Community must be interpreted as meaning that Member States are not permitted to adopt provisions of national law affecting the scope of the regulation itself, and in particular the descriptions of goods appearing therein.

3. The provisions to which the common organizations of the markets in agriculture give rise must be applied in a uniform manner in all the Member States. The descriptions of the goods which are subject to these organizations must therefore have, in all the Member States, the same scope and must be interpreted in a manner which respects Community jurisdiction. It follows that Member States may not, where there are difficulties in classifying a product for tariff purposes, themselves fix this scope by way of interpretation. Although, in such a case, the national administration may find it advisable to take implementing measures and to elucidate thereby the doubts raised by the description of a product, it may only do so by observing Community law, without the national authorities' being able to issue rules of interpretation having binding effect.

4. An unofficial interpretation of a regulation by an informal document of the Commission is not enough to confer on that interpretation an authentic Community character. Such documents have no binding effect and thus cannot ensure that the provisions to which they refer have the same scope in all the Member States. The uniform application of Community law is only guaranteed if it is the subject of formal measures taken in the context of the Treaty.

5. The interpretation of one tariff heading in relation to another must, in a case of doubt, take into account both the function of the customs tariff in regard to the necessities of the systems of organization of the markets and its purely customs function.

In Case 74/69

Reference to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof, Munich, for a preliminary ruling in the action pending before that court between

HAUPTZOLLAMT BREMEN — FREIHAFEN

and

WAREN-IMPORT-GESELLSCHAFT KROHN & Co., Hamburg,

on the interpretation of certain provisions of Regulation No 19 of the Council of the EEC of 4 April 1962,

THE COURT

composed of: R. Lecourt, President, R. Monaco (Rapporteur) and P. Pescatore,

Presidents of Chambers, A. M. Donner, A. Trabucchi, W. Strauß and J. Mertens de Wilmars, Judges,

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

1. On 11 July 1966 the firm Waren-Import-Gesellschaft Krohn & Co. cleared through the Customs Office of Bremen—Überseehafen 204 796 kg of residues of starch manufactured from tapioca' ('waste'), having a starch content in excess of 40%, coming from Thailand. In its customs declaration Krohn asked for these goods to be classified under tariff heading 23.03 of the German Customs Tariff, the products under this heading not being subject to levy.
The Customs Office, relying on the 'Explanatory Notes on the German Customs Tariff', took the view on the other hand that the said goods constituted 'manioc flour' within the meaning of tariff heading 11.06 A of the tariff of levies, the products under that heading being, according to Regulations Nos 19/62 and 141/67, subject to levy.
After the Finanzgericht (Financial Court), Bremen, to which Krohn appealed, had found on 27 January 1966 that tapioca waste does not come under heading 11.06, the Hauptzollamt (Principal Customs Office) lodged a further appeal against that decision to the Bundesfinanzhof (Federal Finance Court), Munich, in May 1967.
That court, having found that the answer to the problem in question was bound up with the interpretation of Article 1 (d) of Regulation No 19/62, the annex to which repeats *verbatim* the description 'manioc flour' under tariff heading 11.06 A, decided by order of 21 October 1969 to submit to the Court of Justice, pursuant to the first and third paragraphs of Article 177 of the EEC Treaty, the following questions:

'(a) Is Article 23 (1) of Regulation No 19/62 of the Council on the progressive establishment of a common organization of the market in cereals of 4 April 1962 (OJ 1962, No 30, p. 933), according to which Member States shall take all measures with a view to adapting their provisions laid down by law, regulation or administrative action so that the provisions of this regulation may take effect in practice as from 1 July 1962, to be understood as meaning that Member States are entitled and obliged to state and specify, by provisions of internal law, the descriptions of the products subject to levy (Article 1 of the regulation)?

(b) If not:
Is Article 1 of Regulation No 19/62 of the Council, which lists the goods appearing in the Common Customs Tariff, to be understood as meaning that these descriptions of products are capable of being interpreted by the national legislature for so long as there is no interpretation according to Community law?

(c) If not:
Is the expression "manioc flour", appearing in the annex referred to in Article 1 (d) of Regulation No 19/62 of the Council, to be understood as meaning that it covers, irrespective of the manufacturing process, any product derived from manioc roots when its starch content is in excess of 40%, or are maximum and minimum contents in other constituent elements, such as raw fibres, sugar or proteins, also to be taken into consideration?'

