OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 5 February 1987 *

Mr President,
Members of the Court,

1. Do the price of maize agreed upon in an exporting non-member country or the special situation of the island of Réunion justify a derogation from the Community system of agricultural levies instituted by Regulation No 2727/75 of the Council on the common organization of the market in cereals? This in essence is the question to be decided in this case.

In order to resolve that question the national court asks first whether the amount of the levies charged on imports from non-member countries must be varied in the light of the circumstances surrounding *each transaction*, in such a way that they will be collected only if there is in each case a positive difference between the price prevailing within the Community and the external price.

That question can only be answered in the negative since it would be inconsistent with the very object of the legislation in question and the measures implementing it to 'individualize' the system of levies in that way.

The common organization of the market in cereals rests on a 'single price system' including

'a threshold price to which the price of imported products must be equated by means of a variable import levy'. [1]

2. That is because

'the creation of a single Community market for cereals involves, apart from a single price system, the introduction of a single trading system at the external frontiers of the Community'. [2]

The existence of a single price system for trade both within the Community and outside it, being a *sine qua non* for a single market, is the only means by which the objectives of Article 39 of the EEC Treaty can be attained. In particular, a single trading system serves

'to stabilize the Community market, in particular by preventing price fluctuations on the world market from affecting prices ruling within the Community' [2]

and thus makes it possible to ensure a fair income for the persons concerned while guaranteeing Community preference.

To that end, the levies on imports from non-member countries are intended, in a general manner,

'to cover the difference between prices ruling outside and within the Community'. [2]

1 — Third recital in the preamble to Regulation No 2727/75.
2 — Tenth recital in the preamble to Regulation No 2727/75.

* Translated from the French.

Thus conceived, the system of levies must, as the Commission stated, be of an 'abstract' or rather a general impersonal nature because it must apply independently of the price conditions agreed in any particular transaction.

This is confirmed in the Court's judgment in *Neumann*:

'since the levy . . . acts as a regulatory device for markets not in a national context but in a common organization, is defined with reference to a price level fixed in the light of the objectives of the common market . . . , it therefore appears as *a charge regulating external trade connected with a common price policy* . . . '.[3]

As the Commission correctly pointed out, the rules governing the calculation of the levy are a direct reflection of those characteristics. The amount of the levy is defined by the difference between

(a) a notional price, the *threshold price*, calculated on the basis of the target price, fixed for Rotterdam and determined each year for the whole marketing year,[4]

and

(b) a real average price, the cif price, that is to say the price of the product on the world market, which is also fixed for Rotterdam, on the basis of

'the most favourable purchasing opportunities on the world market, determined for each product on the basis of the quotations and prices of that market'.[5]

That last price therefore amounts to an average representing the real trend of the market.[6] The amount of the levy, which is fixed each day by the Commission, is altered only where it would be increased or reduced by more than 0.60 units of account per tonne.[7]

The levies are therefore applicable to all imports irrespective of the particular price conditions prevailing in the exporting non-member country. Since the levies collected are necessarily standard in nature, it may be that the price paid in respect of a particular transaction will exceed the cif price which the Commission has adopted as representative. That will merely be an isolated case without any significance from the point of view of the general trend of prices on the world market. Otherwise it will be necessary for the Commission to amend the levy previously fixed.

The price actually agreed by a Community importer for products from a non-member country is therefore in itself immaterial for the purposes of the application of the levy. Traders in the Community must therefore organize their import strategy in the light of the general and impersonal system instituted by the legislation, the provisions of which must be known to them. The levy, which is established on a Community basis, must therefore be regarded as a charge ensuring a standardized regulation of the price of products imported from non-member countries into the Community.

3 — Case 17/67 *Neumann* v *Hauptzollamt Hof (Saale)* [1967] ECR 441 at p. 453, emphasis added.

4 — Articles 2, 3 and 5 of Regulation No 2727/75.

5 — Article 13 of Regulation No 2727/75.

6 — Second recital in the preamble and Article 1 (2) of Regulation No 156/67 of the Commission of 23 June 1967 on the method of determining cif prices and levies for cereals, flour, groats and meal (Official Journal, English Special Edition 1967, p. 111).

7 — Article 6 of Regulation No 156/67.

3. Secondly, the tribunal d'instance, Saint-Denis asks the Court whether, in view of the objectively different situation of the island of Réunion as compared with the rest of the Community, the application of the system of levies to its imports of maize is not contrary to the principle of non-discrimination laid down in Article 40 (3) of the EEC Treaty.

The plaintiff in the main proceedings contends that the island's geographical isolation from the European mainland, which entails high transport costs, and the fact that its maize requirements substantially exceed local production capacity constitute a case of *force majeure* for importers in Réunion, who are compelled to import from South Africa the quantities of maize necessary to satisfy the requirements of local stock-farmers.

In that regard it should be pointed out that the application of the system of import levies to the French overseas departments is governed by Article 227 (2) of the EEC Treaty, which provides that:

'the general and particular provisions of this Treaty relating to:

...

agriculture, save for Article 40 (4);

...

shall apply as soon as this Treaty enters into force'.

