On those grounds,

THE COURT (Second Chamber)

in answer to the question referred to it by the Bundesfinanzhof by order of 19 June 1979, hereby rules:

The concept of "export" within the meaning of Article 7 (2) of Regulation (EEC) No 1132/74 of the Council of 29 April 1974 on production refunds in the cereals and rice sectors must be interpreted as meaning that any levy which may be introduced in pursuance of that provision must also be imposed on the exportation of the products in question when they are exported under outward processing arrangements and later reimported as compensating products.

Touffait Pescatore Due

Delivered in open court in Luxembourg on 20 March 1980.

A. Van Houtte
Registrar

A. Touffait
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 14 FEBRUARY 1980 [1]

Mr President,
Members of the Court,

The main action which gave rise to this request for a preliminary ruling concerns the lawfulness of decisions to apply export levies. The decision turns on the interpretation of the word "export" in Article 7 (2) of Regulation (EEC) No 1132/74 of the Council of 29 April 1974 on production refunds in the cereals and rice sectors (Official Journal 1974, L

1 — Translated from the German.

128, p. 24) and in particular whether there is an export within the meaning of this provision when goods liable to the export levy are taken to non-member countries within the framework of *outward processing arrangements.*

In accordance with Article 1 (1) of the said regulation Member States must grant a production refund on maize for the manufacture of starch equal to the difference per 100 kilograms between the threshold price for that product and 8.2 units of account. In accordance with Article 7 (2) of that regulation if the world market price of maize appreciably exceeds 8.20 units of account, to compensate for the difference between that price and the supply price for maize within the Community an export levy, to be fixed by the Commission, shall be charged on the export of maize starch falling within heading 11.08 A of the Common Customs Tariff. Article 9 of the regulation provides that detailed rules for the application of that regulation in particular also for the export levy referred to in Article 7 (2) must be adopted in accordance with the procedure laid down in Article 26 of Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals (Official Journal, English Special Edition 1967, p. 33). Regulation (EEC) No 1981/74 of the Commission of 25 July 1974 (Official Journal, L 207 of 29 July 1974, p. 9), which was adopted on the basis of that regulation, provides *inter alia* that the export levy is to be fixed by the Commission and that it must be collected by the Member States on whose territory the customs formalities have been completed. The Commission exercised the right conferred upon it in Article 7 (2) of Regulation No 1132/74 to fix a levy for the export of maize starch *inter alia* in Regulation No 2443/74 of 27 September 1974 (Official Journal, L 262 of 28 September 1974, p. 5) and in Regulation No 2527/74 of 4 October 1974 (Official Journal L 271 of 5 October 1974, p. 20).

Gebrüder Knauf Westdeutsche Gipswerke, the plaintiff in the main action, obtained customs clearance in September and October 1974 for special maize starch coming under heading 11.08 A I of the Common Customs Tariff for export to Austria under outward processing arrangements for which it had been granted authorization. In accordance with the authorizations granted to it the undertaking re-imported into the territory of the European Community the product which was processed from that starch and intended for the building sector. On the basis of the said provisions the Hauptzollamt [Principal Customs Office] Hamburg-Jonas charged, by decisions of 2 and 17 October 1974, export levies amounting in total to DM 7 103.40.

When the objections against those decisions lodged by the plaintiff, in which it maintained that no export levy should be charged on goods on which export levies were payable where they have been exported under outward processing arrangements and returned to the territory of the European Community in the form of other goods, were unsuccessful, the plaintiff instituted proceedings before the Finanzgericht [Finance Court] Hamburg. After these proceedings had been instituted the Principal Customs Office issued two amended notices of assessment of 18 June 1975 and 4 September 1975 in favour of the plaintiff which the plaintiff made the subject-matter of the action. The Finanzgericht dismissed the action *inter alia* on the ground that liability to the levy within the meaning of the said provisions of Community law arises on the export of the products in question

from free circulation in the Community regardless whether such export was effected for the purpose of finally leaving the territory of the Community or under outward processing arrangements with subsequent re-importation of the processed product.

