JUDGMENT OF THE COURT
10 JANUARY 1973 [1]

Getreide-Import-Gesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel (reference for a preliminary ruling by the Hessisches Finanzgericht)

'Criteria for the calculation of free-at-frontier prices'

Case 41/72

In Case 41/72

Reference to the Court under Article 177 of the EEC Treaty by the Hessisches Finanzgericht (VIIth Senate) for a preliminary ruling in the action pending before that court between

GETREIDE-IMPORT-GESELLSCHAFT mbH, having its registered office at 41 Duisburg, Mercatorstraße 16–20,

and

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND FUTTERMITTEL, Frankfurt-on-Main, Adickesallee 40,

on the validity of the decision of the Commission of the EEC of 3 December 1965 (OJ Agricultural Supplement No 7/65 of 8 December 1965, pages 1612/65 and 1625/65, Table B),

THE COURT

composed of: R. Monaco (President of Chamber), President, P. Pescatore, President of Chamber, A. M. Donner (Rapporteur), J. Mertens de Wilmars and H. Kutscher, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

1 — Language of the Case: German.

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

At the end of 1965, the applicant in the main action imported maize from Italy to Germany. The rate of levy charged on those imports was fixed by two import licences dated 9 and 10 December 1965 respectively.

Considering that the Commission had fixed in an incorrect manner the free-at-frontier price serving as the basis for the calculation of the levy, the applicant brought an action before the Hessisches Finanzgericht seeking a reduction of that levy by DM 14 per metric ton of maize.

It claims that the free-at-frontier price from 6 December for maize imported from Italy was not correct because the Commission based the calculation of that price on the information on prices ruling on the Italian export market of Padua for maize from North America and not on the information on prices ruling for maize grown in Italy. Such a procedure, it is claimed, is illegal as the principles laid down by the Court of Justice in Case 16/65, (Judgment of 1 December 1965 in Case 16/65 Fa. C. Schwarze v. EVSt., Rec. 1965, p. 1081) do not apply in the case of Italy.

The Hessisches Finanzgericht, considering that the determining of the free-at-frontier price is a decision emanating from one of the institutions of the European Communities, has, by order dated 12 June 1972 received at the Court Registry on 4 July 1972, decided to apply for a preliminary ruling on the following question:

'Is the decision of the Commission of the EEC of 3 December 1965 (OJ, Agricultural Supplement No 7/65 of 8 December 1965, pages 1612 and 1625, Table B), by which it fixed the free-at-frontier price for imports of maize from Italy to the Federal Republic of Germany at 51 751 lire per metric ton as from 6 December 1965, valid or not?'

By order dated 18 October 1972, the Court decided to join Cases 41/72 and 55/72 for the purposes of the oral proceedings.

The Commission submitted its written observations in accordance with the provisions of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to proceed without a preparatory inquiry.

The oral observations of the Commission, for which its Legal Adviser, P. Kalbe, appeared, were made at the hearing on 16 November 1972.

The Advocate-General delivered his opinion at the hearing on 6 December 1972.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

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

1. The *Commission* explains that the aim of the levy in question, charged on imports of maize from Italy to Germany, is to compensate for the differences existing between the prices of cereals in these two Member States. The amount of the levy corresponds to the difference between the price of maize from Italy delivered free-at-frontier in Germany and the German threshold price,

corrected by a flat-rate amount. It devolves on the Commission to determine the free-at-frontier price, in accordance with the detailed rules laid down by Article 3 of Regulation No 19 of the Council of 4 April 1962 (OJ No 30 of 20. 4. 1962, p. 933).

According to Regulation No 89 of the Commission laying down criteria for determining free-at-frontier prices for cereals, flour, groats and meal (OJ No 66 of 28. 7. 1962), the free-at-frontier price is to be determined on the basis of the most favourable price ruling on the most representative Italian markets for exports to Germany, taking freight charges into account (Article 2). By representative markets is meant the Italian markets from which maize could be exported to Germany at the most favourable price (Article 3). The most favourable price is that which, taking into account freight charges and marketing costs, works out at the lowest figure in relation to the standard of quality (Article 4 (1)). Freight charges are defined in Article 5 of Regulation No 89. These calculation data are regularly prepared by the Italian authorities, which determine the free-at-frontier price and then supply the Commission with all this information (Article 7). After checking the information, the Commission determines the free-at-frontier prices each Friday (Articles 8 and 9) and the competent German authorities then calculate the amounts of the intra-Community levies in accordance with the provisions of Article 15 of Regulation No 19.

The Commission emphasizes that this system was applicable in all Member States without any exception being provided for in respect of imports of maize from Italy to Germany.

2. The Commission maintains that the free-at-frontier price in question was properly calculated and determined, in accordance with all relevant provisions.

It was based on the market prices ruling at Padua, the most representative market in this case.

In order to determine the free-at-frontier price in the disputed decision, the Commission took the price of 45 500 lire per metric ton supplied by the Italian Ministry of Agriculture on the one hand, and the prices of 44 500 lire and 44 000 lire supplied by 'ONIC' (the French market organization department), on the other hand. The Commission determined its price on the basis of the lowest price, being 44 000 lire, in accordance with Article 4 of Regulation No 89.

