OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 24 October 1996 *

1. The questions referred to the Court in this case arise from a dispute between Paul Daut GmbH&Co. KG ('Daut GmbH') and the Oberkreisdirektor des Kreises Gütersloh, the German authority responsible for veterinary inspections, concerning imports from Belgium of fresh meat, mechanically recovered and frozen.

2. Daut GmbH has a meat-processing establishment in Rheda-Wiedenbrück which holds the authorization required by Community legislation. On 3 August 1993 the Oberkreisdirektor carried out an inspection of those premises, as a result of which he seized approximately 2 tonnes of frozen mechanically recovered meat which had been imported from Belgium and which was to have been subjected to heat treatment and then marketed. The meat had been purchased from a Belgian company, Distriporc, which had an authorized establishment for the production of mechanically recovered meat.

3. The Oberkreisdirektor seized the meat in question pursuant to Paragraph 17 of the Regulations concerning hygiene requirements in relation to meat, [1] which categorically prohibits the importation and the bringing into German territory of, *inter alia*, mechanically recovered meat. The German authority then also brought criminal proceedings in respect of that offence against Paul Daut, the legal representative of Daut GmbH, which led to a conviction by the Amtsgericht Rheda-Wiedenbrück and a fine of DM 13 500. Daut GmbH, for its part, brought an action before the Verwaltungsgericht for a declaration that the importation of frozen mechanically recovered meat for heat treatment and subsequent processing was lawful, and applied for an interim order to that effect. The criminal proceedings were stayed by order of the Amtsgericht Rheda-Wiedenbrück of 26 October 1994 pending determination of the action before the Verwaltungsgericht. The application for an interim order was originally dismissed by the Verwaltungsgericht Minden by decision of 8 November 1994, against which Daut GmbH lodged an appeal to the Oberverwaltungsgericht für das Land Nordrhein-Westfalen, which considered it necessary to refer the following questions to the Court:

'Is it compatible with Articles 30 and 36 of the EC Treaty in conjunction with Council

1 — Verordnung über die hygienischen Anforderungen und amtlichen Untersuchungen beim Verkehr mit Fleisch, 30 October 1986 (*Bundesgesetzblatt* I, p. 1678), last amended by the Law of 27 April 1993 (*Bundesgesetzblatt* I, pp. 512, 552).

* Original language: Spanish.

Directive 64/433/EEC on health requirements and the marketing of fresh meat ("the Fresh Meat Directive") in the consolidated version annexed to Council Directive 91/497/EEC of 29 July 1991, as amended by Council Directive 92/5/EEC of 10 February 1992 and in conjunction with Directive 77/99/EEC on health problems affecting intra-Community trade in meat products ("the Meat Products Directive") in the version annexed to Directive 92/5/EEC if the respondent — on the basis of Paragraph 17(1)(2) of the Verordnung über die hygienischen Anforderungen und amtlichen Untersuchungen beim Verkehr mit Fleisch (Regulation on hygiene requirements and official inspections relating to trade in meat, "the FlHV") of 30 October 1986, BGBl. I 1678, as last amended by the EWR-Ausführungsgesetz (EEA implementation law) of 27 April 1993, BGBl. I 512, 552 — objects to the importation of *frozen* mechanically recovered meat in the case of an EC-authorized German establishment which is in a position to carry out heat treatment within the meaning of the Meat Products Directive and obtains frozen mechanically recovered meat from an EC-authorized Belgian establishment designated by the Belgian EC veterinarian in order to subject it to heat treatment within the meaning of the Meat Products Directive and further process it and, if not, is coordinated action with the competent German Veterinary Office necessary and between whom?'

4. Before considering the problem raised by the national court and replying to its questions, I shall refer to the Community legislation applicable to intra-Community trade in fresh meat.

Legislative context

5. The Community institutions have laid down minimum health conditions for the production and marketing of fresh meat throughout the Community with the object of protecting public health. Harmonization of the requirements for the production and sale of meat was necessary in order to ensure the free movement of meat products in the common market, particularly after the discontinuance of veterinary controls at the frontiers of the Member States. The Community measures prescribe compliance with uniform health conditions in intra-Community trade in meat and meat products, replacing the former national rules applied by the Member States, with the object of reducing or removing the technical obstacles to trade in those products arising from different national health requirements.

