the mere fact that an imported product has a lower nutritional value does not pose a real threat to human health.

2. A Member State may not justify a ban on the importation and marketing in its territory of meat products from other Member States containing certain ingredients other than meat by referring to requirements of consumer protection and fair trading and arguing, first, that because of their established eating habits national consumers have a clear idea about what they expect from meat products and, secondly, that some traders could acquire a competitive advantage by using less expensive ingredients of poorer quality without the differences in manufacture being apparent to consumers. Consumers may be provided with information by means which do not hinder the importation of the products concerned, in particular by the compulsory affixing of suitable labels indicating the nature of the product sold.

3. Once the Community has established a common market organization in a particular sector, the Member States must refrain from taking any unilateral measure, even if that measure is likely to support the common policy.

   Even if they support a common policy of the Community, national measures may not conflict with one of the fundamental principles of the Community, such as that of the free movement of goods, unless they are justified by reasons recognized by Community law itself.

REPORT FOR THE HEARING

delivered in Case 274/87 *

I — Facts

Paragraph 4 (1) of the Fleisch-Verordnung (Meat Regulation) of 21 January 1982 (*BGBl.* I, p. 89) prohibits the marketing of meat products in the preparation of which certain animal or vegetable substances are used. Those substances include, *inter alia*, milk and dairy products, eggs and egg-based products, and vegetable substances containing albumen, starch or dextrin.

There are two exceptions to that prohibition. First, Paragraph 4 (2), read together with Annex 2 of the Fleisch-Verordnung, provides that subparagraph (1) of that paragraph is not to apply in respect

* Language of the case: German.

of the substances listed, and under the conditions set out, in that annex, without any necessity to place a distinguishing mark on the product to indicate the presence of those substances.

Secondly, Paragraph 5, read together with Annex 3 of the Fleisch-Verordnung, allows the use of other prohibited substances for certain meat products and under specified conditions. In such cases, however, the goods must bear a mark indicating that those substances are present.

The ban on marketing is supplemented by Paragraph 47 (1) of the Lebensmittel- und Bedarfsgegenständegesetz (LMBG, Law on foodstuffs and necessities) of 15 August 1974 (*BGBl.* I, p. 1945; III, 2125 to 40), which prohibits the importation of foodstuffs which do not comply with German standards.

Compliance with those rules is ensured by provisions relating to criminal or administrative offences.

The abovementioned provisions have the effect of preventing certain meat products, lawfully manufactured in other Member States where different rules apply to the use of ingredients other than meat, from being imported into the Federal Republic of Germany.

The Commission considered that the prohibition of the importation of meat products that did not comply with German standards was contrary to Articles 30 and 36 of the Treaty and, by a letter of 20 December 1985, requested the German Government, in accordance with the first paragraph of Article 169 of the Treaty, to submit its observations within a period of one month from the receipt of that letter. The German Government explained its point of view in a letter of 24 April 1986.

On 23 December 1986, the Commission delivered a reasoned opinion, as provided for in the first paragraph of Article 169 of the Treaty, requesting the Federal Republic of Germany to adopt the measures necessary to comply with that opinion within a period of one month from the date of notification thereof.

In its reply of 2 June 1987, the German Government maintained its point of view. It stated, however, that in the interim it had been possible to find a solution for the description of French and Belgian 'pâtés' and suggested that the proceedings should be suspended, referring, *inter alia*, to discussions in the Council about a possible ban on the use of vegetable proteins in meat products.

II — Written procedure

By an application lodged at the Court Registry on 16 September 1987, the Commission of the European Communities brought an action before the Court under the second paragraph of Article 169 of the EEC Treaty for a declaration that the Federal Republic of Germany had failed to fulfil its obligations.

The procedure followed the normal course. The Commission waived its right to submit a reply.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate

General, the Court decided to open the oral proceedings without any preparatory inquiry. The parties were requested to clarify certain statements in writing; they complied with that request within the time allowed.

III — Conclusions of the parties

The Commission claims that the Court should:

(1) declare that by prohibiting the importation and marketing in its territory of meat products from other Member States which do not comply with Paragraphs 4 and 5 of the Fleisch-Verordnung, the Federal Republic of Germany has failed to fulfil its obligations under Article 30 of the EEC Treaty;

(2) order the Federal Republic of Germany to pay the costs.

The defendant contends that the Court should:

(1) dismiss the application;

(2) order the Commission to pay the costs.

