3. Article 1 of Regulation No 22 of the Council of the EC of 4 April 1962 which enumerates some of the goods included in the Common Customs Tariff does not empower the national authorities of Member States to issue binding rules of interpretation for the application of those descriptions.

4. In accordance with a general rule of classification for tariff purposes, goods not falling within any heading of the Tariff must be classified under the heading appropriate to the goods to which they are most akin. The question whether goods are akin one to another is to be decided on the basis not only of their physical characteristics but also of their use and commercial value. In the absence of special circumstances the commercial value of goods is their market price.

In Case 40/69

Reference to the Court under Article 177 of the Treaty establishing the European Economic Community by the Bundesfinanzhof (Federal Finance Court), Munich, for a preliminary ruling in the action pending before it between

HAUPTZOLLAMT HAMBURG-OBERELBE

and

FIRMA PAUL G. BOLMANN, HAMBURG

on the interpretation of Regulation No 22/62 of the Council and Regulation No 77/62 of the Commission as amended by Regulation No 136/62 of the Commission

THE COURT

composed of: R. Lecourt, President, R. Monaco (Rapporteur) and P. Pescatore, Presidents of Chambers, A. M. Donner, W. Strauß, 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

1. The undertaking P.G. Bollman of Hamburg (hereinafter referred to as 'Bollmann') on 12 November 1962 applied for customs clearance of 1 196 parcels of goods imported from the United States of America described in the customs declaration as 'edible turkey offals'. In the invoice accompanying the declaration the goods were described as 'turkey rumps'.

The Customs Office of Hamburg — Veddel considered that the goods in question came under heading 02.02-C of the tariff of levies and by an informal decision charged the levy payable under this heading.

However by a communication of 15 May 1963 amending the levy the Customs Office notified Bollmann that, in accordance with instructions which it had received concerning the tariff of levies and which were binding on it, turkey rumps were not to be classified under the heading of 'edible offals' but under the heading 'poultry cuts' (heading 02.02-B-II-b) and demanded payment of a revised amount of levy.

Bollmann lodged a complaint against this amended decision on 25 May 1963 to the Hauptzollamt (Principal Customs Office), Hamburg-Oberelbe.

As its complaint was dismissed by a decision of 11 November 1963, Bollmann appealed on 10 December 1963 against the decision to dismiss the complaint to the Finanzgericht Hamburg (Hamburg Finance Court).

In its decision of 21 March 1967 the Finanzgericht found that under the tariff legislation in force at the date when the goods giving rise to the dispute were imported, turkey rumps were to be regarded as 'poultry offals' within the meaning of heading 02.02-C of the Tariff and not as 'poultry cuts' as described under heading 02.02-B-II-b.

The amending decision of 15 May 1963 was therefore annulled and the original amount of the levy payable was restored.

The Hauptzollamt appealed on 5 May 1967 against this decision of the Finanzgericht Hamburg to the Bundesfinanzhof.

The Bundesfinanzhof (VII Senate) pointed out that the right to charge the levy on poultrymeat is ultimately based on Regulation No 22/62 of the Council read in conjunction with other regulations issued by the Commission of the EEC, in particular Regulations Nos 77/62 and 136/62.

In addition it found that the solution of the dispute whether turkey rumps are subject to the rate of levy applicable to poultry cuts or to the rate applicable to edible offals calls for the interpretation of certain provisions in these regulations.

It therefore decided by an order of 30 July 1969 to stay the proceedings and to refer to the Court of Justice under the first and third paragraphs of Article 177 of the EEC Treaty the following questions:

'(1) Is Article 14 of Regulation No 22 of the Council of the EEC of 4 April 1962, according to which Member States shall take all steps to adapt their laws, regulations and administrative provisions in such a way that the provisions of that regulation, unless thereby otherwise expressly provided, may be effectively implemented as from 1 July 1962, to be understood as meaning that Member States are entitled and required to specify more closely by means of national legal measures which goods are subject to the levy (Article 1 of the regulation) and to differentiate between them?

