*7. Agriculture — Common organization of the markets — Cereals — Regulation No 19 — Sphere of application — General interests concerned — Possibility of protection of individual interests*

1. It follows from the actual wording of the second and third sentences of Article 43 of the Statute of the Court of Justice of the EEC that these provisions are not intended to shorten the period of limitation of five years but that they are intended to protect those concerned by preventing certain periods from being taken into account in the calculation of the said period. Consequently the aim of the third sentence of Article 43 is merely to postpone the expiration of the period of five years when proceedings instituted or a prior application made within this period start time to run in respect of the periods provided for in Articles 173 or 175.
2. If, for the purposes of obtaining compensation for the same damage, two actions are brought, one against a Member State before a national court and one against the EEC before the Court of Justice, it is necessary to avoid the applicant's being insufficiently or excessively compensated because of the different assessment of two different courts applying different rules of law. For that reason the final judgment of the Court cannot be given before the decision of the national court on the matter.
3. When there is damage resulting from an act illegal according to Community law and the law of a Member State, it is appropriate to ask the applicant to prove that he has exhausted all methods of recourse, both administrative and judicial, under the national law applicable for obtaining repayment of sums improperly paid. Only after production of such proof is it appropriate to consider whether any damage exists which the Community should make good.
4. Damage suffered by a person subject to the jurisdiction of the EEC by reason of the fact that he has relied on the legality of an unlawful administrative act must be made good.
5. Compensation for loss of profit following a wrongful act or omission presupposes that the performance of the commercial transaction in question has at least been commenced.
6. In exercising the powers conferred upon it by Article 22 of Regulation No 19, the Commission is required in respect of each protective measure notified to it to conduct as exhaustive an examination as that required to be made by the Member States and bears independent responsibility for the retention of protective measures.
7. Even though in essence they refer to interests of a general nature, the provisions of Regulation No 19 may also ensure the protection of individual interests such as those of the producers of Member States and of persons subject to the jurisdiction of the EEC participating in intra-Community trade.

In Joined Cases

5/66

FIRMA E. KAMPFFMEYER, whose offices are in Hamburg, represented by its sole member, Kurt Kampffmeyer,

7/66
FIRMA P. KRUSE, whose offices are in Hamburg, represented by its sole member, Mrs Margarethe Maria Kruse, née Tiede,

13/66
GETREIDE-IMPORT-GESELLSCHAFT MBH, having its registered office in Duisburg, represented by its managers, Wilhelm Specht and Wilhelm Breder,

14/66
FIRMA PETER CREMER, whose offices are in Hamburg, represented by its sole member, Peter Cremer,

15/66
KOMMANDITGESELLSCHAFT IN FIRMA ANTON KESTING & Co., having its registered office in Bremen, represented by its personally liable member, Edgar Hellmers,

16/66
KOMMANDITGESELLSCHAFT IN FIRMA KÖSTER, BERODT & Co., having its registered office in Hamburg, represented by its personally liable member, Kurt Köster,

17/66
KOMMANDITGESELLSCHAFT IN FIRMA C. MACKPRANG JR., having its registered office in Hamburg, represented by its personally liable member, Erich Wilhelm Mackprang,

18/66
DEUTSCHE GETREIDE- UND FUTTERMITTELHANDELSGESELLSCHAFT MBH having its registered office in Hamburg, represented by its manager, Gerhard Jahn,

19/66
DEUTSCHE RAIFFEISEN-WARENZENTRALE GMBH, having its registered office in Frankfurt am Main, represented by its manager, Joachim Gräfe,

20/66
OFFENE HANDELSGESELLSCHAFT IN FIRMA FRANZ HAGEN, having its registered office in Hamburg, represented by its personally liable member, Hans Helmut Friedrich Porr,

21/66
KOMMANDITGESELLSCHAFT IN FIRMA LUDWIG WÜNSCHE & Co., having its registered office in Hamburg, represented by its personally liable member, Karl Konstantin Ludwig Wünsche,

22/66
FIRMA ALFRED TOEPFER, whose offices are in Hamburg, represented by its sole representative, Günther Martin,

23/66
FIRMA C. SCHWARZE, whose offices are in Bremen,

24/66
GESELLSCHAFT FÜR GETREIDEHANDEL AG, having its registered office in Düsseldorf, represented by the members of its Board of Directors, Ferdinand Popp, Erich Steffen, Kurt Klemm and Karl Wedershoven,

assisted by Messrs Dres, Modest, Heemann, Menssen, Gündisch and Brändel of the Hamburg Bar (for Cases 5, 7 and 14 to 21/66), K. Redeker of the Bonn Bar (for Case 13/66) and Walter Hempel, Advocate of the Hamburg Bar (for Cases 22 to 24/66),

with an address for service in Luxembourg at the office of Félicien Jansen, Huissier, rue Aldringer (for Cases 5, 7 and 14 to 21/66), and at the Chambers of Georges Reuter, 1 avenue de l'Arsenal (for Cases 13/66 and 22 to 24/66),

applicants,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by its Legal Adviser, Claus-Dieter Ehlermann, acting as Agent, with an address for service in Luxembourg at the offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application for damages under the second paragraph of Article 215 of the Treaty establishing the EEC,

## THE COURT

composed of: Ch. L. Hammes, President, A. Trabucchi and R. Monaco, Presidents of Chambers, L. Delvaux, R. Lecourt, A. M. Donner (Rapporteur) and W. Strauß, Judges,

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

gives the following

## JUDGMENT

### Issues of fact and of law

I — Summary of the facts

The facts may be summarized as follows:

The applicants are German importers of cereals. Among other things, they make regular importations of maize originating in France. Since 31 July 1962, trade in cereals and products derived therefrom between the Member States has been governed by the provisions of Regulation No 19 of the Council, on the gradual establishment of a common organization of the market in cereals.

In order to co-ordinate prices in trade between the Member States Regulation No 19 provides that the State into the territory of which goods are imported shall impose a levy. This levy corresponds to the difference between the free-at-frontier price of the exporting country, fixed daily by the Commission, and the threshold price, fixed by the importing country. When the free-at-frontier price is equal to or higher than the threshold price, the levy is fixed at zero.

In Germany, the rates of levy per metric ton are calculated by the German department responsible for organization of the market, the Einfuhr- und Vorratsstelle für Getreide und Futtermittel (hereinafter referred to as 'the EVSt'), and posted in its buildings. An import licence which is necessary for the importation of cereals is issued by the EVSt upon request.