The plaintiff appealed on a point of law against the judgment to the Bundesfinanzhof [Federal Finance Court]. It argued that the EEC regulations, on the basis of which the export levies are charged, merely contained general outline provisions and directions as to the rates of the levy and the date on which they were to be imposed. Furthermore, the levies were to be imposed in accordance with national legal and administrative provisions. The relevant German provisions, in particular Article 18 of the Gesetz zur Durchführung der Gemeinsamen Marktorganisationen [Law implementing the common organizations of the markets] of 31 August 1972 (Bundesgesetzblatt I p. 1617) and Article 52 of the Zollgesetz [Customs Law] of 14 June 1961 (Bundesgesetzblatt I, p. 737), which was to be applied by analogy, did not make provision for the charging of an export levy under outward processing arrangements. Moreover, in acordance with the spirit and objectives of the Community provisions there is no room for the charging of levies where processed goods subject to the levy are exported, or in any case not if the product does not finally reach the markets of a non-member country but is instead brought back into the Community again after being processed into another product under authorized outward processing arrangements.

On the other hand the defendant Hauptzollamt Hamburg-Jonas takes the view that it was not the intention of the Community provisions to trade in such goods. This, *inter alia,* was expressly stated in the subsequent Regulation (EEC) No 645/75 of the Commission laying down common detailed rules for the application of the export levies and charges on agricultural products (Official Journal L 67 of 14 March 1975, p. 16), Article 3 (2) of which provides an exhaustive list of the cases in which an exemption applies but does not contain an exemption from the export levy in respect of exports under outward processing arrangements to a non-member country.

By order of 19 June 1979 the Seventh Senate stayed the proceedings and referred to the Court of Justice under Article 177 of the EEC Treaty the following question for a preliminary ruling:

"Must the word 'export' within the meaning of Article 7 (2) of Regulation (EEC) No 1132/74 be interpreted as meaning that an export levy must be imposed on products coming within tariff heading 11.08 A of the Common Customs Tariff even if they were exported in September and October 1974 under outward processing arrangements and were later re-imported as processed goods?"

My opinion on that question is as follows:

By its question the court making the reference wishes to establish whether the word "export" within the meaning of Article 7 (2) of the said regulation embraces "export under outward processing arrangements". As the Court is aware, the distinctive feature of outward processing arrangements is that they involve the transfer of goods to non-member countries whence they are returned, after treatment or processing, to the original customs territory. The plaintiff in the main action considers for that reason that the export of goods under outward processing arrangements — from the point of view of the result at least — does not constitute an export

properly so-called since the goods are of necessity re-imported. Under Community law no rules have been laid down regarding the legal principles relating to outward processing arrangements, at any rate up to the date on which the exports in question were effected. Accordingly only national legal provisions, which do not provide for the charging of any levies, are applicable to exports under outward processing arrangements. Thus, since no chargeable event giving rise to the levy has occurred either under national law or Community law the export levy should not have been charged on the export of the consignment of starch in question. In particular the plaintiff considers that the *lacuna* in the law may not be filled by way of argument by analogy.

With regard to this submission of the plaintiff it should nevertheless be pointed out from the outset that in addition to the law on inward and outward processing, provisions of the law on the common organization of the markets in fact are of considerable importance with regard to inward and outward processing arrangements for agricultural products. Although at the time in question there were not yet any outward processing arrangements as an institution of Community law the market in agricultural products was, on the other hand, covered by provisions of Community law. In relation to non-member countries the market was controlled *inter alia* by means of levies and refunds. In this connexion the law governing the common organizations of the markets generally contains rules only on the conditions for the charging of export levies, the rates of the levy, the date on which they are to be charged and the Member States which are competent to charge the levy, as well as further provisions necessary for the uniform application of Community law. In particular the uniform application of the instruments for the control of the market makes it necessary for uniform criteria to be defined for the charging of the levies. The Member States are, in accordance with the case-law of the Court of Justice, only entitled to enact provisions relating to due form and procedure and also provisions of substantive law, where otherwise, in the absence of provisions of Community law a *lacuna* in the law would arise (cf. in particular Case 26/69 *Commission* v *French Republic,* judgment of 9 July 1970 ECR [1970] 565; Case 39/70 *Norddeutsches Vieh- und Fleischkontor GmbH* v *Hauptzollamt Hamburg-St. Annen,* judgment of 11 February 1971 [1971] ECR 49 and Joined Cases 51 to 54/71 *International Fruit Company NV and Others* v *Produktschap voor Groenten en Fruit,* judgment of 15 December 1971 [1971] ECR 1107). In order to ensure the uniform application of Community law recourse may however be had to national law only in so far as is necessary for the implementation of the regulations on the common organizations of the agricultural markets and reaches its limits where Community law has provided for a uniform solution or where such a solution is called for by its general scheme. Accordingly, the Court of Justice emphasized in particular in its judgment of 30 November 1972 in Case 18/72 *(NV Granaria Graaninkoopmaatschappij* v *Produktschap voor Veevoeder* [1972] ECR 1163) that no provision of the Treaty or of the rules relating to its application empowers the national authorities to grant exemption from a levy provided for under Community law.

