JUDGMENT OF THE COURT
OF 5 DECEMBER 1973 [1]

Friedhelm Busch
v Hauptzollamt Hamburg-Ericus
(preliminary ruling requested by the Finanzgericht Hamburg)

'Turnover equalization tax'

Case 126/73

Summary

Agriculture — Common organization of markets — Poultry — Import — Third country — Levy and additional levy — Turnover equalization tax — Deduction — Not allowable

(Articles 4 and 6 of Regulation No 22 of the Council)

Articles 4 and 6 of EEC Regulation No 22 of the Council of 20 April 1962 must be interpreted as meaning that the levy and the additional amount payable on import of slaughtered poultry and poultrymeat from third countries must not be reduced by a charge such as the turnover equalization tax on import.

In Case 126/73

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

FRIEDHELM BUSCH,

and

HAUPTZOLLAMT HAMBURG-ERICUS,

on the interpretation of Articles 4 and 6 of Regulation No 22 of the Council dated 4 April 1962 (OJ 1962, p. 959), concerning taking into account the turnover equalization tax for the purpose of the levy applicable in the poultry sector and subsidiarily on the validity of EEC Regulations No 91/65 of the

1 — Language of the Case: German.

Commission dated 29 June 1965 (OJ 1965, p. 1927) and 124/65 of the Commission dated 22 September 1965 (OJ 1965, p. 2587),

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. In November 1965 the plaintiff obtained customs clearance of quantities of slaughtered poultry coming from the United States and falling under tariff heading 02.02-A-I-b. The Customs Office levied 33 813·90 DM at the standard levy rate of 90·60 DM/100 kg (Regulation No 91/65 of 29 June 1965), plus 40·60 DM/100 kg as additional levy under Article 6 of Regulation No 22/62 (Regulation No 124/65 of 22 September 1965), and finally 2 855·40 DM as turnover equalization tax at 4 % of the customs value.

The plaintiff requested that the Community levies be reduced by the whole amount of the turnover equalization tax paid on the imports. It referred, *inter alia,* to the judgment of the Court of 12 May 1971 in the case of *Wünsche* (Case 76/70, Rec. 1971, p. 393) as well as to two judgments of the Bundesfinanzhof (VII R 91/69 and VII R 188/69) concerning the charging of turnover equalization tax in the case of levies on cereals.

This claim was rejected by the defendant. The dispute having been brought before the Hamburg Finanzgericht, that court decided, by Order dated 16 March 1973, filed at the Court on 18 April 1973, to stay the proceedings and to submit the following questions to the Court, in accordance with Article 177 of the EEC Treaty, for a preliminary ruling:

1. Are Articles 4 and 6 of Regulation No 22/62 of the Council to be interpreted so that on the import of slaughtered poultry or poultrymeat from third countries, the standard levy or additional levy which is made has to be reduced by a fixed amount which is equivalent to the turnover equalization tax levied on import?
2. If Question 1 is answered in the affirmative, are Regulations Nos 91/65 of the Commission of 29 June 1965 and 124/65 of the Commission of 22 September 1965 invalid insofar

as they fix the standard levy and the additional levy for poultry under tariff heading 02.02?

2. In its order of reference the Finanzgericht declared, *inter alia,* that in the event of an affirmative reply to the first question the standard or additional levy should be reduced by the whole of the turnover equalization tax in spite of the reduction of the threshold price of barley by the national regulations of 27 December 1962 (BGBl. 62 I p. 774) and 2 November 1971 (Bundesanzeiger No 209 of 9 November 1971).

The Finanzgericht declared moreover that as regards the second question an affirmative reply to the first question would raise the question of the validity both of Regulation No 91/65 of 29 June 1965 fixing in particular levies for slaughtered poultry of tariff heading 02.02 and of Regulation No 124/65 of 22 September 1965 reducing the additional amounts charged on slaughtered chickens on import. The interpretation of Article 4 of Regulation No 22/62 by the Court in the present case would not be concerned, as was the dispute which gave rise to the *Wünsche* case, with the validity of rules of national law derived from Community law, but with the validity of Regulations of the Commission subsequent to and implementing Regulation No 22/62. If these Regulations are valid, it is doubtful whether the national judge may proceed in accordance with paragraph 8 of the judgment in the Wünsche case regarding the first question, and deduct the amount of the turnover equalization tax actually paid from the levy due from the importer.

