the enumeration in paragraph (2) or where it has been recognized by a member state pursuant to paragraph (3) of Article 8 of Regulation No 102/64.

3. Article 7 of Regulation No 102/64 does not prevent an importation within the meaning of that article being defined as the crossing of the frontier of the importing country, duly recorded by the competent customs authorities, provided that it is also established that the goods were subsequently given customs clearance and put into free circulation.

4. Article 8 of Regulation No 102/64 does not lay down any specified period for the introduction of a request for the consideration of circumstances of *force majeure*, but it nevertheless requires the importers or exporters concerned to substantiate their claims in the fullest possible manner.

In Case 3/74

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

EINFUHR- UND VORRATSSTELLE FUR GETREIDE UND FUTTERMITTEL, Frankfurt-on-Main

and

WILHELM PFÜTZENREUTER, Düsseldorf-Benrath,

on the interpretation of Articles 3, 7 (2) and 8 (2) of Regulation No 102/64 of the Commission of 28 July 1964, on import and export licences for cereals, processed cereal products, rice, broken rice and processed rice products (OJ No L 126 of 6 August 1964, p. 2125),

THE COURT

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

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

gives the following

JUDGMENT

Facts

I — Summary of facts and written procedure

The facts and written procedure may be summarized as follows:

1. On 3 February 1967, the plaintiff in the main action obtained from the defendant in the main action two import licences for a total of 500 000 kg of French brewing barley, the licences being valid until 31 May 1967. To ensure that such imports were effected, the company furnished security of 10 000 DM.

On the basis of these two licences the company imported, up to 24 May 1967, 260 464 kg of goods, the formalities being conducted by the customs offices at Andernach and Düsseldorf.

On 31 May 1967 the Company submitted a request for a further 250 000 kg of barley, on board ship, at the customs office at Emmerich-Hafen, which, the same day, duly certified that the goods had crossed the frontier and placed the cargo under customs bond for transportation to the customs office at Düsseldorf, where it was unloaded and put in free circulation on 5 June 1967.

By two decisions of 12 June 1967 the defendant in the main action declared the security to be partially forfeit in the sum of 2 386·33 DM by reason of the fact that part of the stated quantities had not been imported before the time limit.

In its complaint of 22 June 1967 against these decisions the plaintiff claimed that the quantity of goods at issue could not be cleared at the customs office at Emmerich-Hafen because the necessary documents, which had been required by the customs offices at Andernach and Düsseldorf for the customs clearence of the previous amounts and which had been returned by post, did not reach the customs office at Emmerich-Hafen in time.

This complaint was rejected.

The plaintiff then brought an action before the Verwaltungsgericht of Frankfurt-on-Main. Its request was upheld and the decisions in issue as to the forfeiture of security were annulled.

The defendant appealed and the Verwaltungsgerichtshof of Hesse confirmed the judgment of the court of first instance on the ground that since, at the time of proceedings the Community legislature had given no definition of the concept of importation, the national provisions on that subject, in this case German law, must be considered decisive. According to that law importation is completed when the goods have been transferred from a foreign economic territory to that of the Federal Republic of Germany. The goods were submitted to the customs office at Emmerich-Hafen upon German territory before the expiry of the time-limit set for importation and the security should therefore not have been declared forfeit, even in part.

2. The defendant brought an appeal on a point of law against this judgment to the Bundesverwaltungsgericht which decided, pursuant to Article 177 of the EEC treaty, to stay the proceedings and to refer to the Court of Justice the following preliminary questions:

1. Is the concept of importation contained in Article 7 (2) of Regulation No 102/64/EEC to be interpreted:
   (a) according to national law?
   (b) if question (a) is answered in the negative: when is an obligation to import fulfilled, where the importer has declared the

imported goods with a view to their transport under customs bond?

2. Is the national court competent to recognize the existence of a case of *force majeure* in circumstances which are different from those listed in Article 8 (2) of Regulation No 102/64/EEC and those recognized by the Member States pursuant to Article 8 (3)? Are requests for the consideration of circumstances of *force majeure* subject to a time limit, and if so, within what period must they be submitted?

3. The order of the Bundesverwaltungsgericht was registered at the Court on 11 January 1974.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC the plaintiff in the main action and the Commission of the European Communities submitted written observations.

The plaintiff in the main action was represented by P. Wendt of the Hamburg Bar and the Commission was represented by its Legal Adviser, P. Gilsdorf.