Article 2 (1) of Regulation No 31/63 of the Council provides for the possibility of fixing the rate of levy in advance in the import licence in the case of the importation of maize originating in France. In this case the EVSt is obliged to apply the rate applicable on the date on which the request for the licence is received.

Relying on a decision of the Commission of 27 September 1963, fixing free-at-frontier price, the EVSt on 1 October published, by notice in its buildings, a rate of levy applicable to maize originating in France of 0.00 DM. On the same day the applicant companies requested import licences for the importation of maize originating in France with the rate of levy fixed in advance at 0.00 DM for the month of January 1964. In all import licences for a totel of 126 000 metric tons were requested on 1 October for January 1964. On the same date, the applicant companies in Cases 5/66, 7/66, 14 to 16/66, 19/66 and 21/66 also purchased certain quantities of French maize.

By a decision of 3 October 1963 the EVSt refused to grant the import licences requested for January 1964, basing its refusal on the protective measure taken by the German Government on 1 October, in accordance with Article 22 (1) of Regulation No 19, and including a suspension of import licences.

By a decision of 3 October 1963 the Commission, which had already fixed a new free-at-frontier price as from 2 October 1963, authorized the German government to keep in force until 4 October the protective measures which had been notified to it on 1 October, in accordance with Article 22 (2) of Regulation No 19.

In its judgment of 1 July 1965 in Joined Cases 106 and 107/63, the Court of Justice held the decision of the Commission of 3 October to be illegal and annulled it.

The applicants in Cases 5, 7, 14 to 16, 19 and 21/66 carried out contracts for the purchase of French maize concluded by them on 1 October 1963 (in Case 21/66 a contract concluded on 23 August as well) and imported the quantities purchased against payment of the levy at the rate applicable at the date of importation. The applicants in Cases 5, 15 and 21/66 cancelled certain contracts of purchase of 1 October 1963 against payment of compensation.

The applicants in Cases 5/66 (by letter of 4 October), 7/66, 14 to 17/66 and 19 to 21/66 (by letter of 29 September) and 18/66 (by letter of 12 September) requested the Commission to honour its obligation to make good the damage caused by its decision of 3 October.

By letters of 28 October 1965, the Commission stated that it would make a decision concerning the applicants' requests.

By a decision of 2 March 1966, notified on 4 March 1966, the Commission informed the applicants that it disputed any obligation to make reparation.

On 17 February 1966, 24 February 1966, 26 April 1966, 28 April 1966, 7 June 1966, 22 June 1966 and 22 July 1966 the respective firms and companies in Cases 5/66, 7/66, 13/66 and 14 to 24/66 made an application against the Commission of the EEC for the payment of damages and interest.

## II — Conclusions of the parties

The applicants claim that the Court should:

1. Order the defendant to pay:
   (a) to the applicant in Case 5/66, the sum of 148 104.62 DM, plus interest at the rate of 7% from the date of the application,
   (b) to the applicant in Case 7/66, the sum of 55 030.81 DM, plus interest at the rate of 7% from the day on which proceedings were commenced,
   (c) to the applicant in Case 13/66, the sum of 1 640 880 DM, plus interest at the rate of 4% from the lodging of the application,
   (d) to the applicant in Case 14/66, the sum of 115 049.20 DM, plus interest at the rate of 7% from the commencement of proceedings,
   (e) to the applicant in Case 15/66, the sum of 55 285.90 DM, plus interest at the rate of 7% from the commencement of proceedings,
   (f) to the applicant in Case 16/66, the sum of 93 956.30 DM, plus interest at the rate of 7% from the commencement of proceedings,
   (g) to the applicant in case 17/66, the sum of 48 000 DM, plus interest at the rate of 7% from the commencement of proceedings,
   (h) to the applicant in Case 18/66, the sum of 32 000 DM, plus

interest at the rate of 7% from the commencement of proceedings,

(i) to the applicant in Case 19/66, the sum of 57 550.50 DM, plus interest at the rate of 7% from the commencement of proceedings,

(j) to the applicant in Case 20/66, the sum of 40 000 DM, plus interest at the rate of 7% from the commencement of proceedings,

(k) to the applicant in Case 21/66, the sum of 362 600.92 DM, plus interest at the rate of 7% from the commencement of proceedings,

(l) to the applicant in Case 22/66, the sum of 1 014 960 DM, plus interest at the rate of 4% from the commencement of proceedings,

(m) to the applicant in Case 23/66, the sum of 63 435 DM, plus interest at the rate of 4% from the commencement of proceedings,

(n) to the applicant in Case 24/66, the sum of 211 450 DM, plus interest at the rate of 4% from the commencement of proceedings;

2. Order the defendant to pay the costs of the proceedings.

The defendant contends that the Court should:

— dismiss the applications as unfounded, and

— order the applicants to pay the costs.

## III — Submissions of the parties

### A — *Admissibility*

The *defendant* relies on the fact that all the applicants, with the exception of those in Cases 13/66 and 22 to 24/66, made requests to it for damages by letters sent on the dates mentioned above and did not lodge their applications until 19 February at the earliest to raise the question whether Article 43 of the Statute of the Court of Justice of the EEC does not prevent the admissibility of the said applications because they were not made within the two months which followed the period of two months provided for in Article 43.

The defendant considers however for its part that the periods provided for in Article 43 do not constitute periods of limitation. It alleges that the provision is intended only to govern the length of the interruption which increases the limitation period of five years provided for in the first sentence of Article 43 in favour of the aggrieved party.

Although agreeing with the defendant's opinion that Article 43 of the Statute does not apply in the present case, the *applicants* assert, with arguments in support, that their applications should be considered as admissible.

In its rejoinder the *defendant* adheres to its original position, whilst disputing the correctness of certain arguments of the applicants.

### B — *The substance of the case*

(a) The alleged unlawful act or omission

The *applicants* assert that they have suffered injury as a consequence of the conduct of the Commission of the EEC which, instead of abolishing the protective measure taken by the Federal Republic of Germany, which would have required that Member State to annul that measure with retroactive effect and to grant the licences requested, illegally maintained the said protective measure. This retention of the measure was illegal because there was no reason to anticipate a serious disturbance on the German market, as an institution as specialized and as highly qualified in the observation of the market as the

Commission ought to have known. Consequently it behaved in a most imprudent manner and this constituted an unlawful act or omission on its part.

The applicants, deducing from the judgment in Joined Cases 9 and 12/60 (*Vloeberghs*) that only infringements of a rule of law intended to protect interests which are infringed are capable of justifying an action for damages, rely on the judgment in Joined Cases 106 and 107/63 (*Toepfer*) to establish that Regulation No 19, and particularly Article 22 thereof, is intended to protect the interests of importers.

