JUDGMENT OF THE COURT
5 July 1990 *

In Case C-304/88,

Commission of the European Communities, represented by René Barents, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by Jan Devadder, Deputy Adviser in the Ministry of Foreign Affairs, External Trade and Development Cooperation, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy, 4 rue des Girondins,

defendant,

APPLICATION for a declaration that by subjecting imports of live animals and fresh meat coming from other Member States to the requirement of a prior import authorization, whether issued automatically or otherwise, the Kingdom of Belgium has failed to fulfil its obligations under Article 30 of the EEC Treaty and Council Directive 64/432/EEC of 26 June 1964 on animal-health problems affecting intra-Community trade in bovine animals and swine (Official Journal, English Special Edition 1963-64, p. 164) and Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (Official Journal, English Special Edition 1963-64, p. 185),

* Language of the case: Dutch.

THE COURT

composed of: O. Due, President, Sir Gordon Slynn, C. N. Kakouris and F. A. Schockweiler (Presidents of Chambers), G. F. Mancini, T. F. O'Higgins and G. C. Rodríguez Iglesias, Judges

Advocate General: M. Darmon
Registrar: H. A. Rühl, Principal Administrator

having regard to the Report for the Hearing,

after hearing the representatives of the parties at the hearing on 21 February 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 20 March 1990,

gives the following

Judgment

1 By application lodged at the Court Registry on 18 October 1988, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by subjecting imports of live animals and fresh meat coming from other Member States to the requirement of a prior import authorization, whether issued automatically or otherwise, the Kingdom of Belgium had failed to fulfil its obligations under Article 30 of the EEC Treaty and Council Directive 64/432/EEC of 26 June 1964 on animal-health problems affecting intra-Community trade in bovine animals and swine (Official Journal, English Special Edition 1963-64, p. 164) and Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (Official Journal, English Special Edition 1963-64, p. 185).

2 With regard to fresh meat, the Commission stated at the hearing that the requirement of an authorization had been discontinued, and that it therefore withdrew that head of claim.

3 With regard to live animals, it is apparent from Articles 5 and 6 of the Belgian Ministerial Order of 22 June 1965 concerning the importation, transit and exportation of live animals (*Moniteur belge* 1965, p. 10238) and Articles 2, 3(7), 15, 20, 23, 36 and 64 of the Belgian Ministerial Order of 28 July 1971 on the importation, transit, exportation and trade between Benelux countries of live animals and certain products of animal and vegetable origin (*Moniteur belge* 1971, p. 13370), that the importation of live bovine animals, swine, sheep and goats, domestic solipeds and poultry coming from other Member States is conditional on prior authorization issued by the Minister for Agriculture.

4 As regards the importation of bovine animals and swine, the Commission considered that the requirement of prior import authorizations was contrary to Council Directive 64/432, cited above, and, as regards the importation of live animals of other species, to Article 30 of the EEC Treaty. By letter of 13 December 1985, it therefore served formal notice on the Belgian Government to submit its observations.

5 By letter of 14 April 1986, the Belgian Government informed the Commission that it intended to maintain the requirement of a prior authorization for the importation of live animals, which, in its view, was lawful because it was issued automatically and had no restrictive effect on trade.

6 On 9 March 1987, the Commission delivered a reasoned opinion to the Belgian Government, calling upon it to adopt the measures necessary to comply with its obligations within one month. In its reply of 2 July 1987, the Belgian Government stood by the position set out in its letter of 14 April 1986.

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The compatibility of the requirement of prior import authorization with the EEC Treaty

8 The Belgian Government maintains, first of all, that the requirement of a prior import authorization does not constitute a restrictive measure because the authorization is issued automatically.

9 In that regard, it is sufficient to point out that a system of authorizations is, in principle, contrary to Article 30 of the EEC Treaty. The Court has already held that Article 30 precludes the application to intra-Community trade of national provisions which require, even as a pure formality, import licences or any other similar procedure (judgment in Case 124/81 *Commission* v *United Kingdom* [1983] ECR 203 — the 'UHT milk' case).

10 The Belgian Government claims, however, that the system set up is intended to provide information for health purposes. In particular, it informs the importer that the importation is not prohibited on health grounds and enables the national authorities to check the health of the animals after importation.

11 With regard to the first branch of that argument, it must be pointed out that a prior import authorization is not necessary in order to inform the importer of a right which he knows he has already under Article 30 of the Treaty, since bovine animals and swine to be imported are accompanied by a health certificate drawn up by the authorities of the exporting Member State.

12 The second branch of the Belgian Government's argument must be regarded as an attempt to justify the requirement of prior import authorizations in the light of

Article 36 of the Treaty, which permits restrictions on imports justified on grounds of *inter alia* the protection of health and life of humans or animals.