Having heard the report of the Judge-Rapporteur and the opinion of the Advocate-General the Court decided to open the oral procedure without any preparatory enquiry.

II — Written observations submitted to the Court pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

1. The *plaintiff in the main action* notes that the Member States are not empowered to promulgate rules of interpretation of concepts relating to Community law. Nor are they competent to give a prescriptive interpretation of concepts of Community law in cases where there are no Community rules of interpretation.

Given that the provisions of Regulation No 102/64 do not expressly empower the Member States to establish their own rules of interpretation, it is clear that the concept of importation contained in Article 7 (2) of that Regulation cannot be interpreted according to national law. This conclusion can be based upon the Judgments of the Court of 18 June 1970 in Case 74/69 *(Krohn)*, Rec. p. 451, 17 December 1970, in Case 25/70 *(Köster-Berodt)*, Rec. p. 1161 and 27 October 1971, in Case 6/71 *(Rheinmühlen)*, Rec. p. 823.

However, the question remains that of knowing whether the concept of importation contained in Article 7 (2) of Regulation No 102/64 corresponds to the interpretation traditionally put upon that concept by the Member States. In this connexion the plaintiff in the main action notes that Regulation No 102/64 forms part of the rules laid down for the transitional period. During this period national market organizations remained in force. At the time the Council and the Commission did not judge it necessary to define the concept of importation. It would in fact have been impossible to give a uniform Community definition, in view of the differences arising from the existence of separate national market organizations. It was only when the rules laid down for the final stage of the common agricultural policy came into force that Community rules for imports were established. Reference is made here to Regulations Nos 1496/68 of the Council of 25 September 1968 on the definition of the customs territory of the Community (OJ of 28 September 1968, L 238/1) and 542/69 of the Council of 18 May 1969 on Community transit (OJ of 29 March 1969, L 77/1).

The case law of the Bundesfinanzhof shows that the latter has taken account of the details of the system laid down for the transitional period when applying

national rules for the definition of the concept of exportation.

It is in no way incompatible with the principle of the uniform application of Community law to ally the concept of importation as contained in Article 7 (2) of Regulation No 102/64 to the interpretations given to that concept in the laws of the various Member States. In applying this principle of uniformity, account must be taken of the level of integration of the national agricultural policies and markets during the transitional period. Under the system laid down in the basic Regulation No 19/62 of the Council of 4 April 1962 (OJ 1962, p. 965) the integration of markets principally concerned the unification and harmonization of customs duties, levies, quantitative restrictions etc. The unification of customs procedures assumed a secondary importance. Accordingly, the principle of the uniform application of Community law is of significance only for the interpretation of concepts such as levies or quantitative restrictions. Viewed in this way, even the concept of discrimination as contained at Article 40 (3) has only a limited sphere of application during the transitional period. Finally, the objective of the licence system, instituted by Regulation No 102/64, does not require that the concept of importation in Article 7 (2) of the Regulation should be interpreted uniformly in all Member States. The objective of the Regulation is to make possible accurate forecasts as to future trade in agricultural products so that the competent authority should be able to plan such intervention as may prove necessary. Since, during the transitional period, trade forecasts could relate only to the various national markets, there was nothing to prevent the Member States applying national criteria for the definition of concepts relating to imports and exports. The plaintiff in the main action here refers to the Judgment of the Court of 11 July 1968 in Case 4/68 *(Schwarzwaldmilch)*, Rec. 549. It concludes that the concept of importation in Article 7 (2) of Regulation No 102/64 should be defined according to normal administrative practice in the various Member States.

Should the Court not adopt this theory, the plaintiff claims that question 1 (b) cannot be answered by reference to Regulation No 1373/70 of the Council of 10 July 1970 (OJ of 20 July 1970, L 151/1) and to the Judgment of the Court of 15 December 1971 in Case 35/71 *(Schleswig-Holsteinische landwirtschaftliche Hauptgenossenschaft)*, Rec. 1083.

The last-mentioned Judgment was concerned with the interpretation of Article 15 (1) of Regulation No 120/67 of the Council of 13 June 1967 (OJ No 117, p. 2269). The expression 'day of importation' contained in that provision was interpreted with regard to the objective of the levy system instituted by Regulation No 120/67.

The concept of importation contained in Article 7 (2) of Regulation No 102/64 must be approached in the same fashion if a correct interpretation is to be obtained. In the words of the seventh recital of the preamble to that Regulation it is the purpose of the security 'to avoid licences being put into circulation which are not then followed by import and export' and, accordingly, could give 'a mistaken view of the market situation'.