(2) Should question one be answered in the negative: Is Article 1 of Regulation No 22 of the Council, which mention some of the goods listed in the Common Customs Tariff to be construed as meaning that national legislatures may interpret the terms by which these goods are described, since the terms by which goods in a customs tariff are described of necessity require interpretation?

(3) Should question two be answered in the negative: Are turkey rumps to be classified as backs (parts of backs) or other poultry cuts within the meaning of Article 2 of Regulation No 77 of 23 July 1962 of the Commission of the European Economic Community (as amended by Article 1 of Regulation No 136 of 31 October 1962 of the Commission of the European Economic Community) or are they edible offals within the meaning of Article 3 of this regulation?'

2. The order for reference in this case was lodged at the Court Registry on 3 September 1969.
The Bollmann undertaking, the Government of the Federal Republic of Germany and the Commission of the European Communities lodged their written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice annexed to the EEC Treaty and presented their oral submissions at the hearing on 15 January 1970.
The Advocate-General delivered his opinion at the hearing on 29 January 1970.

II — Written observations submitted under Article 20 of the said Protocol

The written and oral submissions may be summarized as follows:

A — *The first two questions*

1. The Bollmann undertaking stresses that the effect of Regulation No 950/68 is that the powers in the matter of tariffs in almost every field of the Common Customs Tariff has been transferred from Member States to the Community.
There is no doubt that previously this power in the case of products for which there were still no Community regulations was vested in Member States, whereas, in the case of goods subject to a market organization, the question — which is particularly relevant in the present case — whether this power was reserved to Member States or whether it was already vested exclusively in the Community remains to be settled.
This power in the matter of tariffs comprises the right to give binding explanations and interpretations of the various headings of a customs tariff. During the period under consideration the Government of the Federal Republic of Germany often exercised this right in connexion with the common organization of agricultural markets.
Therefore the question raised by the Bundesfinanzhof has an importance extending beyond this case. The decision which the Court is to make will have wide repercussions, because:

— the solution found by the Court must be applied not only to the common organization of the market in poultry but also to the other common market organizations;

— the exercise by the German Government of powers relating to tariffs in the field of market organizations in agricultural products has given rise to a whole series of disputes concerning the tariff classification of particular products, which have to be settled on a uniform basis;

— the situation with regard to such disputes in the other Member States cannot be very different from the situation in Germany;

— finally the effect of the exercise by Member States of powers relating to tariffs in this connexion is that decisions made concerning the classification of agricultural products vary from state to state, so that there is no uniform classification within the Community. Whether the exercise of these powers has more or less serious consequences depends on the question whether they have been used to delimit or interpret descriptions of goods *before* or *after* the establishment of a market organization for the products concerned. Whereas in the first case the exercise of these powers does not contribute to the standardization of national regulations in this sector although it is unlikely to increase existing

disparities, in the second case the effect of using the powers in this way is to undermine this standardization to such an extent as to destroy it completely.

Bollmann then defines its position with regard to the decision which has to be taken. It argues that once common organizations of agricultural markets were established powers relating to tariffs passed exclusively to the Community institutions.
It must be noted on this point that the regulations made in this context by the Community between 1962 and 1967 have already brought about, sector by sector, the tariff union of the Community established in a general way by Regulation No 950/68 of the Council which laid down the principle of this transfer of powers. In particular those regulations which were adopted in 1967 only anticipate, each in its own sector, the list of products of the common customs tariff in its definitive form. However it is possible in the case of all these regulations to state:

— that the Council alone has the right to amend the list of products subject to the market organization, from which it may be concluded that the Community has exclusive jurisdiction and powers in tariff matters;

— that for the purposes of the tariff classification of the said products the same rules apply as are applicable for the interpretation and implementation of the Common Customs Tariff.