6. The main Community measures applying to trade in meat products are as follows: Directive 91/497/EEC, which amends and

consolidates Directive 64/433/EEC [2] and applies to fresh meat intended for human consumption from domestic bovine animals, swine, sheep, goats and domestic solipeds; Directive 71/118/EEC [3] on the marketing of poultrymeat; Directive 91/495/EEC [4] concerning rabbit meat and farmed game meat; Directive 77/99/EEC, as amended and updated by Directive 92/5/EEC, [5] which deals with health requirements relating to the production, storage and transport of meat products, and Directive 94/65/EC, [6] which applies to minced meat and meat preparations.

7. One type of fresh meat is that known as mechanically recovered meat. It consists of the small pieces of meat which are left on the bones of an animal after it has been cut up and after the meat has been removed and which, after being separated mechanically from the bones, is used for human consumption. Mechanically recovered meat is a type of fresh meat which is highly perishable because it has a large area exposed to the air and, therefore, to contaminants. This is why there are strict health requirements to prevent the consumption of this fresh meat from affecting consumers' health.

8. With regard to mechanically recovered fresh meat from domestic bovine animals, swine, sheep, goats and domestic solipeds, Article 6(1) of Directive 64/433 provides that the Member States must ensure that:

'(c) mechanically recovered meat undergoes heat treatment in accordance with Directive 77/99/EEC;

[...]

(g) the treatment provided for in the preceding points is carried out in the establishment of origin or in any other establishment designated by the official veterinarian.'

2 — Council Directive 91/497/EEC of 29 July 1991 amending and consolidating Directive 64/433/EEC on health problems affecting intra-Community trade in fresh meat to extend it to the production and marketing of fresh meat (OJ 1991 L 268, p. 69).

3 — Council Directive 71/118/EEC of 15 February 1971 on health problems affecting the production and placing on the market of fresh poultrymeat (OJ, English Special Edition 1971 (I), p. 106).

4 — Council Directive 91/495/EEC of 27 November 1990 concerning public health and animal health problems affecting the production and placing on the market of rabbit meat and farmed game meat (OJ 1991 L 268, p. 41).

5 — Council Directive 92/5/EEC of 10 February 1992 amending and updating Directive 77/99/EEC on health problems affecting intra-Community trade in meat products and amending Directive 64/433/EEC (OJ 1992 L 57, p. 1).

6 — Council Directive 94/65/EC of 14 December 1994 laying down the requirements for the production and placing on the market of minced meat and meat preparations (OJ 1994 L 368, p. 10).

9. With regard to mechanically recovered fresh meat from poultry, rabbits and farmed game, Article 5(3) of Directive 71/118 and Article 6(4) of Directive 91/495, which were added by Article 17 of Directive 94/65, provide in the same terms that:

'Member States shall ensure that mechanically recovered meat may be traded only if it has previously undergone heat treatment in accordance with Directive 77/99/EEC in the establishment of origin or any other establishment designated by the competent authority.'

10. The requirement of heat treatment, which is essential because mechanically recovered meat is highly perishable, applies to the marketing of any kind of fresh meat. However, in the case of poultry, rabbits and farmed game, intra-Community trading in mechanically recovered meat is subject to the requirement of prior heat treatment. So far as beef, veal, pigmeat, sheepmeat, goatmeat and the meat of domestic solipeds are concerned, Directive 64/433 does not expressly preclude the movement of mechanically recovered meat in the Community prior to heat treatment.

11. Article 4 of Directive 77/99/EEC, as amended and updated by Directive 92/5, provides for the possibility of this type of treatment as follows:

'Member States shall ensure that, in addition to the general requirements laid down in Article 3:

1. meat products:

(a) have been prepared by heating, curing, marinating or drying [...].'

12. As can be seen, there are still no general Community measures harmonizing health conditions for the production and marketing of mechanically recovered meat, although

Article 21 of Directive 94/65 expressly provides for the adoption of such rules:

'The Council, acting by a qualified majority on a proposal from the Commission, shall before 1 January 1996 lay down the health rules applicable to:

[...]

(b) the production and use of mechanically recovered meat.'

13. These substantive Community provisions concerning trade in fresh meat have been supplemented, from the procedural viewpoint, by Directive 89/608/EEC, [7] which permits the competent veterinary authorities in the different Member States to assist each other to ensure more effective application of the veterinary legislation.

7 — Council Directive 89/608/EEC of 21 November 1989 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of legislation on veterinary and zootechnical matters (OJ 1989 L 351, p. 34).