The applicants in Cases 22 and 24/66 add that the origin of the protective measure should already have attracted the attention of the Commission. Although the changes in market prices in exporting countries require regular alterations of the free-at-frontier prices, it is unacceptable, on the other hand, to make alterations with retroactive effect to a price once settled, for importers should be able to have confidence that decisions fixing free-at-frontier prices are correct and definitive. According to the Commission itself, the decision of 27 December corresponded to the facts, so that the Commission should have been particularly careful in respect of protective measures of a Member State which were substituted with retroactive effect for the findings made. As the Commission failed to exercise such care but on the contrary omitted to carry out the necessary checks, it must be deduced from this that it had an inefficient organization.

The *defendant* relies on the absence of two conditions which in its opinion are indispensible for the existence of a right to reparation.

*The nature of the rule infringed*

According to the principle laid down in Joined Cases 9 and 12/60 (*Vloeberghs*), the right to reparation is available only if the rule infringed was intended to protect the interests of the applicants. The duty of the Commission to verify the legality of protective measures was not laid down in the interests of the applicants, but in the collective interest of the proper functioning of the common organization of the markets in cereals. The defendant refers to the similarity of Article 22 to the third subparagraph of Article 44 (4) and Article 73 (2) of the Treaty, the second paragraph of Article 4 and the second subparagraph of Article 8 (2) of Regulation No 19 as well as the second subparagraph of Article 3 (3) (a) of Regulation No 16/64 claiming that all these provisions only confer on it a power comparable to that granted by Article 169 of the Treaty, that is to say, a power to review the legality of the action of a Member State.

The *applicants* state in their reply that, as the Court of Justice has decided that the applicants in Joined Cases 106 and 107/63 were directly and individually concerned by the decision of the Commission, it follows that they may logically make a request for reparation within the meaning of the second paragraph of Article 215 of the Treaty. By its decision the Commission infringed the right of the applicants to the free movement of goods as provided for by Regulation No 19, not only in the interest of the Member States but also in the interests of the individuals concerned such as importers. There is hardly any similarity in Article 22 of Regulation No 19 to the articles quoted by the defendant.

In its rejoinder the *defendant* disputes the inferences drawn by the applicant from the judgment in Joined Cases 106 and 107/63.

It appears from the second paragraph of Article 176 of the Treaty that an annulment on the basis of Article 173 does not lead to the quasi-automatic admissibility of a request for reparation because the conditions of admissibility of the two actions are completely differ-

ent. With regard to the alleged infringement of the principle of free movement of goods and particularly of Article 18 of Regulation No 19, the defendant maintains that the prohibition contained in Article 18 is directed towards Member States and not to institutions of the Community. Thus an infringement of Article 18 by the Commission can only be indirect as being the consequence of an infringement of its power of supervision in accordance with Article 22, a power which, according to it, was not provided for in the interests of trade. In a more general manner, Article 18 (1) is not intended to protect the interests of importers, as the principle of free movement of goods was conceived in the interests of the Community and not in the particular interests of trade. It is not possible to reply to these arguments that they deprive Article 18 of its 'self-executing' character and are thus contrary to the case-law of the Court of Justice.

*The wrongful act (das Verschulden)*

The *defendant* alleges that the subjective condition which is indispensable for liability of a public body, that is to say, the existence of a wrongful act or omission, is not fulfilled in the present case. In its case-law on Article 40 of the ECSC Treaty, the Court has recognized that behaviour which is illegal when viewed objectively does not by itself provide the basis for an action for a civil wrong, but that it is necessary to add negligence thereto (judgments in Case 23/59 (*Feram*), Joined Cases 14, 16, 17, 20, 24, 26 and 27/60 and 1/61 (*Meroni*), Joined Cases 19 and 21/60 and 2 and 3/61, (*Fives-Lille-Cail*), Case 33/59 (*Chasse*), Joined Cases 46 and 47/59 (*Meroni*) and Joined Cases 29, 31, 36, 39 to 47, 50 and 51/63 (*Providence*) and the opinions of the Advocates-General in the Cases of *Feram, Vloeberghs, Chasse* and *Plaumann* (25/62).

The reply to the questions of the existence of a wrongful act or omission and the degree of blame necessary to provide the basis of a right to reparation depends on the nature of the public activity in question and the circumstances in which the activity is carried on. In this connexion the defendant states:

— that it interpreted Article 22 of Regulation No 19 as meaning that there is a serious disturbance of the market caused by imports and likely to endanger the objectives laid down in Article 39 of the Treaty when there is a danger that the imports may cause prices to fall to the level of the intervention price, so that the intervention agencies must purchase substantial quantities of indigenous cereals; this interpretation is based on both the opinion of the Advocate-General and the judgment of the Court in Joined Cases 106 and 107/63 (*Toepfer*), but even if it appears that such interpretation is mistaken, there is still no wrongful act. According to German legal theory, an interpretation is not wrongful unless it infringes a clear provision which is precise and perfectly evident or if it is contrary to the established case-law of a higher court; if, on the other hand, the provisions allow doubts on their interpretation or obscure passages to exist and if the opinion which has been reached at the end of a careful examination may be regarded as legally defensible (vertretbar), the mere fact that this opinion is subsequently disapproved cannot be regarded retroactively as a wrongful act; a similar attitude is found in Joined Cases 14, 16, 17, 20, 24, 26 and 27/60 and 1/61 (*Meroni*);

— that action under Article 22 of Regulation No 19 is complicated by the fact that a decision must be taken within not more than four working days of the notification of the protective measure, during which time the Member States must be

consulted, the agreement of the various departments of the Commission must be obtained, a collective decision must be taken and that decision of the Commission must be notified to the Member State concerned, and that under these conditions mistakes likely to give rise to public liability must show a marked degree of seriousness;

— that in putting forward the argument already advanced in Joined Cases 106 and 107/63 (*Toepfer*) the defendant claims that its attitude was legally defensible and that it could have regarded the German market as being threatened by a serious disturbance in the sense mentioned above;

— that it was not alone in considering that the conditions for applying Article 2 were fulfilled, that the Federal Government and the representatives of the Member States in the Management Committee for Cereals were of the same opinion and that, because of this, it is not possible to complain of negligence on the part of the defendant capable of amounting to a wrongful act or omission;

— that, if the Court considers, however, that there was negligence on the part of the defendant, the latter relies upon the fact that under the terms of Article 22 as regards the Member States it carries out only a duty of supervision; thus the Advocates-General have stated time and again that carrying out such duty does not result in public liability except in case of 'gross malfeasance'.

