2. Notices of periodic invitations to tender for the sale of frozen beef held by the intervention agencies are general acts which determine in advance and objectively the rights and obligations of the traders who wish to participate in the invitations to tender which these notices make public.

3. Article 184 of the EEC Treaty gives expression to a general principle conferring upon any party to proceedings the right to challenge, for the purpose of obtaining the annulment of a decision of direct and individual concern to that party, the validity of previous acts of the institutions which form the legal basis of the decision which is being attacked, if that party was not entitled under Article 173 of the Treaty to bring a direct action challenging those acts by which it was thus affected without having been in a position to ask that they be declared void. The field of application of the said article must therefore include acts of the institutions which, although they are not in the form of a regulation, nevertheless produce similar effects and on those grounds may not be challenged under Article 173 by natural or legal persons other than Community institutions and Member States.

4. Under the "linking" system provided for by Article 14 (3) (b) of the basic Regulation No 805/68 of the Council as amended by Council Regulation No 425/77 the benefit of the total suspension of the levy on frozen beef imported from non-member countries must be reserved for the beneficiaries defined by the said regulation, namely the processing industry. Therefore Commission Regulation No 2901/77 is inconsistent with the objective of the new Article 14 of the basic regulation in that it gives persons or undertakings unconnected with the sector of industry for which the benefit of the total suspension of the levy was to be reserved the right to take advantage of this special import system.

5. Although it is true that maintaining anonymity is a precaution, taken under national as well as Community law, in certain kinds of invitations to tender and especially in those which involve the exercise of a discretion in relation to individual tenders, such a precaution seems to be unnecessary in the context of an invitation to tender for the sale of frozen beef held by the intervention agencies, the outcome of which is decided with reference to a price fixed by the Commission after an evaluation of all the tenders received, taking into account the need for a fair apportionment of the aggregate quantity among the undertakings of the different regions of the Community. This must be more especially the case in these proceedings as the identification of the tenders by name is essential in order to prevent the same person submitting two or more tenders.

In Case 92/78

SIMMENTHAL, S.P.A, having its registered office at Aprilia (Italy), represented by Emilio Cappelli and Paolo de Caterini of the Rome Bar, with an address

for service in Luxembourg at the chambers of Charles Turk, 4 Rue Nicholas Welter,

applicant,

supported by

THE GOVERNMENT OF THE ITALIAN REPUBLIC, represented by the Italian Ambassador in Luxembourg, Adolfo Maresca, acting as Agent, assisted by Ivo Maria Braguglia, Deputy State Advocate, with an address for service in Luxembourg at the Italian Embassy,

intervener,

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Peter Kalbe, acting as Agent, assisted by Guido Berardis, a member of the Legal Department of the Commission, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision No 78/258 of 15 February 1978 fixing the minimum selling prices for frozen beef put up for sale by the intervention agencies in accordance with Regulation No 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the first quarter of 1978 (Official Journal L 69 of 11 March 1978, p. 36),

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

Article 13 (1) of Regulation No 805/68 of the Council on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187) provides that a levy shall be charged on imports into the Community of meat of domestic bovine animals, frozen, falling within tariff subheading No 02.01 A II (a) 2 of the Common Customs Tariff.

However Article 14 (1) of this regulation provides that frozen meat intended for processing (forequarters and boned or boneless or unboned meat) shall qualify for special import terms consisting of the total or partial suspension of the levy. Article 14 (13) (a) of the same regulation provided for the total suspension of the levy in respect of meat intended for the manufacture of preserved food falling within tariff subheading 16.02 B III (b) which does not contain characteristic components other than beef and jelly.

On 14 February 1977 the Council adopted Council Regulation No 425/77 amending Regulation No 805/68 (Official Journal L 61, p. 1).

Whereas the situation on the beef and veal market which had for several years been characterized by a shortage accompanied by a rise in prices, had then degenerated into a market price slump made worse by massive imports, and import arrangements had to be adjusted to avoid a recurrence of similar situations the Council considered that certain special systems should be adapted so that account might be taken in annual estimates of both the supplies available to the Community and the Community's needs. It therefore amended *inter alia* Article 14 of Regulation No 805/68 by providing that frozen meat intended for processing which qualified for importation under total suspension of the levy from then on only benefited from this exemption under new conditions:

(a) The Council, on a proposal from the Commission, before 1 December each year, shall draw up an estimate of meat which may be imported under suspension of the levy. This estimate shall take account, on the one hand, of the expected Community supplies of meat of a quality and type of cut suitable for industrial use, and, on the other, of industrial needs (new Article 14 (2)).

(b) The Commission shall determine each quarter the quantities of the said meat which may be imported under total suspension of the levy and shall adopt detailed rules for the application of Article 14 and particularly those concerning control of the end use of imported meat (new Article 14 (4)).

(c) Importation under total suspension of the levy shall be made conditional on production of an import licence issued for a quantity falling within the limits laid down each quarter; it may be made conditional, as far as necessary, on production of a purchase contract for frozen meat held by an intervention agency (new Article 14 (3)).

The Commission adopted detailed rules for the application of the said Article 14 of Council Regulation No 425/77 in Commission Regulation No 585/77 of 18 March 1977 on the system of import and export licences for beef and veal (Official Journal 1975 L 75, p. 5); Regulation No 585/77 was itself subsequently amended and completed by Commission Regulation No 1384/77 of 27 June 1977 (Official Journal L 157, p. 16) and Commission Regulation No 2901/77 of 22 December 1977 (Official Journal L 338, p. 9).

These provisions stipulate that in order to qualify for total suspension of the levy the application for a licence or licences lodged by any one applicant must relate to a quantity corresponding to not less than five tonnes of bone-in meat and not more than 10% of the quantity fixed by the Commission, pursuant to the new Article 14 of Regulation No 805/68 for the quarter during which the application for a licence or licences is lodged (Article 3 of Regulation No 1384/77).

Moreover applications for licences shall be considered only if they are made by a natural or legal person, who for at least 12 months has been carrying on business in the meat and livestock sector and is officially registered in a Member State (Article 1 of Regulation No 2901/77).

On 22 December 1977 the Commission also adopted Regulation No 2900/77 laying down detailed rules for the sale of beef held by the intervention agencies to enable the import with total suspension of the levy of frozen beef and veal intended for processing (Official Journal L 338, p. 6).

As provided for in Article 1 (1) of this regulation importation with total suspension of the levy shall be conditional upon the submission of a purchase contract for frozen meat held by an intervention agency, concluded in accordance with the said regulation. Article 1 (2) provides that the sale shall take place by way of tender pursuant to Articles 6 to 14 of Regulation No 216/69 of the Commission of 4 February 1969 on detailed rules of application for the disposal of frozen beef and veal bought in by intervention agencies (Official Journal, English Special Edition 1969 (1), p. 31); that regulation provides *inter alia* that minimum selling prices in a tendering procedure shall be fixed by the Commission, that if the tender is for less than the minimum price it shall be refused and that the contract shall be awarded to the highest tender, provided that when several tenders at the same price are received for the same quantity, the intervention agency shall divide the quantity available in agreement with the tenderers concerned or award it by balloting. Article 1 (2) of Regulation No 2900/77 refers to Regulation No 216/69 "subject to the special and derogating provisions laid down in this regulation".

Article 2 of Regulation No 2900/77 provides that the intervention agencies shall issue partial invitations to tender

every quarter "under the tendering system" and that a general notice of invitation to tender shall be published at the latest on the date of publication of the first partial invitation to tender.

Article 3 of the same regulation provides that tenders may be submitted only during the first ten days of each quarter. However, on the first occasion, they may be submitted only between 20 and 30 January 1978. Only tenders for a total quantity of not less than five tonnes and not more than 100 tonnes, expressed as unboned meat, can be accepted.

On the basis *inter alia* of Regulations No 216/69, No 2900/77 and No 2901/77 the Commission published on 13 January 1978 (Official Journal C 11, p. 16) a "General notice of periodic invitations to tender for the sale of frozen beef held by the intervention agencies to enable the import with total suspension of the levy of frozen beef and veal intended for processing".

The Commission published at the same time as the general notice of invitations to tender several partial invitations to tender including Notice of invitation to tender No It P 1 — Regulation (EEC) No 2900/77 — for the sale of certain frozen unboned (bone-in) beef held in stock by the Italian intervention agency (Official Journal C 11, p. 34).

