In Case 85/78

REFERENCE under Article 177 of the EEC Treaty by the Bundesverwaltungsgericht (Federal Administrative Court) for a preliminary ruling in the action pending before that court between

BUNDESANSTALT FÜR LANDWIRTSCHAFTLICHE MARKTORDNUNG (Federal Office for the Organization of the Agricultural Markets), having its offices in Frankfurt am Main,

and

FIRMA JACOB HIRSCH & SÖHNE GMBH, wholesaler and importer of cereals, feeding-stuffs and seeds, having its registered office in Mannheim,

on the interpretation of Article 16 of Regulation No 19/62/EEC of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in cereals,

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

The undertaking Jacob Hirsch & Söhne GmbH (hereinafter referred to as "Hirsch"), having its registered office in

Mannheim, applied on 16 January 1963, in accordance with Article 16 (1) of Regulation No 19/62/EEC of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in cereals (Journal Officiel 1962, p. 933), to the Einfuhr- und Vorratsstelle für Getreide und Futtermittel (Import and Storage Agency for Cereals and Feeding-stuffs), the predecessor of the Bundesanstalt für landwirtschaftliche Marktordnung (Federal Office for the Organization of the Agricultural Markets), having its offices in Frankfurt am Main, for the grant of a licence authorizing it to import from France into the Federal Republic of Germany 500 metric tonnes of malt barley. It indicated as the date of importation April 1963.

The German intervention agency granted the licence without any special conditions on the following day, 17 January 1963.

On 8 February 1963, Hirsch informed the intervention agency that its application for a licence related to a forward transaction and that consequently, in accordance with Article 2 of Regulation No 130/62/EEC of 23 October 1962 providing for exceptions to Article 17 of Regulation No 19/62/EEC of the Council in the matter of advance fixing of the levy on certain products (Journal Officiel 1962, p. 2555), the import licence should have fixed the levy at the rate applicable on the day on which the application was lodged.

This objection lodged by Hirsch was rejected by the intervention agency on 15 February 1963, since no application for advance fixing of the levy had been submitted to it.

After requesting on 19 March 1963 advance fixing of the rate of levy from at least 8 February 1963, a request which the intervention agency rejected on 26 March, Hirsch cancelled by letter of 5 April 1963 its application for the grant of an import licence of 16 January on the ground of error.

On 3 July 1963, the intervention agency, in accordance with Article 7 (1) of Regulation No 87/62/EEC of the Commission of 25 July 1962 on the adoption of detailed rules on import and export licences for cereals and cereal products (Journal Officiel 1962, p. 1895) declared forfeit the security lodged pursuant to the second sentence of Article 16 (2) of Regulation No 19/62/EEC.

On 22 August 1963 the intervention agency rejected the objection lodged on 8 July 1963 by Hirsch against that decision.

On 19 September 1963 Hirsch lodged an application for annulment against that decision at the Verwaltungsgericht (Administrative Court) Frankfurt am Main. The latter dismissed the application by judgment of 10 July 1974.

On appeal by Hirsch lodged on 26 August 1974, the Hessischer Verwaltungsgerichtshof (Higher Administrative Court of the Land of Hessen) annulled by judgment of 15 March 1976 the decision of the Verwaltungsgericht and basically allowed the claim. It held that the import licence granted to Hirsch had not given rise to an obligation to import in April 1963 but had become null and void because of the cancellation by Hirsch of the application on the ground of error. The conditions laid down with regard to the validity of cancellation on the ground of error are fulfilled in the present case.

On 2 June 1976 the intervention agency brought a further appeal against the judgment of the Hessischer Verwaltungsgerichtshof before the Bundesverwaltungsgericht (Federal Administrative Court). It claimed in support of its appeal that recognition of the possibility of cancelling an application for an import licence was not compatible with the Community rules according to which an import licence can only be used under certain conditions.