3. The plaintiff, represented by Fritz Modest of the Hamburg Bar, the Commission of the European Communities, represented by its legal adviser, Peter Kalbe and the Federal Republic of Germany, represented by Martin Seidel, submitted their written observations in accordance with the provisions of 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 proceed without a preparatory inquiry. The oral observations of the parties in the main action and the Commission were made 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 Statute of the Court of Justice may be summarized as follows:

A — Observations submitted by the plaintiff

The plaintiff sets out first of all the conclusions which it considers may be drawn from the case law on the extent to which turnover equalization tax may be taken into account. In its opinion the judgment of the Court in the *Wünsche* case confirms the result suggested by the interpretation of Article 39 of the Treaty as regards the determination of the levies in the Regulations organizing the agricultural market. The objective of the common agricultural policy is, according to Article 39 of the Treaty, on the one hand, to ensure a fair standard of living for the agricultural community, to stabilize markets and to assure the availability of supplies, and on the other hand, to ensure that supplies reach consumers at reasonable prices (Article 39 (1) (e)). Systems of levies ought not to weigh more heavily on consumers than is necessary for the protection of producers. There is always in consequence a limit to the freedom of appraisal of organs of the Community in

fixing the amount of levies, a limit which is valid for all the agricultural market organizations. The differences between the systems of levies are solely of a technical nature. All the systems of levies must necessarily be based on two factors which determine the limits of the power of appraisal by the organs of the Community: (1) the price of the imported goods at the frontier of the importing State and (2) the fair internal price in the importing Member State. These two factors always determine the amount of the permitted levy. The fair internal price in the importing Member State is the price necessary to guarantee farmers a fair standard of living, but nothing more.

The assertion by the Commission that the levy in the case of poultry does not have the object of increasing the price of imported poultry to a level of prices sought after and guaranteed on the internal market is therefore not correct. Article 39 (1) (e) of the Treaty imposes an obligation on the Council to strive for a level of prices neither too high nor too low for the market in poultry in the Member States and to direct the systems of levies towards this.

The plaintiff then states that if, in order to achieve an alignment of prices, the different prices of goods having to be imported were compared and brought up to the level of internal prices desired in the importing Member State, the conditions of delivery and cost should also be identical. The 'parity' would have to relate to the various stages of marketing for which fixed prices would be applicable. If these parities were not respected and adapted to each other the objective of aligning the prices could not be attained.

Before dealing with the question which was the comparable parity of internal prices on which the system of levy provided by Article 3 (4) of Regulation No 22 concerning poultrymeat was based, the plaintiff states that, in its opinion, Regulation No 19/62 concerning cereals is the model for all the basic Regulations and that, in consequence, it serves as an example for the interpretation of the other basic Regulations. It refers further to the system of levies of Regulation No 22/62 and compares it with the systems established by basic Regulations governing comparable markets (pigmeat: Regulation No 20/62, eggs: Regulation No 21/62 and beef and veal: Regulation No 14/64). After having observed that, although Regulation No 22/62 does not recognize either c.i.f. or free-at-frontier prices on the one hand, or target, threshold or intervention prices on the other hand, its system of levies is based on criteria similar to those on which the system provided by Regulation No 19 for cereals is based, the plaintiff recalls that the recitals of Regulations Nos 22/62 and 35/62 of the Council throw light on the concepts and objectives of the different components of the levy. These components are, as regards imports from third countries, four in number.

The first component has to compensate for the difference between the prices of feed grain in the exporting Member States or third countries on the one hand, and those obtaining in the importing Member State on the other hand, having regard to the quantity normally used for rearing and fattening poultry.

The second component has as objective to protect processing industry in the importing Member State and thus replaces the previous customs duty.

The third component guarantees the preference in favour of Member States provided for by the EEC Treaty.

The fourth possible component has to make good any difference between the 'sluice-gate price' to be calculated for poultrymeat at origin and the current real price on the world market (offer price) free-at-frontier. Regulation No 22 is based on the principle that the sluice-gate price, to be calculated exactly, is not undercut except in special circumstances.