This partial invitation to tender states that the Italian intervention agency was offering for sale approximately 4 000 tonnes of frozen unboned beef in accordance with the rules laid down in the general notice of invitations to tender. Notice of invitation to tender No It P 1 stated that only tenders which reached AIMA (Azienda di Stato per gli interventi nel mercato agricolo; the Italian intervention agency for agricultural products) at the latest could be considered.

On 20 January 1978 the joint stock company Simmenthal whose registered office is at Aprilia submitted to AIMA a tender for the purchase of 100 tonnes of frozen unboned beef at a price of Lit 1 240 000 per tonne.

On 15 February 1978 the Commission adopted Decision 78/258/EEC fixing the minimum selling prices for frozen beef put up for sale by the intervention agencies in accordance with Regulation (EEC) No 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the first quarter of 1978 (Official Journal L 69, p. 36).

Article 1 (1) of that decision provides that the minimum selling prices for frozen beef stored by the intervention agencies which are to be adopted for the invitation to tender held in accordance with Regulation (EEC) No 2900/77, for which the time-limit for submitting tenders was 30 January 1978 shall be as set out in the annex to the decision.

Article 2 of the decision provides that for the period 1 January to 31 March 1978 the maximum quantities of meat intended for the manufacture of "preserved food" which qualify for importation with total suspension of the levy shall be 5 027 tonnes.

On 23 February 1978 AIMA addressed to Simmenthal a decision of refusal of its tender of 20 January since it did not come within the terms of the invitation to tender.

II — Written procedure

On 13 April 1978 Simmenthal instituted proceedings under the second paragraph of Article 173 of the EEC Treaty for the annulment of Commission Decision No 78/258 of 15 February 1978, of the Notice of invitation to tender No It P 1

and of the General notice of periodic invitations to tender of 13 January 1978, of Commission Regulation No 585/77 of 18 March 1977 and of Commission Regulations No 2900/77 and No 2901/77, both of 22 December 1977.

On the same date, namely 13 April 1978, Simmenthal, pursuant to Articles 185 and 186 of the EEC Treaty and to Article 83 (1) of the Rules of Procedure made an application for suspension of the operation of the effects of Commission Decision No 78/258 and for an order that the Commission instruct the national authorities to suspend the issue of import licences corresponding to contracts of purchase entered into by successful tenderers with the intervention agencies and to suspend until judgment is given on the substance of the case the application of special import arrangements for frozen beef intended for processing.

The President of the Court by order of 22 May 1978 dismissed the application and reserved the costs.

The Government of the Italian Republic made an application on 20 July 1978 pursuant to the first paragraph of Article 37 of the Protocol on the Statute of the Court of Justice of the European Economic Community and to Article 93 of the Rules of Procedure to intervene in this case for the purpose of supporting the submissions of Simmenthal.

The Court granted this application by order of 17 August 1978.

The written procedure in the main action followed the normal course.

After 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.

However it invited Simmenthal and the Commission to answer certain questions in writing before the opening of the oral procedure. This request was complied with within the periods specified.

III — Conclusions of the parties

The *applicant*, after having amended its submissions during the proceedings for the adoption of interim measures, claims that the Court should:

— Declare that the application is admissible;

— As provided for in Articles 173 and 174 of the EEC Treaty, declare Commission Decision No 78/258 of 15 February 1978 to be void, and, consequently, as provided for in Article 184 of the EEC Treaty, declare the Notice of invitation to tender No It P 1 of 13 January 1978, the General notice of periodic invitations to tender of 13 January 1978 of the same date, Regulation No 585/77, Regulation No 2900/77 and Regulation No 2901/77 to be inapplicable;

— Order the Commission to pay the costs.

The *Government of the Italian Republic* claims that the Court should uphold the applicant's submissions.

The *Commission* contends that the Court should:

— Dismiss the application as being either inadmissible or unfounded;

— Order the applicant to pay the costs.

IV — Submissions and arguments of the parties during the written procedure

A — Admissibility

The *Commission* states that it has no objections of a strictly procedural nature to raise against the admissibility of the

application: the time-limit for instituting proceedings has been observed and, although Commission Decision No 78/258 is addressed to the Member States and its rules cover an indefinite number of situations it is of direct and individual concern to the applicant.

On the other hand the application is inadmissible because the applicant has no interest in taking legal proceedings.

The tenders for the first quarter of 1978, whether they were accepted or refused, no longer have any effect. The tenders which have been accepted have conferred on the traders who tendered rights which cannot be taken away retroactively. The annulment of the decision cannot have the slightest practical effect: the contracts have been concluded, the licences issued and the imports have been effected, while the tenders which have not been accepted are henceforth non-existent. The decision has fully served its purpose and if it is annulled the applicant cannot reap any benefit whatever.

The contested decision is not a typical individual decision which requires or forbids a particular person to do or not to do something; its main function is to record, on the basis of objective factors, the outcome of a clearly defined tendering procedure which culminated in the applicant's tender not being accepted. To annul such a decision would certainly not involve the applicant's wishes being granted and, still less, taking away from others what they have acquired by participating in the invitation to tender under the same terms.

The applicant cannot set itself up as the protector of the general interest of processing industries: an application to annul a decision should be founded on a personal interest in taking legal proceedings for the purpose of obtaining a judgment producing specific and direct effects within the legal field appropriate to the applicant.

In so far as the aim of its application is a declaration that the regulations upon which the contested decision is based are inapplicable and consequently an acknowledgment that they are invalid and need amending the applicant's objection is to enforce a reorganization of the system of imports under special terms introduced by the regulations in question, either out of respect for a general legal principle or, in point of fact, with a view to its own ideas being put into practice. Such a step amounts to a patent misuse of the procedure which is clearly opposed to the system of legal remedies provided for by the Treaty.

The applicant, by means of an application based on Article 173 and aimed ostensibly at the annulment of a measure, the hypothetical consequences of which would establish that any interest that the applicant may have in instituting proceedings is wholly lacking, is endeavouring, by an improper use of the provisions of Article 184, to call in question the regulations which serve as a basis for the measure formally challenged while evading the conditions for the admissibility of proceedings under Article 173.

The true function of Article 184 is to enable the plea, in the context of proceedings before the Court, that a regulation is inapplicable to be made as a submission affording additional proof for the purpose of the decision on the substance of the case. An action directed, pursuant to Article 173, against a specific act, which is inadmissible because the applicant does not have any interest in instituting proceedings, cannot "revive" by virtue of Article 184, shift its target and be brought directly against the general acts on which the individual act is based.

Individuals can avail themselves of the procedure for obtaining preliminary rulings provided by Article 177; the latter

procedure does not have to be adopted within any time-limit and could produce in the end the results desired by the applicant. A declaration of invalidity which may be the outcome of this procedure would have effects which would be of much greater value from the standpoint of the supposed need to amend an act acknowledged to be illegal.

The aim of the remedy based on Article 173 is to protect the rights of individuals, not to create an instrument to be used for compelling the institutions of the Community to choose between certain economic policies, the choice being determined solely by the specific interests of such and such a person.

The *applicant* is of the opinion that the well established case-law of the Court shows that an applicant in proceedings for the annulment of an individual decision may challenge the general decisions which the decision he is attacking implements so as to prevent an illegal general decision being applied to him. This plea of illegality is a general principle of Community procedural law. The sole condition which has to be fulfilled for the application of this principle is that the decision which is being contested directly and immediately implements the general act; now it cannot in this case be disputed that the contested decision constitutes a direct implementation of the general acts which the applicant requests the Court to declare to be inapplicable.

As far as concerns the applicant's alleged lack of any interest in the institution of proceedings it should be borne in mind that the latter does not claim to be entitled to import meat free of the levy and does not plead enjoyment of any other advantage; it takes the view that the application by the Commission of the special import arrangements for frozen meat for the processing industry is from many points of view illegal and that by reason of this illegality has caused the applicant to suffer serious loss and that consequently the Court should confirm this loss by annulling the decision which has been vitiated by these defects.

The ultimate effect of the Commission's view would in practice be to protect all, or nearly all, general acts adopted by the institutions of the Community from the risk of being criticized by individuals.