2. The order making the reference was received at the Court on 4 December 1969.
Waren-Import-Gesellschaft Krohn & Co., the Government of the Federal Republic of Germany and the Commission of the European Communities submitted written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice annexed to the EEC Treaty.
Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided not to order any preparatory inquiry.
Waren-Import-Gesellschaft Krohn & Co., the Government of the Federal Republic of Germany and the Commission presented oral argument at the hearing on 21 April 1970.
The Advocate-General delivered his opinion at the hearing on 12 May 1970.

II — Written observations submitted under Article 20 of the Protocol of the Statute of the Court of Justice

These observations may be summarized as follows:

A — *The first two questions*

The Krohn undertaking takes the view that, having regard to the decision of the Court in Case 40/69, the first two questions put by the Bundesfinanzhof must receive a negative answer. The fact that the common organization of the market referred to in that case is different from the one in the present case cannot, in its opinion, prevent the fundamental principles worked out by the Court in that judgment from being applied to the present case.
The problems of substance are the same in the two proceedings and the solution adopted by the Court was intended to be general in nature, going beyond the case of a particular common organization of the markets.
The *German Government* recalls that in its judgment in Case 40/69 the Court stressed the necessity for safeguarding uniformity in the application and interpretation of the regulations establishing a common organization of markets, as well as of the provisions of the Common Customs Tariff.
However, the application and interpretation of the Community rules in question in the present case are the same in all the Member States so that uniformity is assured in this instance. The German Government moreover has complied, as regards the classification in dispute, with a communication from the Commission of 13 May 1966:

— informing it of the fact that the Member States had decided to consider as coming under tariff heading 23.03 the residues from the production of starch from manioc roots with a starch content in excess of 40% at the maximum, and to classify under heading 11.06 A residues having a higher starch content; and

— calling upon it to follow the same distinctive criterion.

This communication, it is true, does not constitute a formal measure in the sense of Article 189 of the Treaty, but the Commission only resorts to measures of this kind where there is no agreement between the States on the classification to be adopted, whereas it confines itself to an informal communication in cases where agreement is reached. Such a communication offers no formal interpretation of the Community rules in question but it still enables the real intention of the legislature on the scope of these rules to be ascertained.
Having stated that for this reason the communication of 13 May 1966 appears to it to be capable of having a certain influence on

the interpretation of the description in dispute, the German Government draws attention to the consequences entailed by the fact of having in the future—in accordance with the judgment in Case 40/69—to confine itself to adopting, for the interpretation of the descriptions of goods in the Common Customs Tariff, internal administrative provisions. The classification of goods easily becomes a contentious matter and is in the last analysis entrusted to the Court of Justice by means of Article 177 of the Treaty. In view of the enormous number of descriptions of goods relating to imported products, it may be asked whether such a system is calculated to ensure the uniform interpretation of Community law required by the Common Market.

The *Commission of the European Communities*, referring *inter alia* to the judgment of the Court in Case 40/69, recalls that Community law constitutes an independent legal order having precedence over the internal law of the Member States. From this it infers that the States no longer have the power to legislate in matters which the Treaty leaves to the Community authorities, unless specific powers are conferred on the Member State expressly or by implication under the system laid down by the rules of the Community.

In the present case it cannot be inferred from Regulation No 19/62 that such powers have been conferred. Such an inference follows neither from Article 23—which is clearly inspired by the fundamental principle already stated in Article 5 of the Treaty—nor from the system of levies which it lays down. Under that system, the Member States may, by virtue of Article 15, lay down, amend and collect the amounts of the levy under the conditions fixed by the regulation but they have no power when it comes to determining the field of application of the levy. It is, moreover, a system which has no loophole which could justify the exercise by the States of a power in tariff matters.

It may happen of course that the descriptions of goods which Regulation No 19/62 formulates in a general manner may sometimes require to be interpreted. But in that case Community law itself provides the criteria and rules to be followed for the purposes of such interpretation, by means, if need be, of explanatory notes on the 'Brussels Nomenclature'. Member States cannot be recognized as having powers which are not compatible with the principle of the precedence of Community law.