The Bundesverwaltungsgericht, by order of its Seventh Chamber of 27 January 1978, decided, pursuant to Article 177 of the EEC Treaty, to stay the proceedings until the Court of Justice had given a preliminary ruling on the following questions:

(1) Must the question whether an application for the grant of an import licence under the first sentence of Article 16 (1) of Regulation No 19/62/EEC can be cancelled and what the effects of such cancellation are be decided according to national law?

(2) In the event of Question 1 being answered in the negative: Can such an application be cancelled under EEC law on the ground of error and if so can this be done even where the error is the fault of the applicant?

(3) In the event of Question 2 being answered in the affirmative: What legal consequences has such cancellation on the forfeiture of the security which the applicant has to lodge under the second sentence of Article 16 (2) of Regulation No 19/62/EEC to guarantee the obligation to import while the licence is valid?

The order of the Bundesverwaltungsgericht was registered at the Court Registry on 28 March 1978.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 30 May 1978 by the Commission of the European Communities, on 6 June by the Bundesanstalt für landwirtschaftliche Marktordnung, the appellant on the further appeal, and on 12 June 1978 by Firma Jacob Hirsch & Söhne GmbH, the respondent on the further appeal.

The Court, after hearing the report of the Judge-Rapporteur and the views of the Advocate General, decided to open the oral procedure without any preparatory inquiry. However, it requested the parties to the main action to reply in writing to two questions before the opening of the oral procedure. This request was complied with within the prescribed period.

II — Written observations submitted to the Court

The *Bundesanstalt für landwirtschaftliche Marktordnung*, the appellant on the further appeal, puts forward in substance the following observations:

(a) The first question

The implementation of Community law does not in principle exclude the application of national law to the extent at least to which the Community legal system contains *lacunae* and does not definitively govern a specific situation. The application of principles of general German administrative law, including provisions based on civil law relating to the cancellation of declarations of intent by individuals, to the Community system of licences and securities cannot therefore be envisaged unless the Community rules seem to be incomplete and do not prevent the application on a supplementary basis of national provisions relating to cancellation on the ground of error.

It follows from the case-law of the Court of Justice that the system of licences and of securities is intended to guarantee the actual carrying out of the imports (or exports) for which licences have been requested, so as to enable exact knowledge of the transactions planned; this knowledge, together with the other available information on the market situation is indispensable to enable the competent authorities to make judicious use of the normal and extraordinary intervention instruments at their disposal so as to guarantee the functioning of the system of prices established by the Community rules; the competent authorities must have at their disposal not

only statistics relating to the market situation but in addition precise forecasts of future imports (or exports); by reason of the obligation imposed on Member States to issue import (or export) licences to any applicant, a forecast would be meaningless if the licences did not involve for those to whom they were granted the undertaking to act upon them accordingly; the requirement of import (or export) licences involves for those to whom they are granted the undertaking to carry out the planned transactions guaranteed by a security and is therefore a necessary and appropriate means of enabling the competent authorities to choose the most effective action on the market in cereals.

The instrument for the observation of the market which the licences represent gives reliable results only if the exceptions to the obligation to import (or to export) to which the grant of a licence gives rise remain as limited as possible. For this reason the Community legislature has itself regulated restrictively the opportunities for the licensee to be exempted from the obligations attached to an import or export licence: it permitted only *force majeure* as a ground for exemption.

The concept of *force majeure,* according to the case-law of the Court of Justice, is not limited to that of absolute impossibility but must be understood as meaning abnormal circumstances which are independent of the will of the importer (or exporter), the consequences of which could only have been avoided at the price of excessive sacrifices in spite of all diligence used. On the other hand an exemption from the obligation to import cannot be envisaged where the importation was not carried out through the importer's own fault as a result of an error on his part or by reason of purely commercial considerations. Thus the Community system of licences and securities exhaustively regulates the problems raised in the main action; in particular it does not permit further extension of the possibilities of exemption from the obligation attached to the licence by acknowledgement of the right to cancel the application for a licence on the ground of error.

