OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 18 SEPTEMBER 1979

My Lords,

Introductory

This case comes to the Court by way of a reference for a preliminary ruling by the Verwaltungsgericht of Münster. It concerns the compatibility with Community law of certain restrictions placed in the Federal Republic of Germany on the importation of animal feeding-stuffs with a view to ensuring that they do not contain salmonellae.

The plaintiff in the proceedings before the Verwaltungsgericht is the Firma Denkavit Futtermittel GmbH, of Warendorf in the Land of North Rhine-Westphalia. The plaintiff, besides having its own factory for the manufacture of animal feeding-stuffs at Warendorf, has since 1961 imported into the Federal Republic products obtained from its Dutch associated company, Denkavit Nederlands BV, of Voorthuizen. Those products are of two kinds:

(1) feeding-stuffs for piglets manufactured by the Dutch company itself and marketed under the brand-names "Denkavit" or "Rekord"; their precise composition varies depending upon the state of the market for primary products at any given moment, but their only ingredients of animal origin are milk powder and animal fats (lard or beef fat);

(2) concentrates of powdered milk and animal fats, in roughly equal proportions; these are an intermediate product used in the manufacture of milk based feeding-stuffs and are acquired by the Dutch company from dairies in the Netherlands.

The defendant in the proceedings is the Minister of Food, Agriculture and Forestry of North Rhine-Westphalia. The reason for this is that, until the entry into force on 1 April 1979 of federal legislation on the importation and transit of feeding-stuffs of animal origin, the "Verordnung über die Einfuhr und die Durchfuhr von Futtermitteln tierischer Herkunft und von Knochenmaterial" of 15 August 1978, the regulation of those matters was in the Federal Republic the responsibility of the Länder. Each Land had its own legislation about it, though it appears that, in fact, the legislation was, in all but insignificant respects, the same in all the Länder. We were told at the hearing that the problems arising under the erstwhile legislation of the Länder could arise in much the same way under the new federal legislation.

The legislation in force in North Rhine-Westphalia was a regulation of 18 September 1957, the "Viehseuchenverordnung über die Ein- und Durchfuhr von Futtermitteln tierischer Herkunft aus dem Auslande", which, like the Commission, I shall refer to as the "Einfuhrverordnung".

The main requirements of the Einfuhrverordnung were laid down in paragraphs 1 and 2 thereof.

Paragraph 1 provided:

"Feeding-stuffs of animal origin . . . may be imported into the customs territory only upon production on importation of a certificate from the competent authorities in the exporting country confirming that the goods have undergone a heating process during or after dehydration whereby any salmonellae which may have been present were destroyed."

Paragraph 2 provided:

"(1) Feeding-stuffs shall be subject upon importation to an official inspection carried out by veterinary experts in an official veterinary inspection institute. They may be imported only when it has been established by bacteriological analysis that the goods are free from salmonellae.

Samples shall be taken for inspection purposes in the following proportions:

— for consignments of 1 to 100 bags, in 5% thereof,

— for consignments of 101 to 500 bags, in 3% thereof,

— for consignments of over 500 bags, in 2% thereof.

(2) Where the inspection provided for in subparagraph 1 reveals the presence of salmonellae, the feeding-stuffs may be imported only after having undergone a heating process carried out under the supervision of the official authorities whereby the salmonellae may be destroyed."

Thus those paragraphs provided for a double safeguard: a certificate from the competent authorities in the exporting country (paragraph 1) and an examination, prior to importation, of samples of the goods in a German veterinary institute (paragraph 2).

The effect of those paragraphs was, however, mitigated to some extent by paragraph 9, whereby power was reserved to the Minister "to grant exemptions from the provisions of this Regulation where there is no reason to fear that the importation and transit of the goods . . . are a source of introduction or propagation of epizootic disease germs".

The plaintiff says that for some ten years after it began importing the products in question from the Netherlands its importations were not in fact subjected to systematic veterinary examination. From 1972 onwards, however, the provisions of paragraphs 1 and 2 of the Einfuhrverordnung were applied to those importations with full rigour.