Although it is conceivable that, for practical reasons, national authorities may on occasion give instructions to the customs administrations for the purpose of interpreting and applying a description of goods, it cannot be accepted that these instructions can have binding legal effects as against Community law.

B — *The third question*

The Krohn undertaking takes the view that it is only on the basis of the customs tariff itself that it is possible to define the respective areas of application of the two tariff headings in question. It follows directly from the wording of heading 11.06 —taking into account the place which that heading occupies in the Common Customs Tariff and the reference which it has to heading 07.06—that what must be concerned are roots and tubers under heading 07.06 which have been processed solely by grinding.

However the concept of milling current in trade circles does not apply to operations in the course of which the product undergoes chemical or physical treatment which alters its nature. More particularly, it does not cover heat-treatment or washing, since the result is a new and better product. The residues from this production cannot be regarded as products from milling.

The same criterion, according to Krohn, makes it possible to define the concept of 'manioc flour' within the meaning of heading 11.06 in relationship to that of residues of the production of starch from tapioca within the meaning of heading 23.03. The first of these headings only covers flour obtained by grinding manioc roots and cannot apply to the residues resulting from the extraction of tapioca starch by washing. These residues therefore come under heading 23.03.

The decision of the German administration to enlarge the scope of heading 11.06 at the expense of heading 23.03 as far as including

all tapioca products irrespective of the means of manufacture used in so far as their starch content is in excess of 40% is due in the final analysis to concerns of a fiscal nature: it seeks to prevent the importation without levy of tapioca products which have been subjected to superficial processing. Although these concerns are justified in themselves the quantitative criterion chosen for the purpose of deciding on the classification is still open to criticism. It is based on a simple fiction for it is absolutely impossible in the present state of technical knowledge and industrial possibilities to obtain from this production residues having a sturch content of 40% or less.

Against the German Government's view that the quantitative criterion adopted, far from being arbitrary, was fixed and introduced on the Commission's recommendation, it should be stated:

— with the exception of that government, no other Member State followed such a recommendation—one which, moreover, had no binding effect—in adopting such a criterion for the classification of tapioca products under the two tariff headings in question;

— besides, the Commission itself has in the meantime observed that the said criterion is not correct (see draft regulation of 8 January 1969 on the trade in feedstuffs).

Moreover, the appropriate criterion for defining the two tariff headings in question is not solely that of the starch content, but must be sought also in the commercial value of the product. As for the 'residues from the manufacture of starch from tapioca', this value is appreciably less than that of ground manioc roots.

The Krohn undertaking states that the term 'manioc flour' within the meaning of Article 1 (d) of Regulation No 19/62 must in its opinion be interpreted as applying solely to products deriving from the grinding of manioc roots and not to the residues of the production of tapioca starch. The fact that a product deriving from tapioca has a starch content in excess of 40% is not enough for it to be regarded as 'manioc flour'.

The *German Government*, after giving detailed technical information on the production and starch content of manioc flours, observes in particular that the description 'tapioca flour' indicates, in international trade, all flour obtained from manioc roots, irrespective of the manufacturing process, and that the starch content of these products varies considerably according to their quality.

Tariff heading 11.06 makes no reference to the manufacturing process. It is undeniable that tapioca flour can be obtained by the grinding or grating of manioc roots but it is also true that the products obtained, even if there was subsequently removed from them, by a washing process, a certain quantity of starch, may still be regarded as flours within the meaning of the customs tariff. For it would be absurd that, by reason of the simple fact of this process, the flours should automatically come within the category of residues, although still having a starch content as high as that of other qualities of tapioca flours. Only the starch quantity contained (or still contained) is thus decisive for the purposes of a distinction between flours coming under the two tariff headings in question and not for the manufacturing process employed. In this context the description 'starch residues', which appears under tariff heading 23.03, can only therefore refer to the residues from the production of starch from which it is impossible to extract any more starch in commercially or economically significant quantities.

However, since it was difficult for the customs authorities to decide, in each particular case, whether the starch content of a product is such that it comes under heading 23.03 or heading 11.06, a distinctive general criterion, based on objective technical data, had to be established in order in particular to ensure a uniform classification of products and the implementation of the common organization of the markets.