It is therefore necessary to reply to the first question submitted by the Bundesverwaltungsgericht that the Community legislature has itself regulated exhaustively the possibilities for exemption from the obligations attached to an import licence within the meaning of Article 16 (2) of Regulation No 19/62/EEC, so that it is impossible to invoke on a supplementary basis rules of national law relating to cancellation.

(b) The second question

Even supposing that Community law permitted the possibility of the cancellation on the ground of error of declarations of intent made by an individual to the authorities, that possibility must be subject to the restrictions recognized by German administrative law in this respect. It is necessary in particular to balance on the one hand the interests of the citizen in releasing himself from his own declaration, which gives rise to the act of high public authority, if he has, when making his declaration, made an error involving legal consequences, and, on the other, the interest of the general public, which is superior, in the maintenance of acts of sovereignty, at least in cases in which the administrative measure adopted as the result of an application has, beyond its effects on the legal situation of the individual, direct effects for the general public. As regards the system of licences and securities, the Court of Justice has held that considerations based solely on the interests and conduct of specific undertakings cannot take precedence over a system introduced in the public interest of the Community. Thus the possibility of cancellation on the ground of error which aims, in addition to the annulment

of the application for the grant of a licence, at the annulment of the import licence itself and of its legal effects, is excluded.

It is therefore necessary to reply to the second question that according to Community law it is impossible to cancel on the ground of error an application lodged in accordance with the first sentence of Article 16 (1) of Regulation No 19/62/EEC.

(c) The third question

The reply given to the second question makes it superfluous to adopt a viewpoint on the third question.

According to *Firma Jacob Hirsch & Söhne GmbH,* the defendant on the further appeal, the reiteration of the principal points of fact and the examination of the provisions applicable at that time confirm that its intention was in fact to apply for the grant of an import licence with advance fixing of the amount of the levy and that it in no way intended to abuse the right to cancel a declaration of intent made in error.

(a) The first question

Community law itself requires, for the purposes of the grant of an import licence and the advance fixing of the levy, that an application must be lodged; only the contents of the application, in so far as they had not already been determined in advance by their objectives, were at that time governed by national law.

The objective of cancellation is to annul the application; it should therefore, in the same way as the lodging of the application, be governed by Community law. The application of national law might lead to discrimination and to distortions of competition. Just as recourse to rules of national law for the purposes of the appraisal of the validity of the measures adopted by the institutions of the Community has the effect of jeopardizing the uniformity and the effectiveness of Community law, measures imposed by Community law on the nationals of the Community may be appraised only according to Community law alone. It is therefore necessary to reply to the first question as follows:

The question whether an application for the grant of an import licence under the first sentence of Article 16 (1) of Regulation No 19/62/EEC may be cancelled cannot be decided according to national law.

(b) The second question

Although there are no provisions of Community law in this connexion, it is however necessary to acknowledge that Community law does not exclude the right of cancellation on the ground of error since that legal concept is known and applied in at least some of the Member States; the subsequent revocation of a declaration of intent made in error is a necessity in all legal systems.

The fact that Community law itself permits the possibility of the retroactive withdrawal of an application for the grant of a licence is confirmed by Article 5 (3) of Regulation (EEC) No 1373/70 of the Commission of 10 July 1970 on common detailed rules for the application of the system for import and export licences and advance fixing certificates for agricultural products subject to a single price system (Official Journal, English Special Edition 1970 (II), p. 439) and by Article 5 (3) of Regulation No 173/75 of the Commission of 17 January 1975 (Official Journal 1975, No L 25, p. 10).

The Community legislature therefore does not consider that the cancellation of an application for the grant of an import licence is contrary to the spirit and objectives of the system of licences.

