penal or, at least, in the nature of a fine imposed by the administration. According to general principles of law, such a penalty or fine may not be imposed on an undertaking when its failure to perform a contract within the required period is a result of circumstances for which the undertaking is not responsible. On the strength of these observations, Schwarzwaldmilch concludes that the term '*force majeure*' must be interpreted to include any reason which cannot fairly be imputed to the parties and which prevents them from fulfilling their obligations.

(a) The *Commission* observes that in order to settle the question whether the interpretation of the concept of *force majeure* shall follow the provisions of Community law, or whether national law alone must be regarded as applicable, it must be remembered that Community law constitutes an independent legal system vis-à-vis the national law of Member States. It follows, therefore, that the provisions of Community law must be applied uniformly throughout the Community. As the application of the national law alone to the interpretation of concepts of Community law is contrary to this requirement of uniformity, it can only constitute an exceptional procedure and must always be clear from the text.

In the present case, it is true that the provision in Article 6(4) makes reference to a definition based on national law alone.

The Commission considers, however, that the question whether *force majeure* exists within the meaning of the provision in question cannot be settled exclusively on the basis of national law. In fact, this concept is relevant in a specifically Community context, within the framework of the system of import licences, which is identical for all the Member States and which allows them very little scope for making their own decisions.

Furthermore, it follows from Article 6 that, while the Commission has allowed Member States to define cases of *force majeure* additional to those expressly provided for therein, it did not intend to give up the principle of the review of the uniform application of these saving provisions by the institutions of the Community. The obligation on Member States to notify the Commission, laid down in this provision, must clearly enable this body to ensure the uniform and correct application of the concept of *force majeure* by Member States in each individual case and to intervene as may be necessary in particular where the practices followed by Member States show considerable variation. It must be added that the Commission has used almost without modification the wording of Article 6 in other regulations applicable in the context of the common organization of the agricultural markets, that is, in an area in which the need for a uniform application throughout the whole of the Community of the system of import licences and, so of the concept of *force majeure*, appears even more compelling.

The Commission concludes that the definition of the concept of *force majeure*, within the meaning of Article 6 of Regulation No 136/64 constitutes an independent question of interpretation of Community law.

(b) As regards the question of the criteria by which this concept must be precisely defined the Commission observes that, in spite of their differences, national laws are generally at one in admitting as cases of *force majeure* only those in which impossibility of performance of an obligation must be attributed to an exceptional and unforeseen event, for which the person under the obligation is not responsible, that is to say, an event which he has not brought about by his own default and which he could neither have foreseen nor avoided.

The authorities and courts of Member States must be left a wide area of discretion in each individual case. In particular, the imprecise nature of any rules of interpreta-

tion which may be drawn up in this matter and their relative force may be taken into account having regard to the special features of the legal field and of all those questions which arise in practice and require that special stress be laid on one or other criterion according to the circumstances of the case.

The Commission refers to the plaintiff's statements to the effect that German law does not allow any penalty to be imposed in the absence of a wrongful act and observes that, according to the Bundesverfassungsgericht (German Federal Constitution Court), this principles applies only to punishment for crimes or to similar penalties, but not to all the means of coercion intended to induce a party who is under an obligation to adopt a certain course of conduct. The fact that the deposit concerned in this instance is declared forfeit does not impute unlawful conduct to the party who is obliged to effect the importation. If the party subject to an obligation to import is not himself responsible for the obstacle to the importation, it must be determined whether, by taking all the necessary action in commercial matters, that party could have foreseen and avoided its occurrence and its effects. Disturbances such as, for example, delays in the manufacture or carriage of goods cannot as a general rule be regarded as unforeseeable circumstances, as provision should always be made for such delays.

V. Question No 4: The need for a direct causal connexion between the *force majeure* and the failure to effect the importation

Schwarzwaldmilch considers that a direct causal link existed in this instance. The temporary failure affecting its supplier's machinery did not terminate the contract, but simply delayed its performance. This reason is alone sufficient to exclude any obligation to the plaintiff to resort to alternative source of supply. Moreover, in such circumstances it can certainly not be required to enter into contracts at extremely unfavourable prices.

The Commission observes that where a combination of reasons exists, the person under the obligation to import is only exempted from that obligation if the circumstances which may be considered to have given rise to the *force majeure*, and no other reasons, were in fact the decisive cause of the failure to import.

It must therefore be established that these factors constitute a condition *sine qua non* on which the failure to effect the importation depended and that without them the importation would have been effected within the required time.

As regards this latter point, the *Einfuhr- und Vorratsstelle für Fette* maintains that the order which had been placed by Schwarzwaldmilch with the Laiterie Centrale de Strasbourg concerned skimmed milk powder intended for consumption by cattle, while the import licence which it had obtained concerned 100 metric tons of skimmed milk powder intended for human consumption. As a result, the plantiff was unable from the outset to fulfil its obligation to import. For this reason the decision of 3 April 1967 declaring forfeit the deposit lodged by the plaintiff was at all events justified, quite apart from the problems raised in the order containing the request for a preliminary ruling.