The German Government also contests, by means of extensive technical data, the distinction between tapioca flours within the meaning of heading 11.06 and residues under heading 23.03 founded on the state of the starch grains, the colour, the fibre content and other constituents (proteins, sugar etc.).

It states that in its opinion 'manioc flours' within the meaning of Article 1 of Regulation No 19/62 are distinguished from the 'residues' referred to by tariff heading 23.03 solely by reason of their starch content. The percentage of 40% adopted for this purpose corresponds to an objective criterion for making a distinction for tariff purposes.
The *Commission* takes the view that the argument of the Krohn undertaking finds support neither in the wording of tariff heading 11.06 nor in the fundamental principles of the German Tariff and that it fails to correspond to the ultimate purposes of the levy. To this end it argues in particular as follows:

(a) In the literal sense, the description 'manioc flours' appearing under tariff heading 11.06 A and covered by Article 1 of Regulation No 19/62 covers any farinaceous product obtained from manioc roots, whatever its composition, its quality or the manufacturing process used. The tariff heading in question applies therefore to tapioca flour of normal commercial quality, including tapioca residues with a high starch content, which are ground manioc roots from which part of the separable natural starches have been removed by means of an additional decantation.
The argument of the Krohn undertaking, based essentially on the manufacturing process, cannot therefore be justified.
The interpretation given here is moreover in conformity with the explanatory notes on the 'Brussels Nomenclature' and also with the preliminary observations in Chapter II of those notes. Lastly, according to the customary interpretation of the Common Customs Tariff, even flours corresponding to the limited concept proposed by the firm Krohn can be submitted to manipulative processes without thereby losing their essential features.

(b) Moreover, even on the basis of that limited concept, the fundamental principles of the Common Customs Tariff do not permit 'tapioca residues' to be classified otherwise than under tariff heading 11.06. Resort to such principles for the interpretation of the descriptions of the goods contained in Regulation No 19/62 is quite permissible since it is clear that, if a regulation establishing a common organization of the markets adopts a heading of the Common Customs Tariff, it adopts it according to the significance and scope which that tariff attaches to it.
However, by virtue of the rules of interpretation which may be deduced from the Common Customs Tariff and also from the explanatory notes on the Brussels Nomenclature, the tapioca residues which, on the basis of the aforesaid concept of 'flour', are not precisely shown in either of the two tariff headings in question must, in case of uncertainty, be classified under heading 11.06, since that heading prescribes a higher rate of duty and the products which it describes are the closest to the ones in dispute.

(c) Moreover, the interpretation advanced by Krohn frustrates the essential objectives of the levy which is not only intended to balance the prices and supply of imported products and those of domestic products but also to ensure for the latter the benefit of a preferential system. Unlike tariff heading 23.03, heading 11.06 applies to all products imported from third countries capable of constituting a threat to similar domestic products which must be protected. That is why this latter heading, as distinct from the first, provides for the imposition of a levy. Such protection is necessary in the present case both on the *qualitative* and on the *quantitative* level. Statistics clearly show a considerable reduction in imports of products traditionally classified under heading 11.06 in relationship to imports of 'tapioca waste', which was exempted from levy from the outset.

(d) For all these reasons, and having regard to the explanatory notes on the Brussels Nomenclature, the distinction between 'tapioca waste' under heading 11.06 and the residues under heading 23.03 must be based on their starch content which determines the value and the intended use of the product.
According to the Commission's experience, this content can be fixed, in view of the extraction processes used in the Community, at approximately 40% of the total weight of the dry material. Such a limit

necessarily constitutes a fixed value but it complies with the rules of interpretation of the Common Customs Tariff and does not rest on considerations foreign to the problem.

The Commission concludes that the term 'manioc flours' within the meaning of Article 1 (d) of Regulation No 19/62 must in its opinion be interpreted as meaning that it covers, irrespective of the manufacturing process, the products obtained from manioc roots and having a starch content in excess of 40% by weight of dry material, without any necessity to take into account maximum or minimum contents of other constituent elements.

