JUDGMENT OF THE COURT
OF 5 DECEMBER 1973 [1]

Deutsche Getreide- und Futtermittel-Handelsgesellschaft v Einfuhr- und Vorratsstelle für Getreide und Futtermittel (preliminary ruling requested by the Hessisches Finanzgericht)

'Turnover equalization tax'

Case 119/73

Summary

1. *Agriculture — Common organization of the market — Cereals — Durum wheat — Levy — Calculation — Turnover equalization tax — Inclusion in the calculation — Condition*
   (Regulation No 19 of the Council, Article 11)
2. *Agriculture — Common organization of the market — Cereals — Maize — Threshold price — Fixing — Characteristics of the products at issue — Inclusion in the calculation — Condition*
   (Regulation No 19 of the Council, Article 8 (1))

1. Article 11 of Regulation No 19 of the Council of the EEC of 4 April 1962 neither requires nor prohibits that a Member State should take account of the turnover equalization tax in calculating the levy applicable to durum wheat, provided that the threshold price for that cereal is maintained at a level at least 5 % above that for common wheat.
2. Article 8 (1) of Regulation No 19 of the Council of the EEC of 4 April 1962 is to be interpreted as meaning that Member States in which there is no significant production of maize could not, when fixing the threshold price for maize, take account of the characteristics of the different varieties of cereals in question if the fact of taking account of these characteristics would have led to a threshold price for maize which would have made it impossible for barley to reach its target price.

In Case 119/73

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

1 — Language of the Case: German.

FIRMA DEUTSCHE GETREIDE- UND FUTTERMITTEL-HANDELSGESELLSCHAFT, Hamburg,

and

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND FUTTERMITTEL, Frankfurt/Main,

on the interpretation of Articles 8 and 11 of Regulation No 19 of the Council of 4 April 1962 (OJ 1962, No 30), concerning the calculation of the levy for wheat and the fixing of the threshold price for maize in Member States in which there is no significant production of that cereal,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen, Presidents of Chambers, R. Monaco (Rapporteur), J. Mertens de Wilmars, P. Pescatore, H. Kutscher, C. Ó Dálaigh and A. J. Mackenzie Stuart, Judges,

Advocate-General: J. P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. Firma Deutsche Getreide- und Futtermittel-Handelsgesellschaft (hereinafter referred to as 'Deutsche Getreide') was granted a number of import licences for maize and durum wheat by the Einfuhr- und Vorratsstelle für Getreide und Futtermittel (hereinafter referred to as 'EVstG'). The company lodged a complaint against the rate of levy indicated in these licences, claiming:

— that, in fixing the rate of the levy, the EVstG should have taken account of the turnover equalization tax;

— that as regards the import licences for maize, the EVstG, having taken account of the abovementioned tax, should have reduced the amount of the levy by an extra 5 DM per metric ton, pursuant to the German regulation of 2 November 1971, concerning the fixing of the threshold price for cereals for the period July 1962 to December 1962, introduced in view of the Judgment

of the Court of Justice of 12 May 1971 in the *Wünsche* case (Case 76/70, Rec. 1971, p. 393). This is the purport of Article 8 (1) of Regulation No 19/62, according to which the threshold price in Memer States in which there is no significant production of this cereal should have been fixed so as to correspond to the threshold price for barley.

For its part, the EVstG is of the opinion:

— that the fixing of the threshold price for durum wheat derives from the discretionary power of the Member States, and that it was merely incumbent upon the latter not to fix the levy below a minimum rate (5 % above the threshold price for common wheat);

— that, as concerns Article 8 (1) of Regulation No 19/62, the interpretation put forward by Deutsche Getreide cannot be accepted, since it does not take account of the differing values of the various varieties of cereal.

The Hessisches Finanzgericht, before which the action was brought, being of the opinion that the latter raised a problem of interpretation of Community law, decided, by order of 21 March 1973, lodged at the Registry of the Court of Justice on 12 April 1973, to suspend judgment and to refer the following questions to the Court pursuant to Article 177 of the EEC Treaty:

'1. Is Article 11 of Regulation No 19/62 of the Council of the European Economic Community (Official Journal of the European Communities No 933/62) to be interpreted in such a way that in the calculation of the levy on durum wheat the turnover equalization tax payable on imports should have been taken into account, or was this not required?