VI. Question No 5: The inability to import

The *Einfuhr- und Vorratsstelle für Fette* observes that the failure to effect the importation is not the result of a case of *force majeure* but of the mere fact that the plaintiff did not take sufficient trouble to obtain the goods elsewhere. It denies that the situation existing in the French market at that period prevented the plantiff from obtaining the goods elsewhere on acceptable terms, since the market price corresponded approximately to the price referred to in the contract entered into between the plaintiff and the Laiterie Centrale.

Schwarzwaldmilch observes that it remained bound by contract to its French supplier, which was to have effected delivery before the end of February but postponed delivery until April. In such cases it cannot be required that the importation be objectively impossible, rather must it be sufficient that the importer found it so after the due

conclusion of the contract guaranteeing delivery within the period laid down. In the opinion of the *Commission*, the aim of all the regulations considered does not require the importation to have been objectively impossible but, on the contrary, allows the special position of the person or undertaking concerned to be taken into account. However, such person must be expected to show due diligence and it is not sufficient to consider only his subjective statement that he was unable to effect the importation. In particular, the existence of a case of *force majeure* may be admitted when, in order to be able to effect the importation, the party subject to the obligation to import has had to bear additional costs which could not reasonably be expected of him. But it is still necessary to determine the moment from which the importer could and should have become aware of the circumstances constituting the *force majeure* and of their consequences for the importation and, therefore, of the possibility of taking measures in order to avoid those consequences.

In this instance the plaintiff in the main action caused neither the engine failure nor the failure to perform the contract of delivery, nor could it have been aware of the failure before the issue of the import licence or the conclusion of the contract of delivery. It is therefore necessary to consider carefully whether it was unable, before 20 February 1967, to realize the difficulties to come and to try in good time to find another producer on acceptable terms.

Grounds of judgment

By an order dated 17 January 1968, received at the Court Registry on 13 February 1968, the Verwaltungsgericht, Frankfurt-am-Main, submitted certain questions in accordance with Article 177 of the Treaty establishing the EEC on the interpretation of Article 6 of Regulation No 136/64/EEC.

The action before the court referring the matter to the Court of Justice concerns the deposit required on the issue of an import licence for dairy products which could not be utilized within the period laid down; the importer claims that the deposit must be refunded on the ground of *force majeure*.

On Question No 1

In the first question the Verwaltungsgericht, Frankfurt-am-Main, asks whether the concept of 'engine failure' referred to in Article 6(3)(e) of Regulations No 136/64/EEC also applies to engine failures occurring in dairy machinery.

Although, from the syntactical point of view, this text does not necessarily relate the term 'engine failure' to the difficulties concerning shipping referred to in Article 6(3)(e), it nevertheless juxtaposes these words and those describing the difficulties.

Moreover the provisions in subparagraph (c), (d) and (g) of the same paragraph only concern shipping.

Furthermore, the concept of 'engine failure' already appeared in Article 8(2) of Regulation No 87 of the Commission of 25 July 1962 for the purpose of deter-

mining the conditions of implementation applicable to import and export licences for cereals and could only refer to the question of carriage and not to the production of goods.

This concept is found in Article 6(3)(e) of Regulation No 136/64 in a context which is in substance identical to that of Article 8 of Regulation No 87.

It must therefore be concluded that the concept of 'engine failure' does not include failures occurring in machinery intended for the production of goods.

Questions Nos 3, 4 and 5

The Verwaltungsgericht asks how the concept of *force majeure* referred to in Article 6(2) to (4) of Regulation No 136/64/EEC is to be interpreted.

It further asks whether Article 6(2) of Regulation No 136/64/EEC requires the existence of a direct causal connexion between the circumstances relied on as a case of *force majeure* and the failure to effect the importation and whether, if a direct causal connexion is necessary, the non-performance of the contract by the importer's supplier might be regarded as a case of *force majeure*.

Finally it asks whether it is sufficient for the application of the abovementioned Article 6(2) that 'as a result of *force majeure*, importation would involve the importer in considerable economic difficulties and could only take place at excessive economic sacrifice'.

It is appropriate to consider these various questions together.

Article 6(2) provides that the obligation to import is cancelled where the importation cannot be effected during the term of validity of the licence owing to *force majeure*.

As the concept of *force majeure* is not identical in the different branches of law and the various fields of application, the significance of this concept must be determined on the basis of the legal framework within which it is intended to take effect.

Thus, the interpretation of the concept of *force majeure* used in the regulation in question must take into account the particular nature of the relationships in public law between the importers and the national administration, as well as the objectives of that regulation.