In 1976 the plaintiff applied to the Minister for exemption under paragraph 9 from the requirements of paragraphs 1 and 2 or, in the alternative, from the requirements of at least one of them, preferably paragraph 2. In support of its application the plaintiff relied on Article 30 of the EEC Treaty as interpreted by this Court in Case 4/75 *Rewe-Zentralfinanz* v *Landwirtschaftskammer* [1975] 1 ECR 843, contending that the requirements of paragraphs 1 and 2 were measures having an effect equivalent to quantitative restrictions on imports of a kind prohibited by Article 30 subject only to the exceptions provided for by Article 36 of the Treaty. The plaintiff said that the requirements of paragraph 2 meant in practice that the goods were held up for three days at the frontier, which in its turn meant that they could not be transported by lorry but must be transported by rail, because it would be uneconomic to immobilize a lorry for three days. On the other hand transport by rail was more costly and less convenient than would be direct door-to-door transport by lorry. The plaintiff

contended, again in reliance on the Judgment of this Court in the *Rewe-Zentralfinanz* case, that Article 36 could not be invoked to justify the requirements of paragraph 2 because there was in North Rhine-Westphalia no systematic examination of home produced feeding-stuffs. Moreover, having regard to the reliability of the certificate furnished by the Dutch authorities under paragraph 1, there was no justification for requiring in addition an inspection under paragraph 2. Alternatively inspection under paragraph 2 should make it unnecessary to require a certificate from the Dutch authorities, the obtaining of which also entailed expense and trouble.

Correspondence ensued between the Minister and the plaintiff's legal advisers as a result of which, early in 1977, it was intimated to the plaintiff on behalf of the Minister that licences under paragraph 9 would be granted exempting its importations from the requirements of paragraph 2, in each instance for a period of three months and in relation to a named customs post. To obtain a licence the plaintiff would be required to specify:

(i) that the imported feeding-stuffs contained no ingredient of animal origin apart from milk products in powdered form and animal fat;

(ii) that the milk products had been manufactured exclusively from pasteurized milk;

(iii) that the fats had been heated to at least 85 °C; and

(iv) that the whole manufacturing process had been carried out as a "closed process".

The plaintiff expressed doubt as to the compatibility of those conditions with Articles 30 and 36 of the Treaty, but, whilst reserving its legal rights, made the declarations that had been called for on behalf of the Minister. A licence was accordingly issued to it on 15 March 1977.

The licence was expressed to be for a period of three months and to be revocable at any time, without compensation, for public health reasons. It specified the quantity of each kind of goods to be imported thereunder (350 tons of "Denkavit" feeding-stuffs for piglets and 50 tons of concentrate of milk powder and fats); the origin of the goods (the Netherlands); the customs post through which they were to be imported (Oeding); their destination (Warendorf); and the consignee (the plaintiff). It was also expressed to be subject to the condition that a certificate of the kind that I have mentioned be produced at the time of importation, and to the further condition that the goods should be imported in new plastic bags which must be destroyed after being emptied.

A charge of 50 DM was made for the licence under Land legislation prescribing administrative fees, the "Allgemeine Verwaltungsgebührenordnung" of 9 January 1973.

In the present proceedings before the Verwaltungsgericht of Münster the plaintiff challenges the validity of the restrictive conditions upon which that licence was granted, and also the lawfulness of the charge made for it.

Your Lordships will remember that, in applying for the licence, the plaintiff had said that there was in North Rhine-Westphalia no legislation for the

systematic examination of home-produced feeding-stuffs. That appears to be correct, but there has at all material times existed in Germany legislation requiring installations for the commercial manufacture of feeding-stuffs containing products of animal origin to be supervised by the veterinary authorities. The legislation now in force as to that is a federal regulation, the "Verordnung über die Behandlung von Futtermitteln tierischer Herkunft bei gewerbsmäßiger Herstellung" of 28 July 1977. Before the entry into force of that regulation similar provision was made in North Rhine-Westphalia by the "Viehseuchenverordnung zur Ausführung des Viehseuchengesetzes" of 24 November 1964.

