health legislation intended to simplify the checks carried out when the goods pass from one Member State to another.

4. Article 36 of the Treaty cannot be interpreted as meaning that it forbids in principle a national authority, which has imposed by a general rule veterinary and public health restrictions on imports of animal feeding-stuffs, from providing that it will be possible to derogate therefrom by individual measures left to the discretion of the administration if such derogations assist the simplification of the restrictions imposed by the general rules and if this power of derogation does not give rise to arbitrary discrimination between traders of different Member States.

   Nevertheless it does not automatically follow that each of the conditions to which the national authoritiy subjects the grant of such authorization itself complies with what is permitted by Article 36. It is in each case for the national courts to determine whether these conditions are necessary for attainment of the objective which Article 36 permits to be sought.

5. A pecuniary charge levied for reasons connected with veterinary and public health checks, even if such checks take the form of a system of individual import licences and even if this system is justified within the meaning of Article 36 of the Treaty is a charge having an effect equivalent to a customs duty and prohibited by the Treaty.

In Case 251/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht [Administrative Court] Münster for a preliminary ruling in the action pending before that court between

FIRMA DENKAVIT FUTTERMITTEL GMBH, Warendorf,

and

MINISTER FÜR ERNÄHRUNG, LANDWIRTSCHAFT UND FORSTEN DES LANDES NORDRHEIN-WESTFALEN [Minister for Food, Agriculture and Forestry of the Land of North Rhine-Westphalia], Düsseldorf

on the interpretation of Articles 9, 30 and 36 of the EEC Treaty and also of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176) and Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (Official Journal L 281, p. 1).

THE COURT

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

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The order making the reference to the Court 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

1. In the main action before the Verwaltungsgericht [Administrative Court] Münster, the plaintiff, Denkavit Futtermittel GmbH, Warendorf, calls in question the compatibility with Community law, in particular Articles 9, 30 and 36 of the EEC Treaty, of certain provisions of the legislation enacted *inter alia* for the prevention of salmonellosis by the Land of North Rhine-Westphalia in the field of veterinary inspections of imports of feeding-stuffs containing products of animal origin, and of measures adopted in implementation of that legislation.

2. In the Federal Republic of Germany the organization of the veterinary health inspection of feeding-stuffs, based on the Viehseuchengesetz [Law on infectious diseases of animals] 1909, is governed by two different systems, one dealing with feeding-stuffs manufactured in the Federal Republic of Germany and the other dealing with imported feeding-stuffs. Until very recently these matters were within the jurisdiction of the Länder.

3. *For feeding-stuffs manufactured in the Federal Republic of Germany,* Article 49 of the regulation of the Land in question, the Viehseuchenverordnung zur Ausführung des Viehseuchengesetzes [regulation on infectious diseases of animals issued in implementation of the Law on infectious diseases of animals] of 24 November 1964, Gesetz- und Verordnungsblatt für das Land Nordrhein-Westfalen, Ausgabe A [Journal of Laws and Regulations for the Land of North Rhine-Westphalia, Edition A] of 17 December 1964, provides:

"The setting-up and operation of installations intended for the industrial manufacture, mixing or other processing of feedingstuffs of animal origin shall be subject to inspection by the official veterinary surgeon; the latter is also empowered to take samples for purposes of bacteriological analysis".

With effect from 5 August 1977 that legislation was replaced by Federal legislation, namely the Verordnung über die Behandlung von Futtermitteln tierischer Herkunft bei gewerbsmäßiger Herstellung [regulation on the treatment of feeding-stuffs of animal origin where they are manufactured commercially] of 28 July 1977 — short title, *Futtermittelbehandlungs-Verordnung* — Bundesgesetzblatt [Federal Journal of Laws] I, p. 1457.

According to Article 2 of that regulation feeding-stuffs must undergo treatment allowing the germs of contagious diseases to be destroyed. That provision does not apply where the ingredients of the product have already undergone similar treatment. Furthermore, under Article 2 (2), exemptions may be granted subject to certain reservations where in general or in a particular case there is no danger of contagion; whilst under Article 7 "installations for the industrial manufacture of feeding-stuffs which contain products of animal origin shall be inspected by the authorized veterinary surgeon".