The general view of the market situation which the system of licences is intended to achieve is the result on the one hand

of the knowledge of the imports and exports actually carried out and, on the other, of the forecast, based on the licences applied for and granted, of expected imports and exports. This forecast is subject to certain fluctuations because, according to the law in force at the time, the licence could be used by 5 % more or less, in other words a margin of 10 % was permitted, and because it was not necessary to use the licences in cases of *force majeure*. The forecast may also be altered at very short notice. Licences with advance fixing, which assume an increase in the levy when the goods are imported, are usually drawn up in the long term whereas day licences are applied for in the short term. The authorities are therefore required to alter their forecasts each day. The cancellation of an application for the grant of an import licence lodged in January for an importation planned for April cannot therefore jeopardize the forecast of the competent authorities as regards the development of the market. Normal cancellation in good time of an application for the grant of a day licence for an importation planned for a much later date is not contrary to the spirit and the objectives of the licence system.

This is *a fortiori* so where, as in the present case, the importer not only cancels the application for the grant of a day licence but at the same time expresses his intention of applying for a licence with advance fixing of the levy and of carrying out the importation at the date originally planned. The grant of a licence with advance fixing of the levy instead of a day licence does not affect either the general view of the market situation or the forecast of expected imports and exports.

Having regard to the spirit and objectives of the licence system it is also of little importance whether or not the error is the fault of the person cancelling the application; the question whether an application for the grant of a licence once lodged may be cancelled does not depend on the problem of fault. In any case the intervention agency cannot have suffered any damage in the present case.

It is necessary to reply to the second question as follows:

An application for the grant of an import licence under the first sentence of Article 16 (1) of Regulation No 19/62/EEC may, at least in Community law, be cancelled on the ground of error where at the same time notice is given of the application for the grant of a fresh licence with the same dates of importation, regardless of whether the error was or was not the fault of the person cancelling the application, if the intervention agency granting the licence thereby retains a general view of the market.

(c) The third question

The cancellation of the application has retroactive effect: the situation is then as if no application at all had been lodged. The application is an essential condition for the grant of the licence so that the licence is therefore annulled retroactively; the rights and duties arising from it are non-existent. The objective of the lodging of the security is solely to ensure that the undertaking to carry out the importation during the period of validity of the licence is carried out; the obligation to lodge the security lapses with the obligation to import or, if the security has already been lodged, it cannot be forfeit.

The third question must be answered as follows:

The result of the cancellation of an application for the grant of an import licence under the first sentence of Article 16 (1) of Regulation No 19/62/EEC is that where, in particular cases, it is permissible and effective, the security lodged to guarantee the obligation to carry out the importation is not forfeit.

The *Commission of the European Communities* recalls the provisions of

Community law applicable at the time of the events in dispute and insists that a reliable general view of the expected imports (or exports) cannot be achieved by means of the licence system unless it is guaranteed that licences are only applied for in respect of transactions which the importer (or exporter) actually carries out or intends to carry out.

As regards the questions referred to the Court of Justice by the Bundesverwaltungsgericht, it is necessary to state that Hirsch was granted an import licence in accordance with its application; that licence authorized but also obliged Hirsch to import the stated quantity of the goods described within the period of validity of the licence. As this importation was not carried out, the legal consequence was that after the expiry of the period of validity of the licence the security lodged by Hirsch as a guarantee for the performance of its obligation was forfeit. From the point of view of Community law, the question is therefore first whether the German intervention agency could or even should have considered the error invoked by Hirsch as ground for an exception to the principle of the obligation to import and of the forfeiture of the security where the importation was not carried out; if the answer to this question is in the negative the further question then arises whether the release of the security may in spite of everything be obtained by having recourse to the concept, borrowed from national law, of cancellation of the application for the licence on the ground of error.

