REPORT FOR THE HEARING
in Case C-304/88 *

I — The national legislation at issue and the pre-litigation procedure

A — *Imports of live animals*

1. According to Article 2 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 order applies in particular to:

(i) domestic solipeds,

(ii) sheep and goats,

(iii) bovine animals,

(iv) fowl, day-old chickens and eggs for hatching.

2. Article 3(7) of the same order provides that 'the animals or products to be imported are to be presented at the external frontier accompanied by a valid import authorization, where no general authorization is provided for, and a valid certificate of origin and health'.

3. Finally, a general provision concerning the various animals covered provides that 'the definitive importation ... shall be subject to the issue of a prior authorization by or in the name of the Minister for Agriculture' (see Article 15 in regard to solipeds for breeding, riding, sport and competition, Article 20 in regard to horses for human consumption, Article 23 in regard to live sheep and goats, Article 36 in regard to bovine animals and Article 64 in regard to fowl).

4. Article 5 of the Ministerial Order of 22 June 1965 concerning the importation, transit and exportation of live animals (*Moniteur belge* 1965, p. 10238) provides that 'bovine animals and swine and animals of the equine species intended for human consumption, which are presented at the frontier for a health check must be identified in the country of origin by a fixed, numbered ear-tag'.

5. Article 6 of the same order provides that 'the health check involves a clinical examination of the animals, verification of the authenticity of the certificates of origin and health and of the content thereof, including, where appropriate, verification of the import authorization issued by the Minister for Agriculture ...'.

B — *Imports of fresh meat*

6. By Royal Decree of 16 June 1967 (*Moniteur belge* 1967, p. 8120), the Belgian general administrative regulation for the control of the health of domestic

* Language of the case: Dutch.

animals was amended by the insertion of Article 46 *bis*, which is worded as follows:

'Without prejudice to the provisions of the Royal Decree of 12 March 1965 on the importation of meat, the entry into the country, even for purposes of transit, of fresh meat from bovine animals, sheep, goats, swine, solipeds and other edible species of animal, whether refrigerated, frozen or otherwise, and slaughtered game, in whatever form it is presented, shall be subject to the issue of a special authorization by the Minister for Agriculture or by an official designated by him for that purpose.'

C — *Pre-litigation procedure*

7. Since it considered that the requirement of a prior import authorization was, in regard to the importation of live animals, contrary to Directive 64/432/EEC of the Council 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 to Article 30 of the EEC Treaty and, in regard to the importation of fresh meat, contrary to Directive 64/433/EEC of the Council of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (Official Journal, English Special Edition 1963-64, p. 185), the Commission, by letter of 13 December 1985, called upon the Belgian Government to submit its observations within two months from the receipt of the said letter, in accordance with the first paragraph of Article 169 of the EEC Treaty.

8. 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 since that requirement was lawful and the authorization was issued automatically and had no restrictive effect on trade whereas in regard to the authorization required for the importation of fresh meat, an amendment of the Royal Decree of 16 June 1967 in the direction sought by the Commission was in the process of being drafted.

9. On 9 March 1987, the Commission delivered a reasoned opinion to the Belgian Government under the first paragraph of Article 169 of the Treaty, calling upon it to adopt the necessary measures within one month from the date of notification of the opinion. By letter of 2 July 1987, the Belgian Government expressed its views on that opinion and maintained the point of view set out in its letter of 14 April 1986.

10. Since it was not satisfied with that reply, the Commission brought these proceedings.

II — Written procedure and conclusions of the parties

11. The Commission's application was received at the Court Registry on 18 October 1988.

12. The written procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

13. The *applicant* claims that the Court should:

(i) declare that by subjecting imports of live animals and fresh meat 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 under Directives 64/432/EEC, 64/433/EEC;

(ii) order the Kingdom of Belgium to pay the costs.

14. The *Kingdom of Belgium* contends that the Court should:

(i) dismiss the Commission's application in regard to the infringement of Article 30 of the EEC Treaty and Directive 64/432;

(ii) order the Commission to pay the costs.

III — Submissions and arguments of the parties

A — *The importation of bovine animals and swine*

15. The *Commission* claims that the requirement of a prior authorization for the importation of bovine animals is contrary to Directive 64/432 of the Council.

16. The seventh recital in the preamble to that directive clearly shows that responsibility for compliance with the veterinary and health requirements of the directive lies with the exporting Member State, which continues to have that responsibility after the issue of the certificate provided for until the products have reached their destination, as the Court expressly confirmed in its judgment in Case 46/76 *Bauhaus* v *Netherlands* [1977] ECR 5.

17. Furthermore, it is clear from the judgment in Case 35/76 *Simmenthal* v *Italian Minister for Finance* [1976] ECR 1871 that the importing Member State may merely examine the certificate issued by the exporting Member State and, possibly, carry out spot checks, subject to the powers granted to it under the safeguard clause laid down in Article 9 of Directive 64/432.