The plaintiff concludes from this that the objectives of the levy system as laid down by Regulation No 120/67 on the one hand and those of the import-licence system on the other are not identical. A solution must therefore be found which takes account both of the particular objective of Regulation No 102/64 and of the legitimate interests of importers. The plaintiff refers to Article 41 of the Customs Law (Zollgesetz) and to the German doctrine of transport under customs bond and concludes that the declaration of imported goods with a view to their transport under customs bond constitutes an importation within the meaning of Article 7 (2) of Regulation No 102/64, provided that the

goods are not re-exported before being put into free circulation.

As to the second question, the plaintiff claims that the Court, in its Judgment of 11 July 1968 (Case 4/68) expressly laid down that the enumeration of cases of *force majeure* contained in Article 6 (3) of Regulation No 136/64 of the Council of 12 October 1964 (OJ 1964, p. 2601) is not exhaustive and that accordingly national courts are competent to recognize the existence of a case of *force majeure* in circumstances other than those set out in that provision. Given that the wording of Article 8 (2) and (3) of Regulation No 102/64 is almost identical to that of Article 6 (3) and (4) of Regulation No 136/64, it may justifiably be concluded that the case law of the Court cited above is equally valid in this case. This conclusion is supported by the Judgments of the Court of 17 December 1970 (Case 25/70) and 16 December 1970 in Case 36/70 *(Getreide-Import),* Rec. 1107.

In its Judgment of 30 January 1974 in Case 158/73 *(Kampffmeyer),* not yet reported, the Court held that a request for the consideration of circumstances of *force majeure* may be submitted after the period of validity of the licence has expired. Although that case was concerned with the interpretation of Article 18 of Regulation No 1373/70, there is nothing to prevent this case law being applied by analogy here.

Article 8 of Regulation No 102/64 lays down no time limit for the submission of the request. It follows from this that the submission of a request for consideration of circumstances of *force majeure* is not subject to any time limit, apart from the general limits applicable to the unlawful exercise of a right.

2. The *Commission* emphasizes that responsibility for the elaboration of the binding interpretation of the concept of importation contained in Article 7 (2) of Regulation No 102/64 devolves solely upon the Community legislature. The system inaugurated by Regulation No 102/64 can function only if the fact of putting goods into free circulation is included within the concept of importation. Any concept of importation which does not fulfil this condition is inadequate for the correct application of the licence system. In particular, the putting forward of the time of importation to coincide with another customs procedure, for example transport under customs bond, would not constitute a sufficient guarantee that the goods would be released upon the internal market. Transportation under customs bond does not in any way predetermine the final destination of the goods. The importer remains completely free to re-export the goods without previously putting them into circulation. The very existence of that possibility militates against the meaning and objective of Regulation No 102/64.

The line of argument adopted by the plaintiff, according to which during the transitional period the definition of the concept of importation should be allied to administrative practice within the various Member States, cannot be followed. At least insofar as concerns imports, the rules contained in Regulation No 19 are complete and detailed, and the Member States are given no discretionary power in their implementation. Accordingly, any intervention by the national legislature could prejudice the effect of Community provisions, in this case in particular those of Regulation No 102/64. Moreover, the fact that after the coming into force of the definitive organization of the market in cereals no definition of the concept of importation was necessary for the purpose of the implementation of the licence system clearly shows that the Member States no longer exercised any prescriptive power in this field during the transitional period.

In interpreting the concept of importation, no distinction should be made between the levy system and the licence system. In fact the systems are

closely linked to one another. This relationship has been recognized by the Court in its Judgment of 15 December 1971 (Case 35/71). The concept of importation cannot be interpreted on the basis of the individual facts of the case in point. Rather, general and abstract criteria must be applied. The application of Community agricultural law would become practically impossible if the national customs authorities had to establish the fact of importation according to the particular circumstances of each different case. The detailed definition of importation as contained in Regulation No 1373/70 does not in fact have the importance attributed to it by the plaintiff. That Regulation merely clarified the existing principle according to which all imports under the licence system must be effected by putting the relevant goods into free circulation.

However, insofar as Regulation No 1373/70 contains details of a technical nature, especially as to the exact definition of the moment at which the goods are put into free circulation, it must be recognized as having a normative effect. The Commission concludes from this that before Regulation No 1373/70 came into force slight differences in the definition of the time of importation were legitimate, insofar as they resulted from disparities between national provisions as to the definition of the time at which goods are put into free circulation.

