the fundamental principle of the elimination of all obstacles to the free movement of goods between Member States. It is not to be understood as authorizing measures of a nature different from those contemplated by Articles 30 to 34.

3. Article 36, in accordance with the conditions which it prescribes, does not prevent the retention of certain restrictions. In this respect it does not matter that the inspections carried out by importing States on the occasion of the crossing of the frontier are replaced by inspections initially carried out by the exporting Member State. However Article 36 does not permit the collection of duties charged on the goods subjected to these inspections since this collection is not necessary for the exercise of the process provided for by Article 36 and therefore constitutes an additional obstacle to intra-Community trade.
4. If the fees for veterinary and public health inspections are demanded in the case of internal marketing as well as in the case of exportation then they form part of a general system of domestic charges and are not charges having an effect equivalent to a customs duty on exports but fall within the prohibition of discrimination under Article 95 of the Treaty.
5. Fees charged for veterinary and public health inspections, which are prescribed by a Community provision, which are uniform and are required to be carried out before despatch within the exporting country do not constitute charges having an effect equivalent to customs duties on exports, provided that they do not exceed the actual cost of the inspection for which they were charged.
6. Apart from the exceptions laid down by the directive itself, any additional inspection of bovine animals or swine for export to another Member State imposed unilaterally by a Member State, whether on its own initiative or in order to meet the requirements of another Member State, which are no longer justified, would constitute a measure having an effect equivalent to a quantitative restriction and any fee charged on this occasion would, for that reason, be incompatible with Community law.

In Case 46/76

Reference to the Court under Article 177 of the EEC Treaty by the Arrondissementsrechtbank of The Hague, for a preliminary ruling in the proceedings before that Court between

W. J. G. BAUHUIS

and

THE NETHERLANDS STATE

for an interpretation of the provisions of the Treaty prohibiting charges having an effect equivalent to customs duties on exports and of Council Directive No 64/432 of 26 June 1964 (OJ English Special Edition 1963-1964, p. 164)

THE COURT

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

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

gives the following

JUDGMENT

Facts

The order making the reference and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

In accordance with provisions of Netherlands Law relating to livestock (Veewet) the plaintiff in the main action paid fees for veterinary and public health inspections when in November and December 1970 he imported into the Netherlands swine coming from Member States and when from August 1966 to July 1971 he exported swine, swine for breeding, bovine animals, bovine animals for breeding and horses from the Netherlands to other Member States. Since he takes the view that these fees, Fl 588 for the imports and Fl 32 265.90 for the exports, are not payable because they were levied in contravention of Community provisions, which prohibit the collection of charges having an effect equivalent to customs duties on imports and exports, he asks for the total amount of Fl 32 853.90 to be refunded together with interest at the rate allowed by law as from 15 January 1972.

By its judgment of 10 May 1976 the Arrondissementsrechtbank, The Hague, before which this action was brought, allowed the claim for a refund of the fees paid when the import inspections were made. As far as the fees levied for the veterinary inspection on the export of the animals in question is concerned, this court, while reserving judgment, rejected certain submissions of the Netherlands Government in support of the view that the imposition of these fees complies with Community law but also decided to refer to the Court the following questions:

'Is the phrase 'charges having an effect equivalent to customs duties on exports' to be interpreted as including pecuniary charges which are imposed by a Member State in respect of the veterinary and public health inspection of livestock which is intended to be exported to another Member State in so far as such pecuniary charges suffice to cover, and do not exceed, the actual costs of a veterinary and public health inspection

which is carried out by authority of the Government:

(a) (as regards bovine animals and swine) in compliance with obligations imposed on the exporting Member State by the Council of the European Economic Community in its Directive No 64/432/EEC of 26 June 1964; or

(b) (as regards bovine animals and swine) in compliance with the obligations referred to at (a) above, and in addition to ensure that the bovine animals and swine concerned satisfy the particular conditions laid down for the importation thereof by the importing Member State; or

(c) (as regards animals other than bovine animals or swine) in order to ensure that the animals concerned satisfy the conditions laid down for the importation thereof by the importing Member State?'