4. *As regards imported feeding-stuffs,* veterinary inspection was governed in the *Land* of North Rhine-Westphalia by the Viehseuchenverordnung über die Einfuhr und Durchfuhr von Futtermitteln tierischer Herkunft aus dem Auslande [regulation on infectious diseases of animals relating to the importation and transit of feeding-stuffs of animal origin from abroad] of 18 September 1957, hereinafter referred to as "the *Viehseuchenverordnung*", Gesetz- und Verordnungsblatt für das Land Nordrhein-Westfalen, 1957, Ausgabe A, p. 247. Such inspection is primarily directed at the detection of salmonellae in feeding-stuffs.

Articles 1, 2 and 9 of the Viehseuchenverordnung read as follows:

Article 1

"Feeding-stuffs containing products of animal origin (Article 3) may be imported into the customs territory only upon production on importation of a certificate from the competent authorities in the exporting country confirming that the goods have undergone a heating process during or after dehydration whereby any salmonellae which may have been present were destroyed."

Article 2

"(1) Feeding-stuffs shall be subject upon importation to an official inspection carried out by veterinary experts in an official veterinary inspection institute. They may be imported only when it has been established by bacteriological analysis that the goods are free from salmonellae.

Samples shall be taken for inspection purposes in the following proportions:

— for consignments of 1 to 100 bags, in 5% thereof,

— for consignments of 101 to 500 bags, in 3% thereof,

— for consignments of over 500 bags, in 2% thereof.

(2) Where the inspection provided for in paragraph (1) reveals the presence of salmonellae, the feeding-stuffs may be imported only after having undergone a heating process carried out under the supervision of the official authorities whereby the salmonellae may be destroyed".

Article 9

"The right is reserved to grant exemptions from the provisions of this

regulation where there is no reason to fear that the importation and transit of the goods mentioned in Article 3 are a source of introduction or propagation of epizootic disease germs."

The legislation in question was repealed and replaced with effect from 1 April 1979 by Federal legislation: the Verordnung über die Einfuhr und Durchfuhr von Futtermitteln tierischer Herkunft und von Knochenmaterial [regulation on the importation and transit of feeding-stuffs of animal origin and of bone material] hereinafter referred to as "the *Einfuhrverordnung*", Bundesgesetzblatt 1978 I, p. 1375. However, the main action concerns only the Land's legislation on imports of feeding-stuffs as in force until 1 April 1979.

5. Owing to the disadvantages inherent in these inspections, the plaintiff in the main action had by a letter of 18 October 1976 applied for an exemption under Article 9 of the Viehseuchenverordnung, permitting it to import the feeding-stuffs in question, essentially from the Netherlands and from Denkavit Nederland B.V., without the certificate provided for in Article 1 and without inspection upon importation.

By letters of 5 November 1976 and 11 January 1977 the Minister for Food, Agriculture and Forestry of the Land of North Rhine-Westphalia, the defendant in the main action, proposed to grant that exemption on condition that the plaintiff stated

(1) the quantity of feeding-stuffs which was to be imported within the period for which the licence was valid,

(2) the origin of the goods,

(3) the customs post through which the goods were to be imported,

(4) the destination of the goods,

(5) the consignee of the goods,

(6) the packaging of the goods;

and that in addition, when the goods were given customs clearance at the frontier customs post, it produced a certificate in German or accompanied by a certified German translation from the official veterinary surgeon having authority for the place where the milk-based feeding-stuffs were manufactured. That certificate also had to state that

(1) the feeding-stuffs contained no constituents of animal origin other than milk products in powdered form and animal fat,

(2) the milk products were manufactured exclusively from pasteurized milk,

(3) the fats had been heated to at least 85° Centigrade,

(4) the whole manufacturing process had been carried out as one complete process.