The freight charges were calculated on the basis of the official tariffs and the data supplied through freight and trade media according to the following specifications:

Cost of freight by rail Padua—Venice	750 lire per metric ton
Cost of loading on ship at Venice	1 051 lire per metric ton
Sea freight Venice—Rotterdam	3 806 lire per metric ton
Insurance	64 lire per metric ton
Cost of transhipment at Rotterdam	547 lire per metric ton
River freight Rotterdam—Duisburg	647 lire per metric ton
	6 865 lire per metric ton

From this total was deducted the figure of 129 lire per metric ton, representing the proportion of the freight charges between Duisburg and Emmerich, in accordance with Article 5 (2) of Regulation No 89.

After taking into account a trade margin of 1 015 lire per metric ton, the free-at-frontier price was arrived at as follows:

Market price at Padua	44 000 lire per metric ton
Freight Padua—Duisburg, corrected by freight Duisburg—Emmerich	6 736 lire per metric ton
Trade margin	1 015 lire per metric ton
	51 751 lire per metric ton

3. It follows from the foregoing that the Commission did not base its calculations on the lowest prices ruling

at the time at Padua for maize imported from North America, which worked out at 41 500 lire per metric ton, but on the lowest prices for maize grown in Italy, as desired by the applicant.

This practice corresponded to that generally followed by the Commission in respect of the other Member States also.

In the absence of any prices for home-grown cereals in the exporting Member State, or if those prices were higher than those for imported cereals, the free-at-frontier prices were determined on the basis of the prices fixed for imported cereals, in accordance with the judgment of the Court in Case 16/65.

As the threshold price in Italy in 1965 was at a relatively low level (e.g. 40 500 lire p.m.t.), certain types of maize imported from third countries were regularly put on the market in Italy at prices lower than the home-grown product (e.g. 41 250 lire p.m.t. to 42 500 lire p.m.t. for 'US — Yellow Corn 3' and 44 000 lire p.m.t. to 45 500 lire p.m.t. for homegrown hybrid maize).

At first the Commission based its calculations on the lowest prices ruling for home-grown maize, because the intra-Community levies were only applicable for cereals which, it could be proved, had been harvested in the exporting Member State.

In intra-Community trade in other cereals, the 'third country' levy is charged in order to prevent diversion of trade.

Since the introduction of the common organization of the market in the cereals sector, exports to Germany of maize allegedly harvested in Italy had increased out of all proportion compared to normal quantities from the domestic harvest and had been put on the market as maize fodder (from 211 metric tons in 1962 to 503 738 metric tons in 1965). There was therefore a strong presumption that quantities of maize grown in third countries had been exported to Germany from Italy and had been falsely declared as produce harvested in Italy in order to take advantage of the lower intra-Community levy.

In these circumstances, the Commission considered it necessary to fill the gap in the application of the levy system in Germany by basing the calculation of the free-at-frontier prices for exports of maize from Italy to Germany on the prices ruling at Padua for 'US — Yellow Corn 3' as from 10 December 1965 (cf. Article 1 of Regulation No 86 of the Commission embodying provisions to prevent diversion of trade in cereals, OJ No 66 of 28. 7. 1962, p. 1864/62).

However it would be irrelevant to go into that question in this case, as the disputed free-at-frontier price of 3 December 1965 has been calculated from the prices for home-grown cereals.

The Commission submits that the validity of its decision of 3 December 1965 is beyond doubt.

Grounds of judgment

1 By order dated 12 June 1972, received at the Registry on 4 July 1972, the Hessisches Finanzgericht referred to the Court for a preliminary ruling the question of the validity of the decision of the Commission of the EEC of 3 December 1965 (OJ, Agricultural Supplement No 7/65 of 8 December 1965, pages 1612 and 1625, Table B) by which it fixed the free-at-frontier price for imports of maize from Italy to the Federal Republic of Germany at 51 751 lire per metric ton as from 6 December 1965.

2 It can be seen from the statement of reasons in the order referring the matter that the applicant in the main action alleges that the decision in question is illegal because the Commission based its calculations for determining the free-at-frontier price of maize from Italy not on the most favourable price for maize grown in Italy, as laid down by Article 1 of Regulation No 86 of the Commission, but on the most favourable price for maize imported from the United States.

3 However, it has been established in the course of these proceedings that in determining free-at-frontier prices the Commission, until 10 December 1965, based its calculations exclusively on the most favourable prices for maize harvested in Italy.

Therefore, the ground of complaint of the applicant in the main action against the decision in question is without foundation.

4 Examination of the procedure followed by the Commission in preparing the decision in question does not reveal any other matter capable of affecting its validity.

5 The question should therefore be answered in this manner.

Costs

6 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable, and as these proceedings are, insofar as the parties to the main action are concerned, in the nature of a step in the action pending before a national court, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the Commission of the European Communities;

Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation No 19 of the Council of 4 April 1962, on the gradual establishment of a common organization of the market in the cereals sector;
Having regard to Regulation No 86 of the Commission of 28 July 1962, embodying provisions to prevent diversion of trade in cereals, especially Article 1;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

in answer to the question referred to it by the Hessisches Finanzgericht by order of that court dated 12 June 1972, hereby rules:

Examination of the decision of the Commission of the European Economic Community of 3 December 1965 determining the free-at-frontier price for the import of maize from Italy to the Federal Republic of Germany has not revealed any matter capable of affecting its validity.

Monaco Pescatore Donner

Mertens de Wilmars Kutscher

Delivered in open court in Luxembourg on 10 January 1973.

A. Van Houtte
Registrar

R. Lecourt
President