The judgment of 10 May 1976 making the reference was registered at the Court Registry on 2 June 1976.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by the Commission, the Netherlands Government and the plaintiff in the main action.

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.

II — Observations submitted to the Court

A — Observations of the plaintiff in the main action

Bauhuis emphasizes the importance of the present proceedings. Other livestock dealers have claimed a refund of the fees they have paid but the Netherlands State still continues to levy the fees which are criticized in spite of two letters sent on 18 October 1970 by the Commission to the Minister for Foreign Affairs stating that in its opinion the fees both on imports and exports were contrary to the Treaty.

The plaintiff in the main action refers to the submission which he developed before the national court and to the case-law of the Court *(inter alia:* Case 39/73, *Rewe* I, [1973] 1039 and Case 63/74, *Cadsky,* [1975] ECR 281) which lays down that, even if inspection of imports or exports may be retained, they cannot give rise to the collection of charges or refunds, unless such refunds form part of a general system which, according to the same criteria, applies to goods on the home market and products crossing one of the frontiers between Member States, which is not the case in these proceedings. He goes on to argue that the fees for the veterinary and public health inspection of exports do not cease to be charges having an effect equivalent to customs duties and consequently prohibited if it were to be shown that these inspections are carried out pursuant to obligations arising out of Council Directive No 64/432 of 26 June 1964. Such a situation would still not justify the imposition of fees.

B — Observations of the Commission of the European Communities

After the Commission had stated that it proposed to bring before the Court the matter dealt with under the procedure laid down by Article 169 of the Treaty which it initiated as far back as 1970 against the Netherlands and other Member States in connexion with the charging of fees for veterinary and public health inspections, it pointed out that pursuant to the rules governing particular agricultural markets the prohibition of charges having an effect equivalent to import duties came into force in several cases before 1 January 1970, the date when the transitional period ended. This prohibition applies as from 1 July 1962

for the importation of swine (Article 14 (1) and Article 23 of Regulation No 20 of the Council of 4. 4. 1962, OJ L 30, p. 945).

The Commission infers from the recitals of the judgment making the reference that the inspection fees for exports fulfil all the conditions for them to be designated charges having an effect equivalent to customs duties on exports:

— they only apply to exported products and not to domestic products;
— they are charged when the products which are being exported cross the frontier and undergo a compulsory inspection;
— they do not form part of a general system of domestic charges under which products exported to and offered for sale in the Netherlands are charged systematically according to the same criteria;
— they must not be regarded as the consideration for a specific benefit which in fact accrues to the exporter.

The real question therefore is whether the refunds which are the subject-matter of this case must be regarded as in conformity with the Treaty:

— because the inspections are carried out pursuant to a provision of Community law (subparagraph (a) of the question);
— because the inspections are carried out for the purpose of determining that the products satisfy the conditions to which their importation is made subject by the State of destination (subparagraphs (b) and (c) of the question).

The Commission considers however that it is helpful to examine first of all what relationship there may be, *in this case,* between Article 36 of the EEC Treaty and the inspections or the fees charged for them. In its view the application of Article 36 of the EEC Treaty should be ruled out for two reasons. First because Article 36 only permits a Member State to take protective measures for the protection of health and life of humans and animals in this Member State, whereas in this case the measures of inspection are justified by the protection of health and life of humans and animals in the Member State of destination. Secondly because national measures may only be adopted pursuant to Article 36 provided that measures have not been taken by the Community to protect the interests mentioned in Article 36. However, as far as bovine animals and swine are concerned Council Directive No 64/432 of 26 June 1964 provides for a whole series of measures designed to provide a complete set of rules which represents neither a minimum nor a supplement to national provisions but which replaced the latter. Thus national measures based on Article 36 must be excluded.