Further this transfer of powers meets the logical requirements of the system. To leave the powers relating to tariffs vested in Member States would in fact be tantamount to undermining the stability of the common organization of markets in agriculture, in particular because there would be no other way of avoiding abuses by Member States committed in the exercise of these powers. The Community legislature was fully aware of this. If the basic regulations do not expressly provide for such a transfer this is because such a transfer appeared to it to follow from the objective requirements of the system. Moreover this transfer is to be inferred from several legislative measures of the Council and the Commission.
On the other hand Community regulations do not anywhere contain similar provisions in favour of Member States. In particular, so far as the principle laid down in Articles 14 and 1 of Regulation No 22/62 is concerned, which is found in other regulations, it is necessary to note the following:

— Article 14 simply imposes upon Member States the obligation to adapt their internal law to the provisions of the regulation and in no way authorizes them to adopt new legislative provisions. It could not be otherwise because of the very nature of the regulation which, in accordance with the second paragraph of Article 189 of the EEC Treaty are 'directly applicable in all Member States' and are 'self-executing'. This certainly does not preclude the possibility that in certain cases a specific regulation may require the adoption by Member States of internal measures for the purpose of its application but these measures must be restricted to the limits fixed by the regulation itself.
For the purpose of the application and operation of agricultural regulations Member States cannot be allowed to interpret and define the lists of products referred to in these regulations. This interpretation and definition are provided for by the general tariff provisions of the Common Customs Tariff and by the particular provisions laid down in each regulation.

— Article 1 of Regulation No 22/26 is also a 'self-executing' provision which does not require for the purpose of its application any internal measures to be taken by Member States. It defines clearly and with binding effect the products to which the regulation applies.

Moreover recognition of the right of Member States to interpret and define the tariff headings of goods referred to by the rules of Community law would not only jeopardize the operation of the common organization of the market but would amount to a grant of jurisdiction incompatible with the principle laid down by the

legislature in Article 177 of the Treaty. The questions of the extent of a tariff heading and whether a particular product comes within one market organization or another are questions of the interpretation of the relevant agricultural regulations and consequently of Community law. This interpretation is within the exclusive jurisdiction of the Community and more precisely of the Court of Justice.

In conclusion it follows from the foregoing that, as a result of the entry into force of Regulation No 22/62, all powers relating to the tariff applicable to the goods mentioned by this text have been transferred to the Community. The effect of this transfer is that the rules of law adopted by Member States for the purpose of explaining or interpreting the tariff headings contained in this regulation are therefore inapplicable to the extent to which they have been adopted after its entry into force.

With regard to the pre-existing national provisions Member States must, by virtue of the regulations themselves, adapt them to Community law. To the extent to which this adaptation is carried out they remain applicable. Those provisions, however, which have not been adopted and which prove to be incompatible with Community law, can no longer be applied by virtue of the principle *lex posterior derogat legi priori*. Therefore the provisions adopted by the German authorities to define tariff heading 02.02, which were in force before Regulation No 22/62, are only applicable subject to this reservation. It is true that the question whether they conform to Community law falls within the exclusive jurisdiction of the national court and not within that of the Court of Justice under Article 177. Nevertheless the Court of Justice can indirectly play a part in deciding this issue by making use of its exclusive jurisdiction to interpret Community law against which these provisions must be tested.

Bollmann concludes its argument by stating that for these reasons the first two questions must be answered in the negative.

2. The *Government of the Federal Republic of Germany*, after emphasizing the importance of the questions referred by the Bundesfinanzhof, calls attention to the fact that in Regulation No 22/62 and also in the entire system of the common market organizations power to adopt legislative and administrative measures is shared between the Community and the Member States.

Regulation No 22/62 lays down the fundamental principles upon which the organization of the market in poultry meat is based and provides for the necessary criteria for the determination of the levies. But Member States have to apply and implement this regulation and are required by virtue not only of Article 14 of this regulation but also of Article 5 of the EEC Treaty to take all necessary measures for this purpose.