There is no such mandatory legislation in the Netherlands. But it appears that similar supervision of undertakings is in fact carried out there, at all events where they produce for export. There was before the Verwaltungsgericht evidence as to the relative frequency and thoroughness of the inspections made in the Netherlands and Germany respectively. From that evidence (which is before this Court also) the Verwaltungsgericht concluded that the supervision by the Dutch authorities of Denkayit Nederlands BV's installation at Voorthuizen was at least as reliable as the supervision by the German authorities of installations within their jurisdiction.

The question referred to the Court by the Verwaltungsgericht

The question referred to this Court by the Verwaltungsgericht is framed as one long sentence extending to nearly two pages. It begins by setting out the provisions of Community law that appear to the Verwaltungsgericht to be relevant. They are Articles 9, 30 and 36 of the Treaty, Council Regulation (EEC) No 804/68 "on the common organization of the market in milk and milk products" and Council Regulation (EEC) No 2727/75 "on the common organization of the market in cereals".

Two substantive questions are then asked.

The first is directed to the compatibility with those provisions of paragraphs 1 and 2 of the Einfuhrverordnung taken by themselves. It is whether those provisions are to be interpreted as forbidding legislation in a Member State that "makes the importation of feeding-stuffs of animal origin from another Member State subject, in respect of each consignment, to a certificate from the competent authority in the exporting country showing that the feeding stuffs have undergone a process to destroy salmonellae and, in addition, authorizes importation only if the competent national authority in the importing country has established by bacteriological examination that the goods contain no salmonellae".

The second substantive question is directed to paragraph 9 of the Einfuhrverordnung and to the way in which the Minister, in the instant case, exercised his powers under that paragraph. It is whether the provisions of Community law referred to are to be interpreted as forbidding a state of affairs in which it is left to the discretion of the competent authority to grant exemption, by special licence, from the requirements mentioned in the first substantive question, and that authority is thereby given power to grant such a licence "on condition that;

— the licence is granted only for a limited period, may be revoked without compensation at any time for reasons of the veterinary authority, is, in addition, valid in accordance with the application only for goods of a specific quantity and origin and only for transportation via a specific custom post to a specific consignee;

— a certificate from the veterinary authority of the exporting country as to the composition and method of processing of the feeding-stuffs to be imported must be produced in respect of each individual consignment;

— importation in plastic bags is only permitted if the bags are new and are destroyed after being emptied;

— and an administrative fee of not less than DM 5 and not more than DM 50 is charged in respect of each licence."

Finally there is a tailpiece of which the effect is to invite the Court to deal with the question on the assumption that:

"on the one hand, a provision of the law relating to infectious diseases of animals of the importing country provides with regard to domestic production in general for the supervision by the veterinary authority of the installations for the commercial manufacture of feeding-stuffs which contain products of animal origin, and, on the other, there is no comparable provision in the exporting country but the exporting manufacturing undertaking is subject to an official control which is at least comparable to the supervision carried out in the importing country."

Regulation No 804/68 and Regulation No 2727/75

It seems that, depending on their precise composition, the feeding-stuffs imported by the plaintiff are covered by the common organization of the market in milk and milk products or by that of the market in cereals. Article 22 of Regulation No 804/68 expressly prohibits the levying of customs duties or charges having equivalent effect and the imposition of quantitative restrictions or measures having equivalent effect "in the internal trade of the Community". The Verwaltungsgericht saw a similar prohibition as being implicit in Regulation No 2727/75. As the Commission pointed out, however, the better view is that provisions like Article 22 of Regulation No 804/68 were included in the earlier Regulations establishing common organizations of agricultural markets because the Articles of the Treaty relating to the abolition of barriers to intra-Community trade (in particular Articles 9 and 30) did not become directly effective until the end of the transitional period. Now that those Articles do have direct effect, provisions such as Article 22 are spent, for they add nothing to what is contained in the Treaty.

I need accordingly to consider the question referred to the Court by the Verwaltungsgericht only in relation to Articles 9, 30 and 36 of the Treaty.