With regard to the fact that the inspections are carried out in pursuance of a Community provision, Directive No 64/432, the Commission submits the following observations:

— Directive No 64/432 is silent on the question whether the Member States may or may not require payment for the inspection which they carry out in the implementation of this directive, whereas in the case of trade with third countries the later Council Directive No 72/462 of 12 December 1972 (OJ English Special Edition, 31. 12. 1972, p. 7) provides specifically (Article 12 (8)) for the collection of fees.

  The Commission deduces from this, *a contrario,* that in intra-Community trade such fees may not be charged.
— The Council itself may not permit or charge such fees since the Community legislature is also bound by the provisions of Articles 13 and 16 of the EEC Treaty.
— On the basis of Articles 43 of the EEC Treaty measures which derogate from the general rules of the Treaty may only be taken by way of exception if the functioning of the agricultural markets were to meet

with special difficulties; this exception does not apply in this case because there is no need to receive payment for veterinary inspections in order to deal with special difficulties and protect the proper functioning of the Common Market.

— The Community legislature itself cannot call Article 36 in aid in order to justify the compulsory charging of fees for veterinary and public health inspections; this provision in fact only applies to quantitative restrictions and charges having equivalent effect and not to charges relating to these measures (Case 7/68, *Commission* v *Italy,* [1968], ECR 423).

— In Case 63/74 *(Cadsky* [1975] ECR 290) the Court affirmed that 'in laying down provisions for their (i.e. customs duties on exports) abolition the Treaty does not distinguish between the purposes for which duties and charges were introduced or the uses to which the revenue obtained therefrom is put'.

With regard to the fact that the fees which are at issue are imposed on the occasion of inspections which are intended to comply with the special conditions laid down by the Member State of destination the Commission takes the view that the arguments which it put forward relating to the inspections justified by Community rules must apply, *a fortiori,* in this case of national sales.

Furthermore the inspections themselves cannot be reconciled with Community law and this, *ipso facto,* means that the fees relating thereto are also illegal.

As far as the exports of horses and also of bovine animals and swine is concerned the inspections are unquestionably charges having an effect equivalent to quantitative restrictions which are prohibited by Article 34 of the EEC Treaty and at the same time cannot be brought within the exception provided by Article 36 because they are not justified on grounds of public health in the Member State which adopts the measures but in the Member State of destination. Moreover in the case of exports of bovine animals and swine these measures of inspection clearly go further than those provided for by Directive No 64/432 under which the Member State of destination must, under the system adopted by the directive, rely on the EEC Certificate issued by the authorities of the exporting Member State. Any additional requirements laid down by the importing Member State, which contravene provision of Community law, do not justify the unilateral adoption by the exporting Member State of measures to this end.

The Commission then considers the other reasons put forward by the Netherlands State to justify the imposition of fees for veterinary and public health inspections.

The first argument put forward by the Netherlands State was that the costs necessary for the benefit of a product should be borne by this product and its consumer. This argument put forward by the Netherlands Government in other cases, *Marimex,* 29/72 [1972] ECR 1309 and *Cadsky,* 63/74 [1975] ECR 281) was rejected by the Netherlands court.

The Commission also points out that neither a legal principle nor even a general principle of economic policy applies and that according to the case-law of the Court the decisive test for the purposes of levying certain charges on importers or exporters engaged in intra-Community trade is the specific benefit which the said importers and exporters derive individually from the service provided. Finally, assuming that the principle defended by the Netherlands Government is a general principle of Community law, the Commission does not see why it should take precedence over the principle of the free movement of goods.

The Commission's answer to the argument of the Netherlands Government that, if the costs of veterinary and public health supervision were financed out of public funds, there would be the danger of concealed aid to exporters to other Member States, is that to accept such a proposition would be tantamount to treating the abolition of any charge having an effect equivalent to a customs duty on exports whereby certain expenses are borne by the exporter as a measure granting aid.