The question whether Member States can within these bounds also establish the distinction between and interpret the descriptions of the products referred to in this regulation can only be determined in accordance with its content. To the extent to which this regulation establishes these distinctions and interprets these descriptions Member States cannot do so themselves.

However Regulation No 22/62 refers in Article 1 to the Common Customs Tariff in the description of the various products subject to the levy. But this reference does not provide a sufficiently accurate classification of each product. For this purpose supplementary classification and definitions by Member States proved to be necessary. The Commission, the Council and Member States proceeded therefore on the basis of the principle that it is in the first instance the task of the Member States to define and clarify in particular cases the description of products. Such a system moreover is in keeping with the development of the Community which for practical reasons could not exercise immediately and fully all its legislative powers.

The German Government concludes that the correct interpretation of Article 14 of Regulation No 22/62 read in conjunction with Article 1 thereof is that Member States, in the absence of any corresponding rules laid down by the Community, are entitled and are obliged to clarify and define at a later date by internal measures the descriptions of the products subject to the levy.

3. The *Commission of the European Communities*, after first calling attention to the state of the existing legal provisions applicable, at the date when the disputed products were imported, to the imposition of the levies, defines its position on the questions raised by the Bundesfinanzhof by pointing out that in general Community law takes precedence over internal law, so that in those matters covered by Community law there cannot be any national provisions derogating therefrom. With regard to supplementary provisions they are only permissible to the extent to which the spirit and letter of Community law allows.

More specifically the entry into force of Regulation No 22/62 and of the implementing regulations made by the Community has withdrawn from the jurisdiction of Member States the possibility of determining the groups of products subject to the levy and the levy applicable to each product. This applies not only to the national provisions derogating from these regulations but also to the supplementary rules of interpretation under national law to the extent to which their object is, in the event of difficulties arising in defining the limits of the descriptions of products, to classify with one of the headings determining the applicable levy.

The descriptions of products in the said regulations are in fact independent concepts of Community law. The national legislatures could not be given the freedom to decide, in accordance with their own criteria, the tariff classification of any particular product, because if they were given such freedom, they would in practice be allowed to manipulate unilaterally the levy on the importation of that product, and in that way to frustrate the uniform application of the Community system of levies. The interpretation and the substantive definition of the limits of these concepts must be a matter for Community law and are in the final resort the responsibility of the Court of Justice.

Regulation No 22/62 as well as the other regulations made at the same time which establish the common organizations of the markets only confirm this requirement. They are based on the principle that it is the task of the Community to adopt a number of measures having general application and they leave to Member States the task and duty of taking, in conformity with Article 5 of the EEC Treaty, the principal measures necessary for the establishment of the common organizations of the markets. Article 14 of Regulation No 22/62 falls exactly within this context. Far from granting Member States powers going beyond this jurisdiction, its object was simply to acknowledge the powers which they have to exercise in conformity with Article 5 of the Treaty.

There is no doubt that the nature, content and extent of the measures taken by Member States to put into effect the common organizations of markets established by the Community regulations are determined having regard to the requirements inherent in the structure and the distribution of the tasks of the common organization which is planned and also depend upon the former structure of the market.

The need to adapt national organizations at the right time to the new system established by a common organization of the market was much more apparent in those cases where wide powers to take decisions had been granted to Member States than in cases such as that of the system established by Regulation No 22/62, where in practice there was virtually no scope for independent action to be initiated by Member States. In fact by virtue of this regulation it is the Commission which fixes for each Member State the amounts of the levy and all the rules to be applied for their calculation. On the other hand it is for the Member States to ensure that this calculation is done, that the amounts are converted into national currency and are collected.

By virtue of the above-mentioned general principle such a system of rules denies to the Member States the power to invoke independent rules for the interpretation of the Community descriptions of products employed by Regulation No 77/62 with the object of classifying them according to their own criteria under a particular heading for the purpose of applying the levies to them. Article 14 of Regulation No 22/62 can only confirm that this is so.

The question may nevertheless be asked whether Member States can adopt measures

which, without calling in question the uniform interpretation of Community descriptions of goods, are limited to facilitating their application by the competent authorities.