Nor, contrary to the plaintiff's opinion, is it possible to deduce anything different from Article 6 (1) of Council Decision No 70/243/ECSC, EEC, Euratom, of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (Official Journal, English Special Edition, 1970 (I) p. 224) since that provision merely provides that the Community resources referred to in the decision shall be collected by the

Member States *in accordance with* national provisions imposed by law, regulation or administrative action.

Since Community law takes precedence over domestic law the answer to the question depends simply on whether the word "export" within the meaning of Article 7 (2) of Regulation No 1132/74 also includes export under outward processing arrangements, regardless of any domestic rules.

It may, however, be inferred without difficulty from the law on refunds and levies that export is to be understood as covering the movement of goods which have been in free circulation within the Community out of the geographical territory of the Community (cf. *inter alia* Articles 3 (1), 4 (1) and 5 (1) of Regulation No 1041/67/EEC of the Commission of 21 December 1967 (Official Journal, English Special Edition 1967, p. 323) and Article 2 of the later regulation, Regulation (EEC) No 645/75 of the Commission of 13 March 1975 (Official Journal L 67 of 14 March 1975, p. 16)). Outward processing arrangements constitute such an export since in such customs operations the goods leave the Community and are transferred to non-member countries without customs supervision by the customs agencies of the Communities. This is made clear in particular in Article 2 (1) of Council Directive No 76/119/EEC of 18 December 1975 on the harmonization of provisions laid down by law, regulation or administrative action in respect of outward processing (Official Journal L 24 of 30 January 1976, p. 58) which is now in force and which defines outward processing arrangements as the customs arrangements whereby goods of whatever kind or origin may be temporarily exported outside the customs territory of the Community with a view to their being re-imported in the form of compensating products, wholly or partly free of import duties, after they have undergone one or more processing operations outside the customs territory of the Community. Neither Regulation No 1132/74 nor the implementing regulation, Regulation No 1981/74, makes provision for exemption from the export levies in cases in which the products are only temporarily exported under outward processing arrangements. On the contrary, Article 7 (2) of Regulation No 1132/74 confers upon the Commission unrestricted power to charge a levy on the exportation of the products in question. If the authors of the regulation had intended to create for exportation under outward processing arrangements an exception from the general liability to the export levy in the case of exports it would have been natural, as the Commission correctly emphasizes, to make express provision for this, as for example in Regulation No 645/75 for inward processing arrangements.

Accordingly I merely require to consider below whether doubt is cast by the spirit and objective of the rules relating to the levies contained in Regulation No 1132/74 on the wording, which is clear as such, with regard to the outward processing arrangements.

In this connexion it is necessary first of all to point out the close relationship between the objective of the charging of an export levy which is possible under Article 7 (2) of Regulation No 1132/74 and the objective of the production refund to be granted in accordance with Article 1 of that regulation. The objective of the production refund in respect of maize for the manufacture of starch is expressed as follows in the first recital of the preamble to Regulation No 1132/74:

"Whereas, on account of the special situation on the market in starches and, in particular, the need for the starch industry to ensure that its prices are competitive with those of substitute products, Regulations Nos 120/67/EEC and 359/67/EEC provided for the granting of a production refund, in order that the starch industry might obtain the basic products it requires at a lower price that than which would result from the application of the rules of the common organization of the markets in the products in question".

The objective of the charging of the levy on the export of maize starch follows from the seventh recital of the preamble to the same regulation which provides that:

"Whereas the above-mentioned measures should not disturb the markets in third countries; whereas, therefore, in the event of an appreciable and persistent increase in prices on the said markets, provision should be made for compensatory measures consisting of the charging of a levy on exported products with a view to reducing the advantages granted to Community manufacturers to an appropriate level".

The plaintiff in the main action and the court making the reference entertain doubts, taking into account these recitals to the preamble of that regulation, whether the objectives to be attained through the charging of the export levy justify its application even where the goods are exported under outward processing arrangements, since, on their view, the exported products do not permanently burden the markets of non-member countries because they are, after processing, brought back into the territory of the EEC and, further, no reason can be seen to reduce the advantages granted to domestic declarants to an appropriate level since the goods remain their property. In particular, the court making the reference considers that the subsequent charging of an export levy is justified only in cases in which the products exported under outward processing arrangements are not brought back again into the territory of the Community.