After having compared Regulation No 22/62 concerning poultrymeat with the basic Regulations concerning pigmeat (Regulation No 20/62), eggs (Regulation No 21/62 and beef and veal (Regulation No 14/64), the plaintiff examines the two kinds of systems of levies contained in Regulations Nos 20/62, 21/62 and 22/62. Of these two kinds, that provided for by Regulations Nos 20/62 and 22/62 (Article 3 (2)) is to be preferred. It is the more precise, in the sense that, for the calculation of the levy, it is related in an obvious manner to the two opposite and appropriate factors (the market prices in the exporting Member State or in the third country and the market prices in the importing Member State) and further it also takes into account the differences in marketing costs. It can thus better attain the objectives of Article 39 of the Treaty. As a result, the plaintiff expresses the most serious doubts as regards the validity of the other method of calculation. In its opinion, if there are two kinds of systems of levy for attaining the aims of Article 39 of the Treaty, it follows from the principle of proportionality that the method which promises the best attainment of the desired aims should be chosen. The plaintiff inquires into the reasons which have determined the choice of the two methods and can only propose as explanation that the Community authorities have proceeded from the principle, in the cases where the second component corresponds to the rate of customs duties payable during 1961, that in the importing State prices based on this customs tariff were fair and protected satisfactorily the interests of both producers and consumers.

In the plaintiff's opinion the result is that, in the case of the application of each of the two methods, the Community authorities found that the market prices in the importing Member State were fair before the Regulation concerning poultrymeat came into force.

It points out that since the second component of the levy corresponds at least to the charges payable before it came into force, the levy calculated on the basis of the first and second components has the result that the whole of the entry taxes are higher than before the Regulation came into force. For previously the customs duties payable had as their objective the protection of the national processing industry both against the disadvantages resulting from difference between food costs and against those resulting from other cost factors. The first component is an additional entry tax which did not previously exist. In the framework of intra-Community trade this method of determining the levy, in the plaintiff's opinion, infringed Articles 12 and 13 of the Treaty. In trade with third countries the effects were similar. The imposition of the first component of the levy in addition to existing customs duties (second component) is an additional burden of entry taxes. It is not justified having regard to the principle of Community preference, since in this respect a third special component of the levy was provided for. These reservations with regard to the validity of the system of levies provided for by Regulation No 22/62 show clearly, in the plaintiff's opinion, that in any case the Community authorities have gone to the extreme permitted limit if the system which they had promulgated can still be regarded as legal. An interpretation of the system of levies in the perspective of the questions raised should take account of this fact.

After these reflections the plaintiff replies to the question to what parity the schemes of levies provided for by Article 3 (1) and by Article 4 of Regulation No 22/62 relate, or should relate. It notes that nowhere was it expressly stated whether the term market price in the Member States meant the sale price of poultry producers, the wholesale purchase price, the retail purchase or sale price or anything else. Consequently the question arises whether the gap existing in the wording of Regulation No 22/62 can be overcome by way of interpretation. In the plaintiff's opinion,

this question should be answered in the affirmative. In short, the reply is to be deduced from the meaning and aim of the system of levies. These are expressed particularly in Articles 4 and 5 of Regulation No 19/62 as regards cereals, which by reason of its function as model should also be used to interpret Regulation No 22/62. In the case of the agricultural market wholesale trade is the central point within each Member State; it checks off and distributes agricultural products (processed or otherwise). In case of doubt the market prices are those of the wholesale trade. Having regard to their objective, the schemes of levies are directed, in the plaintiff's opinion, to the wholesale trade of the Member States, the stage at which the question arises whether a domestic agricultural product should be purchased.

The plaintiff asserts that the wholesale purchase price for domestic poultrymeat comprises the whole of the prior costs and charges attaching to slaughtered poultry as well as the whole of the marketing costs. If the system of levies provided for in the basic Regulations had as object the alignment of the import prices of foreign poultry, the free-at-frontier prices or the sluice-gate prices with the wholesale purchase price for comparable domestic products, the whole of the prior marketing costs and charges which the comparable domestic goods had to bear would be in the first place referred to and included. If the turnover equalization tax charged by the Federal Republic of Germany on import and described as a domestic charge was not intended to have the same effect as a levy, it follows inevitably that the levy as at first calculated should be reduced by an amount equal to the turnover equalization tax (where appropriate a flat-rate sum). If such a reduction of the levy were not made, the German turnover equalization tax would result in an increase of the levy.