2. Is Article 8 (1) of Regulation No 19/62 EEC to be interpreted in such a way that the threshold price for maize in Member States in which there is no significant production was to be fixed in such a way that it corresponded to the threshold price for barley, or was there a certain latitude of valuation for particular types of cereals according to their value as fodder, etc.?'

2. By decision of 14 August 1973, the Bundesfinanzhof rejected as unfounded an appeal brought by Deutsche Getreide against the order of 21 March 1973 of the Hessisches Finanzgericht referring the case for a preliminary ruling.

Firma Deutsche Getreide, represented by Fritz Modest, of the Hamburg Bar, the Federal Republic of Germany, represented by Christof von Arnim, and the Commission of the European Communities, represented by its Legal Adviser Peter Kalbe, submitted written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

The parties to the main action and the Commission of the European Communities made their oral observations at the hearing on 3 October 1973.

The Advocate-General delivered his opinion at the hearing on 7 November 1973.

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

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

A — Observations submitted by Deutsche Getreide- und Futtermittel-Handelsgesellschaft

Firstly, Deutsche Getreide points to certain individual features of the market

in durum wheat, which, although a special market, is closely aligned with the market in common wheat. For climatic reasons, durum wheat can be cultivated within the Community only in France and in Italy. By reason of the risks and expense which it involves, the cultivation of durum wheat in large quantities is only possible with the help of financial aid. Even before the coming into force of the definitive rules with regard to the market in cereals in 1967 (Regulation No 120/67), Italy and France had given financial aid to producers, but is was only from 1967 onwards that the cultivation of this cereal underwent a sudden development within these States, due to the grant of more substantial financial aid.

Article 11 of Regulation No 19/62 did in fact take account of this state of affairs, by making a distinction between the Member States which produce this cereal and those which do not. Under Article 11 (4), all the States were required to fix the threshold price, for the same standard quality, at a level at least 5 % higher than that for common wheat. On the other hand, according to Article 11 (5), only those Member States which produce durum wheat were obliged to fix target prices annually for the durum wheat which they produced. The threshold price for durum wheat had a twofold purpose in protecting producers of both types of wheat. On the one hand it was to guarantee producers of durum wheat within the Member States a market for their produce at a fair price; on the other hand it served to obviate the circumstance whereby common wheat mills within the Community process durum wheat instead of common wheat, so that the volume of common wheat processed had fallen and the surplus had increased. However, in those Member States which do not produce durum wheat the threshold price, while Regulation No 19/62 was in force, fulfilled only one protective function, namely that of ensuring that durum wheat imported from third countries did not supplant common wheat harvested within the Community. This was the precise objective of Article 11 (4).

Having examined the way in which the Federal Republic of Germany took account of the provisions of Articles 5, 7, 8 and 11 of Regulation No 19/62, concerning the fixing of basic target prices, basic intervention prices and threshold prices both for common wheat and for durum wheat, Deutsche Getreide defines its position with regard to the two questions referred.

As to the *first question,* Deutsche Getreide refers to the case law of the Court, especially to its Judgment in Case 76/70, regarding Articles 4 and 5 of Regulation No 19/62. The principle laid down in that case, to the effect that the amount of the turnover equalization tax is part of the inevitable cost of marketing and therefore is an essential factor in the calculation of the threshold price, confirms certain conclusions which may be drawn from Article 39 of the Treaty as to the way the levy fits into the framework of the common organization of agricultural markets. Amongst the objectives listed in this provision we find that of the necessity of ensuring and safeguarding the interests of persons engaged in agriculture, on the one hand, and of consumers, on the other. Although it is true that the objectives of Article 39 cannot all be attained at once, the Community institutions should nevertheless consider one in terms of the others. According to the principle of Community preference the interests of consumers should give way to the extent necessary to guarantee a fair standard of living for the agricultural community. However, given that consumers must accept the disadvantages of the levy systems, these disadvantages should not go beyond what is necessary in order to protect the interests of producers. Therefore there must be a limit to the autonomous appraisal by the Community institutions as regards the fixing of the amount of the levies, and this limit applies to each type of levy.