The Commission agrees with the plaintiff on the reply to be given to the first part of the second question: the enumeration of cases of *force majeure* in Article 8 (2) of Regultaon No 102/64 is not exhaustive.

Although neither the provisions of Regulation No 102/64 nor those at present in force lay down a time limit for the submission of a request for the recognition of circumstances of *force majeure,* the submission of such a request is subject to a time limit by reason of the requirements of the effective administration of the licence system. Importers must therefore submit requests within a reasonable time. It is not possible to give a generally valid definition of what is to be understood by a 'reasonable time'. This must be determined by the particular circumstances of individual cases.

It is for the national authorities, who retain a certain measure of discretion in this field, to ascertain the reasonable time in individual cases.

The applicant in the main action and the Commission submitted oral observations at the public hearing on 4 April 1974.

The Advocate-General presented his opinion at the hearing on 7 May 1974.

Grounds of judgment

1 By order of 16 November 1973, registered at the Court on 11 January 1974, the Bundesverwaltungsgericht referred to the Court, pursuant to Article 177 of the EEC Treaty, two questions on the interpretation of Regulation No 102/64 of the Commission, of 28 July 1964, on import and export licences for cereals, processed cereal products, rice, broken rice and processed rice products (OJ No 126, p. 2125).

2 According to the order for reference, the main action is essentially concerned with the questions whether certain imports of brewing barley,

effected in 1967, were completed during the period of validity of the import licences upon which they were entered and if, accordingly, the security furnished pursuant to Article 7 of the Regulation should be released.

3 In this case the importer, the plaintiff in the main action, submitted the amount in question, loaded on board ship, to the customs office at Emmerich-Hafen on 31 May 1967, the final day of the period of validity of the licences in question. On the same day the customs office certified that the goods had crossed the frontier and placed the cargo under customs bond for the purpose of its transportation to the customs office in Düsseldorf where it was given customs clearance, unloaded and put into free circulation on 5 June 1967.

4 This procedure is explained by the fact that the documents necessary for customs clearance, notably the import licences, could not be submitted in good time to the authorities at Emmerich-Hafen because the importer had required them, on 24 May 1967, for the customs clearance of a previous quantity by the customs offices at Andernach and Düsseldorf. The licences had been returned by post and had not yet reached Emmerich-Hafen at that time.

As to the first question

5 Article 7 (2) of Regulation No 102/64 lays down: 'subject to the provisions of Article 8, where the obligation to import or export has not been fulfilled during the period of validity of the licence, the security shall be forfeit ...

6 As regards the market in cereals, this provision is based upon Article 16 of Regulation No 19/62 of the Council, of 4 April 1962, on the gradual establishment of a common organization of the market in cereals (OJ No 30, p. 933), according to which 'issue of the licence shall be conditional upon the furnishing of security guaranteeing the obligation to import during the period of validity of the licence, which shall be forfeit in the event of the import not being carried out during that period'.

7 The first question asks if the concept of importation contained in Article 7 of Regulation No 102/64 is to be interpreted according to national law and, if not, when the obligation to import is fulfilled where the importer has

declared the imported goods to the customs for the purpose of its transportation under customs bond.

8 Both the issue of import and export licences and the making of such issue conditional upon the furnishing of security corresponded to the competent authorities' need to be in possession of precise information on the state of the market and projected intra-Community imports and exports.

9 With this in mind, the provisions at issue must be interpreted and applied uniformly in all the Member States so as to avoid certain patterns of trade being treated more favourably than others as a result of differing practices.

10 In fact the development of the rules in relation to agricultural policy is characterized by an effort to define and elucidate the major concepts, such as that of importation, which are intended to facilitate the replacement of differing customs practices within the Member States by a uniform Community practice.

11 In the matter at issue this development was concluded — passing through Regulations Nos 120/67 (OJ 1967, No 117, p. 2269) and 473/67 (OJ 1967, No 204/16), which, in the framework of a more definitive common organization of the market, abolished the issuing of licences for intra-Community trade — in the provisions of Regulation 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.

12 As regards the period of validity of the licences, Article 15 of that Regulation lays down that 'the obligation to import shall be considered to have been fulfilled and the right to import pursuant to the licence or certificate shall be considered to have been exercised on the day when the customs [import] formalities ... are completed'.

13 Although the conclusion must be drawn from the objectives of the system adopted that only an import operation which results in the goods in question being put into free circulation corresponds to the concept of importation contained in Article 7 of Regulation No 102/64 and the provisions which have replaced it, that provision did not precisely define the moment at which the import operation should be considered to have been accomplished and legally established.