In the plaintiff's opinion, the draftsmen of the basic Regulations Nos 19 and 22/62 did not see at the time of drafting the problem regarding the calculation of the levies that the turnover equalization tax charged by the Federal Republic of Germany on import would raise. They did not become aware of the question until the basic Regulations had come into force and the German cereal importers disputed at law the validity of the turnover equalization tax as a charge having an effect equivalent to a customs duty. Recognition that the system of levies of the basic Regulations required, if these Regulations were to attain their objectives, that the levies should be reduced by a flat-rate amount equal to the turnover equalization tax subsequently found an echo in the basic Regulations Nos 13/64 concerning milk products and 14/64 concerning beef and veal.

The plaintiff asserts that in the present case it is a question of applying to Regulation No 22/62 the consequences which flow from this finding.

It consequently replies to the following questions:

'What legal consequences attach to the fact that Articles 3 (1) and 4 of Regulation No 22/62 do not provide expressly in any case for the reduction of the levy by the amount of a domestic charge?'

'. . . . . .

Can gaps existing in the case in question be overcome by complementary interpretation by the Court, as it has done in a similar manner in the judgment given on 12 May 1971 in the *Wünsche* case regarding the interpretation of Articles 4 and 5 of Regulation No 19/62?

Or must the provisions of Articles 3 (1) and 4 of Regulation No 22/62 be regarded as void . . .?'

In the plaintiff's opinion, the first interpretation is the only correct and possible one. It asserts that Article 5 of Regulation No 22/62 shows the way. It is clear that it provides that the systems of levies established by Articles 3 and 4 are not intended to be immutable.

Article 5 of Regulation No 22/62 reserves to the Commission the power of authorizing a Member State, at its request, to reduce the amounts of the levies calculated under Articles 3 and 4. Although they did not yet have any actual example, the draftsmen of Regulation No 22 understood at the time of drafting this provision that certain events which would require the reduction of the levies of Articles 3 and 4 were foreseeable. It is moreover not obvious, as the Commission claims, that Article 5 was to be applied only in exceptional cases. Article 5 was intended to enable the objectives of Article 39 of the Treaty to be attained. The plaintiff asserts in consequence that recourse to the authority provided for by Article 5 is necessary when it is a question, as in the present case, of translating into practice the meaning and objectives of the system of levies in the context of the internal charge levied by the Federal Republic of Germany at the time of import.

It proposes that the Court should reply to the first question in the following manner:

'Articles 4 and 6 of Regulation No 22/62 of the Council of the European Economic Community dated 4 April 1962 concerning the gradual establishment of a common organization of the market in poultrymeat must be interpreted as meaning that the levy payable at the time of import of poultrymeat from a third country into the Federal Republic of Germany must be reduced by a flat-rate amount to be determined by the competent Community authorities under the provision made in Article 5; this reduction should correspond to the turnover equalization tax payable at the time of import.'

As regards the second question the plaintiff points out that Regulation No 124/65 of the Commission determined the additional levy by comparison between the offer price and the sluice-gate price. This Regulation dealt with the adaptation of the foreign price as one of the criteria in the calculation of the levy (fourth component). The backwash which the German turnover equalization tax created did not reach it. Its validity is not in issue. The plaintiff asserts on the other hand that under Regulation No 91/65 of the Commission the amounts of the levies are objectively excessive to the extent that they have been fixed for imports of poultrymeat into the Federal Republic of Germany. According to an earlier claim by the Federal Republic of Germany this levy ought to have been fixed at a lower flat level corresponding to 4 % of the turnover equalization tax calculated on the customs value.

B — Observations submitted by the Commission

The Commisison contends that neither Regulation No 22/62 nor any of its implementing Regulations contains any provisions ordering or permitting turnover equalization tax payable on the import of poultrymeat into Germany to be deducted directly or indirectly from the levy. This is quite consistent with the objective and structure of the common organization of the market in poultrymeat.

As distinct from the common organization of the market in cereals, the common organization of the market established by Regulation No 22/62 does not contain a price guarantee for producers on the domestic market. It does not provide for a system of intervention, it does not fix any price comparable to the target price or to the guide price in other sectors and it does not fix a threshold price.

The Commission states that it has been necessary to forgo in this sector direct support for production prices and market prices and to have recourse instead to compensation for disparities in production conditions both between Member States and as regards the world market. This was the reason the levy did not in the case in question aim at raising the price of imported poultry on the

domestic market to a fixed level determined in advance.