IV — Submissions and arguments of the parties

1. The Commission considers that the German rules constitute an infringement of the prohibition of measures having an effect equivalent to quantitative restrictions (Article 30 of the EEC Treaty) and are not justified. The Commission rejects the following justifications, put forward by the German Government during the pre-litigation procedure:

(a) *Public health*

The restrictions cannot be justified on grounds relating to the protection of public health (Article 36 of the Treaty) because they are not necessary in order to guarantee a supply of animal protein for the population.

It appears from the report on nutrition drawn up in 1984 and published by the German Government that meat consumption in Germany consists of 60 to 65% fresh meat and of 35 to 40% meat products and that meat consumption has increased considerably in Germany since the 1960s, with the result that internationally recommended protein intake levels have already been partially exceeded.

Consequently, there is no threat to health in Germany from slight changes in the composition of meat products. On the contrary, those products, especially sausages, contain considerable quantities of harmful substances such as cholesterol and purine, whereas certain vegetable proteins are generally considered to be very healthy. Experts even fear that over-consumption of meat is a bad thing.

(b) *National quality policy*

The Commission considers that the pursuit of a national quality policy does not constitute a mandatory requirement of public interest within the meaning of the Court's case-law and cannot, therefore, be relied upon as justification for a prohibition on the importation of products lawfully manufactured and marketed in other Member States. The Commission refers to the Court's judgments of 20 February 1979 in Case 120/78 *Rewe* v *Bundesmonopolverwaltung für Branntwein* [1979] ECR 649, of 17 March 1983 in Case 94/82 *De Kikvorsch* [1983] ECR 947, of 12 March 1987 in Case 176/84 *Commission* v *Greece* [1987] ECR 1193 and Case 178/84 *Commission* v *Germany* [1987] ECR 1227. It is also clear from the Court's previous decisions relating to the effects of a national quality policy that such a policy is permissible only in so far as it does not prevent the importation of different products from other Member States (Judgments of 7 February 1984 in Case 237/82 *Jongeneel Kaas* v *Netherlands* [1984] ECR 483 and of 28 March 1984 in Joined Cases 47 and 48/83 *Pluimveeslachterijen Midden-Nederland and Van Miert* [1984] ECR 1721).

In the Commission's view, those last two judgments show that it is perfectly possible to have a national quality policy for foodstuffs while still complying with the requirement set out above. True quality will generally prevail, without protective measures, except against unfair competition and practices which mislead consumers. It is wrong to claim that, where competition is completely free and fair, inferior products will win more market acceptance than high-quality products. The error of that argument is borne out, *inter alia*, by developments in Germany subsequent to the Court's judgment in Case 178/84, cited above, especially by the reaction of the brewers who have seized the opportunity of using the 'purity' of German beer as an advertisement.

In the alternative, the Commission submits that, even if a national quality policy were to be considered a mandatory requirement of public interest within the meaning of the Court's case-law on Article 30 of the Treaty, the relevant German rules could not be accepted. A national policy on the quality of meat products based on the sole criterion that all ingredients other than meat must be eliminated is totally unsuitable for achieving its objective. The quality of meat products does not depend essentially on whether they contain exclusively or principally pure meat but on the type of meat and the types of the other ingredients. The German rules, however, do not define meat quality, and contain exceptions to the prohibition of ingredients other than meat, some of which refer even to luxury products.

The concern voiced by, *inter alia*, the German Government itself in its 1984 report on nutrition, mentioned above, about excessive consumption of fats and harmful substances contained in certain meat products, particularly sausages, shows the extent to which the German legislation is unable to provide a general and permanent guarantee of the quality of such products. Consequently, in view of the principle of proportionality, it is impossible to justify measures laying down an absolute ban on the importation of products of undoubtedly high quality from other Member States while at the same time allowing national products of poorer quality to be marketed.

Finally, the Commission claims that the German rules cannot in any event be allowed to remain in their present form, since they contain a disguised discrimination against foreign meat specialities (see the Court's judgment of 6 November 1984 in Case 177/83 *Kohl* v *Ringelhan & Rennett* [1984] ECR 3651). To a certain extent at least, the provisions in question apply only theoretically to both national and imported products, since the derogations from the ban on the use of ingredients other than meat are granted primarily for products traditionally manufactured in Germany. In the Commission's view, the lists of exceptions contained in the annexes to Paragraphs 4 and 5 of the Fleisch-Verordnung should at least be transformed into a 'European list of specialities'.

(c) *Consumer protection*

The Commission acknowledges that, to a certain extent, the application of measures restricting the movement of goods may be justified on grounds related to the protection of the consumer from misleading practices. The German rules, however, do not comply with the principle of proportionality.