It cannot be disputed that, in the context of the special import arrangements for frozen beef intended for processing, the applicant's situation is subjective, or it has an interest, which is legally protected, not to import specific quantities of this meat, but to participate, under conditions of actual equality with other competitors and in accordance with administrative rules laid down by law, in the special procedures for the issue of import licences provided for under these arrangements. Even if the applicant was unable to derive any retroactive advantages if the contested measure were annulled the fact nevertheless remains that in a legal order based on the rule of law the Commission would have to make the necessary amendments to the acts which the Court found to be illegal. Article 14 of Regulation No 805/68, as amended by Regulation No 425/77, confers on the Commission the right, but also imposes on it the obligation to adopt the rules necessary for and to administer the special import arrangements in accordance with the criteria set out in Regulation No 805/68 and with due regard to the Treaty, the basic regulations of the Council and the general principles underlying the Community legal order.

The elimination of any defects found to exist by a judgment of the Court would remedy the injury which the applicant has suffered by having participated in the

procedure adopted for the issue of import licences, without prejudice to the question of any indemnification for the damage it has in fact suffered.

B — Substance

The *applicant* puts forward in support of the annulment of Commission Decision No 78/258 several submissions which relate either specifically and directly to the contested decision itself or to the underlying acts upon which it is based.

(a) The contested decision is vitiated because it infringes an essential procedural requirement in that it does not state any of the reasons upon which it is based.

It does not contain any information which could enable the parties concerned and the Court to evaluate the reasons which determined the choices made by the Commission as far as concerns the fixing of minimum selling prices for the meat held by the intervention agencies and of the quantities which may be imported under the special arrangements for the first quarter of 1978.

With regard to prices two objectives had to be reconciled. The aim of Regulation No 98/69 of the Council of 16 January 1969 (Official Journal, English Special Edition 1969 (I), p. 14) and Regulation No 216/69 of the Commission was to dispose of stocks of frozen beef and veal held by intervention agencies at the highest possible price so as to reduce to a minimum the burden of the charges for intervention and storage operations in the Community balance sheet. The objective of the special import arrangements is to enable the processing industry to be supplied with meat from non-member countries on terms which are favourable compared with the price level within the Common Market. There can be no question of sacrificing this second objective which is closely connected with the first by virtue of the operation known as "linking".

Both fixing minimum prices and determining the quantities which may be imported each quarter is quite different in kind from a routine decision which is just the outcome of automatic findings: they are the outward manifestation of the discretion given to the Commission which has the difficult task of reconciling divergent public interests.

As far as concerns the different choices made by the Commission when the "linking" system was first applied it has to be borne in mind that, as provided for in Article 14 (4) (b) of Regulation No 805/68 of the Council as amended by Council Regulation No 425/77, the Commission had to determine the relationship between the quantities which may be imported with total suspension of the levy and the quantities covered by a purchase contract entered into with an intervention agency. The determination of this relationship ought to have been covered by a statement of reasons dealing in particular with the size of the stocks and the urgency of the need to reduce them; on the contrary the relationship in question is found unexpectedly in an annex to Regulation No 2901/77 without there being any reference to it in the recitals in the preamble or in the operative part thereof.

As far as concerns the determination by the Commission each quarter of the quantities of frozen meat which may be imported with total suspension of the levy the contested decision merely fixes them, without any justification whatsoever, for the first quafter of 1978, at 5 027 tonnes of meat intended for the manufacture of preserved food. Taking into account the fact that the estimate

drawn up each year by the Council pursuant to Article 14 (2) (a) (as amended) of Regulation No 805/68 is for the most part based on estimates the Commission should only determine these quantities itself after a careful analysis and assessment of the actual trend of the supply and demand in respect of beef and veal intended for industrial processing within the Common Market. The contested decision does not contain the least justification on this point. Once the quantities to be imported had been determined and the number and range of the tenders submitted by the parties concerned had been ascertained the Commission should have fixed the minimum prices, varying according to the type of preserved food and with each Member State, at such a level as not to disturb the Community market in beef and veal, not to cause the intervention agencies to make an inordinate loss and not to be prohibitive in relation to the requirements of the processing industry. This is not a simple decision; the contested measure does not contain any statement at all of the reasons upon which it is based.

As far as the situation in Italy is more particularly concerned the contested decision does not give the reasons which led the Commission to fix minimum selling prices which are so high that they are the same as or even exceed the buying-in price for storage by the intervention agencies.

When the Commission fixed the quantities qualifying for assisted importation for the first quarter of 1978 it did not take any account of the actual availabilities of frozen meat and of the requirements of the processing industry of the various Member States; when it fixed the minimum selling prices it completely ignored the public interest which has priority and on which the whole of the special import arrangements are based. It has therefore been guilty of a serious misuse of its powers and has clearly exceeded the limits of the discretion which it is given by the Treaty and Regulation No 805/68. In any case there appears to be no doubt whatever that the contested decision does not state any of the reasons upon which it is based.

(b) Commission Regulation No 2900/77 and in particular Article 4 thereof, and the General notice of periodic invitations to tender of 13 January 1978, and especially section 4 thereof, are in breach of the principle that a public service must be impartial and are vitiated for lack of any statement of reasons.

The rules introduced by these texts do not make any provision for guaranteeing the anonymity of the various tenders submitted to the national intervention agencies and passed on by the latter to the Commission. On the contrary the Commission in fact determined the quantities which may be imported and the minimum selling prices on the basis of lists of names supplied by the intervention agencies. This situation constitutes a breach of the most elementary principles that a public service must act properly and must act impartially and might lead to any decisions adopted in such circumstances being delared wholly invalid.

In any case the Commission's primary concern should have been to justify the various implementing decisions by means of an adequate statement of reasons which it has not done in this case.

(c) Neither Regulation No 2900/77 nor the General notice of periodic invitations to tender contains any indication of the reasons which led the Commission to apply the procedure known as "linking" ("couplage" or "jumelage") to imports of beef and veal with total suspension of the levy for 1978. Article 14 (3) (b) of Regulation No 805/68, as amended by Regulation No

425/77, only provides for the possibility; since the decision whether or not to apply this procedure falls wholly within the Commission's discretion the latter was under an obligation to give, if only in a few words, the reasons which prompted it to have recourse to that procedure. It did not do so.

(d) The detailed rules for the application of the special import arrangements adopted by the Commission in its Regulations No 985/77, No 1384/77 and No 2901/77 are in breach of the principles and contrary to the objectives of Article 14 of the basic Regulation No 805/68 of the Council.

Making the quantities which may be imported available without distinction to any natural or legal persons who carry on business in the meat and livestock sector provided only that they are officially registered in a Member State (Article 11 and 11a of Commission Regulation No 585/77 as amended by Regulations No 1384/77 and No 2901/77) introduces serious discrimination to the detriment of the preserved food industry for which the special import arrangements nevertheless claim to provide. In this way the actual processors are forced to compete with a virtually unlimited mass of people (breeders, wholesalers, forwarding agents and even ordinary retailers) who are not in any way connected with the preserved food industry and to whom in the end almost all the import licences are granted. This state of affairs is a breach of the very principles of the special import system set up with the object, according to Regulation No 805/68, of guaranteeing "adequate supplies for the [processing] industries".

The fact that importation free of the levy has been linked to the purchase of meat from the national intervention agencies without regard to the use to which it must be put gives successful tenderers who are not processors an additional privilege.

The Commission's concern to enable small processors to have recourse to importers could have been satisfied by other means.

(e) Regulation No 2900/77, and especially Articles 3 and 5 thereof, contains discrimination between processors themselves. Entitlement to participate in the tendering system is based on a fixed quantitative restriction of the individual applications and on a general limitation of the tenders without giving any consideration either limitation of the tenders without giving any consideration either to the kind of processing envisaged or the size of the industries or the previous pattern of trade; for this reason it in fact penalizes, in a way which is unjustified, processors operating on a large scale and those who only produce a modest added value.

(f) The "linking" system, having regard to the manner in which it has been provided for in Regulations No 2900/77 and No 2901/77, is not in keeping with the spirit and the objectives of the special import arrangements and may be vitiated on the ground of misuse of powers and is in breach of the principle of proportionality.