The Commission submits that the question referred by the Arrondissementsrechtbank, The Hague, should be answered as follows:

'A pecuniary charge levied unilaterally on goods exported to another Member State when they cross the frontier, by whatever name it is called and in whatever way it is made up, is a charge having an effect equivalent to a customs duty. In order to interpret this concept it does not matter whether such a pecuniary charge is levied for reasons of veterinary inspection on exportation, whether this inspection is provided for by Community law or whether it is compatible with it.'

C — Observations of the Netherlands Government

Although the Court has several times had occasion to give a ruling on the question whether the fees charged for inspections at the frontier are compatible with the provisions of Community law, it has not yet had an opportunity of determining the question referred in this case relating to fees for veterinary, public health and phytosanitary inspections, the aim of which is to provide the exporter with guarantees that his product will be allowed to enter the country of destination.

The Netherlands Government stresses the importance of this case. If the argument of the plaintiff in the main action were accepted large sums would have to be refunded. But the principles raised by the questions referred are much more important. What is at issue is the correct method of financing veterinary, public health and phytosanitary inspections of exports which the directives, issued with a view to removing obstacles to intra-Community trade, compel Member States to carry out. Is this financing to be borne by the product or must it be a compulsory charge on the general public funds of Member States?

As far as the distinctions made by the Arrondissementsrechtbank, The Hague, under subparagraphs (b) and (c) of the question referred are concerned, the Netherlands Government draws attention to the fact that, in the case of bovine animals and swine, Article 8 of Council Directive No 64/432/EEC permits importing Member States to lay down special conditions for their importation and to the fact that in the case of the other species the veterinary conditions to which imports are subject are still national in character. The veterinary inspections of exports carried out by the Netherlands veterinary service, cover the conditions prescribed by the Community authorities (Directive No 64/432) or by national authorities in the context of Article 8 of this directive or in exercise of their national powers (in particular in the case of horses in respect of which no Community directive has been issued).

As far as the financing of these indispensable veterinary inspections is concerned the costs incurred for the benefit of a product must be borne by that product in accordance with a well-tried general principle of political economy.

The Netherlands Government refers on this point to the principle, relating to the protection of the environment, that 'the polluter pays', which is also recognized by the Community.

The Netherlands Government insists that, in order to determine the nature of

the fees under Community law, a distinction must be drawn between those charged when the authority concerned provides a service for imports and those charged when the service is provided for exports. In the latter case the fees arise out of restrictions imposed either by the Community or by another Member State. Moreover the service provided free of charge by the authority on exportation may be an aid to exports which contravene the rules of the Treaty.

It is clear from the case-law of the Court of Justice that there are two possible ways of justifying fees charged on exports which are charges having an effect equivalent to customs duties on exports:
1. that the fee forms part of a general system of domestic charges levied according to the same criteria;
2. that the fee is the consideration for a specific service which was in fact provided and does not exceed either the value or the cost of such a service.

The Netherlands Government takes the view that there must be other possible ways of justifying the fees on exports, since these principles taken from the case-law of the Court are based on the assumption that the fees are only charged on imports.

The Netherlands Government considers that the underlying reasons for the measures of inspection affecting exports and consequently for the fees relating thereto must be taken into consideration. This is what distinguishes this case from Case 63/74 *(Cadsky)* and, as far as fees on imports are concerned, from Cases 52 and 55/65 *(Federal Republic of Germany* v *Commission* [1966] ECR 159 and Case 39/73 *Rewe* [1973] ECR 1039).

These three cases were concerned with charges relating to measures which the Member States in question had introduced in its own national interest (for example guaranteeing national standards of quality). In this case the measures are based on Community provisions or provisions laid down by other Member States. If the exporting State helps the exporter to satisfy the conditions prescribed by the importing country that amounts in fact to the provision of a service which brings the product one stage nearer the consumer in another State.

The Netherlands Government considers that having regard to those grounds which have already been accepted by the Court as justified:
(a) the service provided by the veterinary inspection exercised by the authority confers upon each individual exporter a specific and real benefit if by means of this inspection a condition is fulfilled or a guarantee undertaken with regard to the importation into the Member State of destination;
(b) the inspection fee is consideration of equivalent value if it covers and does not exceed the expenses of the inspection.