In spite of the technical differences between the various levy systems before 1967, these systems were operated to one end: to protect the producer while on the other hand not forgetting the legitimate interests of the consumer. If, with a view to the alignment of prices, the prices of imported goods must be raised to the level of home prices, conditions regarding the supply and cost of imports should also be indentical. This 'parity' must apply to the various stages of the marketing process for which specified prices are or should be applied, as well as in the place where they are or should be applied. If these parities are not taken into account and are not harmonized prices cannot be aligned: either the levy would be too low and would therefore lose its protective function or it would be too high and would have the effect of inhibiting imports.

Regulation No 19/62, at Articles 4 and 5 (as well as the Judgment of the Court mentioned above), took this factor into account in fixing the threshold prices for common wheat, barley, maize and rye. But these parities do and must apply equally as regards the fixing of the threshold price for durum wheat, as provided at Article 11 (4) of the said Regulation.

In fact, if Article 11 (4) had to be interpreted as meaning that the Member States were entitled to fix the threshold price for durum wheat at any level, on condition that it must be at least 5 % highter than that applicable to common wheat, it would have contradicted the provisions of Article 39 (1), (d) and (e) and Article 12 of the Treaty. In Regulation No 19/62 the institutions of the Communities undertook not to allow the objectives of Article 39 to be adversely affected by fixing a prohibitively high figure for the threshold price. This undertaking led to the prohibitions contained in Articles 18 (1) and 20 (1) of that Regulation, which were addressed to the Member States, requiring that they should no longer levy customs duties and charges having equivalent effect on imports. It would therefore not have been in accordance with Article 39 (1) (d) of the Treaty to enable the Member States to fix the threshold price for durum wheat as high as the chose. Such a power would have meant that the Member States could, contrary to Article 12 of the Treaty, increase charges having equivalent effect as they thought fit with reference to the situation as it existed in January 1958.

Under these circumstances there are two interpretations which would give Article 11 (4) of Regulation No 19/62 a scope which is in conformity with the Treaty. On the one hand a limitation of the power granted by this provision can be deduced from the protective function of the threshold price. In the Member States which do not produce durum wheat this power could be limited by reference to the basic target price for common wheat, so that the threshold price for durum wheat — in the same way as that for common wheat — would have to be fixed on the basis of the basic target price for home grown common wheat. In this case the equalization tax levied in Germany on imports of durum wheat — like that levied on imports of common wheat — would have given rise to inevitable marketing costs of which account would have to be taken in calculating the threshold price.

On the other hand a limitation of the power granted by Article 11 (4) of Regulation No 19/62 could be inferred from the prohibitions expressed at Articles 18 (1) and 20 (1) of that Regulation. This would imply that the threshold prices could never be fixed at such a high level that they would lose their function of aligning prices and would have a prohibitive effect. In these cases too, the equalization tax would be a necessary cost factor for the calculation of the threshold price. According to either hypothesis this tax ought to have been taken into account in calculating the threshold price for durum wheat.

Finally, Deutsche Getreide suggests the following answer to the first question:

'Article 11 (4) of Regulation No 19 of the Council of the European Community on the gradual establishment of a common organization of the market in cereals of 4 April 1962 (OJ 1962, p. 933) is to be interpreted as meaning that, for the calculation of the threshold price for durum wheat, the inevitable costs of marketing which affect the said cereal from the moment of its import up to the wholesale buying stage must be taken into account, and that therefore, *inter alia,* a fixed amount equivalent to the total of internal import charges, such as the turnover equalization tax, must be deducted from the threshold price.'