Nevertheless, as we can deduce from the recitals of the preamble which I have quoted *verbatim* it is irrelevant with regard to the question whether a levy is to be charged whether the exported goods *permanently* burden the markets of non-member countries or whether they remain the *property* of the domestic declarant. On the contrary, it is merely necessary to prevent the artificial fall in the price brought about by the production refund and the improvement in the competitiveness of the products caused by this from resulting in disturbances of the markets in non-member countries. Such a danger was however acute where there was an appreciable and persistent increase in prices on such markets if Community products, at artificially lowered prices, reached those markets by way of exportation. Accordingly, provision was made for compensating measures in the form of a levy on the exported products with a view to reducing the advantages, namely the artificially-induced competitive advantages, granted to Community manufacturers to an appropriate level by charging levies.

It is clear in particular from the following circumstances, which were also incidentally, taken into account by the Commission, that products exported under outward processing arrangements which have obtained competitive advantages through financial benefits from the Community may also lead to disturbances on the markets of non-member countries: at the time of the

export in question the Community had no influence whatever on the grant of outward processing arrangements the regulation of which was entirely in the control of the Member States. In particular it was always possible for an exporter who obtained an authorization for outward processing arrangements to decide in accordance with the development of the market siutation whether the goods should remain on the market of the non-member country or whether they should be re-imported. Whilst the Member States did indeed possess the power to impose the levy subsequently if it appeared that, despite the declarations that the products in question were subject to outward processing arrangements, the goods remained on the markets of non-member countries, the question whether and to what extent the levy subsequently charged and how the supervision of the outward processing arrangements carried out was settled differently in the various Member States and was, as the Commission points out, extremely complex. In view of the absence of Community provisions governing the subsequent charging of the levy where outward processing arrangements were not implemented it was therefore in my view logical that the Community legislature should make exports under such arrangements liable to the levy, just like other exports. If the legislature had not done so there would have been a great danger that the system of export levies would have been undermined by means of the institution of outward processing arrangements, since the exporters could have had the outward processing arrangements authorized in order to then leave on the markets of non-member countries the goods exported under such arrangements. There is no need to elaborate on the fact that goods exported in this way at prices reduced through financial benefits from the Community with regard to which the subsequent application of the levy was uncertain were capable of causing disturbances on the markets of non-member countries.

Apart from this, however, the very existence of a relatively large quantity of goods at artificially lowered prices on the territory of a non-member country, which might at any time be placed on the market was already capable of producing harmful effects on events on the market of that country.

Even if the processed products were subsequently brought back again into the Community further disturbances of the markets of non-member countries could be occasioned by the fact that more products at reduced prices from the Community were absorbed by the processing industries of the non-member countries than would have been the case but for the production refund. In this way the processing of the corresponding products of non-member countries in such countries could be affected. In addition the exemption for the reduced exports from liability to the levy and the incentive thereby provided to turn increasingly through the outward processing arrangements to the cheaper processing undertakings in non-member countries would have led to assistance of the corresponding processing industries in non-member countries which would ultimately have been borne by Community resources and which likewise was not the purpose or objective of the production refund.

To complete the picture mention should also be made of the fact that in the absence of the levies there would also be a danger of an undesirable reduction in the supply within the Community of maize starch products for feeding purposes which would result in higher prices on the Community market if the reduced products were withdrawn from the agricultural sector indirectly by

means of their industrial use in non-member countries where prices are advantageous.
Such disturbances of the markets of non-member countries and undesirable affects on the Community markets which could also follow from exports under authorized outward processing arrangements could be avoided to a large extent if the competitive advantages granted to Community manufacturers by the production refund were reduced to an appropriate level through the export levy where there was a persistent increase in prices on the markets of non-member countries. It is thus in accordance with the meaning and objectives of Regulation No 1132/74 that even the temporary exportation of products under outward processing arrangements should not be exempted from the export levies provided for in Article 7 (2) of the regulation.

Furthermore, it should not be forgotten that even today, for example in Commission Directive No 76/527/EEC of 4 June 1976 on the calculation of total or partial relief from import duties under the outward processing procedure (Official Journal L 153 of 12 June 1976, p. 43) duties to be charged at the frontiers in connexion with monetary compensatory amounts or accession compensatory amounts in the case of the exportation of products under outward processing arrangements are treated as general exports.

I accordingly propose that question should be answered as follows:

The word "export" within the meaning of Article 7 (2) of Regulation (EEC) No 1132/74 also embraces the temporary exportation of products under authorized outward processing arrangements.