(a) Forfeiture of the security

Under Article 8 of Regulation No 87/62/EEC, the German intervention agency had a margin of discretion, which was, it is true, wide but in no way unlimited, to take into account, under the first paragraph, circumstances which might justify an exception to the obligation to import and to the forfeiture of the security where the importation was not carried out other than those listed by way of example in the second paragraph of that provision. The objective of Article 8 of Regulation No 87/62/EEC was to enable fair balancing of interests in cases in which the performance of the obligation within the required time was prevented by circumstances which arose only after the grant of the licence. By alleging that it had planned the importation on the basis of the levy applicable at the date on which its application was lodged and that it simply forgot to apply for the advance fixing of that levy, Hirsch does not put forward reasons which prevented it from carrying out the importation after obtaining the licence; it invokes mathematical considerations which prompted it to apply for a licence at all; however, the licence does not depend on commercial motives and calculations which caused it to be applied for. To give an importer the possibility of choosing, after lodging the application, between the levy in force on that date and the levy applicable at the time of the importation would prevent the levy from fulfilling effectively its function of equalizing prices within the common organization of the markets.

The fact that Hirsch realized several weeks after obtaining the licence that the levy applicable on the date on which its application was lodged was more favourable than those fixed subsequently cannot justify an exception within the meaning of Article 8 of Regulation No 87/62/EEC. Import licences without any binding effect and the use of which was left entirely to the discretion of the licensee would not enable any reliable general view to be obtained, even an approximate one, of the volume of imports actually expected.

(b) Cancellation on the ground of error

The question of cancellation on the ground of error has not been expressly

broached by Regulation No 87/62/EEC; Article 7 (2) of that regulation moreover authorized the Member States to adopt the necessary implementing measures in particular as regards forfeiture of the security. According to the case-law of the Court of Justice, however, the uniform application of provisions of Community law permits recourse to national rules only to the extent necessary for the implementation of the regulations; domestic provisions must not jeopardize the scope of the authoritative Community regulations.

The application of the principles of German law relating to cancellation on the ground of error are incompatible with the wording, system and objective of Regulation No 87/62/EEC.

A licence from which the licensee can release himself at will merely by claiming that he made a mistake is not likely to produce a forecast as regards expected imports which is even to some extent reliable.

To attach to the grant of a licence an obligation to import the performance of which is guaranteed by a security would only be an empty formality if the licensee, in order to recover his security, needed merely to justify the fact that he had not carried out his obligation on the ground that he made a mistake as to the amount of the levies applicable when lodging his application.

To permit cancellation on the ground of error takes away the discretion granted by the Community rules to the competent national agencies and enables the licensee to compel those agencies to release the security in cases in which it should, according to the purpose and wording of Regulation No 87/62/EEC, be declared forfeit.

(c) The replies to the questions submitted to the Court for a preliminary ruling

It is necessary to reply in the negative to the first two questions referred to the Court by the Bundesverwaltungsgericht. The third question therefore becomes purposeless.

III — Oral procedure

The Bundesanstalt für landwirtschaftliche Marktordnung, the appellant on the further appeal, represented by Albrecht Stockburger, Advocate in Frankfurt am Main, Firma Jacob Hirsch & Söhne GmbH, the respondent on the further appeal, represented by Barbara Festge and Fritz Modest, Advocates in Hamburg, and the Commission of the European Communities, represented by its Legal Adviser, Peter Kalbe, presented oral argument and replied to the questions put by the Court at the hearing on 11 October 1978.

The Advocate General delivered his opinion at the hearing on 9 November 1978.

Decision

1 By order of 27 January 1978, received at the Court on 28 March 1978, the Bundesverwaltungsgericht referred to the Court under Article 177 of the EEC Treaty questions on the interpretation of Regulation No 19/62/EEC of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in cereals (Journal Officiel 1962, p. 933) and of

Regulation No 130/62/EEC of the Council of 23 October 1962 providing for exceptions to Article 17 of Regulation No 19/62/EEC of the Council in the matter of advance fixing of the levy on certain products (Journal Officiel 1962, p. 2555) in relation to the question of the possibility of taking into account an error made by the applicant for an import licence within the context of the provisions applicable at that date to intra-Community trade in cereals.