Article 9 of the Treaty

Article 9, which forbids as between Member States customs duties on imports and exports and all charges having equivalent effect, can apply of course only in relation to the charge made for the licence granted by the Minister to the plaintiff.

It is well established by decisions of this Court that the concept of a charge

having equivalent effect to a customs duty extends to any charge imposed in connexion with the importation of goods, unless it is levied under a general system of internal dues applying to imports and domestic products alike or it constitutes payment for a genuine service to the importer, which controls imposed in the public interest are not; see for instance Case 29/72 *Marimex* v *Italian Finance Administration* [1972] 2 ECR 1309; Case 39/73 *Rewe Zentralfinanz* v *Landwirtschaftskammer Westfalen-Lippe* [1973] ECR 1039; Case 63/74 *Cadsky* v *Istituto Nazionale per il Commercio Estero* [1975] ECR 281; Case 87/75 *Bresciani* v *Amministrazione Italiana delle Finanze* [1976] 1 ECR 129; and Case 35/76 *Simmenthal* v *Italian Minister of Finance* [1976] 2 ECR 1871.

I am accordingly of the opinion that, even assuming in favour of the Minister that the licensing system operated by him under Article 9 of the Einfuhrverordnung and the conditions attached to the licence granted by him to the plaintiff are otherwise valid, no charge may be made for the grant of such a licence. The Minister did not indeed seek to argue otherwise before this Court.

Articles 30 and 36 of the Treaty

The case was argued before us on the footing that there was no doubt that the provisions of paragraphs 1, 2 and 9 of the Einfuhrverordnung constituted measures having an effect equivalent to quantitative restrictions on imports of a kind forbidden by Article 30 of the Treaty unless they were exempted by Article 36.

That that assumption was correct as regards paragraphs 2 and 9 is, in my opinion, clear. There is ample authority for the proposition that systematic public health inspections of imports constitute measures of such a kind; see for instance Case 4/75 *Rewe-Zentralfinanz* v *Landwirtschaftskammer* [1975] 1 ECR 843 and Case 35/76 *Simmenthal* v *Italian Minister of Finance* [1976] 2 ECR 1871. There is similarly ample authority for the proposition that any system of import licensing constitutes such a measure; see for instance Cases 51 to 54/71 *International Fruit Co.* v *Produktschap Groenten en Fruit* [1971] 2 ECR 1107 and Case 41/76 *Donckerwolcke* v *Procureur de la République* [1976] 2 ECR 1921; consider also Case 82/77 *Openbaar Ministerie of the Netherlands* v *Van Tiggele* [1978] ECR 25, where it was held that a system under which a trader was faced with the necessity of applying for exemption from a measure having an effect equivalent to a quantitative restriction itself constituted such a measure.

The position is not, however, so clear as regards paragraph 1 of the Einfuhrverordnung. There is, so far as I am aware, no case in which the Court has held that a requirement that goods should be accompanied by a certificate to this or that effect necessarily constitutes a measure of a kind prima facie forbidden by Article 30. Nor does it seem to me possible to assert that, as a matter of principle, it must do so. There are circumstances in which the requirement of a certificate accompanying goods is designed, and operates, to facilitate trade rather than to hinder it. That indeed is why such a requirement is often imposed by Community law itself. A good

example of this, to which our attention was drawn on behalf of the Minister, is to be found in the health certificates prescribed by Council Directives No 64/432/EEC "on animal health problems affecting intra-Community trade in bovine animals and swine" and No 64/433/EEC "on health problems affecting intra-Community trade in fresh meat". In Case 8/74 *Procureur du Roi* v *Dassonville* [1974] 1 ECR 837 the Court expressly left open the question whether the requirement of a certificate of origin, where it was reasonably required in the interests of consumer protection and fair trading, fell outside the scope of Article 30 altogether or fell within it but was exempted by Article 36. Nor did the Court find it necessary to tackle that question in Case 2/78 *Commission* v *Belgium* (16 May 1979, not yet reported). So far as the authorities go, the most that can be said, I think, is that the *Dassonville* case and *Commission* v *Belgium* show that to require a certificate to accompany goods constitutes a measure having an effect equivalent to a quantitative restriction forbidden by Article 30 where the requirement is unreasonable; the same conclusion may be drawn from the *Donckerwolcke* case and from the cases that follow it, Case 52/77 *Cayrol* v *Rivoira* [1977] 2 ECR 2261 and Case 179/78 *Procureur de la République* v *Rivoira* (28 March 1979, not yet reported).