Grounds of judgment

1 By order of 21 October 1969 which was received at the Court on 4 December 1969 the Bundesfinanzhof of the Federal Republic of Germany has referred to the Court of Justice, pursuant to Article 177 of the EEC Treaty, several questions seeking to obtain an interpretation of Regulation No 19 of the Council of the EEC of 4 April 1962 (OJ 1962, No 30).

The first question

2 By the first question the Court of Justice is asked to rule whether Article 23 (1) of Regulation No 19/62 is to be understood as meaning that the Member States are entitled and obliged to state and specify, by provisions of internal law, the descriptions of the products subject to levy (Article 1 of the regulation).

3 Under that provision 'Member States shall take all measures with a view to adapting their provisions laid down by law, regulation or administrative action so that the provisions of this regulation may take effect in practice as from 30 July 1962'.

4 Since Regulation No 19/62 is, in conformity with the second paragraph of Article 189 of the Treaty, directly applicable in all the Member States, there can be no question, in the absence of any provisions to the contrary, that the States may, for the purpose of ensuring the application of that regulation, take measures the purpose of which is to amend its scope or to add to its provisions. In so far as the Member States have conferred on the Community legislative powers in tariff matters, in order to ensure the proper functioning of the common market in agriculture, they no longer have the power to issue independent provisions in this field.

5 Thus Article 23 (1) of Regulation No 19/62 must be interpreted as meaning that Member States are obliged to take all measures necessary to eliminate the obstacles

which may arise from their legislation to the application of the regulation as from 30 July 1962. This article thus does not enable Member States to issue provisions of national law affecting the scope of the regulation itself.

6 Therefore the answer to the first question put by the Bundesfinanzhof is that Article 23 (1) of Regulation No 19/62 of the Council of the EEC is to be interpreted as meaning that Member States are not permitted to adopt provisions of national law affecting the scope of the regulation itself, and in particular the descriptions of goods appearing therein.

The second question

7 Should the first question be answered in the negative, the Bundesfinanzhof asks the Court if Article 1 of Regulation No 19/62 of the Council, which lists the goods appearing in the Common Customs Tariff, is to be understood as meaning that these descriptions of products are capable of being interpreted by the national legislature for so long as there is no interpretation according to Community law.

8 Since the description of the goods referred to by the regulations establishing a common organization of the market comes under Community law, its interpretation can only be fixed by respecting Community jurisdiction. The common organizations of the agricultural market such as that referred to by Regulation No 19/62 can only fulfil their functions if the provisions to which they give rise are applied in a uniform manner in all the Member States. The descriptions of the goods which are subject to these organizations must therefore have the same scope in all the Member States. Such a requirement would be called in question if, in the case of difficulty in the tariff classification of a product, each Member State could itself fix this scope by way of interpretation.

9 An unofficial interpretation of a regulation by an informal document of the Commission is not enough to confer on that interpretation an authentic Community character. Such documents, which no doubt have their value for the purpose of applying certain regulations, have, however, no binding effect, and thus cannot ensure that the descriptions of the goods to which they refer have the same scope in all the Member States. The uniform application of Community law is only guaranteed if it is the subject of formal measures taken in the context of the Treaty.

10 Although, where there is difficulty in classifying a product, the national administration may find it advisable to take implementing measures and to elucidate thereby the doubts raised by the description of a product, it may only do so by observing

Community law, without the national authorities' being able to issue rules of interpretation having binding effect.

11 Thus the answer to the second question put by the Bundesfinanzhof is that, even in the absence of an express Community interpretation, Article 1 of Regulation No 19/62 of the Council of the EEC, which lists the goods appearing in the Common Customs Tariff, does not empower national authorities to issue, for the purpose of defining those descriptions, rules of interpretation having binding effect.

The third question

12 Should the second question receive a negative answer the Bundesfinanzhof asks the Court to rule whether the expression 'manioc flour', appearing in the annex referred to in Article 1 (d) of Regulation No 19/62 of the Council, must be interpreted as meaning that it covers, irrespective of the manufacturing process, any product derived from manioc roots when its starch content is in excess of 40%, or whether maximum and minimum contents of other constituents, such as raw fibres, sugar or proteins, are also to be taken into consideration.