The complicated "linking" operation has been put into effect without taking into account in a proper manner the dual function allotted to it. The first part of the operation, the purchase of Community meat, has not been able to be carried out by running down stocks in the normal way for the sole purpose of emptying the cold storage rooms of the intervention agencies at the highest prices, that is to say on the most favourable terms for the Community budget: thus the meat processors have been indirectly deprived of most of the advantage represented by the total suspension of the levy. The Commission

has completely disregarded the public interest, which is just as important as the interest in the disposal of stocks which underlies the second stage of the "linking" operation, namely the special imports. For this reason the Commission is guilty of having misused its powers.

Moreover the "linking" system is unnecessarily hard on genuine processors who in the end have to bear an exceedingly heavy burden. Consequently the rules introduced by the Commission contain a manifest breach of the principle of proportionality.

The *Government of the Italian Republic* stresses that on several occasions during the meetings of the Management Committee for Beef and Veal it expressed its disagreement with the detailed rules for the application of the special import arrangements, within the Community as from 1979, for frozen meat intended for processing. These rules had disastrous effects on the whole of the sector of preserved food of Italian origin and represent an unjustifiable inflationary factor causing damage to the economy of the whole country.

The conditions for implementing the "linking" system do not in any way, or only to a very slight extent, meet the processing industry's requirement that it must be able to import raw material from non-member countries upon terms which are not too onerous compared with those on the world market; on the other hand they confer an unconscionable privilege as regards the second requirement, which is due to the need to dispose of surplus meat held by the intervention agencies. The results of the invitation to tender, the proceedings in which have been attacked by the applicant, confirm unequivocally that the minimum selling price has been fixed at a level which nullifies the advantage given to the processing industries.

There are two reasons for this unacceptable result: the fact that all the traders interested in any way in the beef and veal sector can have access, without discrimination, to the quantities which may be imported and the absence of any obligation making the purchase of meat from an intervention agency conditional on its being used for an industrial purpose.

It is absurd to apply the general principle that all traders shall have equal opportunity to special arrangements the purpose whereof is to stimulate imports for the benefit of the processing industry; the special position of the processing industry compared with the position of other traders should have been recognized.

The fact that meat bought from intervention agencies pursuant to the "linking" system does not have to be used for an industrial purpose induces traders who are not engaged in processing to offer high prices on the invitation to tender; the minimum price which can be tendered is raised to such a level that the objectives sought to be attained by the special import arrangements are left out of account.

The Commission, by making the disposal of surplus stocks an objective attracting advantages which are to the detriment of the processing industry, has disregarded the fundamental principles of the special import arrangements and has misused its powers.

The *Commission* considers that all the applicant's submissions are completely unfounded.

(a) The contested decision contains all the requisite factors for its justification, which are based on the regulations underlying it.

Its function, which is a typically administrative one, consists in bringing the all-important tendering procedure stage to a conclusion; it fits into a system with which both the intervention agency and the traders themselves are familiar. It may be regarded as an administrative measure for co-operation between the Commission and the intervention agencies in the course of administering the system. If account is taken of the operative part of the decision and of the principles upon which the system is based there is nothing in the contested decision which either the intervention agencies or the traders concerned find is at all ambiguous. Each participant in the invitation to tender knows perfectly well that its tender will be rejected if it is lower than the minimum price or if it exceeds that price but the competing tenderers have tendered higher prices, all such tenders being subject to the quantities available. Fixing the minimum prices and acceptance of the best tenders is based on criteria which are completely objective: the actual market conditions, the tenders received, the quantity and quality of the available goods. These factors which are by no means dependent on the whims of the Commission determine the fixing of the minimum prices with all the ensuing consequences. The contested decision confines itself to recording the effect which these criteria have in combination and, within the limits of this "declaratory" function, the reasons on which it is based are more than adequately stated.

(b) As far as concerns the objections that Regulation No 2900/77 does not state the reasons upon which it is based and is in breach of the principle of proportionality it should to begin with be borne in mind, with regard to the first objection, that the formal decision to initiate the "linking" procedure is contained in Article 1 of the regulation itself.

Regulation No 2900/77 has put in concrete form a possibility expressly provided for in Regulation No 805/68 (as amended by Regulation No 425/77). Making the importation with total suspension of the levy, if need be, conditional upon the production of a purchase contract for frozen meat held by an intervention agency is justified by the necessity to take account of a difficult situation on the Community market the distinctive feature of which is the presence of surpluses of a dangerous size. The aim of this system is not to guarantee an unlimited supply of meat coming from non-member countries but to meet the needs of the processing industries while taking into account the general situation on the home market. The linking is in this respect a satisfactory compromise: it enables, on the one hand, fairly large quantities of meat held by the intervention agencies to be disposed of and, on the other hand, makes it possible to effect imports free of the levy.

In these circumstances the measure by means of which the Commission has decided to adopt the "linking" procedure is intrinsically justified. The traders concerned can after all be in no doubt as to the meaning of the Commission's decision; moreover it clearly emerges from the various parts of the text.

The objection of a breach of the principle of proportionality has not been supported by any argument.

(c) The objections that Regulations No 585/77 and No 2900/77 are in breach of the principles upon which the special import system is based and discriminate between traders is tantamount to saying that, when the Commission adopted the provisions which are criticized, it should have excluded as participants in the invitations to tender any middlemen, that

is to say the entire category of operators which makes up the trade. Now by far the greater part of the processing industries has to have recourse to commercial middlemen. To deprive the latter of the opportunity of importing would damage undertakings which normally make use of their services.

The Community authorities have always respected the general principle that when meat is bought from the intervention agencies the purchasers are guaranteed equal access to the goods and equal treatment. Meat imported under the special arrangements is moreover conditional on its being used for a specific purpose (Article 11 (1) and (9) of Regulations No 585/77 as amended by Regulation No 1384/77). In the final analysis the financial gain derived from the opportunity to effect special imports is in any case reaped by the processing industries, even if it is slightly reduced by the profit margins deducted by the commercial middlemen.

(d) With reference to the objections that Regulations No 2900/77 and No 2901/77 represent a misuse of the Commission's powers and are in breach of the principle of proportionality it should first of all be borne in mind that Regulation No 805/68 expressly provides that there must or may be "linking" and that the Commission has merely applied these provisions.

It is true that the aim of the suspension of the levy is to take account as far as possible of the requirements of the processing industry; the advantage to be derived from this arrangement, as such, may nevertheless be subject to conditions or restrictions imposed in particular by the situation on the Community market. This is the reason why the Council adopted the basic rule which allows "linking": the financial gain arising out of the exemption from the levy is conditional on the need to dispose of stocks held by the intervention agencies.

There is certainly no rule guaranteeing a specific financial gain; the advantage provided varies according both to the amount of the levy and to the selling price of the meat from the intervention agencies offered for sale under the "linking" arrangements and these prices are subject to market conditions.

An advantage which is granted does not necessarily remain invariable or continue to be worth the same.

It would be at the very least be risky to assert that the "linking" system has triggered off a crisis which has a catastrophic effect on the processing industries.

In any case the special arrangements provided for in Article 14 of Regulation No 805/68 is only one of the advantages which the Community processing industries enjoy.

(e) To claim that Regulation No 2900/77 is in breach of the principle that there must be no discrimination is astounding.

The special import arrangements have been designed for the preserved food industry within the Community viewed as a whole and not for a particular individual undertaking. The quantities available are extremely limited and this explains why it was necessary to adopt measures ensuring as wide and fair a distribution as possible; on the one hand the tendering procedure taken as a whole guarantees all traders who are interested equal access to the invitations to tender; on the other hand the quantity for which each trader may tender is restricted to 100 tonnes. As far as the second point is concerned experience has shown that if

the system is to function properly maximum individual quantities have to be fixed.

Apportionment based on the capacities of the processing industries would have raised serious problems; difficulties of the assessment of these capacities would have come up against objective difficulties, and, in any case, because of the imbalance between the different regions of the Community, the effect of such an apportionment would have been to favour the industries of certain Member States which are much larger and have a far greater manufacturing capacity than the corresponding Italian industries.

