OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 23 NOVEMBER 1976 [1]

Mr President,
Members of the Court,

When animals for slaughter and butcher's meat — including bovine animals and beef and veal — are imported into or exported from Italy they undergo on crossing the frontier a veterinary and public health inspection by veterinarians in order to ascertain whether they carry any virus which could endanger the health of domestic livestock. Provision is made for these inspections in Article 32 of the consolidated health laws (Royal Decree No 1265 of 27 July 1934). The implementing provisions are found in Article 45 of the regulation on veterinary supervision (Decree No 320 of 8 February 1954 of the President of the Republic). The importers and exporters are charged fees for carrying out the inspections. The scale of fees in force in 1973 was laid down in a Law of 30 September 1970. The fees were Lit 1 000 for each bovine animal and Lit 500 for every 500 kg of beef and veal.

The Simmenthal firm whose place of business is in Monza had to pay fees for veterinary and public health inspections in accordance with this scale when it imported beef and veal into Italy from France in July 1973. It therefore commenced summary proceedings against the Italian Ministry for Finance for a refund of the fees which it had paid on the ground that this payment was incompatible with Community law.

In order to substantiate this alleged incompatibility it argued that even the inspections which had been carried out are unlawful, because they are to be regarded as measures having an effect equivalent to quantitative restrictions on imports which are prohibited under the common organization of the market in beef and veal (Council Regulation No 14/64/EEC, OJ No 34 of 27. 2. 1964, p. 562 and Regulation (EEC) No 805 of the Council of 27. 6. 1968, OJ English Special Edition 1968 (I), p. 187). In this connexion it is of importance that only imported goods were systematically inspected whereas there was in principle no restriction on the circulation of home-produced goods. As far as meat intended for human consumption is concerned it is interesting to note that a 1928 regulation provides in general for it to be inspected at its destination for the purpose of checking its condition from the point of view of health before it is released for consumption. This also applies to imported goods which are consequently inspected twice. It is also important to bear in mind that animal health problems affecting intra-community trade in bovine animals and swine and also in fresh meat were dealt with in 1964 and 1972 (Council Directive No 64/432 of 26. 6. 1964, OJ English Special Edition 1963-1964, p. 164: Council Directive No 64/433 of 26. 6. 1964, OJ English Special Edition 1963-1964, p. 185: Council Directive No 72/461/EEC of 12. 12. 1972, OJ English Special Edition 1972, 31. 12. 1972, p. 3) by means of harmonizing national provisions for the supervision of public health. The effect of these regulations is that national measures adopted unilaterally have ceased to be justified. Community rules have replaced them and imposed upon Member States in particular the obligation to treat as binding the health certificates which are issued in the exporting State after a compulsory and systematic veterinary and public health inspection by official veterinarians.

1 — Translated from the German.

With regard to the fees payable for the veterinary and public health inspection the Simmenthal firm is of the opinion that they are to be treated as charges having an effect equivalent to customs duties within the meaning of the provisions under the common organization of the market in beef and veal which prohibit such charges. In the first place a decisive factor in support of this view is that only imported goods bear such a charge. In so far as fees are also charged for the inspection of home-produced goods it is important to bear in mind that they are additional fees borne by imported products which also undergo similar inspections. Furthermore not only does the aim of the frontier inspection differ from that of the inspection carried out within the Member State concerned: there is another important difference, namely that fixed scale fees apply to imports, whereas the fees payable to the veterinarians of the communes differ from one province to another and in addition vary according to quantity and head of cattle.

By order of 6 April 1976 the Pretura di Susa stayed the proceedings and referred the following questions for a preliminary ruling under Article 177 of the EEC Treaty:

(a) Whether Articles 30 *et seq.* of the EEC Treaty, Article 12 of Regulation No 14/64/EEC as well as Article 22 of Regulation (EEC) No 805/68 — having regard to the harmonization provisions of the legislation adopted to give full effect to the common organization of the market in beef and veal by Council Directives Nos 64/432/EEC and 64/433/EEC — to be interpreted as meaning that a veterinary and public health inspection at the frontier, of *a compulsory and systematic nature,* constitutes a measure having an effect equivalent to a quantitative restriction on imports and on exports, and if so, as from which date?

(b) Whether in case of an affirmative answer to the foregoing question, is Article 36 of the EEC Treaty to be interpreted as meaning that a compulsory and systematic veterinary and public health inspection of the type carried out within the meaning of Article 32 of the consolidated health laws of the Italian Republic (Regio Decreto No 1265 of 27 July 1934) is still *'justified'* following the adoption of the directives on the harmonization of health laws quoted above several times?