The foregoing explanations show sufficiently that in the present case it is not possible to complain that the defendant is guilty of such a wrongful act.

In their reply the *applicants* state:

— that it is in no way proved that the defendant was motivated by the arguments which it relies upon after the event and that, in its statement of reasons, the decision of 3 October 1963 does not include any of the said arguments; on the contrary, there is reason to suppose that the Commission did not make an exhaustive examination of the facts by its own departments, but that it simply adopted the fears of the German administration;

— that, apart from this, by taking that decision of 3 October 1963, the defendant committed an extremely grave wrongful act or omission; by requiring a Member State which takes protective measures to notify them to the Commission not later than the date of their entry into force, Article 22 shows that such measures cannot enter into force before the time of their notification; the Federal Republic adopted the protective measure during the afternoon of 1 October 1963, with retroactive effect for the whole day of 1 October; as it was informed of this during the night of 1 to 2 October the Commission was therefore obliged to approve the protective measure only with effect from 2 October and to annul it for 1 October 1963; by approving it for 1 October the Commission by this very fact infringed perfectly clear provisions, presenting no difficulty of interpretation; all the applicants which made their requests on 1 October before the afternoon were prejudiced by this fact;

— that, in addition, in the present case the Commission should have observed the principle of proportionality and limited its intervention to the absolutely indispensable minimum; if it had done so, the injury would have been reduced or even completely avoided;

– that the defendant cannot rely upon the agreement of the Management Committee; this agreement is not capable of absolving it from liability;

— further, that all the attempts to grade wrongful acts or omissions according to their seriousness are contrary to the general principles common to the Member States in the sphere of public liability;
— furthermore, that it is wrong to classify the tasks which Article 22 entrusts to the Commission as a mere duty of supervision; it is not a matter of a wrongful act or omission arising out of non-intervention; the defendant found itself in a position where it had to decide independently and to carry out its own administrative duties.

In addition, the applicants counter the arguments of the defendant that its assessment of the state of the German market was perfectly justifiable with contrary arguments similar to those put forward in Joined Cases 106 and 107/63 (*Toepfer*).

The applicant in Case 13/66 also adds:
— that the defendant cannot rely on the shortness of the period given to it by Article 22 because in the present case it did not even take advantage of that period, but came to a decision as early as 3 October 1963
— that this fact amounts on the contrary to an indication that the defendant arrived at its decision in a precipitate manner and without considering the matter deeply, so as to fill the breach which appeared in the application of Regulation No 19.

These arguments are supplemented in the reply of the applicants in Cases 22 to 24/66, which state:
— that the wrongful act or omission of the Commission cannot be explained by the alleged complexity of the interpretation of Article 22 of Regulation No 19, but was caused by the fact that, in considering whether the importation of 125 800 metric tons of maize would lead to a serious disturbance of the German market, the Commission took into consideration only the development of prices and not the influence which these imports were capable of exercising on the objectives laid down in Article 39 of the Treaty, as the wording of Article 22 requires; thus the Commission neglected an essential condition of fact for the application of Article 22 (2) and committed an act of gross malfeasance;
— that, by virtue of Article 215 of the Treaty and in accordance with the general principles common to the law of the Member States concerning liability, the defendant must also make good the damage resulting from slight negligence; in denying the existence of the said principle the defendant wrongly relies on the case-law of the Court; this applies only to Article 40 of the ECSC Treaty and furthermore does not apply to duties of mere supervision; in the present case the wrongful act or omission of the Commission does not lie in the mere fact of not having intervened but in that of having acted and of having expressly approved the German protective measure.

The *defendant* in its rejoinder emphasizes once more the difficulties of making an evaluation of the state of the market and those caused by the shortness of the period of time given by Article 22 of Regulation No 19.

The applicant in Case 13/66 complains that the defendant did not utilize the period of four days, to which the defendant replies that in order to establish a clear and precise situation and to require the Federal Government to abolish the protective measures as soon as possible it considered that it had to react with the maximum speed.

It also defends itself against the allegation of the same applicant that the decision was motivated by reasons foreign to the objective of Article 22 and maintains that its assessment of the market situation was perfectly defen-

sible; in this respect it mentions again the agreement of the Management Committee, and in particular that of the French representative, which may be a not unimportant factor in support of its assessment; returning to the special nature of the duty of supervision which is conferred on it by Article 22, it alleges that according to general principles it is the party under supervision which is responsible in the first instance and that the relationship between the superviser and the party under supervision is not based only upon the effects of their internal relationships but, since it is a matter of law, *erga omnes;* lastly, it rejects the allegations that it unlawfully gave the protective measures retroactive effect and disregarded the principle of proportionality by relying on arguments already put forward in Joined Cases 106 and 107/63.

In its rejoinder in Cases 22 to 24/66 the defendant denies having neglected a condition of fact essential to the application of Article 22, that is to say, the evaluation of the influence of the imports envisaged upon the objectives laid down in Article 39 of the Treaty, which on the contrary it claims to have taken into account. The shortness of the four-day period granted by Article 22 of Regulation No 19 complicated the preparation of the decision, particularly in the present case, as the Commission, in the absence of a precedent, had no experience in respect of the supervision of protective measures. The decision of 3 October 1963 was motivated by the reasons set out in its defence; furthermore in Joined Cases 106 and 107/63 neither the Advocate-General nor the Court found an infringement of essential procedural requirements. It denies having received only information of a general nature from the German authorities and quotes in this connexion the detailed statement of the German representative on the Management Committee.

(b) The causal link

The parties hardly discussed the existence of a causal link between the wrongful act or omission and the alleged injury. Thus, as has already been indicated above, the *applicants* claim that the Commission should have abolished the protective measure, so that they could still carry on properly the transaction entered into on the basis of a zero levy. The judgment of the Court of Justice of 1 July 1965 shows further that the decision of the Commission constitutes the cause of the damage suffered by them.

The *defendant,* which in general confines itself to denying the wrongful nature of its conduct and to emphasizing its duty of supervision, does not specify its views except in its rejoinder in Cases 5, 7 and 13 to 21/66, where it states as follows:

'The applicants in Cases 5, 7 and 14 to 21/66 state that up to the present the aforementioned limitation of liability has been upheld only in cases where the institution subject to criticism was accused of a failure to act; in the present case however the defendant is criticized for a positive act. In the present case the action against the defendant in public liability cannot nevertheless be based upon a failure to act. The cause of any damage suffered by the applicant is not, in fact, the authorization to retain the protective measures—the damage having already being caused by the German protective measures—but the fact of having refrained from requiring Germany to abolish the protective measures'.