2 It appears from the order for reference that on 16 January 1963 Firma Jacob Hirsch & Söhne GmbH applied to the German intervention agency for a licence for the importation of a consignment of French barley, indicating in its application April 1963 as the date of delivery. In accordance with the applicable provisions laid down in the regulations, a bank guarantee ensured that the import licence applied for would be acted upon. The import licence was granted by the intervention agency on the day following the lodging of the application, in other words on 17 January 1963. Three weeks after obtaining the licence, the undertaking approached the intervention agency with a view to obtaining advance fixing of the levy at the rate in force on the date of its application of 16 January 1963, claiming that it had forgotten to do so at the time when it filled in the application form for the issue of the licence. The intervention agency rejected this request and the undertaking concerned declared by letter of 5 April 1963 that it contested the validity of its first application because of the error which it had made when lodging it. Consequently, it maintains that the import licence granted on the basis of that application is not valid and therefore claims the release of its security. For its part, the intervention agency declared the security forfeit on the date on which it was established that the importation which was the subject-matter of the licence granted had not been carried out within the prescribed period.

3 An application lodged by the undertaking concerned at the Verwaltungsgericht Frankfurt for repayment of the security was dismissed by judgment of 10 July 1974. The undertaking appealed to the Hessischer Verwaltungsgerichtshof and that court found in its favour on the basis essentially of an analogous application of the rules of German civil law on the cancellation of declarations of intent on the ground of error. The intervention agency brought a further appeal against that decision to the Bundesverwaltungsgericht; that court submitted to the Court of Justice the following questions:

1. Must the question whether an application for the grant of an import licence under the first sentence of Article 16 (1) of Regulation No 19/62/EEC can be cancelled and what the effects of such cancellation are be decided according to national law?

2. In the event of Question 1 being answered in the negative: Can such an application be cancelled under EEC law on the ground of error and if so can this be done even where the error is the fault of the applicant?

3. In the event of Question 2 being answered in the affirmative: What legal consequences has such cancellation on the forfeiture of the security which the applicant has to lodge under the second sentence of Article 16 (2) of Regulation No 19/62/EEC to guarantee the obligation to import while the licence is valid?

4 The questions raised by the Bundesverwaltungsgericht must be settled within the context of the system established by Regulations Nos 19 and 130 on the organization of the market in cereals.

5 As regards intra-Community trade, Regulation No 19 established a system of levies linked, according to Article 16, to the grant of an import licence. The grant of that licence is made subject, under Article 16 (2) of that regulation, to the lodging of a security which guarantees the undertaking to carry out the importation during the period of validity of the licence and which is forfeit if the importation is not carried out within that period. Under Article 17 of Regulation No 19/62/EEC, the amount of the levy is, in the case of each importation, the levy applicable on the date on which the importation is carried out. In derogation from that principle, Article 17 (2) provided for the possibility of fixing in advance the amount of the levy for cereals imported from third countries (a system called "advance fixing").

6 Regulation No 130/62/EEC subsequently extended that option to imports of certain cereals in intra-Community trade. For this purpose, Article 2 of that regulation provides that the levy applicable where those cereals, including barley, are imported from Member States "is fixed in advance upon request to be made by the person concerned when the application for the licence is lodged in the case of an importation to be carried out during the period of validity of that licence".

7 It follows from a comparison of Article 17 of Regulation No 19/62/EEC, the basic regulation, with the above-mentioned provision of Regulation No 130/62/EEC that the general rule in this matter is the application of the levy in force on the date of the importation, whereas advance fixing appears to be a special benefit which an importer may only obtain at his express request. It

is therefore for the importer to take the necessary steps to obtain the grant of that benefit if it is in his commercial interests, and the authorities are not bound to grant the benefit of advance fixing unless there is an express request to that effect.

8 The fact that the application for any import licence must be accompanied by a bank guarantee emphasizes that the importer undertakes by his application to comply strictly with the terms of the import document applied for.