In the same way the fact that the levies were supplemented by additional amounts calculated on the basis of 'sluice-gate prices' did not aim at raising the offer price on the domestic market of imported poultrymeat to a fixed level determined in advance.

Nor does Article 5 of Regulation No 22 offer, in the Commission's opinion, any permanent guarantee of the market prices within the country. The wording and scope of this provision show that it is obviously not a permanent measure regulating prices, but an exceptional provision aimed at overcoming unusual conditions in the market.

The Commission considers that the aim of the levies applied to poultrymeat, which is limited to compensating for the competitive disadvantages suffered by national producers, appears indisputably in the different components of the calculation.

There is in these circumstances, in the opinion of the Commission, no imperative reason for deducting turnover equalization tax applicable to the import of poultry itself from the levy. That is why Regulation No 22/62 does not contain an express provision comparable to Article 2 (1) of EEC Regulation No 13/64 (OJ 1964, p. 549) and to Article 5 (1) of Regulation No 14/64 (OJ 1964, p. 562) which would require or authorize the Commission, when fixing the levies, to deduct the turnover equalization tax from the amount of the levies. Nor, in the Commission's opinion, does the obligation to deduct turnover equalization tax follow indirectly from the criteria for calculating the levy. It is not possible to take into consideration turnover equalization tax payable on import of poultry in calculating the components of the levy. None of the fixed components justifies the inclusion of turnover equalization tax in the calculation.

It is the same for the variable component of the levy referred in Article 4 (1) (a). As this component is limited to comparing the various prices of a representative quantity, in each case, of feed grain, the only factor which could strictly be taken into account is the turnover equalization tax on the feed grain serving as a basis for the calculation. But the Commission is of the opinion that this turnover equalization tax has no relevant relationship with the turnover equalization tax paid on the basis of the customs value of the various consignments of poultry, the deduction of which the plaintiff claims. This is why the Commission does not share either the view that the turnover equalization tax on slaughtered poultry has been compensated at least partially by the fact that the levy on poultry has been derived from the prices of feed grain.

The Commission then states that Regulation No 22/62 does not authorize Member States to deduct turnover equalization tax from the prescribed amount of the levies. The amount of the levies is calculated by the Commission and fixed by means of Regulation. There is no provision that Member States may modify this amount of their own initiative, which would moreover be contradictory to the object of the system, the application in all Member States of levies harmonized by reference to uniform criteria.

Nor, the Commission asserts finally, can the obligation to deduct turnover equalization tax from the amount of the levy be justified, in the sphere of Regulation No 22/62, by analogy with the systems of common organization of the market in cereals, milk and beef and veal. Neither from the structural point of view nor from the market organization was there anything similar in the case in question between the system of levies for slaughtered poultry and the system of levies of Regulations Nos 19/62, 13/64 and 14/64, and some similarity is necessary before drawing analogies. This is also the reason why the judgment by the Court in the *Wünsche* case cannot be taken as a basis.

For the abovementioned reasons the Commission interprets Article 4 of Regulation No 22 as meaning that a flat-rate amount to be fixed by the competent institutions of the Community and equal to the turnover equalization tax payable on import may not be deducted from the levy.

C — Observations submitted by the Federal Republic of Germany

The Federal Republic of Germany asserts that it follows neither from the ambiguous wording of Article 4 nor from the function which the levy fulfils in the case where a Member State imposes a turnover equalization tax (permitted under Community law) on the import of poultrymeat from third countries that an amount equal to this tax should be deducted from the levy.

The Federal Republic of Germany points out that the draftsmen of the Community Regulation knew that slaughtered poultry imported into the Federal Republic of Germany was subject to turnover equalization tax. In the opinion of the Federal Republic of Germany, this is apparent from Article 3 (2) (b) of Regulation No 22/62. It refers moreover to Article 3 (1) of Regulation No 20 of 4 April 1962 on the gradual establishment of a common organization of the market in pigmeat (OJ 1962, p. 945), which, too, provides for the deduction of domestic charges from the levy. In the case where one of the Regulations on the market organization does not expressly provide for the deduction from the levy of the turnover equalization tax it is proper, in the opinion of the Federal Republic of Germany, to take the view that the deduction was not desired by the Council.