18. The Commission concludes that so complete a system does not permit the establishment of a system of import authorizations, even if they are issued automatically. Moreover, the completeness of the system of harmonization brought about by Directive 64/432 in regard to the measures which importing Member States may take was recognized by the judgment in the *Simmenthal* case cited above.

19. The *Belgian Government* states, *in limine*, that the import authorization provided for in the Ministerial Order of 28 July 1971 does not introduce any health check or a check restricting intra-Community trade over and above the check provided for in Directive 64/432, because it is issued without any formal check. Moreover, Article 2 of Council Directive 81/389/EEC requires Member States to carry out a systematic veterinary check at the frontier on live animals being transported across frontiers. The check as to whether the required authorization has been submitted takes place at the same time as the check provided for in Directive 81/389 and therefore involves no additional hindrance to trade.

20. The authorization in question is designed to achieve two objectives. In the first place, it is intended to inform the importer that importation has not been prohibited on one of the health grounds set out in Article 9 of Directive 64/432. In the second place, it is a document containing administrative information in the sense that it makes it possible: (a) to inform the supervisory authorities of the importation which is to take place; (b) to find the animals after importation in order to carry out certain health checks; (c) to provide the importer with certain administrative information (the approved frontier post, the name of the veterinary inspector, the certificates required by the directive, etc.) and to remind him of certain legal obligations under national law.

21. It follows that the authorization required makes it possible to overcome the disadvantage of the absence of a harmonized system of information under Directive 64/432. The need to set up such a system has been recognized by the Commission in document COM(88) 383 final (explanatory memorandum, p. 5), containing two proposals for Council regulations on veterinary checks in intra-Community trade. That document also shows that Directive 64/432 did not completely regulate intra-Community trade in live bovine animals and swine.

22. The Belgian Government also states that Article 7(1) of Directive 64/432 expressly provides for certain derogations under which countries of destination may grant general authorizations or authorizations restricted to specific cases, which in fact means individual authorizations.

23. The *Commission* points out in its reply that the reference to Directive 81/389 is irrelevant to this case since that directive did not provide for the issue of prior authorization for the importation of animals.

24. With regard to the objectives of the authorization required, it points out that: (a) it is pointless to inform the importer of his right to import because he may already avail himself of that right by virtue of the directive; (b) if the Belgian authorities wish to give certain information to the importer or to obtain information themselves, they may do so without requiring the importer to apply for an authorization.

25. The *Belgian Government* contends in its rejoinder that the reference to Directive 81/389 is relevant to this case because it is intended to show that the checking of the required authorization does not involve any hindrance to trade.

26. Furthermore, it repeats its view that the only reason why the authorization is required is the absence of a harmonized system of information.

B — *Imports of live animals other than bovine animals and swine*

27. The *Commission* argues that in regard to the importation of live animals not covered by Directive 64/432, in particular, sheep, goats, fowl and domestic solipeds, the requirement of a prior import authorization is contrary to Article 30. The fact that the authorizations at issue are issued automatically in no way justifies their impo-

sition, because they are a potential hindrance to intra-Community trade.

28. That measure cannot be justified on the basis of Article 36 because it is disproportionate in regard to the purpose to be achieved. It is apparent from the Court's case-law and in particular from the judgment in Case 124/81 *Commission* v *United Kingdom* [1983] ECR 203, the 'UHT milk' case, that a Member State may adopt measures which are less restrictive than a system of prior import authorizations to protect the health and life of persons and animals.

29. The *Belgian Government* contends that the contested measure does not come within the scope of Article 30 because it does not restrict intra-Community trade.

30. It points out that the authorization required is intended to make up for the absence of a harmonized system of information, the necessity for which has been recognized by the Commission, even in regard to products which are not the subject of harmonization measures. That conclusion follows from document COM(88) 383 final, mentioned above.

C — *Imports of fresh meat*

31. The *Commission* considers that in regard to the importation of fresh meat of animals of the bovine species, swine, sheep, goats and domestic solipeds, the requirement of a prior import authorization is contrary to Directive 64/433 of the Council. It relies in that regard on the arguments put forward in regard to Directive 64/432, set out in paragraphs 16 to 18 above, and on the judgment in Joined Cases 2 to 4/82 *Delhaize* v *Belgian State* [1983] ECR 2973.

32. The *Belgian Government* does not contest that point of view and points out that Article 46 *bis* of the general administrative regulation on health checks for domestic animals will be completed by a provision abolishing the requirement of a prior import authorization in respect of the intra-Community trade in fresh meat referred to in Article 46 *bis*.

C. N. Kakouris
Judge-Rapporteur