My own view is that where the requirement of a certificate is reasonable it is outside the scope of Article 30 altogether. But I doubt if, at the end of the day, in the case of a certificate of the kind required by paragraph 1 of the Einfuhrverordnung, i. e. of a certificate confirming that goods have undergone treatment ensuring their freedom from pathogens, it matters very much whether one regards the requirement of it as excluded altogether from Article 30 if reasonable or as prima facie within Article 30 but exempted by Article 36 if the conditions of the latter are met. In either case, it seems to me, the relevant test must be the same, because one could hardly hold to be reasonable a requirement that such a certificate should be furnished where that was unnecessary for the protection of the health or life of humans or animals, or where it constituted a means of arbitrary discrimination or a disguised restriction on trade between Member States.

On Article 36 the plaintiff puts its case in two ways.

First the plaintiff relies on Case 5/77 *Tedeschi* v *Denkavit* [1977] 2 ECR 1555, where the Court said:

"Where, in application of Article 100 of the Treaty, Community directives provide for the harmonization of the measures necessary to ensure the protection of animal and human health and establish Community procedures to check that they are observed, recourse to Article 36 is no longer justified and the appropriate checks must be carried out and the measures of protection adopted within the framework outlined by the

harmonizing directive." (Paragraph 35 of the Judgment).

The plaintiff contends that the problems of human and animal health connected with intra-Community trade in animal feeding-stuffs fall within a field that is already exhaustively regulated by harmonizing directives adopted under Article 100 of the Treaty, so that recourse to Article 36 is no longer permissible in relation to them.

The Minister and the Commission submit that that contention is ill-founded. I agree.

I do not propose to take up Your Lordships' time with an analysis of all the Council Resolutions and Directives that are referred to in the Order for Reference and were referred to in argument before us, because, as I understand the plaintiff's argument, its essential foundations include on the one hand a Council Resolution of 22 July 1974 (OJ C 92/2 of 6 August 1974) foreshadowing, among other things, the adoption by the Council of proposals relating to the "marketing of straight feeding-stuffs" and to the "marketing of compound feeding-stuffs" and, on the other hand, two Directives adopted by the Council in accordance with that Resolution. These are Directive No 77/101/EEC of 23 November 1976 "on the marketing of straight feeding-stuffs" and Directive No 79/373/EEC of 2 April 1979 "on the marketing of compound feeding-stuffs". As was pointed out on behalf of the Minister and of the Commission, it is within the latter that the feeding-stuffs imported by the plaintiff from the Netherlands must fall.

Not only was Directive No 79/373 adopted after the events in the present case had occurred, but, by virtue of Article 16 thereof, Member States have until 1 January 1981 to bring into force the laws, regulations and administrative provisions necessary to comply with it. That being so, despite the bold and ingenious argument put forward on behalf of the plaintiff to the contrary, I do not think that the existence of that Directive can possibly render applicable here the principle stated by the Court in *Tedeschi* v *Denkavit.* It is therefore unnecessary for me to consider a further point made on behalf of the Minister and of the Commission that Directives No 77/101 and No 79/373 are not concerned with safeguards against the presence of pathogens in feeding-stuffs.

In the alternative the plaintiff submits that, in the circumstances of the present case, Article 36 of the Treaty does not authorize a double safeguard such as is provided for by paragraphs 1 and 2 of the Einfuhrverordnung, nor does it authorize a system of lincences limited in point of time or a system of licences, even unlimited in point of time, that contain conditions of the kind imposed by the Minister on the plaintiff. At most, the plaintiff says, Article 36 authorizes random sampling, on the footing that the essential safeguard for the German authorities should lie in their keeping in touch with the Dutch authorities as to the nature and extent of the inspections carried out by them at the premises of Denkavit Nederlands BV. There is some support for that view in Article 5 of the Treaty and in the Judgment of the Court in Case 104/75 *De Peijper's* case [1976] 1 ECR 613 (paragraph 27).