On this point there is no doubt that Member States, in order to facilitate the application of the Community system by national authorities, could regroup under a single tariff levy all the agricultural products which the common organizations of markets in force at that time had made subject to the levy, provided that the Community had not already done so. Such a tariff like any customs tariff can only describe the numerous goods referred to in a very general way by enumerating their distinctive features according to their class and type. The need to guarantee legal certainty and to determine or to predict different import duties makes it imperative that this nomenclature be interpreted and that it be completed by the necessary clarification in the form of more detailed subdivisions or by reliable rules of tariff classification and interpretation.

On the date of importation of the turkey rumps in this case, apart from the Rules for the interpretation of the Customs Tariff contained in the Decision of the Council of 13 February 1960 and the explanatory notes to the Brussels Nomenclature, the only provisions which could have been used as basic Community rules for the application and interpretation of the tariff of levies were those contained in Article 8 of Regulation No 77/62.

On the other hand Regulation No 22/72 and its implementing provisions are part of the first measures which replaced national import duties by a uniform system of levies. To begin with the national authorities were not familiar with the new system and binding directions on the correct way of applying it were therefore necessary.

The Commission's conclusion is that the answer to the first two questions must be that the national legislature in each Member State was authorized to adopt provisions intended to clarify the generalized descriptions of the goods employed in Regulations No 22/62 and 72/62 to distinguish the products subject to levy. It goes without saying, however, that Community law also takes precedence over such national provisions. Their content is limited by the wording and purpose of the Community descriptions of the goods for which an interpretation is necessary and they cannot call in question the uniform and independent interpretation of Community law.

B — *The third question*

1. The Bollmann undertaking states first of all that, if an attempt is made to extract from the wording of this question the main problem which the German court had in mind, the conclusion may be reached that the question is: What are the meaning and extent of the expressions 'spines' and in particular 'poultry cuts' on the one hand and 'edible offals' on the other hand referred to in Articles 2 and 3 of Regulation No 77/62 (as amended by Regulation No 136/62). If the third question is given this form it is clearly admissible, because, even if national provisions are applicable in this case in accordance with what has been said above, it is still necessary to confirm that they are compatible with Community law. The problem of deciding whether they are compatible can in turn only be resolved by considering the meaning and extent of the said expressions under Community law.

Bollmann then goes on to point out that tariff heading 02.02, which in Article 1 of Regulation No 22/62 refers generally to 'dead poultry and ... edible offals thereof ...', is divided in Regulation No 77/62 into two categories; 'poultry cuts' and 'edible offals', to each of which a different conversion factor applies.

Regulation No 136/62 also divided 'poultry cuts' into two sub-headings 'backs and necks' and 'all other poultry cuts', to the first of which a lower conversion factor was applied than the one applied to the second. Finally Regulation No 79/66 (Article 2) subsequently divided the category 'poultry cuts' into several sub-categories of which the last one includes, inter alia, 'rumps'. The latter are therefore classified in the category 'poultry cuts' but it is no less true that a conversion factor is applied to them which makes them correspond more nearly to the

category of 'edible offals' referred to in Article 3 of this regulation. As Regulation No 79/66 was not yet in force when the disputed question arose, it cannot be used to interpret the expressions applied by Regulations Nos 77/62 and 136/62, but it can make it easier to interpret these regulations, since it clearly indicates that in the opinion of the Commission 'rumps' by reason of the conversion factor applicable to them must in practice be regarded as 'edible offals'.

Therefore it must be assumed that the expression 'edible offals' referred to in Regulation No 77/62, as amended by Regulation No 136/62, must be construed as covering by-products the value of which does not in any case exceed that of 'backs and necks'.

However 'turkey rumps' are in fact offals of little value, not only from the zoological and technical point of view but also having regard to their price which is much lower than that of 'turkey backs'.