(c) The concurrence of obligations to make reparation

In their applications the *applicants* state that they have also brought actions for damages against the Federal Republic of Germany before the competent German courts. They consider that the Community and the Federal Republic

are jointly responsible and that the obligation to make reparation is an internal matter between the two defendants.

(d) The amount of the damage

The *applicants* state that they requested import licences on 1 October 1963 for January 1964 in respect of the quantities of maize shown in their applications. Certain of them state in addition that they bought on the French market the quantities of maize also shown in anticipation of the licences requested; the refusal of the said licences following the protective measure of the Federal Government, which was maintained by the Commission, caused them to suffer considerable injury which they distinguish as follows:

I — the alleged losses suffered in carrying out the said contracts of purchase (*damnum emergens*);

II — the penalty paid on the repudiation of certain contracts.

The *defendant* disputes the correctness of the calculations set out in the applications and the argument concerning the calculations continues in the reply and the rejoinder. More generally, the defendant raises two points:

I — In respect of the losses suffered by the applicants, the losses resulting from the contracts of purchase concluded on 1 October 1963 were due to the improper conduct of the applicants themselves; the excessive quantity for which the import licences were requested on 1 October shows without any possible doubt that the importers knew on that day that a large gap had been opened in the levy system. The applicants acted without due consideration both in making contracts of purchase, in spite of this circumstance, before having received a favourable reply to their requests and in not providing for the possibility of cancellation should the licences, which had not yet been issued, be refused. They should have known that a situation such as that obtaining on 1 October 1963 was capable of giving rise to protective measures and they themselves should therefore bear the losses resulting from the cancellation and repudiation of the contracts of purchase made on 1 October.

The defendant refers in this connexion to the judgment in Case 3/65 (*Espérance-Longdoz*) and the opinions in Joined Cases 9 and 12/60 (*Vloeberghs*) and in Joined Cases 19 and 20/60 and 2 and 3/61 (*Fives-Lille-Cail*).

In their reply the *applicants* state on the other hand that the calculation of the levy for 1 October 1963 was correct and in accordance with the provisions applicable in the matter and that, if there had been an incorrect fixing of the free-at-frontier price, it would have been logical to remove this error with effect *ex nunc* and to fix a new free-at-frontier price. As the zero levy published on 1 October 1963 followed necessarily from the application of the legal provisions in force, no importer had any doubt as to the correctness of this rate of levy.

In its rejoinder the *defendant* repeats that it must have been clear to all concerned that the zero levy had opened a major gap in the whole system, and adds that in any case there was reason to presume improper conduct on the part of the applicants which made contracts of purchase after 2.15 p.m. on 1 October as the EVSt announced at that time by means of a notice that the published levy had been withdrawn.

II — In respect of the alleged failure to make a profit, the defendant relies upon the principle claimed to be common to the laws of the Member States according to which no reparation can be claimed for the loss of benefits which are contrary to public policy. As the object of Regulation No 19 is to compensate for the difference between prices ruling in importing countries (see Articles 2, 3 and 10 as well as the fifth and ninth recitals in the preamble), the fact of importing with a zero levy cereals which could be purchased in the exporting

country at a price considerably lower than the threshold price of the importing country is incompatible with the principles of the said regulation. It is even less in accordance with the said principles that the importers should obtain from this situation benefits of 11 or 15 DM per metric ton, because these benefits far exceed the margin which Regulation No 19 regards as normal, namely the margin which should be taken into account at the time of fixing of the threshold price in accordance with Article 4 and which amounts in Germany to 3 DM per metric ton.

In consequence, the applicants may claim at the most that they failed to obtain for the imports actually made a sum of 3 DM per metric ton, whilst in respect of the quantities not imported only a fraction of this sum may be taken into account.

In their reply the *applicants* express surprise at the statement that by making an import at zero levy they would have obtained an advantage contrary to public policy. The argument that Regulation No 19 fixes a commercial margin of 3 DM per metric ton is totally incorrect.

When they complain of levies which are too high to allow a reasonable profit importers still encounter the argument that the levy was calculated in strict application of the legal provisions in force and that the legislature is compelled to accept a certain floating flat-rate solution. In the present case the defendant is obliged to put forward the same considerations; in condemning the margins of profit resulting from a zero levy they allow financial reasons to appear which are completely alien to the neutrality required of them, reasons which caused them to propose and to confirm a protective measure, namely the fallacious view that the Treasury of a Member State is deprived of income from levies to the extent to which external trade might hope for good opportunities for profit which consequently it is necessary to suppress.

The applicants in Cases 22 to 24/66 again dispute the existence of the principle relied upon by the defendant by denying that it is common to the law of the Member States. It follows from the defendant's assertion that its decision of 27 September which led to a zero levy was correct that the applicants justifiably made their requests for licences; for so long as he observes the law the importer cannot obtain benefits which may be described as abnormal or contrary to public policy. Such a description might possibly be justified if Regulation No 19 had established a system of fixed prices and profit margins but such is not the case, as the said regulation, in conformity furthermore with the principle of commercial freedom, allows importers to purchase and to sell at the prices which they choose and to ask for the grant of licences at the times they choose. As the importer is free to choose the time of importation in accordance with his evaluation of market trends, the losses which he suffers should be at his own risk as well as the profits which he makes. Consequently these profits are legitimate, even if they be abnormally large, as long as they conform to the rules laid down.

In its rejoinder the *defendant* repeats the argument that, although the zero levy of 1 October was literally in accordance with Regulation No 19, it was nevertheless substantially contrary to the very principles embraced by this regulation which, whilst allowing a certain margin of uncertainty, because of flat-rate solutions being accepted, is nevertheless opposed to differences such as those obtaining on 1 October 1963.

## IV — Procedure

By orders of 29 March, 2 June, 13 July and 5 October 1966 and of 9 February 1967, the Court joined Cases 5, 7 and 13 to 24/66 for the purposes of both the written and oral procedures.

Upon hearing the report of the Judge-Rapporteur and the views of the Advo-

cate-General, the Court decided to open the oral procedure without making any preparatory inquiry, whilst asking the applicants by letter of 10 February 1967 for certain information concerning their actions pending before the German courts.
Also by a letter of 10 February 1967, the Court put to the defendant a question on the fixing of free-at-frontier prices.
The parties lodged their replies within the prescribed period and presented oral argument at the hearing on 14 March 1967.
The Advocate-General delivered his opinion at the hearing on 19 April 1967.

