On those grounds,

THE COURT

in answer to the question referred to it by the Verwaltungsgericht Köln in accordance with the order made by that court on 21 November 1974 hereby rules:

Pecuniary charges of whatever amount levied for public and veterinary health inspection of products imported from third countries which are determined according to their own particular criteria and which are not comparable to those used to fix any pecuniary charges which might be levied on Community products must be considered as charges having an effect equivalent to customs duties.

Lecourt Mertens de Wilmars Mackenzie Stuart Donner Monaco

Pescatore Kutscher Sørensen O'Keeffe

Delivered in open court in Luxembourg on 9 July 1975.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 18 JUNE 1975

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling by the Verwaltungsgericht of Cologne. The Plaintiff in the proceedings before that Court is the Firma I. Schroeder KG. For technical reasons, into which I need not enter, there are in form two Defendants: the Oberstadtdirektor (Chief Administrative Officer) of the City of Cologne and the City of Cologne itself, represented by its Oberstadtdirektor. In substance the Defendant is the City of Cologne.

In the proceedings before the Verwaltungsgericht there also appears the

Vertreter des öffentlichen Interesses (the Representative of the Public Interest) attached to that Court. This functionary sought to submit written Observations to this Court, but did so out of time. They were accordingly rejected and I say no more about them.

The facts, which are, to my mind, important, do not appear from the order for reference of the Verwaltungsgericht. Nor are they mentioned in the Plaintiff's Observations. I cull them from the Observations of the Commission and of the Defendant, which have not, in so far as they set out the facts, been challenged.

It seems that, between December 1972 and June 1973, the Plaintiff imported into the Federal Republic of Germany 18 consignments of tinned meat from France and 8 from Hungary. On each occasion the goods were, as required by the relevant German legislation, subjected to a public health examination to check their fitness for human consumption. It is to be inferred, though it is nowhere stated, that that examination was carried out by officers acting on behalf of the City of Cologne. For the examination the Plaintiff was assessed to charges amounting to DM 16 366·31. The Defendant claims that those charges were authorized by the German legislation in question, and in particular by the combined effect of paragraph 23 of the Fleischbeschaugesetz (Statute on the inspection of meat) of 29 October 1940 (RGBl, I, p. 1463 in its version of 23 June 1970 (BGBl, I, p. 805) and of the Auslandsfleischbeschaugebührenverordnung (regulation on charges for inspection of imported meat) of 29 February 1972 (BGBl, I, p. 265).

Against the assessments to those charges the Plaintiff appealed to the Verwaltungsgericht, claiming that they were charges having an effect equivalent to customs duties on imports and therefore forbidden by Community law. As regards the charges relating to the importations from France, the Plaintiff, I assume, relied upon Articles 9, 12 and 13 of the EEC Treaty which by then had taken full direct effect. As regards the charges relating to imports from Hungary, the Plaintiff relied on the relevant provisions of Regulations adopted by the Council under Article 43 of the Treaty, that is to say, in the case of pork products, Article 17 (2) of Council Regulation No 121/67/EEC of 13 June 1967 on the common organization of the market in pigmeat and, in the case of beef and veal products, Article 20 (2) of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal. Each of these provisions forbids the levying of any charge having an effect equivalent to a customs duty on imports from third countries of the products to which it relates.

On 21 November 1974 the Verwaltungsgericht delivered Judgment in favour of the Plaintiff in the matter of the charges relating to the importations from France. In so doing the Verwaltungsgericht relied in particular on the Judgment of this Court in Case 29/72, the second *Marimex* case (Rec. 1972 p. 1309) and on a subsequent decision of the Bundesverwaltungsgericht in the same sense (8 March 1974, NJW 1974, p. 2196). Against that Judgment of the Verwaltungsgericht, the Defendant has lodged an appeal to the Oberverwaltungsgericht of Munster.

On the same day, 21 November 1974, the Verwaltungsgericht made an order staying the proceedings before it in so far as they related to the importations from Hungary and referring to this Court the following question:

'Do the expression "the levying of any customs duty or charge having equivalent effect" within the meaning of Article 17 (2) of Regulation No 121/67/EEC of the Council of 13 June 1967 on the common organization of the market in pigmeat ... and the expression "the levying of any charge having effect equivalent to a customs duty" within the

meaning of Article 20 (2) of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal ... also include fees charged for public and veterinary health inspection of imported meat under paragraph 23 of the Fleischbeschaugesetz ... of 29 October 1940 ... in the version of 23 June 1970 ... read in conjunction with the Auslandsfleischbeschaugebührenverordnung of 29 February 1972 ...?'