On the other hand the interpretation of the distinction between 'poultry cuts' and 'offals' is not that the first of these categories applies to 'parts of the truncus', whereas the second category is reserved for the other parts of the bird. On this basis the 'neck' could no longer be considered as a 'poultry cut' since zoologically it does not form part of the truncus.

If the Community legislature had intended to draw such a distinction between these two categories they would have expressly mentioned it in the regulations. In the absence of any such distinction the diffe-- ence between the said categories must be based on their respective values. These values can in turn only be determined by ascertaining how the categories are rated in the trade which classifies 'turkey rumps' because of their low commercial value in the category 'edible offals'.

Bollmann's conclusion is that the expression 'edible offals' within the meaning of Article 1 of Regulation No 22/62 and Article 3 of Regulation No 77/62 covers all the by-products left after poultry has been cut into pieces which have a lower commercial value than backs and necks which are regarded in the trade as offals. 'Rumps' are included in this expression.

2. The *Government of the Federal Republic of Germany*, after stating that its observations on this point are submitted in the alternative and in the event of the first two questions being answered in the negative, points out that before the establishment of a common organization of the market in poultrymeat there was no international trade in turkey rumps. It was only after the entry into force of the levy applicable to slaughtered turkeys that turkey rumps appeared as a separate product on the German market. They are separated from backs at the request of the importer to save import duty.

It is impossible to find any rules based on trade customs defining what the ratio in weight must be between the rump and the back. There must be therefore cases where a larger part of the back is cut in order to form the rump properly so-called.

Moreover the fact that rumps of other animals (Nos 01.01 to 01.04 of the Common Customs Tariff) are classified in all the Member States as 'edible offals' is not relevant in this case, since the meat and fat content of turkey rumps is not comparable to that of other 'rumps' and cannot be regarded as the continuation of the spine of the animal.

The German Government concludes that turkey rumps are backs (or parts of backs) or 'other poultry parts' within the meaning of Article 2 of Regulation No 77/62 as amended by Article 1 of Regulation No 136/62.

3. The *Commission of the European Communities* points out first that 'turkey rumps' are not 'edible offals' but are to be classified as 'poultry cuts'. In support of this first conclusion it makes the following submissions:

— In order to classify the disputed goods the expressions 'offals' and 'poultry cuts' must be given their normal meaning. In this connexion what matters is what is meant by offals obtained in the normal course of preparing products of saleable quality and not the customary views of the average consumer.

— However in the Community if the normal methods used to slaughter poultry and prepare it are taken into account, turkey rumps are not separate parts. Normally they remain attached to the backs which are marketed as 'backs and necks' and are only separated if they are ordered as separate products. There is usually no such demand for them, except from the pharmaceutical industry, and most of it is met from imports from third countries. In this case turkey rumps become a special product: when turkeys are slaughtered they are not regarded as offals but are separated and marketed as such.

— It is naturally quite possible that in third countries, in particular in the United States of America, turkey rumps are classified as offals. But the interpretation of the descriptions of goods relating to the levy must be based on the commercial practice of the Community, because it would be impossible to ensure a uniform application of the levy if a different classification had to be adopted for each country of origin.

— The fact that turkey rumps are not or are scarcely edible is not a conclusive factor in interpreting the word 'offal'.

— Further the classification of turkey rumps cannot depend upon their actual commercial value. This value varies and Regulation No 77/62 has not expressly adopted the criterion of the commercial value of the different poultry cuts for the purpose of defining the headings determining the amount of the levy.

— It serves moreover no useful purpose to invoke in this case the rule of interpretation in paragraph 2 of Chapter 2 of the explanatory notes to the Brussels Nomenclature, because this rule is merely indicative and does not prevail over specific commercial practices. No firm conclusion can be drawn from it as regards turkey rumps.

— On the other hand, even if this rule were assumed to prevail over current commercial practice, it would not alone solve the problem of the classification of the disputed products. In such a case it would be necessary to invoke Article 8 of Regulation No 77/62 and, in application of the second paragraph, to classify turkey rumps precisely in the category of 'poultry cuts'.