6. The plaintiff provided the evidence requested and, by a letter of 15 March 1977, obtained from the Ministry concerned a licence to import for a period of three months specified quantities of the said feeding-stuffs in new plastic bags via certain customs posts named in the said licence. There licence was, however, made subject to production of the certificate at the frontier customs post. At the same time the Ministry concerned put the plaintiff under an obligation to destroy the plastic bags after they had been emptied, and charged a fee of DM 50 for the licence under the Allgemeine Verwaltungsgebührenordnung [general regulation on administrative fees] of 9 January 1973.

Taking the view that the fee charged and certain of the conditions and obligations to which the grant of the licence was made subject were incompatible with the

EEC Treaty, the plaintiff brought proceedings before the Verwaltungsgericht Münster, claiming a declaration that the licence was illegal and at the same time challenging the compatibility with Community law of the provisions of the Viehseuchenverordnung of 1957. Holding that the interpretation of the Treaty was necessary to enable it to give judgment in the case, that court, by an order of 13 September 1978 which was registered at the Court on 10 November 1978, referred the following question to the Court of Justice:

"Must Articles 9, 30 and 36 of the EEC Treaty, Regulation (EEC) No 804/68 (regulation on the common organization of the market in milk and milk products) and Regulation (EEC) No 2727/75 (regulation on the common organization of the market in cereals) be interpreted as meaning that it is prohibited

either

to make, by legislative provision (Rechtsnorm) in a Member State, the importation of feeding-stuffs of animal origin from another Member State subject, in respect of each consignment, to a certificate from the competent authority in the exporting country showing that the feeding-stuffs have undergone a process to destroy salmonellae and, in addition, to authorize importation only if the competent national authority in the importing country has established by bacteriological examination that the goods contain no salmonellae

or

to leave special licences granting exemption from this to the discretion of the competent authority (das Ermessen der zuständigen Behörde) and thereby give that authority the power to grant those special licences provided that:

— the licence is granted only for a limited period, may be revoked without compensation at any time for reasons of the veterinary authority, is, in addition, valid in accordance with the application only for goods of a specific quantity and origin and only for transportation via specific customs posts to specific consignees,

— a certificate from the veterinary authority of the exporting country as to the composition and method of processing of the feeding-stuffs to be imported must be produced in respect of each individual consignment,

— importation in plastic bags is only permitted if the bags are new and are destroyed after being emptied, and

— an administration fee of not less than DM 5 and not more than DM 50 is charged in respect of each licence,

if, on the one hand, a provision of the law relating to infectious diseases of animals of the importing country provides with regard to domestic production in general for the supervision by the veterinary authority of the installations for the commercial manufacture of feeding-stuffs which contain products of animal origin, and, on the other, there is no comparable provision in the exporting country but the exporting manufacturing undertaking is, however, subject to an official control which is at least comparable to the supervision carried out in the importing country?."

Under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the plaintiff in the main action, represented for this purpose by its Counsel D. Ehle, by the defendant in the main action, represented for this purpose by Dr Erbert and by the Commission of the European Communities, represented by Manfred Beschel, a member of its Legal Department, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to

open the oral procedure without any preparatory inquiry.

II — Observations under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — Observations of the plaintiff in the main action (Denkavit)

According to the plaintiff the restrictive provisions of Articles 1 and 2 of the Viehseuchenverordnung as well as the requirement of a licence granting exemption under Article 9 of that regulation are measures having an effect equivalent to quantitative restrictions prohibited by Article 30 and not justified by Article 36 of the EEC Treaty. Furthermore, the charging of the fee accompanying the inspection infringes Article 9, 12 and 13 of that Treaty.

Article 30 of the Treaty

The restrictive measures laid down in Articles 1 and 2 of the Viehseuchenverordnung constitute measures having an effect equivalent to quantitative restrictions within the meaning of Article 30 of the EEC Treaty because they are capable of acting as a direct or indirect, real or potential hindrance to trade within the Community.

As regards the licensing procedures, the Court held in its judgment of 12 December 1971 in Joined Cases 51 to 54/71 *International Fruit Company* [1971] 2 ECR 1107, that apart from the exceptions for which provision is made by Community law itself Articles 30 and 34 of the EEC Treaty precluded the application of a national provision which requires, even purely as a formality, import or export licences or any other similar procedure.