9 In view of the continual variations in the rate of the levy, if errors relied upon by traders were taken into consideration it would be possible to call in question unilaterally, on the basis of those fluctuations, the undertakings given by importers and the forecasts which are essential for the purpose of ensuring effective management of the common market in cereals would thus be made completely unreliable.

10 In cases such as the present case, to prevent importers from repudiating unilaterally their applications does not moreover involve any unjustified hardship, whereas the effect of maintaining the licence once granted in accordance with the terms of the application lodged with the intervention agency is merely that the levy justified by the state of the market at the actual date of importation is applied.

11 It is necessary to conclude that an importer cannot, within the context of the organization of the market established by Regulations Nos 19 and 130, rely upon an error made by him as regards the option of choosing between the rate of the levy in force at the date of lodging the application and that in force at the date of importation.

12 It is therefore necessary to reply firstly that the question whether an application for the grant of an import licence under the first sentence of Article 16 (1) of Regulation No 19/62/EEC may be cancelled and what the effects of such cancellation are must, having regard to the system established by the above-mentioned regulation, together with Regulation No 130/62/EEC, be decided on the basis of Community law. It is necessary to reply, therefore, to the second question that having regard to the system laid down by the above-mentioned regulations, an application for the grant of an import licence cannot be cancelled by the applicant on the ground of an

error in his declaration of intent as regards the choise, made available under Regulation No 130, between the application of the levy in force on the date on which the application was lodged and the application of the levy in force on the date of importation.

13 In view of the reply given to the second question, the third question is purposeless.

Costs

14 The costs incurred by the Commission of the European Communities, which submitted observations to the Court, are not recoverable. Since the proceedings are, so far as the parties to the main action are concerned, a step in the action pending before the Bundesverwaltungsgericht, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Bundesverwaltungsgericht by Order of 27 January 1978 hereby rules:

1. **The question whether an application for the grant of an import licence under the first sentence of Article 16 (1) of Regulation No 19/62/EEC of 4 April 1962 on the progressive establishment of a common organization of the market in cereals can be cancelled and what the effects of such cancellation are must, having regard to the system established by that regulation, together with Regulation No 130/62/EEC of the Council of 23 October 1962 providing for exceptions to Article 17 of Regulation No 19 of the Council in the matter of advance fixing of the levy on certain products, be decided on the basis of Community law.**

2. **Having regard to the system laid down in Regulations Nos 19 and 130 of the Council, an application for the grant of an import licence cannot be cancelled by the applicant on the ground of an error in his declaration of intent as regards the choice, made available under Regulation No 130, between the application of the levy in force on the**

date on which the application was lodged and the application of the levy in force on the date of importation.

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 12 December 1978.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 9 NOVEMBER 1978 [1]

Mr President,
Members of the Court,

The proceedings with which my observations today are concerned involve the application of Regulation No 19 of 4 April 1972 on the progressive establishment of a common organization of the market in cereals (Journal Officiel 1962, No 30, p. 933) and of provisions issued in implementation thereof, in particular Regulation No 130 of the Council providing for exceptions to Article 17 of Regulation No 19 of the Council in the matter of advance fixing of the levy on certain products (Journal Officiel No 106 of 30 October 1962, p. 2555) and Regulation No 87 of the Commission of 25 July 1962 on the adoption of detailed rules on import and export licences for cereals and cereal products (Journal Officiel No 66 of 28 July 1962, p. 1895).

Regulation No 19 provided for levies even in intra-Community trade owing to the different price level in the Member States. A person who wished to import from other Member States required for this an import licence which was issued upon application and which was valid for several months. In principle the rate of levy applicable on the date of importation was determining. In derogation from this rule, Regulation No 130 provided for the advance fixing of the levy with regard to certain products — *inter alia* barley. If advance fixing of the levy was requested, the rate of levy in force on the date of the lodging of the application was applied. The licences issued not only authorized importation but also imposed an obligation to do so. To guarantee this obligation the importer had to lodge a security which was forfeited if the obligation was not

1 — Translated from the German.