The first question

14. By its first question the German court seeks to determine whether the total prohibition imposed by German law on the importation of frozen mechanically recovered meat is compatible with Directive 64/433 or, in the alternative, with Articles 30 and 36 of the EC Treaty.

Interpretation of Directive 64/433

15. In relation to domestic bovine animals, swine, sheep, goats and domestic solipeds, Article 6(1)(c) and (g) of Directive 64/433 provide that mechanically recovered meat must undergo heat treatment in accordance with Directive 77/99, which is to be carried out in the establishment of origin or in any other establishment designated by the official veterinarian. According to those provisions, this type of meat must always undergo heat treatment before being consumed in order to protect the health of consumers. The treatment may be carried out in the establishment where the mechanical recovery process is carried out or in 'any other establishment designated by the official veterinarian.' In the latter case it is possible for the mechanically recovered meat to be traded, but not consumed, before it undergoes heat treatment.

16. The answer to the German court's question depends on whether the official veterinarian, when designating a slaughterhouse other than that which recovered the meat to carry out heat treatment, must confine himself to establishments in the country of origin or whether the 'other establishment' may be in any other Member State.

17. The German Government supports a narrow interpretation of Directive 64/433 and takes the view that the establishment designated by the official veterinarian must always be situated in the Member State of origin where the meat is mechanically recovered. In its opinion, the consignment of meat from one Member State to another requires, under Directive 77/99, an inspection by the official veterinarian of the State of origin in order to certify that the meat is healthy. Mechanically recovered meat satisfies the relevant health requirements only after heat treatment, which logically must always be carried out in the State of origin. Mere freezing does not result in mechanically recovered meat becoming safe for consumption for the purpose of intra-Community trade. According to the German Government, this interpretation is confirmed by Article 17 of Directive 94/65, which prohibits trade in mechanically recovered meat from poultry, rabbits and farmed game before it undergoes heat treatment.

18. In my opinion, that narrow interpretation of Directive 64/433 is unacceptable. As the Commission pointed out in its observations, Article 6(1)(g) of Directive 64/433 requires proximity, as regards time and location, between the mechanical recovery and the heat treatment of meat. Therefore it lays down, as the preferred course of action, that both operations should be carried out in the same establishment, failing which, it authorizes the official veterinarian to designate another establishment where mechanically recovered meat can undergo heat treatment. In the latter case, the requirement of geographical proximity neutralizes the potentially harmful effects on health of transporting meat of that kind, which is highly perishable.

19. Where the second alternative is resorted to, the official veterinarian is not under any obligation to designate a slaughterhouse in the Member State of origin of the meat as the place for carrying out heat treatment. Article 6(1)(g) of Directive 64/433 refers to 'any other establishment,' so that it may be located in the Member State of origin or the Member State of destination of the meat. When choosing the most suitable establishment for the heat treatment of mechanically recovered meat, the official veterinarian must be guided by the object of avoiding any health risk caused by transport. Accordingly, a slaughterhouse in another Member State, normally close to the frontier, may offer more effective health safeguards in the heat treatment of this kind of meat than other establishments in the Member State of the

origin of the meat, which may be at a rather greater distance.

20. This interpretation of Directive 64/433 permits trading in and the free movement in the Community of mechanically recovered meat before it undergoes heat treatment and is therefore the interpretation most appropriate to the principle of the free movement of goods, which according to the Court's case-law is one of the fundamental principles of the Common Market. [8]

Furthermore, the protection of public health is adequately ensured since the official veterinarian of the Member State of origin of the mechanically recovered meat is empowered to permit or disallow heat treatment in an establishment in another Member State, depending on the circumstances of each case. To that end, cooperation between the veterinary authorities of the Member States, regulated by Directive 89/608, permits adequate monitoring of the health characteristics of mechanically recovered meat which is sent for heat treatment to another Member State by decision of the official veterinarian of the State of origin.

21. The interpretation of Directive 64/433 which I propose is not precluded by Article 17 of Directive 94/65, which prohibits trade in mechanically recovered meat from poultry, rabbits and farmed game before it undergoes heat treatment. The heat treatment of such meat must always be carried out in an establishment in the country of origin, because intra-Community trading is not allowed before heat treatment. According to the Commission, the reason for that prohibition is the particular susceptibility of meat of that kind, which arises from the difficulty of monitoring the food supply of poultry, rabbits and farmed game. Mechanically recovered meat from domestic bovine animals, swine, sheep, goats and domestic solipeds is less perishable than that of poultry, rabbits and farmed game and therefore intra-Community trade is permitted before the heat treatment which must precede consumption.