(f) The fact that the Commission is aware of the names of the tenderers and of the particulars of their tenders is solely due to its concern to be able to find out whether one undertaking has submitted several tenders in the different Member States, since such a practice is specifically forbidden by Article 3 (5) of Regulation No 2900/77. This prohibition, like the restricting of individual tenders to a maximum of 100 tonnes, is prompted by the need to ensure that the quantities available are apportioned fairly among all the processing industries which are interested.

V — Oral procedure

The parties presented oral argument and answered the questions put to them by the Court at the hearing on 22 November 1978.

The Advocate General delivered his opinion at the hearing on 24 January 1979.

Decision

1 The applicant by an application lodged on 13 April 1978 pursuant to the second paragraph of Article 173 of the EEC Treaty requests the Court in its finally amended statement of claim to annul Commission Decision No 78/258 of 15 February 1978 fixing the minimum selling prices for frozen beef put up for sale by the intervention agencies in accordance with Regulation (EEC) No 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the first quarter of 1978 (Official Journal L 69, p. 36).

2 In support of its application the applicant has relied on Article 184 of the EEC Treaty and invoked the inapplicability of the following measures which constitute the legal basis of the decision which is challenged.

— Commission Regulation No 585/77 of 18 March 1977 on the system of import and export licences for beef and veal (Official Journal L 75, p. 5);

— Commission Regulation No 2900/77 of 22 December 1977 laying down detailed rules for the sale of beef held by the intervention agencies to enable the import with total suspension of the levy of frozen beef and veal intended for processing (Official Journal L 338, p. 6);

— Commission Regulation No 2901/77 of 22 December 1977 amending Regulations (EEC) No 585/77 and (EEC) No 597/77 especially as regards the total suspension of the levy in the framework of the special import system for frozen beef and veal (Official Journal L 338, p. 9);

— General notice of periodic invitations to tender for the sale of frozen beef held by the intervention agencies to enable the import with total suspension of the levy of frozen beef and veal intended for processing, published by the Commission on 13 January 1978 (Official Journal C 11, p. 16), and also

— Notice of invitation to tender No It P 1 — Regulation (EEC) No 2900/77 — for the sale of certain frozen unboned (bone-in) beef held in stock by the Italian intervention agency, published by the Commission on 13 January 1978 (Official Journal C 11, p. 34).

The category of proceedings to which the application belongs and its object

3 It should in the first place be borne in mind that Article 14 of Regulation No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 192) had provided in Article 14 thereof for special import terms consisting of the suspension of the levy for the benefit of certain frozen meat intended for processing, namely:

(a) rules for the total or partial suspension of the levy in respect of meat intended for the manufacture of certain preserved pure beef and veal and

(b) similar rules benefiting the other uses for which meat is processed by the processing industry, the advantage to be derived being conditional on the submission by the importer of a contract for the purchase of a fixed quantity of frozen beef and veal held by an intervention agency, known as the "linking" system.

4 These rules from which the preserved food industry derives very great benefit were later made subject to more restrictive conditions by Council Regulation No 425/77 of 14 February 1977 (Official Journal L 61, p. 1).

5 The second recital in the preamble to that regulation, after having drawn attention to the fact that the previous rules were justified because there was a shortage accompanied by a rise in prices, states that this situation has since then degenerated into a market price slump made worse by massive imports.

6 The fifth recital states that certain special systems should be adapted so that account may be taken in annual estimates of both the supplies available to the Community and the Community's needs.

7 To this end Article 3 of Regulation No 425/77 amends, *inter alia,* Article 14 of Regulation No 805/68 in that, as provided for in Article 14 (1) (a) of the new version of that article, the total suspension of the levy on meat intended for the manufacture of preserved food, which does not contain characteristic components other than beef and jelly is retained on the understanding however that these imports may themselves henceforth also be subject to the "linking" system.

8 With this in mind the new Article 14 (3) (b) provides that as far as concerns all the frozen meat intended for processing and defined in the relevant tariff headings "importation under total suspension of the levy may be made conditional, as far as necessary, on production of a purchase contract for frozen meat held by an intervention agency".

9 The new Article 14 (4) provides that detailed rules for the application of the said article are to be settled by the Commission in accordance with the "Management Committee" procedure.

10 It was on the basis of this procedure that the Commission adopted the regulations laying down the detailed rules for the application of the system

as provided for in the new Article 14 of Regulation No 805/68, namely Regulation No 585/77 which was in turn amended and supplemented by Regulation No 1384/77 of 27 June 1977 (Official Journal L 157, p. 16), laying down the rules for issuing import and export licences provided for by Article 14 (3) (a) and also Regulations No 2900/77 and No 2901/77 of 22 December 1977 which lay down, in various ways, the detailed rules for the application of the system known as "linking".

11 The General notice of periodic invitations to tender of 13 January 1978 and a complete set of specific invitations to tender for the first quarter of 1978 published on the same date including Notice of invitation to tender No It P 1 relating to Italy have been issued pursuant to those regulations.

12 Out of all these regulations the following provisions have special relevance in these proceedings:

— Article 1 (1) of Regulation No 2900/77 which provides that importation with total suspension of the levy "shall be conditional upon the submission of a purchase contract for frozen meat held by an intervention agency", the sale taking place — as provided for in sub-paragraph (2) of the said article — "by way of tender" in accordance with the general rules applicable thereto;

— Article 2 (1) of the said regulation which provides that a general notice of invitation to tender shall be published before the first of the partial invitations to tender each quarter opened by the intervention agencies;

— Article 3 (4) of the said regulation which provides that "Only tenders for a total quantity of not less than five tonnes and not more than 100 tonnes ... can be accepted";

— Article 5 of the said regulation which provides that minimum prices may be fixed for the different categories of meat which benefit from the arrangements for suspension of the levy;

— Article 11 a (1) (a) of Regulation No 585/77 — added by Regulation No 2901/77 — which provides that every application for a licence to import beef and veal with suspension of the levy must be accompanied by the original of a purchase contract for frozen meat held by an intervention agency, drawn up in accordance with Regulation No 2900/77;

— Article 11 a (2) of the said regulation which provides that applications for licences shall be considered only if the applicant is a natural or legal

person who for at least 12 months has been carrying on business in the meat and livestock sector and officially registered in a Member State;

— Subparagraphs (b) and (d) of Section 6 "Award of Contract" of the General notice of periodic invitations to tender of 13 January 1978 which state:

"(b) If the price tendered is lower than the minimum price fixed by the Commission of the European Communities the tender shall be rejected.

...

(d) Each tenderer shall be informed without delay by the intervention agency of the outcome of his participation in the invitation to tender.";

— Finally: Notice of invitation to tender No It P 1 of 13 January 1978 which states that the Italian intervention agency AIMA shall sell approximately 4 000 tonnes of beef in accordance with the rules laid down in the general notice of invitations to tender and that only tenders which reach AIMA on 30 January 1978 at the latest shall be considered.

13 The applicant submitted to AIMA on 20 January 1978 a tender for the purchase of 100 tonnes of frozen beef offering a price of Lit 1 124 000 per tonne (1 091.26 units of account per tonne).

14 AIMA forwarded this tender forthwith to the Commission together with all the other tenders collected in Italy.

15 The Commission having considered all the tenders forwarded by the intervention agencies of the various Member States adopted Commission Decision No 78/258 of 15 February 1978 addressed to the Member States. Its purpose is to fix the minimum selling prices applicable in the different Member States, the minimum selling price for Italy as far as concerns the category in which the applicant is interested being fixed at 1 601 units of account per tonne.

16 Subsequent to this decision AIMA informed the applicant by a letter of 23 February 1978 that its tender had been rejected because it had no chance of being considered when the contracts were awarded.

17 This latter communication has not been the subject-matter of any action before the Italian courts since the applicant has brought his application in respect of Commission Decision No 78/258 directly against the Commission.

Admissibility of the application and the plea of illegality

18 The Commission admits that, although the contested decision was addressed to the Member States, it is of direct and individual concern to the applicant in that, by excluding all tenders tendering prices lower than the minimum price, it also provided that the tender submitted by the applicant would be rejected because the price tendered was below that price.

19 On the other hand the Commission denies that the application is admissible on the ground that the applicant does not have any interest in instituting proceedings.

20 In fact the Commission takes the view that the annulment of the decision cannot bestow upon the applicant the advantage which it is seeking now that the contracts in accordance with the invitation to tender have been concluded, the licences have been issued and the imports have been effected, while the tenders which have not been accepted are henceforth non-existent.