(c) In the event of a negative answer to the foregoing questions, must recourse be had to the provisions of Article 9 *et seq.* of the EEC Treaty or else to those of Article 95 in a case in point in which in one Member State there must be paid, on the occasion of veterinary and public health inspections of animals and of beef and veal, various pecuniary charges some of which are charged on the imported goods on the occasion of veterinary and public health inspections at the time of crossing the frontier, whilst others are charged on the occasion of internal inspections of similar domestic goods or goods treated as such and which are distinguished by the following characteristics,
   - the inspections at the frontier are additional to the domestic ones and to the relevant fees;
   - for the domestic inspections there is no fixed duty but a 'fee' for the issue of the inspection certificate;
   - the frontier duties are of a fixed amount whilst the 'fees' for the internal inspections are variable;
   - the 'fixed frontier duties' are invariably charged per head of cattle or on the quantity of goods, whilst the 'fees' for the domestic inspections vary according to quantity and number and are reduced in inverse proportion to the increase in the number and quantity?

If these questions are considered against the factual background as I have

described it, it is immediately apparent that they go beyond it. In fact they refer indeed also to the veterinary and public health inspections carried out when *live bovine animals* are imported and they cover in addition the Italian rules applying to *exports* in this field. Therefore to that extent it might te thought that the questions are plainly irrelevant to the decision which the national court must make. However I do not intend to suggest that the Court should take this view. Since the facts upon which the various questions referred are based are interrelated and since those questions which are not of direct interest in this case may be of importance in parallel proceedings, there are in my view no fundamental objections to conducting the examination in accordance with the wording of the order making the reference. For my part I shall however leave out the questions concerning the inspections of *exports* simply because I have to give my opinion on them in any event in Case 46/76 *(Bauhuis* v *The Netherlands State)* which is a reference for a preliminary ruling.

1. Of the two categories of problems arising out of the questions I will deal first of all with the one which relates to the legality of veterinary and public health inspections of imported bovine animals and meat. It is therefore necessary to consider whether they are to be treated as measures having an effect equivalent to quantitative restrictions on imports and whether it appears to be possible to justifiy them under Article 36 of the EEC Treaty even after the issue of the Community directives to which reference has already been made. In this connexion it must not be overlooked that the order making the reference focuses attention on *systematic* inspections. On the other hand I do not need to concern myself with the question whether — as the representative of the Italian Government stressed — exhaustive inspections were only carried out from time to time. This is a question of fact which has if necessary to be determined by the court making the reference in the main action.

(a) In this connexion there is one finding which can be made at the outset without any difficulty. There is in fact much to be said for the view that when systematic veterinary inspections of exports to determine whether there are any pathogenic agents — even laboratory analyses play a part in determining this question — are carried out, as they reputedly are in Italy, they are to be regarded as measures having an effect equivalent to quantitative restrictions on imports. To support this view it is sufficient to refer to the relevant definition as laid down by the Court for example in Case 8/74 *(Procureur du Roi* v *Benoir and Gustave Dassonville* [1974] ECR 852) according to which 'All trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade ...' amount to such a measure. These conditions would seem to be satisfied in a case such as this one, if it is borne in mind that the inspections involve delays — a fact which for instance played a part in Case 4/75 *Rewe-Zentralfinanze GmbH* v *Landwirtschaftskammer* [1975] ECR 858) — that, as the plaintiff in the main action submitted, these delays may lead to the imported goods being damaged and that they involve financial charges as well as to the administrative formalities connected therewith, to which for example reference was made in Case 63/74 in *W. Cadsky SpA* v *Instituto Nazionale per il Commercio Estero* [1975] ECR 290).

Moreover the Commission Directive No 70/50/EEC (OJ English Special edition 1970 (I), p. 17) on the abolition of measures having an effect equivalent to quantitative restrictions on imports to which reference has been made in other cases (for example Case 4/75, *Rewe* [1975] ECR 843) must not be forgotten. According to Article 2 (r) of this directive

such measures exist if imported products are subjected to inspections other than those inherent in the customs clearance procedure, to which domestic products are not subjected, or if the inspections applying to imported products are stricter than those carried out on domestic products. On this point it is important to bear in mind that in Italy domestic products are not subjected *before* despatch to any similar systematic inspections – this is to be inferred from the order making the reference and the arguments of the parties to the main action – but only have to undergo a veterinary inspection in exceptional cases and for a limited period by order of the Prefect when a disease breaks out. In so far as a veterinary and public health inspection of meat has to be carried out at the destination it applies apparently also to imported meat, in other words the latter meat is inspected twice. When the Italian Government on the other hand also submitted during the oral procedure that veterinary and public health inspections of a different kind are carried out within Italy this does not in any case seem to me to prove that these are similar and equivalent inspections which rule out the possibility of any discrimination against imported goods. However in the end the necessary clarification of this point would have to be obtained in the main action, because the procedure for making references under Article 177 is not suitable for making such findings, an operation which would be tantamount to an application of the law.