The public interest which requires the most accurate forecast possible of the future development of imports in each Member State and warrants the lodging of a deposit on the issue of an import licence must be reconciled with the need, which

is also a matter of public interest, for trade between States to remain unhampered by obligations which are too rigid.

The treat of the loss of the deposit is intended to encourage the importers to whom a licence has been issued to fulfil the obligation to import and thus to ensure the accuracy of the forecast of the future development of imports in the general interest.

It follows therefore that an importer who has shown the necessary diligence is in principle released from the obligation to import within the meaning of Article 6 of Regulation No 136/64/EEC when circumstances outside his control make it impossible for him to effect the importation within the required period.

Such is the case when the event which renders impossible the performance in due time of a contract which, under normal circumstances, ought to have enabled the importer to fulfil his obligation to import, is so unusual that it would have had to be considered as improbable by a prudent businessman exercising all due care.

Some of the cases enumerated in Article 6(3) appear to be based on this criterion, as they do not refer to situations corresponding to a concept of *force majeure* in the sense of absolute impossibility, but to unusual difficulties which are independent of the will of importers and which arise during the performance of the contracts.

However, recognition of a case of *force majeure* presupposes not only the occurrence of an unusual event but also that the consequences of that event could not be avoided, as for example where an importer could have obtained the goods elsewhere within the period stipulated.

In this respect, too, the importer must be expected to show all due diligence.

This being so, *force majeure* is established if the importer could only have effected the importation within the period stipulated by replacing the goods at an excessive loss taking into account, where necessary, any remedies available to him.

It must, therefore, be concluded that sufficient causal connexion between the circumstances relied on as a case of *force majeure* and the failure to effect the importation must in principle be recognized when delivery in due time by the importer's supplier has become impossible within the meaning of the above definition, and when the importer can only obtain the goods elsewhere at an excessive loss.

Finally, it follows from the scheme of Article 6 of the regulation that it is for the importer to prove the existence of the circumstances necessary to constitute a case of *force majeure*.

Question No 2

The court requesting the preliminary ruling asks whether Article 6(4) of Regulation No 136/64/EEC empowers the courts of Member States to recognize as cases of *force majeure* circumstances other than those mentioned in paragraph (3) of that Article.
Article 6(3) of the regulation in dispute lists a number of circumstances from which cases of *force majeure* 'may' result.

Paragraph (4) of the same Article implies that it is possible for the Member States to recognize as *force majeure* cases resulting from circumstances other than those set out in paragraph (3).

The spirit of these provisions is explained in the sixth Recital in the preamble to the regulation in dispute which reads '... mention needs to be made of certain circumstances which may be considered as constituting cases of *force majeure* without thereby excluding other circumstances from consideration'.

It follows from the general scheme of Article 6(2), (3) and (4) that exemption on the grounds of *force majeure* may apply even outside the cases expressly provided for in paragraph (3), as this list is not exhaustive.

Within the limits of their own jurisdiction, therefore, national courts may recognize the existence of a case of *force majeure* not only when the situation relied on is included in those enumerated in Article 6(3), or when it has been recognized by the national authorities in accordance with Article 6(4), but also in other specific cases in which *force majeure*, within the abovementioned exposition of the concept, justifies the application of the exemption referred to in Article 6(2).

The effect of Article 6(4), which makes a general reference to the powers of the Member States, is not to limit the powers of the national courts in this respect.

Costs

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 Verwaltungsgericht, Frankfurt-am-Main (Third Chamber), the decision as to 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 Commission of the European Communities and the parties to the main action;

Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to Regulations Nos 13/64/EEC on the progressive establishment of a common organization of the market in milk and dairy products, and 136/64/EEC on the determination of the conditions for implementation to apply to the import licences referred to in Regulation No 13/64/EEC;
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 Verwaltungsgericht, Frankfurt-am-Main (Third Chamber), by order of that court dated 17 January 1968,

hereby rules:

1. **The concept of 'engine failure' referred to in Article 6(3) of Regulation No 136/64/EEC does not include failures which occur in machinery intended for the production of goods;**

2. **The courts of Member States may recognize as cases of force majeure within the meaning of Article 6(2) of Regulation No 136/64/EEC circumstances other than those referred to in paragraph (3) of that Article;**

3. **In order to rely on force majeure within the meaning of this regulation, the importer must show that he was unable to effect the importation within the period laid down as a result of unusual circumstances outside his control, the consequences of which, in spite of the exercise of all due care on his part, he could not have avoided except at the cost of excessive sacrifice;**

and declares:

The decision as to costs is a matter for the Verwaltungsgericht, Frankfurt-am-Main.

Lecourt Donner Strauß

Trabucchi Monaco Mertens de Wilmars Pescatore

Delivered in open court in Luxembourg on 11 July 1968.

A. Van Houtte R. Lecourt

Registrar President