Article 36 of the Treaty

Basing itself on the judgment of the Court of 5 October 1977 in Case 5/77 *Tedeschi* [1977] ECR 1555, the plaintiff takes the view that where, pursuant to Article 100 of the EEC Treaty, Community directives have provided for the harmonization of measures intended to ensure the protection of animal and human health and where they set up Community inspection procedures, recourse to Article 36 of the EEC Treaty is no longer justified.

Although there is no directive specifically concerning compound feeding-stuffs [1] applicable to products of animal origin (milk products and animal fats), the plaintiff considers that the approximation programme laid down in the Council Resolution of 22 July 1974 on the veterinary, plant health and animal feeding-stuffs sectors (Official Journal 1974, C 92, p. 2) extends to the bacteriological aspects without its having been necessary to lay down specific rules going beyond the considerations developed in that resolution and in the directives already adopted. In these circumstances there is no longer any place for rules granting exemptions on the basis of Article 36 of the EEC Treaty.

Should the Court of Justice not take this view, the plaintiff submits that Article 36 of the Treaty (a) does not justify a double check such as that which is pre-

1 — On 2 April 1979 the Council adopted a directive on the marketing of compound feeding-stuffs (Official Journal 1979 L 86, p. 30). According to Article 16, "Member States shall bring into force on 1 January 1981 the laws, regulations and administrative provisions necessary to comply with this directive and shall forthwith inform the Commission thereof".

scribed in Articles 1 and 2 of the Viehseuchenverordnung and (b) cannot justify the requirement of a licence accompanied by conditions and obligations.

(a) The double veterinary check

Basing itself on the findings of the national court, the plaintiff argues that the inspection of Denkavit Nederland's feeding-stuffs factory by the Netherlands veterinary authorities is neither less thorough nor less reliable than the inspection to which German undertakings are subject. In these circumstances the answer to the first part of the question should be to the effect that in any case systematic bacteriological inspection upon importation violates the principle of free movement of goods and cannot be justified by Article 36 of the EEC Treaty where the manufacture of the feeding-stuffs is subject in the exporting country to actual and reliable bacteriological inspection by the veterinary authorities. The question whether in this connexion there are express legal provisions imposing such inspection in the exporting country is irrelevant if it is shown that such inspection is actually carried out.

(b) The need for an exemption accompanied by conditions and obligations

The licence, like the conditions and obligations attached to it, is not justified in the light of Article 36 of the EEC Treaty.

As regards the licence itself, the plaintiff considers that no general principle requires, within the framework of Articles 30 and 36 of the Treaty, the carrying out of a health or veterinary inspection in intra-Community trade to be certified by a document. Basing itself on the judgment of the Court of 20 May 1976 in Case 104/75 *De Peijper* [1976] 1 ECR 613, it takes the view that information about the nature of the supervision of Denkavit Nederland B.V. in the Netherlands could, if necessary, be obtained by the defendant by direct contact with the Netherlands veterinary authorities. The obligation to produce a certificate from the exporting country — *a fortiori* for each consignment — constitutes an arbitrary discrimination within the meaning of the second sentence of Article 36 because, when the plaintiff obtains products of the same kind as the products in question from a German manufacturer, it does not have to produce such a certificate.

As regards the conditions and obligations attached to the licence (laying down of a time-limit, specified quantities, statement of the consignee, and so on), the plaintiff considers that they are neither appropriate nor necessary to prevent epizootic diseases.

Consequently the answer to the second part of the question should be to the effect that the conditions, obligations and time-limits laid down in the licence granting exempiton are not justified by Article 36 of the EEC Treaty and therefore there is no longer any need to obtain a licence granting exemption.

Articles 9, 12 and 13 of the EEC Treaty

The illegality of the licence *ipso facto* entails the illegality of the fee charged for issuing it (judgment of the Court of Justice of 16 June 1966 in Joined Cases

52 and 55/65 *Federal Republic of Germany* v *Commission* [1966] ECR 159). Furthermore, the charging of a fee in itself infringes Articles 9, 12 and 13 of the Treaty, because it does not constitute the consideration for a service provided and does not form part of a body of general national rules since it is charged only for the issue of an import licence.