On this point the Netherlands Government states that the recital in the judgment of the Arrondissementsrechtbank according to which the benefit derived by the exporter from the inspections was incapable of proof was based on a misunderstanding. In the main action the Government, on the contrary, asserted that this benefit was manifest and real, because, in the absence of this inspection, importation into the State of destination would be impossible, but it went on to say that it was impossible to quantify the benefit in every single case.

The Netherlands Government submits that the question referred should be answered as follows:

'Pecuniary charges applied by a Member State for inspections of livestock intended for export to another Member State are not charges having equivalent effect within the meaning of Article 16 of the Treaty in so far as such pecuniary charges cover and do not exceed the

actual cost of a veterinary inspection carried out by a Member State for the purposes of the performance of the obligations set out in Directive No 64/432/EEC and/or in order to ascertain that the animals in question satisfy the requirements to which the Member State of destination has subjected their importation.'

At the hearing on 26 October 1976 the plaintiff in the main action represented by Mr Van Boeschoten, Advocate of the Bar at The Hague, the Netherlands Government represented by Mr Van de Does and Mr Alexander, Advocates at the Bar at The Hague and the Commission of the European Communities, represented by its Agent, Mr Bourgeois, submitted their oral observations.

The Advocate-General delivered his opinion at the hearing on 23 November 1976.

Law

1 By order of 10 May 1976 received at the Court Registry on 2 June 1976 the Arrondissementsrechtbank, The Hague, requested the Court under Article 177 of the EEC Treaty to give a ruling on the interpretation of Article 16 of the Treaty and in this connexion to state whether:

'... the phrase "charges having an effect equivalent to customs duties on exports" (is) to be interpreted as including pecuniary charges which are imposed by a Member State in respect of the veterinary and public health inspection of livestock which is intended to be exported to another Member State in so far as such pecuniary charges suffice to cover, and do not exceed, the actual costs of a veterinary and public health inspection which is carried out by authority of the Government:

(a) (as regards bovine animals and swine):

in compliance with obligations imposed on the exporting Member State by the Council of the European Economic Community in its Directive No 64/432/EEC of 26 June 1964; or

(b) (as regards bovine animals and swine):

in compliance with the obligations referred to at (a) above, and in addition to ensure that the bovine animals and swine concerned satisfy the particular conditions laid down for the importation thereof by the importing Member States; or

(c) (as regards animals other than bovine animals or swine):

in order to ensure that the animals concerned satisfy the conditions laid down for the importation thereof by the importing Member State?'

2 These questions were referred during proceedings brought against the Netherlands administrative authorities by a cattle dealer who, between August 1966 and July 1971, exported live animals to other Member States and claims a refund of the fees paid for the veterinary and public health inspections carried out by the Netherlands administrative authorities prior to their export.

3 He submits that these fees are charges having an effect equivalent to customs duties on exports prohibited as from 1 January 1962 by Article 16 of the Treaty and that they were therefore improperly paid.

4 It is clear from the judgment delivered by the national court that the fees at issue were charged, on the one hand, on the occasion of veterinary and public health inspections of bovine animals and swine prescribed and provided for by Council Directive No 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine (OJ English Special Edition 1963-1964, p. 164) and, on the other hand, on the occasion of veterinary and public health inspections other than those laid down by this directive or again on animals other than those referred to in the directive and coming solely within the provisions of national law.

5 These situations must be examined separately.

6 It is however advisable to specify first of all the legal framework within which the questions referred have to be answered.

7 Article 9 of the EEC Treaty prohibits between Member States customs duties on imports and exports and all charges having equivalent effect.

8 Under Article 16 Member States shall abolish between themselves customs duties on exports and charges having equivalent effect by the end of the first stage of the transitional period at the latest.