13 Article 1 of Regulation No 19/62 on the progressive establishment of a common organization of the market in cereals subjects to a system of levies the importation of cereals and certain non-cereal products including those under heading 11.06 of the Common Customs Tariff, including manioc flours, imported especially as feeding-stuffs, by reason of their high starch content. These products are liable to a 28% *ad valorem* levy. On the other hand, the products under heading 23.03, including, *inter alia*, the residues of starches, were left outside the area of application of Regulation No 19/62 and are not liable to any customs duty or levy.

14 Following the entry into force of Regulation No 19/62, crushed manioc roots were imported into the Federal Republic of Germany after undergoing treatment in their country of origin intended to extract the starch. Even after this treatment these goods still exhibited a high starch content which rendered them capable of being marketed as manioc flours. However, they were declared to the customs as 'starch residues' under heading 23.03—which was intended to exempt them from the levy affecting these flours. The question referred thus seeks, as regards the products derived from manioc, to establish what criteria make it possible to distinguish the 'starch residues' of manioc under heading 23.03 from manioc flours under heading 11.06.

15 The interpretation of one tariff heading in relation to another must, in a case of doubt, take into account both the function of the customs tariff in regard to the

necessities of the systems of organization of the markets and its purely customs function. Although Regulation No 19/62 included non-cereal products under heading 11.06—and, *inter alia*, manioc flours—in the system of the organization of the market in cereals, this was because precisely by reason of their high starch content these products compete on the common market with cereal products and, in particular, after denaturing, with feeding-stuffs.

16 There is no doubt that 'starch residues' under heading 23.03 are also sold as fodder but because of their lesser starch content they are not capable of being marketed under the same description as the products under heading 11.06 so that they do not compete with local production in the same way as the said products. However, as regards manioc, it has become apparent that in certain countries the extraction methods leave a product the starch content of which is still comparable to that of manioc flours and which, after milling, is marketed under that description. This fact shows that, in regard to the objectives of the levy prescribed in the present case, it is only in terms of the starch content, so far as manioc is concerned, that the line must be drawn between the 'residues of starch manufacture' and flours.

17 Moreover, the plaintiff in the main action maintains that the description 'flours' within the meaning of heading 11.06 must be reserved for manioc products obtained by the simple grating of the dried roots to the exclusion of all other treatment. It bases its argument on the title to Chapter II—in which heading 11.06 appears—which mentions, *inter alia*, 'Products of the milling industry', on the wording of the explanatory notes on the Brussels Nomenclature concerning the said heading as well as on the fact that the flours under heading 11.06 must derive from the vegetable raw materials mentioned under heading 07.07 (manioc roots... other tubers having a high starch content) which would exclude roots from which the starch has already been extracted.

18 This interpretation would give to heading 11.06 a content which it does not possess. By classifying flours as the products of the milling industry the Common Customs Tariff does not contemplate a specific form of processing vegetable products into flours. On the other hand, the expression 'by simple grating' used by the explanatory notes concerns the stage of processing roots into flour and not the treatment which those roots may or, in certain cases, must have undergone previously. Moreover, the prior extraction of a small part of their starch content leaves the roots, before they are crushed, with properties such that they continue to come under heading 07.06 which includes all roots or tubers having a high starch content. The result of this treatment is thus not to remove from heading 11.06 flours deriving from the grating of the roots treated in this way.

19 The Commission and the Federal Government on the one hand and the plaintiff in the main action on the other take issue with each other on the question of the

percentage of the starch content which enables flour residues to be distinguished and rely on the authority of experts whose evaluations, as regards the starch content of the residues, vary between 30% and 70% of starch in relation to dry material. According to the Commission and to the Federal Government only primitive and superficial extraction methods leave starch contents in excess of 50% or 60%, whereas with modern extraction methods the residues have a starch content which does not exceed 40%. The plaintiff in the main action on the other hand states that residues with a starch content under 40% do not exist and that, even after treatment by modern processes, manioc roots still have a starch content in excess of 60%, particularly by reason of the peculiarities of their fibrous structure.

20 If, even with modern methods, it is possible to extract from manioc roots only relatively small quantities of starch so that the raw material remaining still contains 60% or more of starch, then it must be concluded that this material cannot be regarded as a residue—that is to say, according to the terms of the explanatory notes to heading 23.03—waste from starch manufacture within the meaning of that heading, but that it still constitutes a product the high starch content of which must lead to its falling under heading 07.06 (manioc roots) and the simple grating of which provides a product marketed as manioc flour.