21 Since the applicant has elected to apply to this Court and directly challenge the Commission decision, and not to apply to the national courts and there challenge the decision of refusal addressed to it individually by the Italian intervention agency, any decision as to the admissibility of the application is concerned with the division of jurisdiction between this Court and the national courts.

22 Consequently it is necessary for the Court to consider of its own motion the question whether the application is admissible viewed as a whole and not just from the standpoint of the objection raised by the Commission.

23 The Commission adopted the decision at issue after the national intervention agencies had forwarded to it the tenders which the latter had received in answer to the invitations to tender issued by the notices of 13 January 1978.

24 The Commission therefore took into consideration the applicant's tender together with the other tenders submitted within the whole of the Community with a view to fixing a price which was to ensure that a pre-determined quantity of meat held by the intervention agencies was disposed of at the most profitable prices for them.

25 Thus, although the Commission decision was adopted in the form of a decision addressed to the Member States and through them to the intervention agencies, it has directly determined the fate, be it favourable or unfavourable, of each of the tenders submitted in answer to the notices of invitations to tender of 13 January 1978.

26 Since the invitation to tender in question is in fact one which covers the whole of the Community and was decided upon by the Commission alone — the intervention agencies only acting as agents for the purpose of collecting the tenders and notifying the participants of the result — it cannot be denied that the Commission decision is of direct and individual concern to the applicant and that its application is therefore admissible.

27 It must however be stressed that the subject-matter of the application to the Court must be restricted to the effect which the contested decision may have been able to have on all those to whom it was addressed and who were directly and individually concerned by it.

28 It is in fact apparent from the relevant regulations and from the general notice of invitations to tender that it is the duty of the intervention agencies, in addition to accepting and rejecting tenders within the scope of the tendering procedure, to solve, by using their own discretion, a certain number of subsidiary questions, directly connected with the system of invitations to tender or with the conclusion and performance of the contracts of sale.

29 In so far as disputes may arise as a result of the intervention agencies carrying out appropriate duties of this kind the national courts alone have jurisdiction as Section 12 "Final provisions" of the General notice of invitations to tender correctly states.

30 This jurisdiction is also conferred upon national courts should the intervention agencies disregard any Community legal provisions, since the responsibilities assumed by the institutions of the Community do not cover the disputes which might arise out of such actions.

31 Contrary to the Commission's submissions it cannot be denied that the applicant has an interest in the application which it has brought.

32 Even though the contested decision has already been fully implemented for the benefit of the other tenderers participating in the same invitation to tender the applicant retains an interest in the annulment of this decision; such interest consists either in its being restored sufficiently by the Commission to its original position or in inducing the Commission to make suitable amendments in the future to the system of invitations to tender if the latter is found to be incompatible with certain legal requirements.

33 The plea of inadmissibility which the Commission has raised must therefore be rejected.

34 While the applicant formally challenges Commission Decision No 78/258 it has at the same time criticized, in reliance on Article 184 of the EEC Treaty, certain aspects of the "linking" system in the form in which it has been implemented pursuant to the new Article 14 of Regulation No 805/68, by Regulation No 2900/77 and No 2901/77 and also by the notices of invitations to tender of 13 January 1978.

35 Article 184 reads: "Notwithstanding the expiry of the period laid down in the third paragraph of Article 173, any party may, in proceedings in which a regulation of the Council or the Commission is in issue, plead the grounds specified in the first paragraph of Article 173, in order to invoke before the Court of Justice the inapplicability of that regulation".

36 There is no doubt that this provision enables the applicant to challenge indirectly during the proceedings, with a view to obtaining the annulment of the contested decision, the validity of the measures laid down by regulation which form the legal basis of the latter.

37 On the other hand there are gounds for questioning whether Article 184 applies to the notices of invitations to tender of 13 January 1978 when according to its wording it only provides for the calling in question of "regulations".

38 These notices are general acts which determine in advance and objectively the rights and obligations of the traders who wish to participate in the invitations to tender which these notices make public.

39 As the Court in its judgment of 12 June 1958 in Case 15/57, *Compagnie des Hauts Fourneaux de Chasse* v *High Authority of the European Coal and Steel Community* [1957 and 1958] ECR 211, and in its judgment of 13 June 1956 in Case 9/56, *Meroni & Co., Industrie Metallurgische S.p.A.* v *High Authority of the European Coal and Steel Community* [1957 and 1958] ECR 133, has already held in connexion with Article 36 of the ECSC Treaty, Article 184 of the EEC Treaty gives expression to a general principle conferring upon any party to proceedings the right to challenge, for the purpose of obtaining the annulment of a decision of direct and individual concern to that party, the validity of previous acts of the institutions which form the legal basis of the decision which is being attacked, if that party was not entitled under Article 173 of the Treaty to bring a direct action challenging those acts by which it was thus affected without having been in a position to ask that they be declared void.

40 The field of application of the said article must therefore include acts of the institutions which, although they are not in the form of a regulation, nevertheless produce similar effects and on those grounds may not be challenged under Article 173 by natural or legal persons other than Community institutions and Member States.

41 This wide interpretation of Article 184 derives from the need to provide those persons who are precluded by the second paragraph of Article 173 from instituting proceedings directly in respect of general acts with the benefit of a judicial review of them at the time when they are affected by implementing decisions which are of direct and individual concern to them.

42 The notices of invitations to tender of 13 January 1978 in respect of which the applicant was unable to initiate proceedings are a case in point, seeing that only the decision taken in consequence of the tender which it had submitted in answer to a specific invitation to tender could be of direct and individual concern to it.

43 There are therefore good grounds for declaring that the applicant's challenge during the proceedings under Article 184, which relates not only to the above-mentioned regulations but also to the notices of invitations to tender of 13 January 1978, is admissible, although the latter are not in the strict sense measures laid down by regulation.

Substance

44 The applicant, supported by the Government of the Italian Republic as intervener, in order to show that the contested decision is a nullity puts forward various submissions intended to establish, on the one hand, that there has been an infringement of Article 14 of Regulation No 425/77 and, on the other hand, that some of the acts constituting the subject-matter of the application are vitiated by defects as to form.

45 The submissions on the substance of the application may be summarized by the objection that when the Commission made the arrangements for the system known as "linking" it misused its powers having regard to the rules laid down in the new Article 14 of the basic regulation.

46 In particular the applicant submits that

— The Commission excessively enlarged the category of beneficiaries intended to avail themselves of an advantage reserved for the processing industry by the basic regulation;

— The beneficiaries in this category who have bought meat from stocks held by the intervention agencies do not have to use it for a specific purpose;

— There are certain irregularities as far as concerns the quantitative aspects of the rules laid down by the Commission;

— Differing prices were fixed for the sale of meat from stocks held by the intervention agencies of the different Member States;

— The machinery set up for implementing the system, taken as a whole, had an effect on the level of the minimum price fixed by Commission Decision 78/258.

47 The applicant's submissions dealing with procedural requirements relate, on the one hand, to a failure to give a statement of the reasons upon which several of the contested acts were based and, on the other hand, to the fact that the tenders submitted in answer to the invitation to tender organized pursuant to the provisions which are at issue were not anonymous.

48 As far as concerns the failure to give a statement of reasons an analysis of the objections shows that the applicant's submission is in fact directed against the Commission's actual justification of its introduction of the "linking" system, in the light of the provisions of the basic regulation, and the failure

to set out the economic reasons which justify the fixing by Commission Decision No 78/258 of the minimum price, which was responsible for the applicant's not qualifying for the award of a contract.

49 These objections will be considered in connexion with the substance of the case.

The submission that the Commission has omitted to justify its introduction of the system known as "linking"

50 The applicant submits that none of the Commission's acts — that is to say neither Regulation No 2900/77 which lays down the rules for the "linking" system nor the General notice of periodic invitations to tender of 13 January 1978 — contains any justification for introducing into the sector of commercial operations under consideration the "linking" system, which was regarded simply as an option in the new Article 14 of the basic regulation.

51 It is claimed in this connexion that the reasons on which the measures adopted by the Commission were based have not been duly stated as required by Article 190 of the Treaty nor are those measures intrinsically justified.