B — Observations of the defendant in the main action (Minister für Ernährung)

After stressing the danger of salmonellosis for human health and the need for appropriate measures to combat it, the defendant explains the *ratio legis* of the conditional exemption provided for in Article 9 of the Viehseuchenverordnung. On the one hand, the certificate concerning the process of treatment in the exporting country is necessary because, for example in the Netherlands, there are no rules comparable to those in the Futtermittelbehandlungs-Verordnung. On the other hand, the ancillary conditions allow the controlling authorities to identify consignments which enjoy the privilege of easier clearance through customs owing to a licence granting exemption. In the defendant's submission, such a procedure is the only means of directly influencing the production process in the countries of origin.

The conditional exemption procedure is moreover covered by the general principle developed in Community law in the animal health field and based on the obligation on the part of exporting Member States to ensure observance of Community health standards by means of a health certificate issued by an official veterinary surgeon to accompany each consignment. As an example one may cite Article 3 (2) (i) of Council Directive No 64/432 of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine (Official Journal 1975, C 189, p. 1). Article 7 of that directive justifies requiring a licence to be granted where it is a question of derogating from the Community rule, and by determining the frontier crossing-points to be used Article 6 of the directive also takes account of the need in intra-Community trade for inspections upon crossing the frontier.

Consequently, for intra-Community trade, Community law prescribes and allows health certificates although such certificates are not required for comparable trade carried out within each country. If the requirement of a certificate from the health authorities of the exporting country is deemed necessary and is provided for when a directive has harmonized the inspection procedures, there is no apparent reason why an identical procedure in an area where there has been no harmonization should violate the general principle mentioned, *a fortiori* as there is no legislation in the Netherlands comparable to the Futtermittelbehandlungs-Verordnung.

As regards recourse to Article 36 of the EEC Treaty, the defendant observes that in the feeding-stuffs sector only trade in *straight* feeding-stuffs has so far been regulated at the Community level (Council Directive No 77/101 of 23 November 1976 on the marketing of straight feeding-stuffs, Official Journal 1977, L 32, p. 1). As the products in dispute are *compound* feeding-stuffs, the Member States have to use national

measures to protect animal and human life and health against salmonellosis.

Moreover, live disease agents cannot be brought within the concept of "additives in feeding-stuffs" or within that of "undesirable substances and products in feeding-stuffs", so that they do not fall within the ambit of Council Directive No 70/524 of 23 November 1970 concerning additives in feeding-stuffs (Official Journal, English Special Edition 1970 (III), p. 840) or within that of Council Directive No 74/63 of 17 December 1973 on the fixing of maximum permitted levels for undesirable substances and products in feeding-stuffs (Official Journal 1974, L 38, p. 31).

As regards the ancillary provisions of the licence, the defendant observes that the statement of origin is necessary in order to allow the identity of the goods to be checked; the limitation of the period of validity of the licence is due to its being by way of an exemption; and the naming of the customs post is to allow further imports to be prevented rapidly should the epizootic situation in the country of origin deteriorate. Contrary to what is stated by the plaintiff, the quantities imported are not subject to any limitation because the importer himself determines those quantities. Finally, the statement of the destination and of the name of the consignee serve to facilitate any epidemiological inquiries which may have to be undertaken.

C — *Observations of the Commission*

Interpreting the question referred to the Court for a preliminary ruling, the Commission observes on the one hand that the Verwaltungsgericht seeks a definition of the scope of the prohibition of measures having an effect equivalent to quantitative restrictions (Articles 30 and 36 of the Treaty) and of charges having an effect equivalent to customs duties (Article 9 of the Treaty) and, on the other hand, that the question draws a distinction between the body of national legislative provisions (Rechtsnormen) and the discretion conferred upon the authority by those legislative provisions (das Ermessen der zuständigen Behörde). The Commission will deal with these different points separately.

Article 30 of the Treaty

In addition to Article 30 of the EEC Treaty, the preliminary question mentions similar provisions contained in the common organization of the market applicable in the present case, namely Article 22 of Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176) and Article 21 of Regulation No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (Official Journal 1975, L 281, p. 1).