9 The justification for the prohibition of charges having an effect equivalent to customs duties lies in the fact that any pecuniary charge, however small, imposed on goods by reason of the fact that they cross a frontier constitutes an obstacle to the movement of goods, which is aggravated by the resulting administrative formalities.

10 Consequently, any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that

they cross a frontier and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 9, 12, 13 and 16 of the Treaty, even if it is not imposed for the benefit of the State.

11 The position would be different only if the charge in question is the consideration for a benefit provided in fact for the exporter representing an amount proportionate to the said benefit or if it related to a general system of internal dues applied systematically in accordance with the same criteria to domestic products and imported products alike.

12 Although Article 36 of the Treaty provides that 'The provisions of Articles 30 to 34 shall not preclude prohibitions or quantitative restrictions on imports ... justified on grounds of ... the protection of health and life of humans, animals ...', this provision constitutes a derogation from the basic rule that all obstacles to the free movement of goods between Member States shall be eliminated and must be interpreted strictly and thus cannot be understood as authorizing measures of a different nature from those referred to in Articles 30 to 34.

13 Consequently, although Article 36 does not prevent veterinary and public health inspections it cannot nevertheless be interpreted as thereby permitting the imposition of charges levied on imported goods subjected to the said inspections and intended to cover the costs thereof.

14 In fact this charge is not intrinsically necessary for the exercise of the power laid down in Article 36 and is thus capable of constituting an additional barrier to intra-Community trade.

15 It is appropriate to examine the questions referred in the light of these considerations.

I — The fees charged for the veterinary and public health inspections prescribed by Directive No 64/432/EEC

16 With a view to eliminating obstacles to intra-Community trade in bovine animals and swine the Council by Directive No 64/432 of 26 June 1964 harmonized the animal health measures in force in the Member States by making it obligatory for the latter to standardize domestic provisions in this field in accordance with the requirements of this directive.

17 According to the second and third recitals of the directive of 26 June 1964 its aim is to increase the effectiveness of the regulations on the organizations of the markets in beef and veal and pigmeat by substituting 'for the numerous traditional means of protection at the frontier a single system designed in particular to facilitate intra-Community trade'.

18 According to the third and fourth recitals this objective can only be attained by eliminating differences between national laws by 'approximating the animal health provisions of Member States'.

19 This approximation consists mainly in imposing upon Member States exporting cattle the obligation to ensure compliance with certain veterinary and public health measures intended, *inter alia,* to guarantee that the exported animals are not a source of contagious disease.

20 It is apparent from all these considerations that the harmonized system of veterinary and public health inspections introduced by the directive is based on the principle that the veterinary and public health guarantees required by each of the Member States have equivalent effect and it is this principle which guarantees both the protection of health and equal treatment of products.

21 Seen in this light the aim of the system is to transfer supervision to the exporting Member State and to replace in this way the systematic measures of protection at the frontier with a uniform system so as to make multiple frontier inspections unnecessary and at the same time to give the Member State of destination the opportunity of ensuring that the guarantees provided by the system of inspections thus standardized are in fact given.

22 This system is based on the trust which Member States should place in each other as far as concerns the guarantees provided by the inspections carried out initially by the veterinary and public health departments of the Member States from which the animals are exported.

23 With a view to making these guarantees effective the directive harmonized the provisions adopted by Member States by making unusually strict methods of supervision of universal application.

24 It therefore frequently happens that some at least of the inspections prescribed by the directive will be similar to the inspections carried out when

the same animals are marketed and transported in the territory of the Member State concerned.

25 If the fees for these inspections are demanded in the case of internal marketing as well as in the case of exportation then they form part of a general system of domestic charges and are not charges having an effect equivalent to a customs duty on exports but fall within the prohibition of discrimination under Article 95 of the Treaty.

26 Therefore the first question referred relates to the interpretation of the concept of a charge having an effect equivalent to a customs duty on exports with reference to the fees charged only for inspections of animals intended for export to another Member State and for the purpose of fulfilling the obligations of Council Directive No 64/432.