As to the *second question,* Deutsche Getreide observes that although the wording of Article 8 (1) of Regulation No 19/62 differs from that of Article 4 (1) of the same Regulation, the purport of the two provisions is substantially the same. From the first of these it follows that in this case the threshold price for maize should have been fixed, within the Member States in which there is no significant production of this cereal, in such a way that the target price for barley could be reached. To this end the threshold price for maize should have been fixed at the same level as that for barley, on condition that the inevitable marketing costs to be taken into consideration for the calculation of the threshold price were not different. In the event of these costs not being the same the threshold price for maize could and should have been proportionally higher or lower than the threshold price for barley. Indeed, if the marketing costs are identical, the threshold prices are also equal.

No other interpretation of Article 8 (1) is possible. In particular this provision does not allow the threshold prices for maize and for barley to be differentiated according to the different value of these two varieties of cereal as fodder. In adopting this Regulation the Community proceeded on the principle that no significant difference existed between the value of these two varieties as fodder which, moreover, is in fact the case.

Finally, having recalled that the contrary hypothesis is also contradicted by the fact that as from the beginning of the 1963/1964 marketing season the Federal Republic of Germany has always fixed the threshold price for barley and for maize at the same level, Deutsche Getreide proposes the following answer to the second question:

'Article 8 (1) of Regulation No 19/62 should be interpreted as meaning that the threshold prices for maize in Member States in which there is no significant production of this cereal should be fixed at the same level as that for barley, on condition that the inevitable marketing costs to be taken into consideration for the calculation of the threshold price are equal. It is only where the marketing costs are not equal that different prices may be fixed, but not on the basis of a supposedly different value as fodder.'

B — Observations submitted by the Federal Republic of Germany

As to the *first question* the Federal Republic of Germany notes, firstly, that one of the main objectives of the common organization of the market in cereals, established by Regulation No 19/62, was to stabilize prices on the internal market at the level desired by each Member State, by instituting a 'price guarantee'. It was the precise purpose of the levy to safeguard this price level. It was not calculated in the same way for all products coming under Regulation No 19 and, even for the calculation of the levy to be applied to basic products, there were differences. The common factor uniting these products was the fact that the levy was equal to the difference between the f.a.f. or c.i.f. prices and the threshold price, which it was for the Member States to ascertain. Moreover, different rules were

in force as to the calculation of threshold prices.

For common wheat and barley, and, in certain Member States, for maize and rye, the threshold price had to be fixed in conformity with the conditions laid down at Article 4 of Regulation No 19/62, so that at the marketing centre of the area having the greatest deficit sale prices for imported products are equal to the basic target price.

For durum wheat on the other hand the threshold price was calculated according to the rule contained in Article 11 (4) of the same Regulation: it had to be fixed at a level higher that 5 % above that of the threshold price for common wheat. The rule thus laid down by this provision imposed on the Member States a minimum limit designed to take account of the quality and properties of durum wheat. However, the Member States retained the possibility of exceeding this limit and of fixing threshold prices at a higher level if this was required by competition within its frontiers.

This Regulation did not provide for marketing costs (including the equalization tax) to be taken into account to the extent that they had already been included in the calculation of the threshold price for common wheat. To have taken account of these costs, if this did not allow the threshold price to reach the required minimum limit, would in fact have constituted an infringement of Community provisions.

The contrary hypothesis cannot be supported by characterizing the tax in question as a charge having effect equivalent to a customs import duty or by invoking the Judgment of the Court of Justice in Case 76/70. On the one hand it is clear from the case law of the Court that the equalization tax is not a charge having equivalent effect and that to levy it is not illegal. On the other hand, Case 76/70 is not relevant here since the Court only gave an interpretation in that Judgment of Article 4 of Regulation No 19/62, whereas the problem at issue here concerns Article 11 (4) of that Regulation.

Finally, the Federal Republic proposes in answer to the first question that 'the turnover equalization tax should not be included in the calculation of the levy to be applied to durum wheat'.