Today's consumer, who is used to travel and to contact with foreign ways of life, has sufficient maturity and taste to try new experiences, contrary to the implication of the German rules. Obviously, he must have sufficient information to be able to make his choice from the considerably wider range of products. That requirement, however, cannot justify limiting the range of meat products available for sale on the basis of national criteria.

Unlike in the field of food safety, complete Community harmonization in the field of foodstuff composition is totally out of the question because of the multiplicity of products and of modes of preparation. Without mutual recognition of national provisions, and appropriate consumer information, free movement of foodstuffs cannot be achieved either.

While acknowledging that the questions of the designation of the nature of the products concerned are more complex than those raised in most of the previous cases, the Commission nevertheless considers that it is possible to provide the consumer with effective information. As Paragraph 5 of the Fleisch-Verordnung shows, the problem raised is not entirely a new one for the German legislature.

It is true that an exhaustive description of ingredients is not always possible. But it would be both possible and compatible with Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (Official Journal 1979, L 33, p. 1) to provide, for example, for a short description of the essential constituents of each product and to make a precise list of all its constituents available to those customers who want it.

(d) *Fair competition*

In the Commission's submission, the protection of producers and distributors against unfair competition, as a mandatory requirement of public interest which can justify restrictive measures, is adequately ensured if the consumer is provided with proper information.

The question whether the application of different provisions to national and foreign products constitutes a breach of the principles governing fair competition is a matter for national law in so far as imports are favoured by that practice. However, neither economic pressure nor even a requirement of national law extending the rules applicable to foreign products to cover national products can ever justify the application of measures which are incompatible with Article 30 of the Treaty. Any other interpretation of that article would amount to calling into question the Court's previous case-law on the subject.

(e) *Protection of farmers and meat-producers*

In the Commission's opinion, economic considerations, such as the protection of agricultural producers against a threatened loss of outlets, cannot justify restrictions on the free movement of goods either on grounds of fair competition or on the ground of any other mandatory requirement accepted by the Court in the context of Article 30 of the Treaty.

In any event, the scope of such a consideration is very limited. As there can be no question of protecting national agriculture or favouring one sector of production (meat) over another (such as eggs, milk or cereals), the prohibitions which might possibly be justified under the German rules would relate only to agricultural products imported from non-member countries.

2. The defendant considers that the German rules are compatible with Articles 30 and 36 of the Treaty because they are justified on the grounds of the protection of health, consumer protection and other mandatory requirements of the public interest.

(a) *Public health*

The aim of the contested rules is to ensure the protection of public health within the meaning of Article 36 of the Treaty by ensuring an adequate supply of certain essential nutrients contained in meat. That aim could not be achieved if ingredients other than meat were authorized in general, which would make it possible to offer meat products at considerably more attractive prices but without containing sufficient quantities of certain important nutrients.

Meat products constitute a major source of proteins — 11.9% of the total requirement for men and 9.7% for women. Even today, however, meat consumption is not adequate in certain groups of the population.

It has been scientifically established that animal proteins have greater value than vegetable proteins. Furthermore, when ingredients other than meat are used, the large number of processing operations required results in a considerable loss of essential nutrients, in particular of vitamin B1 (thiamine).

The high biological value of animal protein, on the other hand, provides an adequate supply of proteins even during periods of increased protein requirements (such as periods of growth). Meat products are also essential as a source of thiamine (vitamin B1), riboflavin, niacin and iron. A balanced diet can be ensured simply by taking the other substances contained in those products, such as fats, cholesterol and purine, into account.

The contested provisions do not constitute a disguised discrimination against meat specialities from other Member States. Whenever the competent authority becomes aware of the existence of such specialities, it can add them to the lists of exceptions contained in the annexes to Paragraphs 4 and 5 of the Fleisch-Verordnung. Furthermore, a foreign product having the same composition as, but a different description from, those listed in the annexes would not be caught by the ban on importation.

The Commission's argument relating to a 'European list of specialities' favours the harmonization of the basic rules on foodstuffs, as advocated by the German Government. Pending such harmonization, the Federal Republic of Germany has taken the step of concluding bilateral or multilateral agreements, especially in the case of French and Belgian 'pâtés'.

(b) *Consumer protection*

In the defendant's submission, the effective protection of consumers against the risk of their being misled — a mandatory requirement precluding any infringement of Article 30 of the Treaty — can be ensured only by a general prohibition of ingredients other than meat in meat products.