Consequently, with the exception of the case covered by Article 40 (4), which is not at issue here, *all* the rules governing the common organization of the cereals sector, and more particularly those instituting the import levies, were applicable in their entirety throughout the territory of the French Republic including the overseas department of Réunion as from the entry into force of Regulation No 2727/75.

That would not of course preclude the authors of Community legislation from creating exceptions based on the special geographic, economic and social situation of an overseas department. [8] Indeed Article 227 (2) of the Treaty specifically provides that:

'the institutions of the Community will, within the framework of the procedures provided for in this Treaty..., take care that the economic and social development of these areas is made possible'.

Furthermore, by Regulation No 594/78 of 20 March 1978 [9] the Council exempted from all levies rice imported into the island of Réunion because it appeared that

'the supply situation should be improved by the introduction of special arrangements for rice for local consumption'. [10]

In the case of rice the Council found that the region was 'completely dependent on imports' because rice was not cultivated there. It also had regard to the fact that rice 'constitutes the basic foodstuff of the least favoured categories of the population of Réunion' and that their rice consumption considerably exceeded that of the Community. [11] In the Council's view those factors regarding the supply of rice for human consumption objectively characterized the situation of Réunion within the Community and therefore justified a different treatment in regard to the system of levies.

No legislation of that nature has thus far been adopted for imports of maize for use as animal feed. It is for the Community legislature, in particular in the light of any proposals made by the study group speci-

8 — See judgment in Case 148/77 *Hansen* v *Hauptzollamt Flensburg* [1978] ECR 1787, at paragraphs 9 and 10.

9 — Official Journal 1978, L 82, p. 10.

10 — Third recital in the preamble to Regulation No 594/78.

11 — Second and third recitals in the preamble to Regulation No 594/78.

fically responsible for monitoring the situation of the overseas departments, to make judgments of an economic and social nature which might justify the creation of a general derogation. As matters stand, there being no specific and compelling indications to that effect, there are no grounds for concluding that the situation of Réunion with regard to maize imports is so special as to distinguish it objectively from all other regions of the Community.

In any event, it is clear from a comparison between figures for imports and for intra-community trade between 1980 and 1983 that the Community is itself, as regards maize imports from non-member countries, in a position of dependence of the same order as Réunion. In particular, approximately 90% of the Community's imported maize comes from the United States of America, which disposes of the argument that this case is made exceptional by high transport costs.

4. It may be observed, moreover, as the Commission has pointed out, that Article 21 of Council Regulation No 435/80 of 18 February 1980 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States or in the overseas countries and territories [12] (hereinafter referred to as 'ACP States') provides that levies are not to be applied to direct imports into the French overseas departments of maize originating in the States concerned. As the Commission rightly states, that is a privilege conferred on the ACP States and not a derogation in favour of the overseas departments. However that may be, it follows that any importer into Réunion is able to import free of the levy. Although it is true that production in most of the exporting countries is not sufficient or reliable production, it would seem that Zimbabwe offered importers in Réunion the possibility of obtaining supplies satisfying both those criteria in each of the years in question.

Thus importers had the choice of purchasing within the Community, the costs of transport constituting in a sense the counterpart for the absence of any import levy, purchasing free of the levy from the exporting ACP States, which are closer geographically, or, finally, purchasing from any other non-member State, in particular South Africa, but subject to the levy. The choice of that last country as a supplier seems in fact to have been prompted by its geographical proximity and by the convenient packaging it was able to offer.

However, mere practical considerations and the quest for profitability cannot of themselves distinguish the situation of Réunion within the Community. In that regard it may be pointed out that Regulation No 594/78 concerning rice refers to exceptional circumstances, such as an absolute dependence for human consumption and imperative economic and social needs, in order to define that region's uniqueness within the Community.

Consequently, the application of the Community system of levies to the French department of Réunion does not, as the Community legislation now stands, constitute a breach of the prohibition of discrimination enunciated in the second subparagraph of Article 40 (3) of the EEC Treaty.

5. Finally, the tribunal d'instance asks the Court to rule on the applicability of the

12 — Official Journal 1980, L 55, p. 4.

provisions for repayment of duties laid down in Council Regulation No 1430/79. Its questions on that point are asked only in the event that collection of the levies on imported maize was contrary to the basic regulation or the prohibition of discrimination in Article 40 (3) of the Treaty. In view of the foregoing considerations, I do not think there is any need to reply to them. Consequently, it is unnecessary to deal with the arguments of the plaintiff in the main proceedings with regard to 'special circumstances' as referred to in Article 13 of Regulation No 1430/79, which is intended to correct only errors in the application of a *lawful* legislative measure, that is to say the reverse hypothesis to that lying behind the tribunal d'instance's questions.

6. The questions submitted by the tribunal d'instance, Saint-Denis, may therefore be answered as follows:

(1) The levies provided for by Regulation No 2727/75 on the common organization of the market in cereals are to be collected, irrespective of the terms agreed in connection with a particular importation, where the Commission finds that there is a difference between the threshold price and the cif price of cereals.

(2) The application of the system of agricultural levies instituted by Regulation No 2727/75 to maize imported into the overseas department of Réunion does not constitute a breach of the prohibition of discrimination enunciated in the second subparagraph of Article 40 (3) of the EEC Treaty.