52 The Commission takes the view that Regulation No 2900/77 has put in concrete form an option expressly provided for by the new Article 14 (3) (b) of Regulation No 805/68 with the result that the statement of the reasons on which that measure was based are exactly the same as the reasons which led the Council to anticipate this option taking into account the market conditons at the period under consideration.

53 When the Council amended Article 14 of Regulation No 805/68 by Regulation No 425/77 it laid stress, in the second and fifth recitals in the preamble to the latter regulation, on the fact that the main feature of the situation on the beef and veal market at that time was a market price slump, made worse by massive imports, with the result that it was necessary to adapt certain special systems so that account might be taken of both the supplies available to the Community and the Community's needs.

54 It is for the purpose of dealing with this situation that the new Article 14 (3) (b) of Regulation No 805/68 has provided that in future imports of beef and

veal under suspension of the levy, required for the manufacture of pure preserved beef, may be made conditional on production of a purchase contract for frozen meat held by an intervention agency.

55 As the Commission has with good reason explained, the object of this system is to achieve a reasonable balance between, on the one hand, the interest of the processing industry in importing beef and veal at world market prices and, on the other hand, the need to reduce the pressure on the market caused by the stocks held by the intervention agencies which had accumulated within the Community.

56 When the Commission exercised the enabling powers conferred upon it by Regulation No 425/77 immediately after the entry into force of the new Article 14 of Regulation No 805/68 it did not have to justify once more the introduction of the "linking" system for the importation under suspension of the levy on meat intended for the manufacture of pure preserved beef seeing that the objective of this implementing measure is the same as the aim defined as clearly as anyone could wish in the Council's basic regulation.

57 Consequently the reference to the new Article 14 of Regulation No 805/68 in the second citation in the preamble to that regulation was sufficient justification for the "linking" system and an adequate statement of the reasons on which its introduction by Article 1 of Regulation No 2900/77 was based.

58 This submission must therefore be rejected.

The submission that the category of beneficiaries has been excessively enlarged

59 The applicant blames the Commission for having by Regulation No 2901/77, Article 1 whereof adds a new Article 11a to Regulation No 585/77, permitted natural and legal persons, who for at least 12 months have been carrying on business in the meat and livestock sector and are officially registered in a Member State to import beef and veal under suspension of the levy.

60 The opportunity for importation provided by Regulation No 805/68 for the benefit of the processing industry has thereby been offered also to a large and indeterminate number of persons, the definition of whom is merely based on the fact that they are interested in some way or another in the meat and livestock sector without being in any way connected with processing.

61 This system of distribution, by limiting the tonnage of meat held by the intervention agencies which is subject to "linking" to a maximum of 100 tonnes per purchaser, pursuant to Article 3 (4) of Regulation No 2900/77, has led to many intermediaries coming into import transactions and to the creation for their benefit of profits which are unjustified and wholly unearned.

62 In the view of the Italian Government the wide definition of the category of beneficiaries of the system in question has meant that the latter no longer has any meaning and has thus reduced to nothing any kind of advantage which the Council regulation intended to give to the processing industries of the sector concerned.

63 The Commission defends itself with the submission that there was nothing to stop the meat processors from participating in the invitation to tender and from importing directly.

64 The wide definition of the category of beneficiaries by Regulation No 2900/77 takes account of the fact that many meat processors are in the habit of using commercial intermediaries for their imports.

65 Furthermore the Commission was under an obligation when it organized the system in question to abide by the principles of equal access to the goods and equality of treatment of all the potential purchasers.

66 Finally Article 11a of Regulation No 585/77, as worded in Regulation No 2901/77, expressly provided in paragraph (5) thereof that the importer shall undertake either to carry out himself the processing referred to in the basic regulation or have it carried out in his own responsibility.

67 It is clear from the new Article 14 (1) (a) of Regulation No 805/68 that the import system under total suspension of the levy is only intended to further the manufacture of preserved food of a specific kind.

68 It is not denied that the economic objective for which this special system was created by the original Article 14 of Regulation No 805/68 and kept in being, with new rules, by the amended version of the same provision, is to protect the competitiveness of the processing industry *vis-à-vis* competitors who are established outside the Community and as such enjoy the benefit of world market prices.

69 Although the aim of the new version of Article 14 is to make this branch of industry bear its share of the costs of marketing the surplus stocks of beef and veal in the Community by making "linking" obligatory, it is nevertheless a fact that the advantage derived from the total suspension of the levy on the quantities imported from non-member countries under this system must be reserved for the beneficiaries defined by the Council regulation.

70 It appears therefore that Regulation No 2901/77, which adds Article 11a to Regulation No 585/77, is inconsistent with the objective of the new Article 14 of the basic regulation in that it gives persons or undertakings unconnected with the sector of industry for which the benefit of the total suspension of the levy was to be reserved by the new Article 14 (1) (a) of Regulation No 805/68 the right to take advantage of this special import system.

71 The Commission's argument that it is under a duty to treat all potential importers equally cannot be upheld seeing that the specific aim of suspending the levy as provided for in Article 14 of Regulation No 805/68 is to give for particular economic reasons an advantage to one branch of the food industry.

72 Similarly the Commission's argument that many processors are obliged to have recourse to the import trade in order to meet their requirements is irrelevant in view of the fact that the minimum quantity accepted for the

purchase of meat from the intervention agencies is 5 tonnes with the result that even small processing undertakings are able to take advantage of the system in question and moreover other legal steps could have met all the practical requirements in such cases without excessively enlarging the category of persons benefiting from the system.

73 It should therefore be held that the Commission has prevented the special system provided for in the new Article 14 (1) (a) of Regulation No 805/68 from attaining its objective by allowing an indeterminate number of intermediaries to take advantage of them.

74 The applicant, with the support of the Italian Government, also submits in this context that the operation of the "linking" mechanism has been distorted by the fact that the meat bought from the intervention agencies under this system may be used by the purchaser for any purpose he likes, since it is only the meat imported free of the levy which has to be used for the preserved food industry.

75 Thus intermediaries who do not carry on business in the processing sector are able to reap a substantial part of the benefit to be derived from the suspension of the levy on imported meat by transferring that benefit to the meat from the intervention agencies which they are free to dispose of as they like.

76 It cannot be denied that the absence of any condition that meat bought from the intervention agencies under the "linking" system is to be used for a specific purpose may in fact distort the functioning of the mechanism, since, as a result of a definition of the category of beneficiaries which is too wide, manipulations of the prices of this meat, which cannot be supervised, may be effected by persons who do not have a direct interest in the processing industry as far as concerns, on the one hand, meat imported free of the levy for processing and, on the other hand, meat from intervention stocks which can be disposed of without restriction and may be unsuited for such a use.

77 This freedom available to the buyer may in fact, in the particular circumstances, have prevented the suspension of the levy as provided for in Article 14 of Regulation No 805/68 from achieving the objective which that Council regulation sought to attain.

The submission that the system introduced by the Commission has an effect on the level of the prices of meat sold by intervention agencies to reduce stocks in the context of the "linking" system

78 The applicant submits that the system of invitations to tender, taking into account the rules adopted by the Commission, has led to an excessively high price being fixed for meat sold by intervention agencies to reduce stocks which are to be bought under the "linking" system by purchasers wishing to benefit from importing with suspension of the levy meat originating in non-member countries.

79 Consequently the minimum price fixed by the Commission in the contested decision was considerably higher than the normal price of meat sold by intervention agencies to reduce stocks and therefore it in fact offset to an appreciable extent the advantage derived from suspending the levy as provided for in the Council regulation.

80 Thus the advantage provided for the processing industry has been switched for the benefit of an operation intended to bring about a reduction of stocks of meat held by the intervention agencies at a higher price than the price normally adopted for reducing stocks.

81 This argument has the support of the Italian Government which describes the results of the invitation to tender in question as "absurd" and points out that a system of invitations to tender which forces up prices cannot be reconciled with the objectives of the special system applicable to importing meat for processing with the suspension of the levy.

82 The Commission defends the system of invitations to tender by submitting that account had to be taken at the relevant time of a difficult situation on the Community market, characterized by surplus stocks of formidable dimensions, and that the aim of the "linking" system consists in finding a proper balance between meeting the requirements of the processing industries and taking into consideration the general market conditions within the Community, the mechanism of the invitation to tender being the best way of finding the point of equilibrium between these interests.