As a result of habits which date back several decades, German consumers have formed a clear idea of what they expect from meat products, that is to say that they must be composed exclusively or essentially of meat and comply with the quality standards laid down in Paragraphs 4 and 5 of the Fleisch-Verordnung.

Those standards protect the consumer from the possibility of being misled by ensuring that the composition of products is transparent and hence that the market is transparent. In that sense, quality protection is a mandatory requirement which can justify certain measures in the context of Articles 30 to 36 of the Treaty (see the Court's judgment of 12 October 1978 in Case 13/78 *Eggers* v *Freie Hansestadt Bremen* [1978] ECR 1935).

The Commission's argument that quality will prevail is valid only if the consumer is in a position to detect inferior quality. But that is not the case for products containing ingredients other than meat. Once colouring and flavouring agents have been added,

those products are indistinguishable, in taste and appearance, from products made exclusively from meat. In many cases, even chemists are unable to detect the presence of such substances, or are able to do so only at the cost of disproportionate effort. Effective supervision would be practically impossible, whereas the contested rules do provide easy and effective control.

In view of the exceptions provided for in the contested rules, they cannot be considered to be disproportionate. The principle of proportionality does not preclude all prohibitions on marketing (see the Court's judgments of 15 December 1982 in Case 286/81 *Oosthoek's Uitgeversmaatschappij* [1982] ECR 4575 and of 13 March 1984 in Case 16/83 *Prantl* [1984] ECR 1299). Pending Community harmonization, which is the only appropriate means of dealing with this type of problem, there is no other way of ensuring consumer protection which would have less effect on the free movement of goods. The multiplicity of products and of modes of preparation to which the Commission refers when explaining that harmonization is impossible gives rise to far more problems for the individual Member State in laying down rules on the marking of meat products. The Community legislature could obtain the necessary information from the various Member States, and then unify the law applicable in that field.

Rules regulating the designation of meat products, however, are not sufficient to ensure consumer protection, and are to a large extent unpractical. The enormous number of new products which might emerge once restrictions were lifted and the difference between their composition and that of the usual products on the German market might mislead consumers, even if there were a list of their actual composition.

Moreover, the provision of exhaustive labelling would pose practical problems, particularly in the case of unpackaged products (approximately 80% of all meat products) and as regards restaurant menus. The listing of all the substances used would not only involve problems of space but might also fail to guarantee proper information in view of the large number of ingredients, the lack of clarity and the impossibility of making the adequate indication of difference in composition sufficiently clear.

Curtailed indications of the kind advocated by the Commission would not be appropriate either, and would require a prior Community definition of 'essential ingredients'. Moreover, such a measure would raise problems with regard to Directive 79/112, cited above. Furthermore, the suggestion that a precise list of ingredients might be made available to customers is unrealistic.

(c) *Fair competition*

In the defendant's submission, the contested rules constitute a measure which is necessary in order to protect producers and distributors of pure meat products from unfair competition. Manufacturers of products containing ingredients other than meat could gain a considerable competitive advantage by using additives inferior in quality but cheaper than pure meat. Since

differences of manufacture are not apparent to purchasers, such an advantage cannot be tolerated.

(d) *Mandatory requirements relating to the common agricultural policy*

The defendant considers that Paragraphs 4 and 5 of the Fleisch-Verordnung are necessary in order to comply with mandatory requirements relating to the common agricultural policy. In its judgment of 14 January 1981 in Case 46/80 *Vinal* v *Orbat* [1981] ECR 77, the Court implicitly acknowledged that the aims of the common agricultural policy could justify restrictions on imports.

In the defendant's submission, that is the case where those aims are embodied in a common organization of the market. The aim pursued by the common organizations of the markets in beef and pig meat, which is to stabilize the market, would be imperilled if existing surpluses were further aggravated by increased use of ingredients other than meat, particularly soya. Because those market organizations have not led to complete harmonization in the marketing field, they must be supplemented by national rules, such as those at issue, which serve the same aims.

Moreover, a complete liberalization of trade in meat-substitute products, not subject to market organizations and therefore offering considerable competitive advantages, would harm agricultural producers of pure meat products. The result would be that the operation of common market organizations would be seriously affected, if not paralysed.

The repeal of the prohibition of ingredients other than meat would adversely affect not only German meat producers but also — in view of the considerable quantities of pigmeat imported into Germany from the other Member States — producers throughout the Community. It is not therefore a question of a conflict between a Member State and the Community but of a conflict between the aims of the common market organizations and those of the free movement of goods. The rules at issue maintain the balance between the various interests involved.

G. C. Rodríguez Iglesias
Judge-Rapporteur