I think it however necessary, on this part of the case, to go back to basic principles.

To one of those basic principles I alluded a moment ago. As the Court reasserted

recently in its Judgment in Case 153/78 *Commission* v *Germany* (12 July 1979, not yet reported) the test of the validity under Article 36 of measures taken by a Member State for the protection of the health or life of humans or animals (or, for that matter, plants) is whether those measures are "justified", which means "necessary", for that purpose. To that I would add (quoting paragraphs 17 and 18 of the Judgment in *De Peijper*'s case) that:

"National rules or practices do not fall within the exception specified in Article 36 if the health and life of humans can as effectively be protected by measures which do not restrict intra-Community trade so much.

In particular Article 36 cannot be relied on to justify rules or practices which, even though they are beneficial, contain restrictions which are explained primarily by a concern to lighten the administration's burden or reduce public expenditure, unless, in the absence of the said rules or practices, this burden or expenditure clearly would exceed the limits of what can reasonably be required."

One must also add the obvious rider that such rules or practices cannot be "justified" under Article 36 if they constitute "a means of arbitrary discrimination or a disguised restriction on trade between Member States".

Secondly, where the validity of measures taken by a Member State purportedly for the protection of the health or life of humans or animals (or plants) is challenged before a court or tribunal of that Member State, it is for that court or tribunal to apply the test in the light of all the facts of the case, including the details of the legislation applicable in that State and the conditions prevailing there as a result of that legislation. On a reference under Article 177 of the Treaty, this Court cannot, without exceeding its jurisdiction, go much further than to restate the test; at most it can indicate to the national court or tribunal factors that it should or should not take into account in applying the test.

Thirdly, the onus must always be upon a national authority that relies on Article 36 to demonstrate that the measures that it seeks to justify under that Article are indeed justifiable thereunder, i.e. that they do satisfy the test. That is implicit, I think, in many Judgments of the Court, including its Judgment in Case 153/78.

So I do not think it possible for Your Lordships to answer the question that has been referred to the Court by the Verwaltungsgericht of Münster in the sort of detail in which it has been put. But I think that Your Lordships can give some useful guidance to the Verwaltungsgericht, particularly in the light of what has been said on behalf of the Minister.

Apart from observations of a general kind about the serious risks to animal and human health inherent in the possible presence of salmonellae in animal feeding-stuffs, no attempt was made in this Court, on behalf of the Minister, to justify the double safeguard in paragraphs 1 and 2 of the Einfuhrverordnung. Mention was made of a case where, in 1976, analysis of a sample

taken from a consignment imported by the plaintiff revealed the presence of salmonellae, but that incident was not specifically relied upon as justifying the double safeguard. Moreover the correctness of that analysis is challenged by the plaintiff. The submissions put forward on the Minister's behalf, on this part of the case, were, unless I misunderstood them, directed only to the terms and conditions of the licence granted to the plaintiff.

On behalf of the Commission we were told that, according to its information, a distinction was drawn in all the other Member States between feeding stuffs of which the only ingredients of animal origin were powdered milk and fats, and those containing other ingredients of animal origin. In all those Member States, with the exception of Italy, imports of feeding-stuffs of the first kind were subject to no restriction. This was because the production of powdered milk and the rendering of fats each involved the heating of the product to such a degree as necessarily to kill off any salmonellae present. Italy, it seems, requires imports of such feeding-stuffs to be accompanied by a certificate to the effect that they have been treated in such a way as to eliminate salmonellae. When I put this point to the representative of the Minister at the hearing, he agreed that the processes of manufacture referred to by the Commission were sufficient to eliminate salmonellae and said that all that the Minister wanted was confirmation that those processes had in fact been used — which seemed to point to the need for a certificate accompanying the goods rather than to the need for a double safeguard.