83 The introduction of the mechanism of an invitation to tender for quantities of meat which had to be bought by importers under the "linking" system cannot be challenged in itself, since this system is of such a kind as to guarantee, by means of the comparison of the tenders which those qualified to do so have submitted, the disposal of stocks held by intervention agencies on the best possible terms, at a particular point in time, taking into account the profitability of the undertakings concerned.

84 However it has to be acknowledged that in this particular case the normal operation of this mechanism has been upset as a result of extraneous factors, namely allowing competitors to participate in the invitation to tender whose interests differ from those of the processing industry to which, according to Article 14 of the basic regulation, the benefit of importing free of the levy was to be reserved, as has been shown above.

85 The fact that the minimum price fixed by the Commission on the basis of the outcome of the tenders submitted in answer to the invitation to tender reached a very much higher level than the normal price of meat sold by the intervention agencies to reduce stocks is due to these factors.

86 It must therefore be acknowledged that the objection by the applicant and the Italian Government that the abnormally high level of this price in fact offset partially an advantage that the Council had intended, for specific economic reasons, to give to the processing industry is justified.

87 Consequently the system organized by the Commission for the purpose of implementing the new Article 14 of Regulation No 805/68 must also be regarded for this reason as contrary to what this regulation anticipated.

88 The applicant also submits in this context that the fixing by the Commission of different minimum prices for the various Member States discriminates between traders depending on where their undertakings are situate.

89 Thus, as the Commission has with good reason explained, the object of fixing differing minimum prices as set out in the annex to the contested

decision is to take account of the regional differences, for both economic and monetary reasons, between the markets of the various Member States so as to arrive at a fair apportionment of the quantities of meat made available under the special system introduced by Article 14 of Regulation No 805/68 between the processing industries of the different regions of the Community.

90 Therefore this objection must be rejected.

Submissions based on certain features of the "linking" system relating to the quantities involved

91 The applicant challenges certain features of the "linking" system relating to the quantities involved which features are contained in the various measures forming the basis of the contested decision.

92 In the applicant's view the Commission arbitrarily fixed in the annex to Regulation No 2901/77 the ratio between the quantities of intervention meat and of meat imported free of the levy and the manner in which it fixed in the notices of invitations to tender the tonnages of meat held by the intervention agencies released under the same system was equally arbitrary.

93 The applicant also criticizes the fact that Section 3 of the General notice of periodic invitations to tender lays down that the quantity for sale shall relate to a quantity, for each tenderer, of not less than five tonnes and not more than 100 tonnes whereas in its view the undertakings should have been allowed to submit tenders corresponding to their actual processing capacity.

94 Finally the applicant complains of the arbitrary way in which the quantities released by the invitation to tender of 13 January 1978 were determined.

95 Placing an upper limit on the quantities of intervention meat which may be bought by one successful tenderer cannot be criticized in so far as it enables a fair apportionment of the advantage provided for the benefit of the processing industry by Article 14 of Regulation No 805/68 to be made among the persons for whom that advantage was intended.

96 However it is apparent in this case that the upper limit chosen by the Commission had the effect, on the one hand, of causing excessive fragmentation of the import quota and on the other hand of placing large processing undertakings in a particularly unfavourable position, owing to the fact that they could only benefit to a very small extent from the opportunities for importing under the "linking" system in the form in which the Commission has organized it.

97 Consequently the applicant's objections to the exceptionally low ceiling for the tonnage which may be purchased by any one successful tenderer appear to be in principle justified.

98 On the other hand it is proper to reject the applicant's objections to the proportion of meat imported free of the levy and of meat released by intervention agencies to reduce stocks under the "linking system" fixed by the Commission as well as the criticisms of the fixing of the tonnage for which tenders were invited for the quarter which was considered and of the apportionment of the latter between the two branches of the processing industry between which a distinction is drawn in the basic regulation.

99 In fact these steps remain within the discretion in economic matters which the Commission lawfully exercises in administering the market in beef and veal, taking into account the date in the Council estimate and the quarterly estimates prepared on this basis with a view to maintaining a reasonable balance between meeting the import requirements of the processing industry and the need to dispose of stocks of beef and veal originating in the Community.

100 The applicant has not produced any convincing evidence which would enable the Court to find that the Commission has exceeded the discretion which it has in the field.

The amount of publicity given to the tendering procedure

101 The applicant's final complaint is that, contrary to what it considers to be the general practice in conducting invitations to tender, the Commission insisted on being given a list of all the tenders received, with the names of the tenderers, following the opening of the invitation to tender.

102 This, it is claimed was a breach of the principles that the procedure for selecting successful tenderers must be objective and jeopardize the independence of the body responsible for choosing to whom the contracts should be awarded.

103 Although it is true that maintaining anonymity is a precaution, taken under national as well as Community law, in certain kinds of invitations to tender and especially in those which involve the exercise of a discretion in relation to individual tenders, such a precaution seems to be unnecessary in the context of an invitation to tender such as the one in the case in point, the outcome of which is decided with reference to a price fixed by the Commission after an evaluation of all the tenders received, taking into account the need for a fair apportionment of the aggregate quantity among the undertakings of the different regions of the Community.

104 This must be more especially the case in these proceedings as the identification of the tenders by name is essential in order to prevent the same person submitting two or more tenders.

105 This objection must therefore be rejected.

106 For the foregoing reasons Commission Decision No 78/258 must be annulled — to the extent hereinafter stated — because it is in breach of a rule relating to the application of the Treaty, namely the new Article 14 of Regulation No 805/68, and because the Commission has misused its powers when laying down certain rules for the implementation of the "linking" system provided for by the regulation quoted.

107 For reasons of legal certainty and taking special account of the established rights of those participants in the invitation to tender whose tenders have been accepted having regard to the minimum price fixed by the Commission the annulment must be restricted to the specific decision to reject the applicant's tender which stemmed from Commission Decision No 78/258.

108 Consequently the Commission, pursuant to the first paragraph of Article 176 of the EEC Treaty, has to reconsider the particular situation of the applicant

and adopt another decision affecting it through the competent intervention agency.

109 It will be for the Commission to adopt its decision with due regard to the grounds of this judgment and especially after taking account of the fact that the system introduced by the new Article 14 of Regulation No 805/68 may in no circumstances have the effect of ensuring that the processing industry buys intervention meat at a price lower than the price for reducing intervention agency stocks usually charged at the relevant terms in the case of meat of the qualities in question.

110 Therefore the applicant's tender should be rejected if it appears it was below that price level.

Costs

111 Under Article 69 (2) of the Rules of Procedure the unsuccesful party shall be ordered to pay the costs.

112 The defendant has failed in the main in its submissions.

113 By an order of 22 May 1978 the President of the Court rejected the application for the adoption of interim measures made by the applicant and reserved the costs of the application.

On those grounds,

THE COURT

hereby:

1. **Annuls Commission Decision No 78/258 of 15 February 1978 fixing the minimum selling prices for frozen beef put up for sale by the intervention agencies in accordance with Regulation No 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the first quarter of 1978 in so far as the decision affects the applicant;**

2. **Orders the Commission to pay the costs of the proceedings, including those of the intervener, except for the costs of the application for interim measures which are to be borne by the applicant.**

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 6 March 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 24 JANUARY 1979 [1]

Mr President,
Members of the Court,

The common organization of the market in beef and veal (Regulation No 805/68 of the Council, Official Journal, English Special Edition 1968 (I), p. 187), in order to ensure the competitiveness of the processing industry and to keep it supplied with frozen meat provides for a special import system — the complete or partial suspension of the levy on imports from non-member countries. The original arrangements were such that meat intended for the manufacture of tinned corned beef could be imported without any levy and any quantitative restrictions. In the case of meat intended for the manufacture of other products the levy was totally or partially suspended as respects quantities which were to be fixed in an estimate; if stocks held by the intervention agencies had reached a certain level the suspension could be made conditional on the purchase of specific quantities of the meat stored with these agencies.

In 1974 a market situation of crisis proportions — large surpluses accumulated on the Community market — necessitated the application of protective measures which were also applicable to

1 — Translated from the German.