## Grounds of judgment

On the basis of Article 215 of the Treaty the applicants request the Court to order the Community to make good the damage which has been caused to them by the Commission as a result of its decision of 3 October 1963 'authorizing the Federal Republic of Germany to retain the protective measures relating to the import of maize, millet and sorghum'.

By that decision, which was annulled by a judgment of the Court of 1 July 1965 in Joined Cases 106 and 107/63, the Commission, in application of the third subparagraph of Article 22 (2) of Regulation No 19 of the Council, retained in force up to and including 4 October 1963 the protective measure taken by the Federal Republic of Germany consisting of the suspension as from 1 October of the issue of import licences for maize, sorghum, millet and other products mentioned in Article 1 (d) of the said regulation at a rate of levy equal to zero.

As the applicants all requested import licences on 1 October for the following January, and eight of them purchased quantities of maize in anticipation of the grant of the said licences, it is claimed that the Commission should be required to make good the injury caused to them which consisted on the one hand of the penalties paid for repudiation of the contracts and the loss resulting from importation on unfavourable conditions of quantities actually delivered and, on the other hand, in the loss of profit resulting from the impossibility of importing the cereals at a zero levy.

### Admissibility

Without formally disputing the admissibility of the application, the defendant raises the question whether the third sentence of Article 43 of the Statute of the Court of Justice of the EEC has the effect of barring Applications 5, 7 and 14 to 21/66, which were made more than two months after a previous request addressed to the Commission, as being out of time.

Under the terms of this article, proceedings against the Community in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event complained of. This period of limitation shall be interrupted if proceedings are instituted before the Court or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Community, on condition that in the latter event the proceedings are instituted within the period of two months provided for in Article 173 or of four months provided for in Article 175.

The defendant itself admits, however, that the reference to Articles 173 and 175 can only apply to the possibility of interruption of the period of limitation of five years laid down in the first sentence of the said Article 43. It follows from the actual wording of the second and third sentences of that provision that it is not intended to shorten the period of limitation of five years, but that it is intended to protect those concerned by preventing certain periods from being taken account in the calculation of the said period. Consequently the aim of the third sentence of Article 43 is merely to postpone the expiration of the period of five years when proceedings instituted or a prior application made within this period start time to run in respect of the periods provided for in Articles 173 or 175. As the event which gave rise to the present applications occurred on 1 October 1963, that is to say, less than five years from the lodging of the said applications, they are therefore admissible.

## The substance of the case

The applicants complain that the Commission incorrectly applied Article 22 of Regulation No 19 and that a correct application would have required the abolition and not the retention of the German protective measure which, according to them, would have led to the non-execution, if not the complete disappearance, of the said measure. The defendant replies that its conduct was not such as to render it liable because, on the one hand, it did not amount to a wrongful act or omission and, on the other, the rule of law which it is supposed to have infringed is not intended to protect interests such as those of the applicants.

The effect and scope of the decision of 3 October 1963 which is the object of the complaint should be considered within the framework of the common organization of the markets in cereals and particularly in relation to the application which was made of this system by the decision of the Commission of 27 September 1963 against the consequences of which the decision of 3 October was intended to protect the German market.

Regulation No 19 of the Council established a system of intra-Community levies in the cereals sector corresponding to the difference between the prices ruling in the exporting Member State and in the importing Member State, in such a way as to prevent, on the market of the Member State where the prices are higher, disturbances which might result from imports coming from a country where the prices are lower. Consequently the levy is established on the basis of the difference between, on the one hand, the price of the product coming from the exporting Member State delivered free-at-frontier in the importing Member State, a price settled by the Commission in accordance with the procedure laid down in Article 26 of the said regulation on the basis of prices ruling on the most representative markets of the exporting Member State, and, on the other hand, the threshold price of the importing Member State which is fixed annually in accordance with the procedure and the criteria laid down in Article 4 of the regulation. When the free-at-frontier prices fixed by the Commission for the exporting State are equal to or higher than the threshold price of the importing State, the levy is then equal to zero.

It appears from the recitals in the preamble to its decision of 3 October 1963 that the Commission, owing to a lack of knowledge concerning the level of prices for the new harvest in France, had not taken into account in its decision of 27 September 1963 the effect of these prices on the formation of prices on the French market and had based that decision solely on the price of the maize, sorghum and millet of the old harvest originating in France, delivered free-at-frontier in Germany, which were higher than the threshold price fixed by the Federal Republic of Germany. The said decision of 27 September 1963 did not thus fix free-at-frontier prices for these products and there followed on 1 October 1963 a zero levy for imports originating in France into the Federal Republic of Germany. As Regulating No 31/63 of the Council allowed, as from 1 October, advance fixing of levies for maize at the rate in force on the day of lodging of the request for licences for imports to be effected three months later, the applicants took advantage of this option to benefit from the prices of the new harvest which were lower than both the free-at-frontier prices fixed by the decision of 27 September and the German threshold price in force and, on 1 October 1963, they lodged with the Einfuhr-und Vorratsstelle, the competent department of the Federal Republic of Germany, applications for licences with the levy fixed in advance in respect of relatively large quantities of the said products.

The Government of the Federal Republic of Germany considered that the issue of these licences would have led to the importation into that State during the month of January of large quantities of maize at prices below the threshold price and on 1 October 1963 adopted and notified to the Commis-

sion the protective measure consisting in the suspension as from that date of the issue of import licences. By its decision of 3 October the Commission kept the said protective measure in force up to and including 4 October.

As is clear, moreover, from the judgment of the Court of 1 July, 1965, this decision constituted an improper application of Article 22 of Regulation No 19, in particular in that it likened the undeniable difficulties caused by the decision of 27 September to serious disturbances which might endanger the objectives laid down in Article 39 of the Treaty. On 3 October 1963 the Commission applied Article 22 (2) of Regulation No 19 in circumstances which did not justify protective measures in order to restore the situation resulting from the fixing by it of a zero levy. As it was aware of the existence of applications for licences, it caused damage to the interests of importers who had acted in reliance on the information provided in accordance with Community rules. The Commission's conduct constituted a wrongful act or omission capable of giving rise to liability on the part of the Community.

In trying to justify itself by the assertion that in view of the economic data at its disposal on 3 October 1963 a threat of serious disturbance was not to be excluded and that consequently its mistaken evaluation of the said data is excusable, the defendant misjudges the nature of the wrongful act or omission attributed to it, which is not to be found in a mistaken evaluation of the facts but in its general conduct which is shown clearly by the improper use made of Article 22, certain provisions of which, of a crucial nature, were ignored.