27 Although the organization of these inspections and exporting to another Member State are correlated, this organization by the exporting State has been made obligatory in the directive so that inspections at the frontier organized unilaterally by the importing Member State become unnecessary or are at least reduced to an occasional check that the veterinary and public health measures which are required to be taken in the exporting Member State have been complied with.

28 These measures are laid down unilaterally by each Member State but have been made obligatory and uniform in the case of all the products in question whichever the exporting Member State or the Member State of destination may be.

29 On the other hand they are not prescribed by each Member State in order to protect some interest of its own but by the Council in the general interest of the Community.

30 They cannot therefore be regarded as unilateral measures which hinder trade but rather as operations intended to promote the free movement of goods, in particular by rendering ineffective the obstacles to this free movement which might be created by the measures for veterinary and public health inspections adopted pursuant to Article 36.

31 In these circumstances fees charged for veterinary and public health inspections, which are prescribed by a Community provision, which are

uniform and are required to be carried out before despatch within the exporting country do not constitute charges having an effect equivalent to customs duties on exports, provided that they do not exceed the actual cost of the inspection for which they were charged.

32 The reasons for the prohibition of any obstacle to intra-Community trade, whether such obstacle takes the form of charges having an effect equivalent to customs duties or of measures having an effect equivalent to quantitative restrictions, do not apply to this case.

33 Moreover, as far as the question whether it is lawful to demand a fee is concerned, a distinction must be made between the inspections prescribed by the directive and those occasional inspections which, according to its provisions, only Member States are permitted to carry out at the frontier, because the former are obligatory and of general application so that they affect all the goods concerned, whereas the fees charged for the latter, which are only carried out in a random manner, are only borne by the goods which are inspected.

34 It is a question moreover of the compensation, justified on economic and financial grounds, for an obligation imposed by Community law on all the Member States equally.

35 The costs of the inspection may well vary from one Member State to another so that the fees may prove to be different according to the Member State where the inspection is carried out.

36 Although it may be desirable to see these charges harmonized, the fact that, if they are not to be designated as charges having an effect equivalent to customs duties, they must not exceed the actual costs of the operation, removes them from the category of prohibited aids to exports and precludes them from being regarded as obstacles to the movement of goods.

II — The fees charged for the special veterinary and public health inspections of bovine animals and swine on the occasion of their exportation

37 With a view to promoting the free movement of bovine animals and swine Directive No 64/432 has made veterinary and public health inspections intended to protect the health and life of humans and animals generally applicable and uniform in the whole of Community territory.

38 The mutual confidence, which Member States must have in the inspections carried out, under the prescribed conditions, by the competent authorities of the other Member States, constitutes a basic element of the system introduced by the directive, without which it would have no purpose.

39 It follows that bovine animals and swine which have undergone inspections prescribed by this directive must be able to be transported from one Member State to the others without additional health and veterinary requirements.

40 Consequently, apart from the exceptions laid down by the directive itself, any additional inspection of bovine animals or swine for export to another Member State imposed unilaterally by a Member State, either on its own initiative or in order to meet the requirements of another Member State, which are no longer justified, would constitute a measure having an effect equivalent to a quantitative restriction and any fee charged on this occasion would, for that reason, be incompatible with Community law.

41 The position would be different only if this inspection and an identical fee were also prescribed and charged under domestic regulations in connexion with the sale and transport of bovine animals and swine on the territory of the Member State concerned.

42 Moreover, if there were additional inspections carried out in the exporting country in the circumstances and subject to the conditions referred to in the special provisions of Directive No 64/432, such as Article 8, the fees would conform with those analysed above and would not constitute charges having an effect equivalent to customs duties on exports, provided that they do not exceed the actual costs of the operation.

III — Fees charged for veterinary and public health inspections of animals other than bovine animals and swine carried out in exporting countries

43 The inspections referred to in the last part of the question are carried out by Member States unilaterally and in a way which has not been standardized and are in no way connected with any Community rules.