22. On the basis of the foregoing considerations I consider that Directive 64/433 does not permit a Member State to prohibit totally the importation of meat which has been mechanically recovered in another Member State and is brought into its territory for heat treatment and subsequent marketing. Therefore the German rules imposing that prohibition are incompatible with Directive 64/433, as amended and consolidated by Directive 91/497, the application of which must be ensured by the national courts in accordance with the Court's case-law upholding the principle that individuals may rely on directives. [9]

8 — See Case C-205/89 *Commission* v *Greece* [1991] ECR I-1361, paragraph 9.

9 — See Case 8/81 *Becker* [1982] ECR 53; Case 152/84 *Marshall* v *Southampton and South West Hampshire Area Health Authority* [1986] ECR 723; Case C-91/92 *Faccini Dori* v *Recreb* [1994] ECR I-3325; and Case C-62/93 *BP Supergas* [1995] ECR I-1883.

Alternative answer: the compatibility of Directive 64/433 with Articles 30 and 36 of the Treaty

23. If my proposed interpretation of Article 6(1)(g) of Directive 64/433 is adopted, the question whether the German authorities' prohibition on the importation of mechanically recovered meat is compatible with Articles 30 and 36 of the Treaty does not arise.

That question would fall to be considered only if the Court were to find that heat treatment must always be carried out in an establishment in the country of origin of the meat and that Directive 64/433 consequently prohibits intra-Community trade in meat which has been mechanically recovered but has not undergone heat treatment. In that eventuality, which I shall examine briefly, the German provisions would constitute a proper implementation of Directive 64/433 and it would be necessary to consider the compatibility of that directive with Articles 30 and 36 of the Treaty.

24. Article 30 of the Treaty prohibits quantitative restrictions on imports and measures having equivalent effect. The prohibition applies to obstacles created by Member States to the movement of goods in the Community and also barriers arising from the application of Community rules. [10] The Court has consistently held that 'the prohibition of quantitative restrictions and of all measures having equivalent effect applies not only to national measures, but also to measures adopted by the Community institutions'. [11]

25. A prohibition on the importation of mechanically recovered meat which has not undergone heat treatment constitutes a quantitative restriction on imports prohibited by Article 30 of the Treaty. Moreover, it is the most serious type of barrier to intra-Community trade because it is total.

26. That prohibition of imports is formally discriminatory because it affects only mechanically recovered meat from other Member States. Therefore the restriction may be justified only on the grounds laid down by Article 36 of the Treaty and not by the imperative requirements developed by the Court in the case-law beginning with the *Cassis de Dijon* judgment. [12]

10 — See, among others, M. López Escudero, *Los obstáculos técnicos al comercio en la Comunidad Económica Europea*, Granada, 1991, pp. 241-247; P. Oliver, 'La législation communautaire et sa conformité avec la libre circulation des marchandises', *Cahiers de Droit Européen*, 1979, No 2, p. 245.

11 — See Case C-51/93 *Meyhui* v *Schott Zwiesel Glaswerke* [1994] ECR I-3879, paragraph 11; also Case 15/83 *Denkavit Nederland* [1984] ECR 2171, and Case 37/83 *Rewe-Zentrale* v *Direktor der Landwirtschaftskammer Rheinland* [1984] ECR 1229.

12 — See Case 120/78 *REWE-Zentrale* v *Bundesmonopolverwaltung für Branntwein* [1979] ECR 649, '*Cassis de Dijon*'; Case 113/80 *Commission* v *Ireland* [1981] ECR 1625; C-196/89 *Italy* v *Nespoli and Crippa* [1990] ECR I-3647, and Joined Cases C-1/90 and C-176/90 *Aragonesa de Publicidad Exterior and Publivía* [1991] ECR I-4151.

27. In the present case reference has been made to the protection of the health and life of humans, mentioned in Article 36 of the Treaty, as justifying the prohibition on the importation of mechanically recovered meat which has not undergone heat treatment. No doubt the transport of this type of meat before heat treatment entails health risks because such meat is perishable and the protection of public health is a general interest which must not be affected by free trading in this type of meat in the Community.

It is therefore necessary to ascertain, in accordance with the Court's case-law, [13] whether the prohibition of imports is the only possible means of avoiding the abovementioned health risks or whether there are other means which are less restrictive of intra-Community trade in mechanically recovered meat.