The Commission's assertion that supervisory organizations cannot, under a general principle common to the laws of the Member States, be made liable, except in the case of gross malfeasance is equally irrelevant. In fact, however the powers which Article 22 of Regulation No 19 confers on the Commission are described, the latter is required in respect of each protective measure notified to it to conduct as exhaustive an examination as that required to be made by the Governments of the Member States and bears independent responsibility for the retention of a protective measure.

With regard to the argument that the rule of law which is infringed is not intended to protect the interests of the applicants, the said Article 22, together with the other provisions of Regulation No 19, is directed, according to the wording of the fourth recital in the preamble to the regulation, to ensuring appropriate support for agricultural markets during the transitional period on the one hand, and to allowing the progressive establishment of a single market by making possible the development of the free movement of goods

on the other. Furthermore, the interests of the producers in the Member States and of free trade between these States are expressly mentioned in the preamble to the said regulation. It appears in particular from Article 18 that the exercise of freedom of trade between States is subject only to the general requirments laid down by its own provisions and those of subsequent regulations. Article 22 constitutes an exception to these general rules and consequently an infringement of that article must be regarded as an infringement of those rules and of the interests which they are intended to protect. The fact that these interests are of a general nature does not prevent their including the interests of individual undertakings such as the applicants which as cereal importers are parties engaged in intra-Community trade. Although the application of the rules of law in question is not in general capable of being of direct and individual concern to the said undertakings, that does not prevent the possibility that the protection of their interests may be—as in the present case it is in fact—intended by those rules of law. The defendant's argument that the rule of law contained in Article 22 of Regulation No 19 is not directed towards the protection of the interests of the applicants cannot therefore be accepted.

Since the liability of the Community has been recognized in principle, it is necessary to establish the facts of the alleged injury to which that liability relates.

In this connexion, it is necessary to distinguish three categories of injury. In the first place, after the refusal of the grant of import licences on 3 October 1963, certain applicants made the imports in question during the month of January, paying the German authorities the levy required for the quantities of maize purchased on 1 October in anticipation of the issue of the licences applied for. In the second place, certain applicants purchased quantities of maize on the French market on 1 October, and repudiated the contracts of purchase after the said refusal to grant licences. In the third place, after the said refusal to grant licences, certain applicants did not carry out the proposed importation, so that it was, as far as they were concerned, a transaction the performance of which had not begun, but one which had merely given rise to the lodging of applications for licences.

As to the first category, as the applicants purchased the maize in anticipation of importation subject to a zero levy, their injury was caused by the necessity to import subject to the payment of a levy. However, the refusal to grant the import licences subject to a zero levy in respect of this transaction had no legal basis, as the decision of the Commission of 3 October had been annulled

by the above-mentioned judgment of 1 July 1965 and, furthermore, as, according to the documents provided by the applicants, the German protective measure had been declared illegal by the German courts for reasons based on German law. Consequently the charging of the levy, made in the name of and for the benefit of the Treasury of the Federal Republic of Germany, is thus shown to be contrary to both Community law and German law. In these circumstances, the question arises whether the damage alleged would be made good by the repayment of the sums improperly paid by way of levy.

During the oral procedure, the existence in the present case of the right to such repayment was put in doubt by the applicants. The Court cannot, however, rely on such a statement to accept the conclusive nature of the alleged damage. It is proper, therefore, to ask the applicants concerned to prove that they have exhausted all methods of recourse both administrative and judicial under the relevant national law to obtain reimbursement of the sums improperly paid by way of levy. Only after production of such evidence would there be reason to consider whether any injury exists which the Community should make good.

The applicants in Cases 5/66, 7/66, 14/66, 15/66, 16/66, 19/66 and 21/66 must be regarded as belonging to the first category mentioned above, as they purchased on 1 October quantities of maize in anticipation of the issue of the licences applied for and imported these quantities into the Federal Republic of Germany either during the month of January 1964 or on prior or subsequent dates sufficiently close to that month to justify the supposition that an importation during that month would have been possible. It is thus appropriate to ask the above-mentioned applicants to produce the evidence indicated above.

It should, however, be stated at this stage that only the imports of maize purchased in reliance on the announcement of the issue of licences subject to a zero levy may be taken into account for the fixing of the damage for which the Community may be liable. It is appropriate therefore to ask the above-mentioned applicants to produce evidence that the quantities of maize imported in or near the month of January 1964, to which they refer, were purchased by contracts made on 1 October.

Because certain contracts were not concluded until after 2.15 p.m. on 1 October 1963, the defendant asserts that in those cases its liability is reduced by the fact that the applicants themselves contributed to the cause of the alleged damage through lack of foresight. In fact, as from the time stated, the

German authorities informed those concerned by posting up a notice of the withdrawal of the zero levy, so that a diligent importer, it is alleged, could have been aware of the hazardous nature of import transactions for the month of January. Furthermore several importers inquired repeatedly from the competent German authorities whether the zero levy was still in force, which proves that the importers were aware of the abnormal nature of the situation.

It is not possible, however, to argue from the said requests for information that a diligent importer was obliged to keep himself informed of the situation at all times. It appears both from the wording of Article 17 of Regulation No 19 and from the account of the functioning of the common organization of the markets provided by the defendant that the levy announced at the beginning of the day normally remains applicable during the whole day. In these circumstances, the requirement of the production of proof either that the importer purchased the maize on 1 October 1963 before 2.15 p.m. or that he could not have been aware of the withdrawal of the zero levy, which moreover was illegal, is equivalent to a reversal of the burden of proof. As such a reversal is not justified, the defendant must be allowed to prove, where appropriate, that the purchases of maize were made with knowledge of the said withdrawal, the right to produce evidence to the contrary being reserved to the applicants.

As to the second category mentioned above, as certain applicants repudiated some of the contracts of purchase concluded on 1 October 1963 in anticipation of the issue of the import licences applied for, they allege that they have suffered injury because of both the expense which they have had to bear in repudiating the said contracts as well as the loss of profit which they have suffered in respect of the quantities of maize purchased but not imported in consequence of the protective measure.

The penalties paid for the repudiation of the concluded contracts of purchase are the direct consequence, on the one hand, of the confidence of the applicants concerned in the proper application of Regulation No 19 and, on the other hand, of the unforeseen factor constituted by the protective measure which was retained by the decision of the Commission of 3 October 1963. In purchasing the quantities of maize in question on 1 October 1963, the applicants concerned legitimately relied upon the system of levies in force in order to enter into contractual obligations in respect of imports into the Federal Republic. They thus have the right to be reimbursed for the whole of the injury suffered through payment of penalties, unless the amount of such penalties was higher than necessary.