By way of explanation of that question, the Verwaltungsgericht, in its order for reference, says this:

'It may be objected to the application of the consistent case-law of the Court of Justice of the European Communities — *inter alia* the judgment of 14 December 1972 in Case 29/72, Rec. 1972, p. 1309 — that under Articles 9 and 13 of the EEC Treaty it is only prohibited for Member States of the Community to levy *between one another* customs duties on imports and exports and all charges having equivalent effect.'

To me, *as to the Plaintiff,* it seems clear that the only question troubling the Verwaltungsgericht is whether the Council had power under the Treaty to forbid the levying of charges having an effect equivalent to customs duties on imports from third countries.

My Lords, I do not doubt that the Council had that power. The Court so held in Cases 37 and 38/73, the second *Diamantarbeiders* case [1973] ECR 1609, where indeed the Court went further and expressed the view that Member States were precluded, after the establishment of the Common Customs Tariff, from introducing, unilaterally, new charges on goods imported from third countries or from raising the level of those in existence at that time. The Court particularly mentioned, in its Judgment in that case, the power of the Council to prohibit the levying of such charges by regulations adopted in the context of the common agricultural policy: see [1973] ECR 1624.

I should add that, in a number of earlier decisions, the Court had held that the concept of charges having an effect equivalent to customs duties had the same import both in the Treaty and in Regulations adopted by the Council in order to give effect to the common agricultural policy, and, also, both in the context of trade between Member States and in the context of trade with third countries — see for instance Case 43/71 *Politi* v *Italy* (Rec. 1971 p. 1039), Case 84/71 the first *Marimex* case (Rec. 1972, p. 89) and Case 34/73 *Variola* v *Amministrazione Italiana delle Finanze* [1973] ECR 981. Of course, the purpose of the prohibition of charges having an effect equivalent to customs duties is different in the case of trade between Member States and in the case of trade with third countries. In the case of the former, the purpose is to prevent discrimination between the products of a Member State and those of other Member States, and also to secure, so far as possible, the free movement of goods between Member States, whereas, in the case of the latter, the purpose is to ensure uniformity in the stance of the Member States towards third countries. But, as the authorities that I have cited show, the practical effect of the prohibition is in each case the same.

My Lords, both the Commission and the Defendant have lodged lengthy Observations dealing with the background and merits of the case, both from the point of view of Community law and from that of German law and even spilling over into the sphere that I would regard as that of legislative policy. These Observations, which were enlarged upon at the hearing, are of great interest, but, if I have correctly understood the scope of the question put to this Court by the Verwaltungsgericht of Cologne, are not, for the most part, directly in point. They go rather, on the one hand

to the desirability of the Council adopting a Directive, which has, it appears, stood in draft from some time, supplementing its Directive No 72/462/EEC of 12 December 1972 on health and veterinary inspection of importations of bovine animals, swine and fresh meat from third countries, so as to deal with the parallel problem of importations of tinned and other processed meat from such countries, and on the other hand to the question whether, on the test laid down by this Court in the second *Marimex* case (and in earlier and later cases), the German legislation here in point did indeed impose on imports charges having an effect equivalent to customs duties or did not rather compensate for comparable charges borne by competing German products. The latter seems to be the point with which the Oberverwaltungsgericht of Munster will have to deal in the appeal now before it. Of course it will be open to that Court, under Article 177 of the EEC Treaty, to refer to this Court any question on which it may feel uncertain as to the Community law applicable to that point. But I do not think that Your Lordships are called upon to deal with it in the present proceedings.

There remains of course the difficulty that the question referred to this Court by the Verwaltungsgericht of Cologne expressly refers to the relevant German legislation, whereas it should, according to Article 177 as interpreted by this Court, be couched in general terms. My Lords, although much is made of this difficulty in the Observations of the Commission and of the Defendant, I do not think that it is more than formal.

I would answer the question put to the Court by the Verwaltungsgericht as follows:

'Article 17 (2) of Council Regulation No 121/67/EEC of 13 June 1967 on the common organization of the market in pigmeat and Article 20 (2) of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal effectively preclude a Member State from imposing any charge having an effect equivalent to a customs duty on any importation from a third country of any product to which those Regulations apply. The test for determining whether a charge is one having an effect equivalent to a customs duty is the same in this context as in the context of trade between Member States.'