28. In my opinion, the prohibition of imports is a disproportionate means of obviating potential health risks arising from intra-Community trade in mechanically recovered meat. As both the Commission and the German national court observe, the protection of public health may be ensured by requiring such meat to be frozen and transported in that condition. That requirement, together with supervision by the veterinarian of the country or origin in consultation with his counterpart in the country of destination, would ensure that the meat was safe for consumption, without impeding trade in the Community before the meat undergoes heat treatment.

29. I therefore consider that the prohibition on imports of meat of that kind, resulting from Article 6(1)(c) and (g) of Directive 64/433, is a quantitative restriction on imports contrary to Article 30 of the Treaty. That conclusion is not undermined by the fact that Directive 64/433 was adopted pursuant to the Treaty provisions concerning agricultural policy. As the Court has observed, [14] the extensive powers granted to the Community institutions in the conduct of the Common Agricultural Policy must be exercised from the perspective of the unity of the market, to the exclusion of any measure compromising the abolition between Member States of quantitative restrictions or measures having equivalent effect. The prohibition of imports of mechanically recovered meat, deriving from Directive 64/433, is a disproportionate quantitative restriction which cannot be regarded as an intermediate step towards the free movement of that product in the Community.

The second question

30. As I consider that Directive 64/433 permits the import of meat mechanically recov-

13 — See, among others, Case C-17/93 *Openbaar Ministerie* v *Van der Veldt* [1994] ECR I-3537, paragraph 30.

14 — See Joined Cases 80/77 and 81/77 *Commissionnaires Réunis* v *Receveur des Douanes* [1978] ECR 927, paragraph 35.

ered in Belgium for subsequent heat treatment and marketing in Germany, it is necessary to answer the second question from the German court. It concerns the possibility of coordinated action by the Belgian veterinarian and the competent German veterinary authorities.

31. The directives concerning the production and marketing of fresh meat and meat products do not provide for machinery for systematic cooperation between the veterinary authorities of the State of origin and the State of destination of those products in relation to imports of mechanically recovered meat that have not undergone heat treatment.

32. However, Directive 89/608 lays down a procedure for mutual assistance and cooperation between the administrative authorities of the Member States and the Commission to ensure the correct application of legislation on veterinary and zootechnical matters in the internal market. That procedure is undoubtedly applicable to cases of the importation of mechanically recovered meat, and the veterinary authorities of the Member States concerned can use it to ensure proper protection of public health.

33. Under Article 2(2) of the abovementioned directive, each Member State must inform the other Member States and the Commission of the competent central authority through which assistance and cooperation in the matter of veterinary and zootechnical controls are to be channelled. Therefore the veterinarians responsible for inspection of the establishments where the mechanical recovery of meat is carried out and those where it undergoes heat treatment must address their requests for cooperation to the appropriate central authorities, and the latter's cooperation, provided for by Directive 89/608, may take the form of spontaneous assistance or assistance in response to a prior request.

34. Article 6 of Directive 89/608 provides as follows:

'At the request of the applicant authority, the requested authority shall keep a watch or arrange for a watch to be kept or to be reinforced within its operational area where such irregularities are suspected, in particular:

(a) on establishments;

(b) on places where stocks of goods have been assembled;

(c) on notified movements of goods;

(d) on means of transport.'

The veterinary authorities of the State of origin of mechanically recovered meat, as well as those of the State of destination, may rely on that provision in order to set in motion the assistance on request or the spontaneous assistance necessary for preventing potential health risks arising from the import of mechanically recovered meat before it undergoes heat treatment.

Conclusion

35. Having regard to the foregoing considerations, I propose that the Court reply as follows to the questions from the national court:

(1) The provision of Article 6(1)(c) and (g) of Directive 64/433/EEC, as amended and consolidated by Directive 91/497/EEC, do not permit a Member State to prohibit an authorized establishment from importing meat mechanically recovered and frozen in an authorized establishment of another Member State, with a view to subsequent heat treatment and processing, provided that the official veterinarian of the Member State of origin has designated the establishment of the Member State of destination in which that operation is to be carried out.

(2) The veterinary authorities of the Member State of origin of mechanically recovered meat and those of the Member State of destination may, under the procedure laid down by Directive 89/608/EEC, assist each other, upon request or spontaneously, in order to obviate potential health risks arising from the import of mechanically recovered meat which has not yet undergone heat treatment.