The applicants in Cases 5/66, 13/66, 15/66 and 21/66 must thus be allowed to show that the repudiated contracts of purchase were made on 1 October 1963, the right to produce evidence that they acted in knowledge of the withdrawal which took place at 2.15 p.m. being reserved to the defendant.

The alleged injury in respect of the loss of profit is based on facts of an essentially speculative nature. In fact, it should be said first of all that the hasty lodging of an abnormally large number of applications for import licences on 1 October provides an indication that the persons concerned know that the decisions in force on 1 October 1963 offered unusual advantages. Furthermore, as the applicants for licences knew the French market and the actual level of prices ruling there, they were able to perceive the error committed by the Commission in the decision of 27 September 1963, fixing the free-at-frontier prices. Thus the applicants may be regarded as having been aware of the abnormal speculative nature of the transaction involved in their purchases of maize. By cancelling the transactions concerned, they avoided any commercial risk to themselves inherent in importation into the Federal Republic. Consequently it is not justifiable to acknowledge their right to recover the whole profit that they would have been able to obtain if the transaction which had been started had been performed. Taking this into account, the injury resulting from loss of profit for which the Community must be regarded as being liable cannot equitably be evaluated at a sum exceeding 10% of that which the applicants would have paid by way of levy, if they had carried out the purchases made but cancelled.

However, with regard to any injury suffered by the applicants belonging to the first and second categories above-mentioned, those applicants have informed the Court that the injury alleged is the subject of two actions for damages, one against the Federal Republic of Germany before a German court and the other against the Community before the Court of Justice. It is necessary to avoid the applicants' being insufficiently or excessively compensated for the same damage by the different assessment of two different courts applying different rules of law. Before determining the damage for which the Community should be held liable, it is necessary for the national court to have the opportunity to give judgment on any liability on the part of the Federal Republic of Germany. This being the case, final judgment cannot be given before the applicants have produced the decision of the national court on this matter, which may be done independently of the evidence asked of the applicants in the first category to the effect that they have exhausted all methods of recourse for the recovery of the amounts improperly paid by way of levy. Furthermore, if it were established that such recovery was possible, this fact might have consequences bearing upon the calculation of the

damages concerning the second category. However, the decisive nature of the said evidence required does not prevent the applicants from producing the other evidence previously indicated in the meantime.

For the purpose of the production of such evidence, it is appropriate to disjoin the cases in question.

As to the third category mentioned above, apart from Cases 7/66 and 15/66 all the applicants gave up the proposed transactions either in part or in whole after the refusal to grant the import licences applied for. The transactions in these cases had not yet been started by the purchase of maize on the French market.

The said applicants allege, however, that they have suffered injury in that they were unable to obtain the profits for which they were hoping from the intended imports subject to a zero levy. Nevertheless the said transactions did not materialize and remained at the stage of an application for import licences.

In these circumstances the imports in which there was a mere intention to engage lack any substantial character capable of giving rise to compensation for loss of profits.

It is necessary therefore to find against the applicants to the extent to which their actions are brought only for compensation for loss of profits resulting from a transaction which was never commenced. The applicants in Cases 17/66, 18/66, 20/66, 22/66, 23/66 and 24/66 confine themselves to claiming damages for loss of profits without claiming that any purchases of maize were made by them on 1 October 1963. Their applications must therefore now be dismissed.

## Costs

By Article 69 (2) of the Rules of the Court, the unsuccessful party shall be ordered to pay the costs if they have been asked for in the successful party's pleading.

The applicants in Cases 17/66, 18/66, 20/66, 22/66, 23/66 and 24/66 have failed in their applications. However, as a wrongful act or omission on the part of the defendant has been found to exist, there are grounds for applying Article 69 (3) of the said Rules of Procedure and ordering that the parties bear their own costs.

In the other cases costs are reserved.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Article 215 of the Treaty establishing the European Economic Community;
Having regard to Regulation No 19 of the Council of the said Community dated 4 April 1962, especially Article 22;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby :

**I. By way of interlocutory judgment :**

1. **Orders the applicants in Cases 5/66, 7/66, 13/66, 14/66, 15/66, 16/66, 19/66 and 21/66 to send to the Court the decisions given by the relevant courts of the Federal Republic of Germany concerning their actions for damages against the Federal Republic;**

2. **Orders the said applicants to send to the Court evidence in writing that they have exhausted all methods of recourse, both administrative and judicial, for obtaining reimbursement of the sums improperly paid to the Treasury of the Federal Republic of Germany by way of levy;**

3. **Orders the said applicants to produce before 31 December 1967 proof that on 1 October 1963 they made contracts for the purchase of maize on the French market;**

4. **In respect of the production of proof required under paragraph 3 of this judgment, orders the said cases to be disjoined;**

5. **Orders that the costs be reserved;**

**II. By way of final judgment :**

**6. Dismisses Applications 17/66, 18/66, 20/66, 22/66, 23/66 and 24/66;**

**7. Orders the parties to bear their own costs.**

Hammes Trabucchi Monaco

Delvaux Donner Lecourt Strauß

Delivered in open court in Luxembourg on 14 July 1967.

A. Van Houtte
Registrar

Ch. L. Hammes
President

## OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 19 APRIL 1967[1]

*Mr President,*
*Members of the Court,*

The fourteen applications which have been made to you by the Kampffmeyer company and by other German cereal importers are the sequel to your judgment of 1 July 1965 which, on the application of the Toepfer company, annulled the decision of the Commission of the EEC dated 3 October 1963, authorizing the Federal Republic to keep in force the protective measures taken by it on the previous 1 October for the importation of maize originating in France.
Drawing the conclusions which that judgment appears to them to involve, the applicants, who all had the applications for import licences which they had requested on 1 October refused by the competent German agency, ask you to order the Commission to make good the injury caused to them by the illegal decision, which according to their conclusions amounts to almost four million DM.
The importance of the judgment which you are called upon to give is not confined solely to the amount of the sums in dispute. It applies above all to a question of principle in respect of which for the first time—if one excepts your judgment in the *Plaumann* case (15 July 1963, Rec. 1963, p. 197)—you have to deal with the interpretation of the ambiguous provisions—no doubt intentionally ambiguous—of the second paragraph of Article 215 of the Treaty of Rome concerning the non-contractual liability of the Community. The question comes before you in circumstances even more delicate since the conduct of the Commission complained of overlaps closely the conduct of the Federal Republic which alone has benefited financially from the disputed transactions and whose liability the applicants are seeking to establish before the courts of that coun-

1 — Translated from the French.