On the need for a certificate we were also told on behalf of the Minister that there was in the Netherlands no systematic inspection of factories producing feeding-stuffs such as was required by law in Germany; that in the Netherlands official inspections were carried out only where and to the extent that that was made necessary by the requirements of countries to which the feeding-stuffs were to be exported; and that accordingly only by requiring a certificate from the Dutch authorities could the German authorities ensure that feeding-stuffs imported from the Netherlands were as safe as those manufactured in Germany. Those statements do not, of course, conflict which the Verwaltungsgericht's finding that the Dutch official inspections (where they take place) are at least as reliable as those conducted in Germany.

As regards the other conditions attached to the plaintiff's licence, the explanations given on behalf of the Minister may be summarized as follows.

As to the requirement that the licence should state the quantity of each type of feeding-stuff to be imported under the licence, it was said that it constituted no restriction on trade because the quantity was determined by the plaintiff itself. To this the plaintiff retorted that to have to decide in advance the amount to be imported over a period of three months did hinder trade because it made it difficult to meet unforeseen orders promptly.

The limitation of the validity of the licence to three months was said to be justified on grounds that were expressed in rather vague terms and which, I confess, I was unable to understand.

The requirement that the origin of the goods should be stated was explained as necessary to prevent misuse of the licence. That is intelligible enough if one accepts the need for a licence at all.

The requirement that the customs post through which the goods were to be imported, their destination and the identity of the consignee should all be specified was explained as necessary to enable consignments imported under the licence to be identified and if necessary traced, so that appropriate steps could be taken in the event of an outbreak of salmonellosis. It was not however made clear whether there were in force in Germany corresponding provisions enabling home-produced feeding-stuffs to be traced in the event of such an outbreak.

Nothing was said on behalf of the Minister about the requirements as to the packaging of the goods, and in particular as to whether similar requirements were imposed in the case of home-produced feeding stuffs. It should, however, in fairness be mentioned that Article 4 (1) of Directive No 79/373 provides, subject to exceptions, that:

"Member States shall prescribe that compound feeding-stuffs may be marketed only in sealed packages or containers. They shall also prescribe that the packages or containers be sealed in such a way that, when the package is opened, the seal is damaged and cannot be re-used."

One can therefore, I think, take it as being generally accepted that such requirements are necessary.

Conclusions

In the light of all that I am of the opinion that, in answer to the question referred to the Court by the Verwaltungsgericht, Your Lordships should rule as follows:

(1) Articles 30 and 36 of the EEC Treaty are to be interpreted as forbidding all impediments to trade between Member States purportedly imposed for the protection of the health or life of humans or animals except in so far as they are shown to be necessary for such protection. This exception does not cover —

(a) national rules or practices adopted for that purpose if the purpose could effectively be achieved by measures impeding intra-Community trade less (including, where that is possible, co-operation between the authorities of Member States);

(b) national rules or practices which, even though they are beneficial, are primarily designed to lighten the administrative burden of the competent authorities unless, in the absence of those rules or practices, that burden would become unreasonable;

(c) national rules or practices that constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

(2) Where the validity of measures taken by a Member State purportedly for the protection of the health or life of humans or animals is challenged before a court or tribunal of that Member State, it is for that court or tribunal to determine, in the light of all relevant circumstances, whether and to what extent the exception applies in favour of those measures or any of them, bearing in mind that the onus of showing that the exception does apply rests on those who assert it. The relevant circumstances may include the nature of the goods in question and of their processes of manufacture, the details of the legislation applicable in that State in relation to such goods when imported and when home-produced respectively, the conditions prevailing in any other Member State from which such goods are imported, and the contents of any relevant Community legislation.

(3) Article 9 of the Treaty is to be interpreted as meaning that, even where a system of licensing imports has been shown to be justified as coming within the exception, no charge may be made for the grant of any licence thereunder.

(4) The provisions of Regulation (EEC) No 804/68 and Regulation (EEC) No 2727/75 do not in any relevant respect add to the provisions of the Treaty.