13 In that regard, it must be pointed out that, unlike trade in other live animals which is not yet covered by any harmonizing measures, animal-health measures in the field of intra-Community trade in bovine animals and swine are governed by Council Directive 64/432. The Court has consistently held that where, in application of Article 100 of the Treaty, Community directives provide for the harmonization of the measures necessary to ensure *inter alia* the protection of animal and human health, recourse to Article 36 is no longer justified and the protective measures must be adopted within the framework outlined by the harmonizing directive (judgment in Case 190/87 *Oberkreisdirektor des Kreises Borken and Another* v *Handelsonderneming Moormann BV* [1988] ECR 4689). Consequently, when considering whether a derogation may be granted for the import authorization requirement laid down in the Belgian legislation, a distinction must be drawn according to whether the authorization in question relates to the importation of live animals other than bovine animals and swine or to the importation of bovine animals and swine.

The importation of live animals other than bovine animals and swine

14 In this regard, it is sufficient to point out that a system requiring prior import authorizations constitutes a measure which is disproportionate in relation to the objective of protecting the health and life of humans and animals. It is clear from the Court's judgment in Case 124/81 *Commission* v *United Kingdom*, cited above, that a Member State may adopt measures less restrictive than a system of prior import authorizations in order to protect those interests, by confining itself to obtaining the information which is of use to it, for example, by means of declarations signed by the importers, accompanied if necessary by the appropriate certificates issued by the exporting Member State.

15 Consequently, the authorization required by Belgian legislation for the importation of live animals other than bovine animals and swine cannot qualify for a derogation under Article 36 of the Treaty.

The importation of bovine animals and swine

16 In this regard, it must be pointed out that Council Directive 64/432 brought about complete harmonization of the animal-health measures which Member States may adopt in the field of intra-Community trade in bovine animals and swine.

17 That harmonization was achieved, in particular, by Article 3 of Directive 64/432, which requires exporting Member States to ensure compliance with a series of health measures intended to guarantee *inter alia* that exported animals do not constitute a source of contagious or infectious diseases. In order to provide the competent authorities of the Member States of destination with an assurance that the animals imported meet the relevant health requirements, Article 3(2)(h) of the directive provides that the animals must be accompanied by a health certificate certifying that the health inspections have been carried out and completed.

18 With more particular regard to the measures which importing Member States may take, it must be pointed out that Article 6 of the directive authorizes the country of destination to prohibit the introduction of animals into its territory if an examination made at the frontier post by an official veterinarian reveals that the animals are affected by, or suspected of being affected by or of being contaminated by a compulsorily notifiable disease, or that the provisions of Articles 3 and 4 of the directive have not been observed. Furthermore, under Article 7, countries of destination may grant general authorizations for the introduction into their territory of bovine animals which do not meet certain of the conditions laid down in Article 3 of the directive. Finally, in accordance with Article 9 of the directive, the Member State of destination may, in the event of an outbreak of an epizootic disease or of another serious contagious or infectious animal disease in the exporting Member State, temporarily prohibit or restrict, as a protective measure, the introduction of bovine animals and swine.

19 With such a complete system in place, Member States of destination have no power to adopt, in the field covered by the directive, measures other than those exhaustively laid down therein.

20 The Belgian Government maintains that the harmonization brought about by the directive is not complete because it did not set up a harmonized information system: the authorization required by the Belgian legislation, which does not constitute a health-control measure in any event, is intended precisely to remedy the non-existence of such an information system; the incompleteness of Directive 64/432 in that regard is highlighted by the explanatory memorandum prefacing two proposals for regulations concerning veterinary checks in intra-Community trade contained in document COM(88) 383 final, in which the Commission acknowledges the need for 'recourse to and the development of a mutual information system'.

21 In that regard, it must first be observed that the proposals for regulations on which the Belgian Government relies are based on the assumption that all frontier veterinary controls will be eliminated. Those proposals, therefore, do not seek to harmonize an information system which would now be inadequate but provide for measures appropriate to the proposed new situation.

22 Secondly, it must be pointed out that Article 6(2) of the directive authorizes the Member State of destination to require the importer to give up to 48 hours' advance notice of importation. The Member State of destination may therefore use that procedure in order to check the health of the animals after importation.

23 Consequently, no derogation from Article 30 is possible for the authorization required by Belgian law for the importation of live bovine animals and swine.

24 It follows from all the foregoing considerations that by subjecting imports of live animals coming from other Member States to the requirement of a prior import authorization, whether issued automatically or otherwise, the Kingdom of Belgium has failed to fulfil its obligations under Article 30 of the EEC Treaty.

Costs

25 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Belgium has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by subjecting imports of live animals coming from other Member States to the requirement of a prior import authorization, whether issued automatically or otherwise, the Kingdom of Belgium has failed to fulfil its obligations under Article 30 of the EEC Treaty;

(2) Orders the Kingdom of Belgium to pay the costs.

Due Slynn Kakouris

Schockweiler Mancini O'Higgins Rodríguez Iglesias

Delivered in open court in Luxembourg on 5 July 1990.

J.-G. Giraud
Registrar

O. Due
President