In the Commission's submission, the licence granting exemption accompanied by ancillary provisions such as those provided for in the Viehseuchenverordnung is, according to the settled case-law of the Court, to be regarded as a measure having an effect equivalent to quantitative restrictions.

Article 36 of the EEC Treaty

The Commission states that in cases such as the present one (a) there is nothing to prohibit Article 36 of the Treaty being invoked, but that (b) it is therefore essential to consider whether the measures in question can be regarded as justified for the purposes of Article 36 of the Treaty.

(a) Applicability of Article 36

Constituting an exception to the principle of free movement of goods, Article 36 of the Treaty can no longer be invoked when the Community legislature has adopted harmonized rules in an area

concerning the protection of human and animal health. However, this is not the case as regards the health protection for *compound* feeding-stuffs, the products which form the subject-matter of the dispute in the main action. Since the problem of pathogenic germs in feeding-stuffs will have to be the subject of specific legislation, the Commission concludes that the Member States are not prohibited from invoking Article 36 within the limits laid down in that article where it is a question of veterinary health inspection measures applied to imports of feeding-stuffs and concerned with the presence of such pathogenic germs.

(b) Justification of the measure under Article 36 of the Treaty

The Commission first considers the question of the circumstances in which a legislative provision (Rechtsnorm) can be regarded as justified for the purposes of Article 36 of the EEC Treaty, and then considers the question of the circumstances in which the exercise of discretion by the administration (das Ermessen der zuständigen Behörde) may be regarded as justified within the meaning of Article 36 of the EEC Treaty.

As regards national legislative measures, it observes that although the Member States have discretion, they can adopt only such measures as are necessary and appropriate to achieve the protective aim in view.

When each Member State assesses the need for inspections upon importation, it must consider what inspections imports of the goods in question undergo in the other Member States and what protective measures are applied to domestic products of the same kind. According to the Commission's information, all the other Member States draw a distinction between feeding-stuffs manufactured from milk and heated animal fats and those manufactured from other animal substances. Whereas in all the other Member States except Italy feeding stuffs in the first category may be imported without any restriction, for the second category of feeding-stuffs all the Member States carry out more or less stringent inspections upon importation.

Examining the animal health measures laid down in the Viehseuchenverordnung, the Commission observes that, as regards milk substitutes, those provisions go markedly further than is considered necessary by the other Member States. Moreover, comparison of the Viehseuchenverordnung with the German rules applicable to the manufacture and sale of German feeding-stuffs shows that Federal law, at least as laid down in the Federal Futtermittelbehandlungs-Verordnung of 28 July 1977, no longer provides for systematic bacteriological analyses of those feeding-stuffs or for special certificates accompanying consignments.

In these circumstances it is open to question whether legislation making imports of milk substitutes always and without exception subject to production of a certificate issued by the veterinary administration and to bacteriological examination is still justified or whether, on the contrary, it should be regarded as an arbitrary restriction on trade. The Commission does not however develop this point because the legislation at issue

does not provide for the inspection measures in question to be applied systematically and because the competent authority may relax the protective measures by exercising the discretion which is conferred upon it.

As regards the administration's discretion to grant exemptions, it is a question not of passing judgment on each measure in particular but of setting forth the Community law criteria upon which the discretionary decisions must be founded and of imposing limits upon the exercise of the discretion which must not be exceeded.

One of the essential issues in this context is whether and to what extent the authorities in the importing country must have regard to the actual veterinary health inspection provisions applied in the exporting State. In the Federal Republic of Germany undertakings manufacturing feeding-stuffs are subject to official inspection provided for in the Federal Futtermittelbehandlungs-Verordnung of 1977, whilst no such control is mandatory in the Netherlands. In a situation of this kind, the principle of free movement of goods and the Member States' duty to assist in the implementation of their obligations under the Treaty pursuant to Article 5 of the EEC Treaty none the less require the authority in the importing Member State to have proper regard, for example by contacting the authority in the exporting country, to anything which may be important from the point of view of possible risks of epizootic disease inherent in the importation of the goods. The Commission takes the view that regard must also be had to the actual risks inherent in the nature and composition of the goods imported and that it may be necessary to treat milk substitutes differently from other feeding-stuffs.