As to the *second question,* the Federal Republic notes that the very terms in which Article 8 (1) of Regulation No 19/62 is couched ('so that the level of target prices may be attained') make it clear that the Member States which had to fix the threshold price were not obliged to fix that price at the same level as that of the threshold price for barley. If such a close parallel between the two threshold prices had been desired, this would have been clearly expressed, for example in the following terms: 'in those Member States in which there is no significant production of maize, the threshold price for maize shall be equal to that applicable to barley'. Thus, far from being laid down in a precise manner, the level of the threshold price for maize was made dependent upon the discretion of the Member States, this margin of discretion being all the more necessary since maize and barley have different properties (e.g., as to their value as fodder, ascertained, *inter alia,* by their starch and albumen content, as to the special possibilities they offer for use in industry, etc.).

Finally, having cited Article 5 (2) of Regulation No 120/67 — a provision which corresponds to Article 8 (1) of Regulation No 19/62 — in support of its submissions, the Federal Republic proposes as an answer to the second question that 'the Member States in which there is no significant production were not obliged to fix the threshold price for maize at the same level as that of the threshold price for barley'.

C — Observations submitted by the Commission

Approaching the *first question,* the Commission notes that whereas in the

case of common wheat the fact that the equalization tax was taken into account in fixing the threshold price was explained by the objectives attributed to the levy applied to that product, this was not so in the case of durum wheat, since the state of the market for this cereal and the interests involved in the various Member States were totally different. By reason of the peculiarities of this market it was not necessary also to provide a guaranteed price corresponding to that laid down for common wheat. It is for this reason that, with reference to the calculation of the threshold price, there is no valid reason why Article 11 (4) of Regulation No 19/62 should recapitulate the rules laid down at Article 4. Moreover the considerable Community deficit in durum wheat required that Community production of this cereal be stimulated. This being the case, on the one hand it was necessary and timely to entrust the Member States with the task of fixing the desired price level for imported durum wheat. On the other hand if, in order to encourage Community production of durum wheat, it appeared that certain price advantages had to be granted to Community producers, it would have been necessary, in theory, to raise the internal price of this cereal, which was already high, to a level above that of common wheat and thereby fix a higher threshold price for durum wheat. In the alternative hypothesis, a lowering of prices for home-grown durum wheat might have been expected, with the result that producers would have found the cultivation of common wheat to be a more attractive proposition from the point of view of profits, so that production of durum wheat would have declined instead of increasing.

These considerations led in fact to Article 11 (4), according to which the Member States had to fix the threshold price for durum wheat at a level at least 5 % higher than that for common wheat.

In calculating the level of the threshold price for common wheat, which was used as a reference, account had already been taken, at a standard rate, pursuant to Article 4, of the equalization tax applicable to this product, but this tax has nothing in common with the charge levied on the dutiable values of imports of durum wheat. The fact that the threshold price for durum wheat was to be fixed at a level at least 5 % higher than that for common wheat implied that that threshold price was to reach an absolute minimum figure which did not allow the tax at issue, which was applicable to durum wheat, to be taken into account. If it had been possible for every Member State to take account of this tax the fixing of this minimum relationship with the price for common wheat throughout the Community would have lost its practical significance. To have fallen below the limit of 5 % would have adversely affected the application of the uniform Community rules and would thereby have been illegal.

On the other hand, where there was nothing to prevent the Member States from fixing the threshold price for durum wheat at a level higher than 5 % above that for common wheat, or from taking account, in fixing this level, of the fact that an equalization tax had also been levied, which had led to a raising of internal offer prices.

As to the *second question,* the Commission notes that the method of calculation adopted in Article 8 of Regulation No 19 for the fixing of the threshold price for maize is quite independent of that set out in Article 4 of that Regulation. This difference of approach is explained by the objectives and requirements, with regard to the organization of markets, of the standardization of prices introduced by Regulation No 19. The levy to be applied to the basic cereals mentioned at Article 4 was calculated so as to guarantee home producers the assurances which they had been given with regard to sales and prices for these cereals on the home market.

On the other hand, with regard to the cereals mentioned at Article 8, such an

extensive guarantee was not necessary, nor was it envisaged, in view of their lesser economic importance in the Member States concerned; nor was it possible to cease the policy of protection against cheap imports from other Member States or third countries. In fact these cereals were capable of replacing those listed in Article 4 on the home market, because their prices for certain important uses were lower and they were therefore likely to reduce the ability of internal prices of these cereals to evolve towards their target prices as planned. Accordingly, offer prices for imported cereals such as those listed in Article 8 had to be raised, by means of a levy, to a level which would guarantee normal competitive conditions, without affecting the evolution of the prices of basic cereals.