The Commission then examines the question whether within this category, the disputed goods are to be classified as coming under 'backs and necks' or 'other cuts of poultry'. It submits on this point:

— that it must not be forgotten that Regulation No 136/62, which was intended to avoid the difficulties arising out of the previous system, in which the amount of the levies prescribed for poultry cuts' (a heading which includes products of greatly varying quality) was fixed per unit of weight, introduced for the first time a sub-heading within this category with the object of taking into account the commercial value of each of the products in question. It therefore fixed a lower conversion factor for 'backs and necks' and retained the original conversion factor for other 'poultry cuts';

— that turkey rumps should be classified under 'backs and necks', because, since they are not normally separated from 'backs' when the bird is trimmed, they are regarded as part of the backs. The fact that they are sometimes separated from the back for particular purposes does not change their nature.

The Commission concludes therefore that turkey rumps had to be classified on 12 November 1962 in the category of 'backs and necks' within the meaning of Article 2(a) of Regulation No 77/62 as amended by Regulation No 136/62.

Grounds of judgment

1 By an order of 30 July 1969 which reached the Court on 3 September 1969 the Bundesfinanzhof (Federal Finance Court) of the Federal Republic of Germany referred to the Court of Justice under Article 177 of the Treaty establishing the European Economic Community several questions on the interpretation of Regulation No 22 of the Council of the EEC of 4 April 1962 (OJ No 30, 1962 and Regulation No 77 of the Commission of the EEC of 23 July 1962 (OJ No 66, 1962) as amended by Regulation No 136 of the Commission of the EEC (OJ No 113, 1962).

The first question

2 In its first question the Bundesfinanzhof asks the Court whether the correct interpretation of Article 14 of Regulation No 22/62 is that Member States are entitled and obliged to take internal legislative measures to specify which products are subject to the levy by virtue of Article 1 of that regulation and to differentiate between them.

3 According to Article 14 of Regulation No 22/62 'Member States shall take all steps to adapt their laws, regulations, and administrtaive provisions in such a way that the provisions of the present regulation, unless hereby otherwise provided, may be effectively implemented as from 1 July 1962'.

4 Since Regulation No 22/62, in conformity with the second paragraph of Article 189 of the Treaty, is directly applicable in all Member States, the latter, unless otherwise expressly provided, are precluded from taking steps, for the purposes of applying the regulation, which are intended to alter its scope or supplement its provisions. To the extent to which Member States have transferred legislative powers in tariff matters with the object of ensuring the satisfactory operation of a common market in agriculture they no longer have the powers to adopt legislative provisions in this field.

5 Therefore Article 14 of Regulation No 22/62 is to be interpreted as meaning that Member States must take all steps necessary to eliminate obstacles which may arise under their own legislation to the application of the regulation as from 1 July 1962. This article does not therefore permit Member States to adopt any internal measures affecting the scope of the regulation itself.

6 Therefore the answer to the first question must be in the negative.

The second question

7 In the event of the first question's being answered in the negative the Bundesfinanzhof asks the Court whether 'Article 1 of Regulation No 22/62 which mentions

some of the goods included in the Common Customs Tariff is to be construed as meaning that national legislatures may interpret the terms by which these goods are described, since the terms by which goods in a customs tariff are described of necessity require interpretation'.

8 As the description of the goods referred to in the regulations establishing a common organization of a market is part of Community law its interpretation can only be settled in accordance with Community procedures. Moreover the common organizations of the markets in agriculture, such as the one which it is the aim of Regulation No 22/62 to establish progressively, can only achieve their objectives if the provisions adopted for their realization are applied in a uniform manner in all Member States. The descriptions of goods covered by these organizations must therefore have exactly the same range in all Member States.