The Federal Republic of Germany states that the Community authorities cannot be denied the power of regulating differently dissimilar economic situations and protecting the various agricultural products in different measures, and the Regulations for the various agricultural products ought each time to be interpreted according to their own particular facts. Nothing can be deduced, for example, from the judgment in the *Wünsche* case. In this judgment the Court was content to provide that the turnover equalization tax must be considered as an item to be deducted in the calculation of the threshold price, which in its turn constitutes the basis for the determination of the levy. In addition, the Court only stated that a subsequent deduction of the turnover equalization tax from the levy must be made when 'the national legislature has omitted to consider it in calculating the threshold price'.

The Federal Republic of Germany adds that the arguments devoted to Article 4 are applicable to Article 6 of Regulation No 22/62 and concludes that the first question should be answered in the negative.

Grounds of judgment

1 By order dated 16 March 1973, filed at the Registry on 18 April 1973, the Hamburg Finanzgericht referred to the Court for a preliminary ruling, under Article 177 of the EEC Treaty, questions concerning the interpretation of Regulation No 22 of the Council of 20 April 1962 on the gradual establishment of a common market organization in poultrymeat (OJ 1962, No 30), and on the validity of Regulations Nos 91/65 and 124/65 of the Commission of 29 June and 22 September 1965 (OJ 1965, Nos 116 and 157).

2 The first question asks whether Articles 4 and 6 of Regulation No 22/62 of the Council must be interpreted as meaning that the standard levy and the additional levy charged on the import of slaughtered poultry or on poultrymeat from third countries must be reduced by a fixed amount equivalent to the turnover equalization tax.

If this question is answered in the affirmative, it is asked whether Regulations Nos 91/65 and 124/65 of the Commission are invalid insofar as they fix levies or additional levies for poultry under tariff heading 02.02.

3 As regards the first question, Article 4 of Regulation No 22/62 provides for the application of a levy in respect of third countries, which is subject to the same principles as regards slaughtered poultry and other poultrymeat referred to in Article 1 (1).

This levy differs by its structure and objectives from the levy provided for by other common organizations of agricultural markets, such as that established by Regulation No 19/62 as regards basic cereals.

Whilst according to the ninth recital of Regulation No 19/62 the levy as regards third countries must 'equal' the difference between the world market prices and those in the importing Member State respectively according to the ninth recital of Regulation No 22/62 it must take into account in particular the incidence on the cost of fodder of the difference between the prices of feed grain in the Member States and on the world market.

To this effect Article 4 (1) and (2) indicates all the components of the calculation on the basis of which the amount of the levy is fixed.

According to this provision, this levy has various components, of which one is fixed in advance for a period of three months and the others are calculated respectively by reference to the levies as regards Member States and on the basis of a fixed percentage of fixed averages.

As regards moreover the additional amount referred to in Article 6 of the same Regulation, its level is directly established by paragraph 3 of this provision, providing that, in the case where the free-at-frontier prices on import fall below the sluice-gate price, the levy shall be increased in each Member State by an amount equal to the difference between these two prices.

4 It follows from these provisions that all the components of the levy applicable to the products in question, as well as any additional amount, are fixed by Regulation No 22/62 and that they do not leave the Member States with any autonomous power of affecting the amount of one or other charge by the expedient of criteria of calculation other than those provided for by the legislature.

This finding is confirmed by Article 4 (3) of the aforementioned Regulation, from which it appears that the fixing of the amount of the levy depends entirely on a Community procedure referred to in Article 17 of the same Regulation.

Therefore if a Member State were to deduct the turnover equalization tax from the levy or from any additional amount it would contravene both the letter and the spirit of the financial mechanism established by Regulation No 22/62 for imports of slaughtered poultry and poultrymeat.

5 It is thus proper to conclude that Articles 4 and 6 of Regulation No 22/62 of the Council must be interpreted as meaning that the levy and the additional amount payable on import of slaughtered poultry or poultrymeat from third countries must not be reduced by a charge such as the turnover equalization tax on import.

6 Since the first question has been answered in the negative the second question does not arise.

Costs

7 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, insofar 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 the plaintiff in the main action 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 22 of the Council 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 questions referred to it by the Hamburg Finanzgericht by order of that court dated 16 March 1973, hereby rules:

Articles 4 and 6 of EEC Regulation No 22 of the Council of 20 April 1962 must be interpreted as meaning that the levy and the additional amount payable on import of slaughtered poultry and poultrymeat from third countries must not be reduced by a charge such as the turnover equalization tax on import.

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