(b) Article 36 of the EEC Treaty is of crucial significance in answering the related question whether the measures of inspection in question are nevertheless justified. It provides that restrictions on trade imposed for the protection *inter alia* of health and life of humans and animals are permitted. However the reservation in Article 36 that the restrictions shall not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States must not be disregarded. Moreover it is clear from the wording of the article that the measures under consideration must be *necessary* and in Case 104/75 *(Adriaan de Peijper, Managing Director of Centrafarm BV* [1976] ECR 636) reference was expressly made to this requirement.

With reference to the last-mentioned point the proceedings have shown that the relevant legal rules enacted on a Community level, that is the Council directives on animal health problems to which reference has already been made, are of decisive importance. There is no need for me to describe their contents in detail now; the Commission has done this comprehensively in its written observations, which gave the clear impression that at Community level far-reaching measures to prevent and combat rinderpest together with other measures intended to ensure that meat for human consumption reaches the market in good condition have been adopted. These measures already apply outside the Community and in trade with third countries and they are intended to prevent the importation of goods which might spread disease. They are unusually extensive and exhaustive within the Community whether they aim at preventing or combating diseases. It is of particular significance that provision is made for systematic and thorough inspections by a veterinarian in the exporting country of goods intended for intra-Community trade and for thorough inspections of meat before and after slaughtering. After such inspections an official health certificate is issued which certifies in the case of animals that they do not have the symptoms of any disease and also in the case of meat that it comes from healthy animals and is fit for human consumption.

In view of these rules which were adopted for the specific purpose of bringing about the free movement of goods and – unlike the rules with which Case 4/75 was concerned – not just to complement domestic provisions and in view furthermore of the fact that, as the

Commission has maintained, the guarantees inherent in Community rules are superior to those under the national systems, and in particular under the Italian system, and also having regard to the fact that experience acquired since the adoption of the Community rules, which the Commission has described in detail, has shown that they are operating satisfactorily, one is forced to the conclusion that systematic inspections of imports are neither necessary nor justified. On this point I call attention in particular to the ruling in Case 8/74 *Procureur du Roi* v *Benoît and Gustave Dassonville* [1974] ECR 852) that Member States are only justified in adopting certain measures restricting trade as long as no Community system has been organized. Moreover the Commission was right when it submitted that the burden placed upon exports by the Community rules, which goods intended for the home market do not have to bear, appears in fact only to be justified if it is assumed that Member States are under a fundamental duty to recognize the health certificates issued in other Member States.

On the other hand reference to the field of application of the Community rules and also to the special provisions in the directives mentioned in no way alters the validity of the basic conclusion which has been reached at this point. The Italian Government referred to this when it observed that the Community rules are not complete, that they expressly permit certain restrictions on imports and moreover that it has been shown that in practice their proper observance is not always guaranteed.

Therefore it certainly has to be conceded that Article 6 of Directive No 64/432 and Article 5 of Directive No 64/433 empowder Member States to prohibit in certain circumstances the introduction of bovine animals and swine or meat into their national territory and that this presupposes that inspections are carried out at the frontier. Further according to Article 8 of Directive No 64/432 that directive does not affect certain domestic provisions, those for example relating to bovine animals which have been treated with antibiotics and under Article 6 of Directive No 64/433 other similar domestic provisions relating to the indtroduction of small pieces of meat, the treatment of slaughter animals with certain substances or the detection of the presence of trichinae in fresh pigmeat. Finally it is also true that the directives contain certain safeguard clauses. They provide for example — as in Article 9 of Directive No 64/432 — that a Member State may take specific measures if there is a danger of animal diseases spreading as a result of the introduction into its national territory of bovine animals or swine from another Member State. On the other hand they authorize — as in Article 4 of Directive No 64/433 — Member States to prohibit the introduction into their national territory of fresh meat coming from certain slaughter-houses or cutting plants.