21 The level of starch which is decisive is therefore that at which the roots which have been treated previously cease to constitute such a product. On the other hand, in order to ensure the functioning of the Common Market and in particular the organizations of the agricultural markets this level must be fixed in a uniform manner for the whole Community.

22 During the year 1966, when the Committee on Common Customs Tariff Nomenclature set up by Regulation No 97/69 of the Council of 16 January 1969 (O.J. Special Edition 1969 (I), p. 12) was not yet operative, a group of officials from the Member States presided over by a representative of the Commission was of the unanimous opinion that only products which, after being subjected to treatment designed to extract starch, contained no more than 40% of that product, could be regarded as residue from the manufacture of starch from manioc and placed under heading 23.03. The result of this discussion was communicated by the Commission's departments to the Permanent Representatives of the Member States, and in particular to the Representative of the Federal Government by letter dated 13 May 1966. The Federal Minister of Finance of that government, by regulation of 27 June 1966, fixed the limit of starch content at 40%.

23 In the absence of express Community provisions, an interpretation fixing the limit of heading 23.03 at 40% of starch content, as regards the 'residues from the

manufacture of starch' from manioc, is calculated to ensure that at any event, despite the peculiarities of the trade concerned in the different Member States, manioc products which could, without the addition of other substances, be marketed as manioc flour shall be subject to the levy.

24 Although this limit may be regarded as fixed at the lowest level, it does not, however, have the effect of destroying the substance of the concept 'residues from the manufacture of starch'. Whilst it leads to a narrow interpretation of the concept 'residues from the manufacture of starch' from manioc, this interpretation finds its justification, however, in the fact that, unlike residues from the manufacture of starch from other products, what is left over from the manufacture of starch from manioc constitutes a product which has nothing in common with waste but has from the commercial point of view the characteristics of a raw material from which it is still possible to obtain manioc flour.

25 The expression 'manioc flours' within the meaning of Article 1 (d) of Regulation No 19, read in conjunction with heading 11.06 of the Common Customs Tariff, mentioned in the annex to that regulation, must therefore be interpreted as referring to all farinaceous substances obtained from manioc roots, irrespective to the treatment which those roots may have undergone, where the product has a starch content in excess of 40%.

Costs

26 The costs incurred by the Commission of the EC and by the Government of the Federal Republic of Germany, 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 the Bundesfinanzhof of the Federal Republic of Germany, 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, the Government of the Federal Republic of Germany 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 38 to 47, 177 and 189;
Having regard to Regulation No 19 of the Council of the EEC of 4 April 1962;
Having regard to Regulations of the Council of the EC Nos 950 of 28 June 1969 and 2451 of 8 December 1969;
Having regard to Regulation No 97 of the Council of the EC of 16 January 1969;
Having regard to the Protocol on the Statute of the Court of Justice of the EEC, 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 Bundesfinanzhof of the Federal Republic of Germany under the order made by that court on 21 October 1969 hereby rules:

1. **Article (1) 23 of Regulation No 19/62 of the Council of the EEC must be interpreted as meaning that Member States are not permitted to adopt provisions of national law affecting the scope of the regulation itself, and in particular the descriptions of goods appearing therein;**

2. **Even in the absence of an express Community interpretation, Article 1 of Regulation No 19/62 of the Council of the EEC, which lists the goods appearing in the Common Customs Tariff, does not empower national authorities to issue, for the purpose of defining those descriptions, rules of interpretation having binding effect;**

3. **The expression 'manioc flours' within the meaning of Article 1 (d) of Regulation No 19/62, read in conjunction with heading 11.06 of the Common Customs Tariff, mentioned in the annex to that regulation, must be interpreted as referring to all farinaceous substances obtained from manioc roots, irrespective of the treatment which those roots may have undergone, where the product has a starch content in excess of 40%.**

Lecourt Monaco Pescatore

Donner Trabucchi Strauß Mertens de Wilmars

Delivered in open court in Luxembourg on 18 June 1970.

A. Van Houtte — Registrar

R. Lecourt — President