That being said, market policy did not however require that these prices be raised above the level which would guarantee this competition. As regards the practical aspect of fixing the threshold price it follows from the above considerations that the wording of Article 8 (1) must not be understood to mean that the price of maize on the German market should necessarily have been raised to the level of the basic target price for barley. On the contrary, this internal price should have been fixed at such a level that market prices for barley could easily have reached the basic target price for that cereal. Moreover a general, overall rise in internal market prices for all varieties of imported fodder cereals mentioned at Article 8 to the level of the basic target price for barley would even have been useless and untimely in economic terms. To treat a whole variety of fodder cereals of different values in such a uniform way would have distorted the market relationships not only between these various cereals but also in relation to barley. Since it was not possible to make a mathematically rigorous and uniform assessment, for all the Member States, of the level to which internal offer prices for imported maize should be raised so that the price structure for barley should not be disturbed, Article 8 (1) entrusted to each Member State the task of fixing the internal price level for imported maize, with the purpose of protecting the home market in barley and therefore of fixing the threshold price for maize in relation to that for barley. Since the common organization of markets established by Regulation No 19/62 allowed national markets with their different price levels to continue to exist side by side, it was perfectly logical in the context of the system as adopted to allow the price level desired by each Member State to be fixed at national level.

Finally, having pointed to reasons for an interpretation confirming the independence of the national legislature in this field, the Commission submits that Article 8 (1) 'implies neither an obligation to fix the threshold prices for cereals mentioned in the said Article systematically at the level of the threshold price for barley nor a prohibition upon exceeding this threshold price for certain types of cereal when this is required by the circumstances, for the protection of internal barley prices and the attainment of the objectives of the levy'.

Grounds of judgment

1 By order of 21 March 1972 lodged at the Registry of the Court on 12 April 1973 the Hessisches Finanzgericht referred two questions pursuant to Article 177 of the EEC Treaty on the interpretation of certain provisions of Regulation No 19

of the Council of 4 April 1962 on the gradual establishment of a common organization of the market in cereals (OJ 1962, No 30).

2 The first question asks whether Article 11 of Regulation No 19/62 of the Council is to be interpreted in such a way that in the calculation of the levy on durum wheat the turnover equalization tax payable on imports should have been taken into account.

3 Article 11 (1) and (2) of Regulation No 19/62 lays down the criterion for calculation which establishes the amount of the levy to be applied to imports of durum wheat into the Member States.

To this end, this provision states that as regards durum wheat the amount of the levy shall be equal to the difference between the threshold price in the importing Member State and the free-at-frontier price of the product on arrival from another Member State or the c.i.f. price of the product when imported from third countries.

In laying down the criteria to be applied to the fixing of the threshold price for durum wheat the said Article 11 does not reproduce the provisions contained in Article 4, relating to the calculation of the threshold price for imports of common wheat, barley, maize and rye, but provides that the threshold price for durum wheat shall be fixed by the Member States, for an identical standard of quality, at a level not less that 5 % above that for common wheat.

Unlike Article 4, Article 11 (4) provides that the threshold price for durum wheat shall be fixed in relation not only to the level of the target price but also to a minimum differential between the threshold price for that cereal and that for common wheat, below which figure the threshold price for durum wheat may not be fixed.

Although the purport of this rule is that the amount of the levy can vary in view of fluctuations in world prices and of the threshold price, provided that these variations occur above the before-mentioned minimum differential, a decrease in the levy due to account being taken of inevitable marketing costs, such as the turnover equalization tax, is prohibited if this decrease results in the amount of the levy in question no longer corresponding to a threshold price for durum wheat which is at least 5 % higher than that for common wheat.