However, in this connexion it must in the first place not be overlooked that it is only *specific* inspections for particular purposes and not therefore inspections of a general nature which can be justified. Moreover it must be possible to point to specific reasons for adopting the measures, for example that there have been outbreaks of diseases or that Community provisions have not been complied with. In my view this emerges from the judgment in Case 4/75 *(Rewe* [1975] ECR 843) which stressed that on the basis of previous experience there must be grounds for believing that failure to carry out inspections of imports might be dangerous. Furthermore it must be assumed that in the interest of the principle of interfering as little as possible with trade the inspections have to be limited to spot checks. Finally it is also important — and this refers to the application of the protective clauses which have been mentioned, for example Article 8 of Directive No 64/432 — that such measures are confined to exceptional circumstances and can only

be provisional. Moreover they provide for a Community procedure to be followed, within the framework of which the standing Veterinary Committee set up by Council Decision of 15 October 1968 (No 68/361/EEC) plays a part and the Commission as well as the Council is empowered to take decisions. It must in particular be borne in mind that in this connexion compliance with the prohibition of discrimination is important, that is to say, that in principle domestic and imported products must be treated on the same footing.

(c) Consequently there remains in fact no other conclusion than that the measures of inspection at issue in the main action as described by the court making the reference are to be regarded as measures having an effect equivalent to quantitative restrictions and therefore incompatible with the Treaty. Since the point was raised in the first question it is also necessary to add that the prohibition relating to products covered by the common organization of the market took effect from the date specified in the regulations establishing the market organizations. If one assumes that national inspections pursuant to Article 36 of the Treaty were jusitied before the adoption of the repeatedly mentioned Community rules, it must in any case be assumed that with the introduction of the national provisions corresponding to the Community rules the said prohibition took effect at the latest on the expiry of the period applicable under the directives for the approximation of national veterinary and public health provisions.

2. The second question to which I now turn, namely whether the fees charged for the veterinary inspections at the frontier are compatible with the Treaty, will not take me long, especially as it was only raised in case the first question was answered in the negative.

On this point I would draw attention again to the definition of charges having an effect equivalent to customs duties which has repeatedly been given in the case-law and in particular to the fact that the purpose for which the charges are used and the question whether they were imposed for the benefit of the State is not a decisive factor, as was emphasized in Case 63/74 *(W. Cadsky SpA* v *Istituto Nationale per il Commercio Estero* [1975] ECR 281). The fact that the systematic frontier inspections for which the fees are charged have to be treated as unlawful is an argument in favour of applying this definition to the present case. Moreover it has already been settled in the case-law — Case 29/72 *SpA Marimex* v *Amministrazione Finanziara Italiana* [1972] ECR 1318 — that, even if the inspections are lawful according to Article 36 of the Treaty the charging of *fees* is not covered by this provision.

The following however must be added to what I have said:

- There can quite clearly be no justification on the ground that the fees represent the consideration for a service provided for the importer by the administration. All that needs to be said on this point is to be found in Case 87/75 *Conceria Daniele Bresciani* v *Amministrazione Italiana delle Finanze* [1967] ECR 139) which made it clear that such public health inspections were in the common interest, and for this reason it appears appropriate that the costs incidental thereto should be borne by the general public.
- Similarly justification on the ground that such fees had to be charged on domestic products, that is to say, that Article 95 of the Treaty and not Article 13 of the Treaty or the corresponding articles in the common organizations of the market has to be considered, is out of the question. On this point the finding made at the outset is important, namely that similar inspections of products are not carried out and that, in so far as there are any domestic inspections, they are in addition to

the inspections of imports, that is to say, they result in fees being charged twice on the imported products. Furthermore the domestic fees appear to be payable in respect of services provided for purposes of a different kind and related to another stage of production and it might well prove to be the case that the criteria for their assessment differ from those which apply to the inspections of imports. In other words — I refer on this point to the passages in the judgments in Case 29/72, *Marimex* [1976] ECR 1309 and in Case 87/75, *Bresciani* [1976] ECR 129 — there can therefore be no question of the fees charged for the inspection of imports forming part of a general system for charging domestic fees which are systematically applied to domestic and imported products in accordance with the same or similar criteria.

The fees at issue in the main action are consequently to be classified as charges having an effect equivalent to customs duties and this proves that according to the Treaty and the relevant provisions relating to the organization of the market they are illegal.

3. The questions referred by the Pretura di Susa can therefore be answered as follows:

(a) The obligation to subject meat and animals intended for intra-Community trade and covered by the directives on the approximation of public health provisions to systematic veterinary and public health inspection on being imported into a Member State constitutes a measure having an effect equivalent to a quantitative restriction on imports which is prohibited by Article 30 *et seq.* of the EEC Treaty and not justified under Article 36. In the case of products subject to a common organization of the market this prohibition took effect in principle from the date specified in the regulations establishing the organization of the market.

(b) The unilateral imposition by a Member State of a pecuniary charge, which is imposed in intra-Community trade in respect of a veterinary or public health inspection of goods crossing the frontier is a charge having an effect equivalent to a customs duty.