44 In so far as these are inspections of animals intended only for export and differ from those carried out when the same animals are marketed or

transported in the territory of the Member State concerned they are measures having an effect equivalent to quantitative restrictions.

45 These measures which are intended to protect the veterinary and public health interests of the importing country comply with the Treaty subject to the conditions laid down in Article 36 thereof.

46 Article 36 does not prohibit the replacement of the inspections carried out by the importing State on the occasion of the crossing of the frontier by inspections initially carried out by the Member States.

47 However the transfer of these inspections which continue to be carried out in the interest of the importing State does not in fact change their nature.

48 As it has been noted above that, although Article 36, in accordance with the conditions which it prescribes, does not prevent the retention of certain restrictions, in particular those which take the form of veterinary and public health inspections, it does not however permit the collection of duties charged on the goods subjected to these inspections, since this collection is not necessary for the exercise of the powers provided for by Article 36 and therefore constitutes an additional obstacle to intra-Community trade.

49 The reasons which render lawful the collection of appropriate duties for the carrying out of uniform Community inspections of general application cannot be applied to situations which continue to consist of obstacles set up unilaterally.

50 This is the case even if the domestic inspections are measures for the promotion of exports.

51 It is therefore necessary to reply that fees charged by the exporting State for veterinary and public health inspections carried out by the authorities of that State, which are not required by a Community regulation or directive but which have been prescribed for the purpose of checking whether the conditions to which the Member State of destination has made the importation subject have been complied with, constitute charges having an effect equivalent to customs duties.

Costs

52 The costs incurred by the Netherlands Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

53 As these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Arrondissementsrechtbank, The Hague, by order of 10 May 1976, hereby rules:

1. **Fees charged for veterinary and public health inspections which are prescribed by a Community provision, which are uniform and are required to be carried out before despatch within the exporting country, do not constitute charges having an effect equivalent to customs duties on exports, provided that they do not exceed the actual cost of the inspection for which they were charged.**

2. **Consequently, apart from the exceptions laid down by Directive No 64/432/EEC itself, any additional inspection of bovine animals or swine intended for export to another Member State, which is prescribed unilaterally by a Member State, either on its own initiative or in order to meet the requirements of another Member State which are no longer justified, constitutes a measure having an effect equivalent to a quantitative restriction and any fee charged on that occasion would, for that reason, be incompatible with Community law.**

3. **Fees charged by the exporting Member State for veterinary and public health inspections carried out by the authorities of that State, which are not required by a Community regulation or directive but which have been prescribed for the purpose of checking whether the conditions to which the Member State of destination has made the importation subject have been**

complied with, constitute charges having an effect equivalent to customs duties.

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 25 January 1977.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 23 NOVEMBER 1976 [1]

Mr President,
Members of the Court,

These proceedings are concerned with the interpretation of Article 16 of the EEC Treaty which provides that Member States shall abolish between themselves customs duties on exports and charges having equivalent effect by the end of the first stage at the latest.

The plaintiff in the main action, a dealer residing in the Netherlands, imported into the Netherlands at the end of 1970 swine from other Member States. Between August 1966 and July 1971 he also exported swine, swine for breeding, bovine animals, bovine animals for breeding and horses from the Netherlands to other Member States. In accordance with the Netherlands' Law on livestock and the implementing rules adopted thereunder which provide that the import and export of particular bovine animals is subject to an inspection by the veterinary authority the goods in question were inspected. The plaintiff had to pay fees for these inspections, the particulars of which had been fixed by the Minister for Agriculture. Since he considered that this was unlawful he sued the Netherlands State for a refund.

As far as imports were concerned the plaintiff regards the fees as charges having equivalent effect and rests this view on the fact that a corresponding prohibition applying to intra-Community trade had direct effect in the Member States as from 1 January 1970. In so far as the fees were charged on his exports the plaintiff takes the view that they are charges having an effect equivalent to customs duties. In this connexion a corresponding prohibition relating to intra-Community trade had direct effect in its entirety as from 1 January 1962.

1 — Translated from the German.