9 Such a requirement would be placed in jeopardy if, whenever there was a difficulty in the classification of any goods for tariff purposes, each Member State could determine the range covered by the descriptions in question by way of interpretation. Although it is true that in the event of any difficulty in the classification of any goods the national administration may be led to take implementing measures and clarify in the particular case the doubts raised by the description of the goods, it can only do so if it complies with the provisions of Community law and subject to the reservation that the national authorities cannot issue binding rules of interpretation.

10 The second question must therefore be answered in the negative.

The third question

11 Should the second question be answered in the negative the Bundesfinanzhof asks the Court whether turkey rumps constitute backs (parts of backs) or other poultry cuts within the meaning of Article 2 of Regulation No 77/62 as amended by Article 1 of Regulation No 136/62, or edible offals within the meaning of Article 3 of that regulation.

12 In accordance with a general rule of classification for tariff purposes set out in Rule 5 the Rules for the interpretation of the nomenclature of the Common Customs Tariff (Regulation No 950/68 of the Council, (OJ No 172, 1968) goods not falling within any heading of the Tariff shall be classified under the heading appropriate to the goods to which they are most akin. The question whether goods are akin one to another is to be decided on the basis not only of their physical characteristics but also of their use and commercial value. In the absence of special circumstances the commercial value of goods is normally their market price.

13 The expression 'backs and necks' in Article 2 of Regulation No 77/62 as amended by Regulation No 136/62 refers to cuts of slaughtered poultry other than those which are deliberately separated from the backs and which form as such the residual parts after the bird has been cut into pieces, as is the case with regard to the disputed product. The commercial value of this product as reflected in its market price is very low and in any case much less than that of 'poultry cuts' mentioned in Article 2 of Regulation No 77/62.

14 This fact is confirmed by implication in Regulation No 79/66 of the Commission of the EEC of 29 June 1966 (OJ No 118, 1966), which classifies turkey rumps under 'backs and necks' but applies to them a conversion factor which in Regulation No 77/62 is nearer to the one applied to 'edible offals' (Article 3) then to those applied to 'backs and necks' and 'all other cuts of poultry' (Article 2 as amended by Regulation No 136/62).

15 Therefore the expression 'edible offals' within the meaning of Article 3 of Regulation No 77/62 must be interpreted so as to include products having similar commercial value such as the disputed product.

Costs

16-17 The costs incurred by the Commission of the European Communities and the Government of the Federal Republic of Germany which have submitted their observations to the Court are not recoverable and as the proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Bundesfinanzhof of the Federal Republic of Germany 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 observations of the defendant in the main action, the Government of the Federal Republic of Germany 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 38 to 47 and Article 177;
Having regard to Regulation No 22 of the Council of the EEC of 4 April 1962;
Having regard to Regulations Nos 77 of 23 July 1962 and 136 of 31 October 1962 of the Commission of the EEC;
Having regard to Regulation No 79 of the Commission of the EEC, of 29 June 1966;
Having regard to Regulation No 950 of the Council of the EEC, of 28 June 1968;

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 question referred to it for a preliminary ruling by the order of 30 July 1969 by the Bundesfinanzhof of the Federal Republic of Germany hereby rules:

1. **Article 14 of Regulation No 22 of the Council of the European Economic Community of 4 April 1962 is to be interpreted as meaning that Member States must take the necessary steps to eliminate any obstacles to its application which may arise under their own legislation, although they are not permitted to adopt any internal measures affecting the scope of the regulation itself;**

2. **Article 1 of Regulation No 22 of the Council of the European Economic Community of 4 April 1962 which enumerates some goods included in the Common Customs Tariff does not empower the national authorities of Member States to issue binding rules of interpretation for the application of those descriptions;**

3. **According to Article 3 of Regulation No 77 of the Commission of the European Economic Community of 23 July 1962 the expression 'edible offals' must be interpreted so as to include products having a similar commercial value such as 'turkey rumps'.**

Lecourt Monaco Pescatore

Donner Trabucchi Strauß Mertens de Wilmars

Delivered in open court in Luxembourg on 18 February 1970.

A. Van Houtte
Registrar

R. Lecourt
President