4 Accordingly the first question should be answered to the effect that Article 11 of Regulation No 19/62 neither requires nor prohibits that a Member State

should take account of the turnover equalization tax in calculating the levy applicable to durum wheat, provided that the threshold price for that cereal is maintained at a level at least 5 % above that for common wheat.

5 The second question asks whether Article 8 (1) of Regulation No 19/62 is to be interpreted in such a way that the threshold price for maize in Member States in which there is no significant production of that cereal was to be fixed in such a way that it corresponded to the threshold price for barley, or was there a certain latitude of valuation for the particular types of cereal at issue.

6 According to Article 8 (1) the threshold price for products listed at Article 1 (a) and which are not 'covered by Article 4, including maize and rye, in Member States in which there is no significant production of those cereals, shall be fixed for each product so that, taking into account the standard amount provided for under Article 2 (1), the level of target prices fixed for home-grown cereals referred to in Article 4 may be attained'.

As regards maize, the target price to be attained is that for barley.

The phrase 'so that . . . may be attained' shows that the objective of Article 8 (1) is essentially that of ensuring that the threshold price for maize, in Member States in which there is no significant production of that cereal, shall not be fixed at a lower level than that for barley.

Were this not so not only would the stability of prices within the Community be jeopardized, but also the preference established by Regulation No 19/62 for competitive home-grown products.

7 It appears therefore, from the wording and the objectives of Article 8 (1), that the Member States are not permitted to take account of the characteristic qualities of the various kinds of fodder cereals if by so doing they allow the amount of the levy to decrease to such an extent that it no longer corresponds to a threshold price for maize which would allow barley to reach its target price.

8 Accordingly the second question should be answered to the effect that Article 8 (1) of Regulation No 19/62 is to be interpreted as meaning that Member States in which there is no significant production of maize could not, when fixing the threshold price for maize, take account of the characteristics of the different varieties of cereals in question if the fact of taking account of these

characteristics would have led to a threshold price for maize which would have made it impossible for barley to reach its target price.

Costs

9 The costs incurred by the Federal Republic of Germany and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, 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 Firma Deutsche Getreide- und Futtermittel-Handelsgesellschaft and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 40 and 177;
Having regard to Regulation No 19 of the Council of the EEC of 4 April 1962;
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 21 March 1973, hereby rules:

1. **Article 11 of Regulation No 19 of the Council of the EEC of 4 April 1962 neither requires nor prohibits that a Member State should take account of the turnover equalization tax in calculating the levy applicable to durum wheat, provided that the threshold price for that cereal is maintained at a level at least 5 % above that for common wheat.**

2. **Article 8 (1) of Regulation No 19 of the Council of the EEC of 4 April 1962 is to be interpreted as meaning that Member States in**

which there is no significant production of maize could not, when fixing the threshold price for maize, take account of the characteristics of the different varieties of cereals in question if the fact of taking account of these characteristics would have led to a threshold price for maize which would have made it impossible for barley to reach its target price.

Lecourt Donner Sørensen Monaco Mertens de Wilmars
Pescatore Kutscher Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 5 December 1973.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 7 NOVEMBER 1973

My Lords,

Your Lordships will remember that in 1962 the Council adopted a series of Regulations having as their object the gradual establishment in the then Member States of a common organization of the markets for certain agricultural products, with a view to the eventual creation of a single Community market for each of those products. In the present four cases (Cases 119, 124, 125 and 126/73) the Court is concerned with two of those Regulations, namely No 19 of 4th April 1962, which related to cereals, and No 22 of the same date, which related to poultry meat. More particularly it is concerned with the provisions of those Regulations which instituted a system of 'levies' in place of the divers measures theretofore taken by the Member States individually to protect their respective agricultures.

Under that system of levies each Member State was enabled to continue to protect its own agriculture against imports both from other Member States and from third countries, though to a lesser extent in the case of the former than in the case of the latter. In 1967 Regulations No 19 and No 22 were superseded by, respectively, Regulation No 120/67/EEC of the Council and Regulation No 123/67/EEC of the Council, which established the common organization of the Community markets in cereals and in poultry meat, involving the removal of all protective barriers as between Member States. These four cases thus belong to a transitional period which is long since past. That is not to