14 The mere fact that the goods in question have duly crossed the frontier of the Member State of destination cannot be sufficient, since in this case the possibility of re-exportation remains.

15 For similar reasons the importer's declaration to the customs authorities that the goods are intended to be imported and put into free circulation cannot fulfil the requirements of the said Article.

16 In fact any interpretation of Article 7 which would reverse the burden of proof, by requiring the competent authority to establish that the goods had not been put into free circulation as had apparently been intended, would be inadmissible as being prejudicial to the efficiency of the system in question.

17 On the other hand, having regard to the lack of precision of that provision, the view could be held that the requirements of Article 7 were fulfilled when the importer had produced documents establishing, on the one hand, that the relevant goods had been submitted to the customs authorities of the importing country during the period of validity of the licence and placed by those authorities under customs bond and, on the other hand, that the goods had subsequently been given customs clearance and been put into free circulation.

18 It must therefore be concluded, in the absence of any more precise requirements on this point, that Article 7 of Regulation No 102/64 does not prevent an importation within the meaning of that Article being defined as the crossing of the frontier of the importing country, duly recorded by the competent customs authorities, provided that it is also established that the goods were subsequently given customs clearance and put into free circulation.

As to the second question

19 Article 8 of Regulation No 102/64 lays down that 'where the import or export cannot be effected during the period of validity of the licence owing to circumstances to be regarded as of *force majeure,* and there is a request that these circumstances be taken into consideration ...', the obligation to import or export is cancelled or extended in the cases enumerated in paragraphs (2) and (3) of that Article.

20 The second question asks, firstly, if the national court is empowered to recognize the existence of a case of *force majeure* in circumstances different

from those listed in Article 8 (2) of Regulation No 102/64 or from those recognized by the Member States pursuant to Article 8 (3).

21 The concept of *force majeure* employed in that Regulation must take account of the special nature of the relationships at public law existing between commercial operators and the national administration, as well as of the objectives of the rules.

22 It is apparent from these objectives, as well as from the actual provisions of the regulations in question, that the concept of *force majeure* is not limited to cases of absolute impossibility, but must be understood in the sense of unusual circumstances, beyond the importer's control and which have arisen despite the fact that the titular holder of the licence has taken all the precautions which could reasonably be expected of a prudent and diligent trader.

23 Within the limits of their own competence, national courts can therefore recognize the existence of a case of *force majeure* not only where the situation in question is covered by the enumeration in paragraph (2) or where it has been recognized by the Member States pursuant to paragraph (3), but also in other cases.

24 The second question further asks whether requests for the consideration of circumstances of *force majeure* must be submitted within a given period and, if so, within what period.

25 Although, unlike subsequent regulations, Article 8 does not lay down a specific period within which a case of *force majeure* must be invoked, it is clear both from the wording of the Article and from the general scheme of the system initiated by the Regulation that the request must be made as soon as possible, preferably during the period of validity of the licence in question.

26 However, the case in point which has given rise to this reference clearly shows that it would be impossible to establish any strict and absolute rule in this matter, in view of the fact that a case of *force majeure* might possibly be invoked merely as a subsidiary point, if the party concerned considers that in the circumstances the conditions contained in the Regulation have been fulfilled.

27 It must be concluded that although Article 8 of Regulation No 102/64 does not lay down any specified period for the introduction of a request for the consideration of circumstances of *force majeure,* it nevertheless requires the

importers or exporters concerned to substantiate their claims in the fullest possible manner.

Costs

28 The costs incurred by the State of Belgium and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

29 As these preceedings are, insofar as the parties to the main action are concerned, a step in the action before the national court, costs are a matter for that court.

On those grounds

THE COURT

in answer to the questions referred to it by the Bundesverwaltungsgericht by order of that court dated 16 November 1973 hereby rules:

1. **Article 7 of Regulation No 102/64 does not prevent an importation within the meaning of that Article being defined as the crossing of the frontier of the importing country, duly recorded by the competent customs authorities, provided that it is also established that the goods were subsequently given customs clearance and put into free circulation.**

2. **Article 8 of Regulation No 102/64 does not lay down any specified period for the introduction of a request for the consideration of circumstances of *force majeure* but it nevertheless requires the importers or exporters concerned to substantiate their claims in the fullest possible manner.**

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

Delivered in open court in Luxembourg on 28 May 1974.

A. Van Houtte — Registrar

R. Lecourt — President