Finally, basing itself on Commission Directive No 70/50 of 22 December 1969 (Official Journal, English Special Edition 1970 (I), p. 17) and on the judgment of the Court of 8 July 1975 in Case 4/75 *Rewe* [1975] 1 ECR 843, the Commission assesses the expediency and appropriateness of the measures applied to imports by asking whether and to what extent similar domestic products are subject to similar restrictions. If domestic feeding-stuffs are not treated in the same way, the measures restricing imports cannot be regarded as justified unless it is proved that the health protection thereby sought is ensured by other measures as far as domestic products are concerned. In the present case the defendant attached conditions to the exemption granted, whereas no similar provision applies in the treatment of domestic goods.

Article 9 of the Treaty

For the purpose of assessing the legality under Community law of the fee at issue the question of the scope of the prohibition of charges having an effect equivalent to customs duties arises only if the measures complained of are not themselves invalid and do not require to be withdrawn. Even if those measures are valid, according to the case-law of the Court a charge levied when an exemption licence is issued is prohibited as a charge having an effect equivalent to a customs duty. On the basis of the judgment of the Court of 14 December 1972 in Case 29/72 *Marimex* [1972] 2 ECR 1309, the Commission takes the

view that the charge in question cannot be regarded as consideration for a service rendered to the importer because it does not procure him individually any measurable ecconomic advantage. Furthermore the fees do not come within a general system of internal taxation applying systematically and according to the same criteria to domestic products and imported products alike.

In view of the foregoing considerations, the Commission submits that the Court should give the following answer to the question referred to it for a preliminary ruling:

"1. A national legislative provision which

(a) makes the importation of feeding-stuffs which contain products of animal origin subject, in respect of each consignment, to a certificate from the competent authority in the exporting country showing that the feeding-stuffs have undergone a process to destroy salmonellae, and

(b) authorizes importation only if the competent national authority in the importing country has established by bacteriological examination that the goods contain no salmonellae, and

(c) leaves the granting of exemptions to the discretion of the competent authority, is in principle compatible with Community law.

2. The competent authority must observe the limits laid down in Article 36 of the EEC Treaty in the exercise of its discretion to grant exemptions. If undertakings which manufacture feeding-stuffs containing products of animal origin in the exporting Member State are subject to official inspection not provided for by law but at least comparable to the inspection carried out in the importing Member State pursuant to its law in installations for the industrial manufacture of similar feeding-stuffs, the exercise of the discretion may constitute an arbitrary restriction on trade between Member States where the importer is exempted from the obligation to submit the feeding-stuffs to bacteriological analysis before each importation but is made subject to other restrictions which do not apply to domestic products and which are not counterbalanced by other national measures relating to domestic products".

The plaintiff in the main action, represented by D. Ehle of the Cologne Bar, the defendant in the main action represented by M. Drees, Ministerialrat, assisted by Dr David and the Commission of the European Communities, represented by R. Wägenbaur, its Legal Adviser, presented oral argument at the hearing on 26 January 1979.

The Advocate General delivered his opinion at the sitting on 18 September 1979.

Decision

1 By an order of 13 September 1978, which was received at the Court on 10 November 1978, the Verwaltungsgericht [Administrative Court] Münster referred the following question to the Court of Justice for a preliminary ruling, under Article 177 of the EEC Treaty:

"Must Articles 9, 30 and 36 of the EEC Treaty, Regulation (EEC) No 804/68 (regulation on the common organization of the market in milk and milk products) and Regulation (EEC) No 2727/75 (regulation on the common organization of the market in cereals) be interpreted as meaning that it is prohibited

either

to make, by legislative provision in a Member State, the importation of feeding-stuffs of animal origin from another Member State subject, in respect of each consignment, to a certificate from the competent authority in the exporting country showing that the feeding-stuffs have undergone a process to destroy salmonellae and, in addition to authorize importation only if the competent national authority in the importing country has established by bacteriological examination that the goods contain no salmonellae

or

to leave special licences granting exemption from this to the discretion of the competent authority and thereby give that authority the power to grant those special licences provided that:

— the licence is granted only for a limited period, may be revoked without compensation at any time for reasons of the veterinary authority, is, in addition, valid in accordance with the application only for goods of a specific quantity and origin and only for transportation via specific customs posts to specific consignees,

— a certificate from the veterinary authority of the exporting country as to the composition and method of processing of the feeding-stuffs to be imported must be produced in respect of each individual consignment,

— importation in plastic bags is only permitted if the bags are new and are destroyed after being emptied, and

— an administration fee of not less than DM 5 and not more than DM 50 is charged in respect of each licence,

if, on the other hand, a provision of the law relating to infectious diseases of animals of the importing country provides with regard to domestic production in general for the supervision by the veterinary authority of the installations for the commercial manufacture of feeding-stuffs which contain products of animal origin, and, on the other, there is no comparable provision in the exporting country but the exporting manufacturing undertaking is, however, subject to an official control which is at least comparable to the supervision carried out in the importing country?"

2 This question has been raised in an action brought by a trader who imports into the Federal Republic of Germany from the Netherlands feeding-stuffs containing products of animal origin — in this case substitute milk-based feeding-stuffs (Milchaustauschfutter) — against the Minister für Ernährung, Landwirtschaft und Forsten des Landes Nordrhein-Westfalen [Minister for Food, Agriculture and Forestry of the Land of North Rhine-Westphalia]. This trader calls in question the compatibility of certain provisions of the regulation of 18 September 1957 of the Land in question on animal health measures applicable on the importation and transit of feeding-stuffs containing products of animal origin from abroad (hereinafter referred to as the "Viehseuchenverordnung [regulation on infectious diseases of animals] 1957" with Articles 30 and 36 and also with Article 9 of the Treaty relating respectively to the prohibition of measures having an effect equivalent to quantitative retrictions and of charges having an effect equivalent to customs duties in intra-Community trade and also with the provisions of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176) and of Regulation (EEC) No 2725/75 of the Council of 29 October 1975 on the common organization of the market in cereals (Official Journal L 281, p. 1) which enact or imply the same prohibitions.

3 It must be stressed that since 31 December 1969, the date when the transitional period came to an end, Articles 9 and 30 of the Treaty have direct effect and create by themselves individual rights which national courts must protect. Consequently on and after 1 January 1970 it was no longer necessary to reproduce in regulations establishing common organizations of the market the prohibitions enacted by those articles, since Article 38 (2) of the Treaty provides that "Save as otherwise provided in Articles 39 to 46, the rules laid down for the establishment of the Common Market shall apply to agricultural products". That is the reason why Article 22 of Regulation No 804/68, which dates back to 1968, expressly provides that any quantitative

restriction or measure having equivalent effect shall be prohibited whereas in Regulation No 2727/75 this prohibition is only specifically enacted in relation to trade with non-member countries. In these circumstances the Court may confine itself to interpreting the provisions of the Treaty which are at issue.

4 The Viehseuchenverordnung 1957, the compatibility whereof with Community law has been called in question in the main action, has been repealed and replaced with effect from 1 April 1979 by a Federal regulation. It was however in force when the events occurred which have given rise to the disputes brought before the national court. The specific aim of this regulation, which is one of the measures to combat salmonellosis, is to detect and destroy salmonellae in feeding-stuffs imported into the Federal Republic of Germany.

5 The particular features of this regulation as far as concerns the obstacles which it might place in the way of intra-Community trade are described as follows by the national court. Pursuant to Articles 1 and 2 of the Viehseuchenverordnung 1957 the feeding-stuffs in question may only be imported if two conditions are fulfilled, first that when they are imported a certificate from the competent authorities in the exporting country is produced confirming that the goods have undergone a heating process during or after dehydration whereby any salmonellae which may have been present were destroyed (Article 1 thereof) and secondly that the said feeding-stuffs shall all be subject upon importation to a preliminary inspection in the form of samples taken for inspection purposes by veterinary experts of the importing country and examined in an official veterinary inspection institute, their importation only being possible when it has been established by bacteriological analysis that the goods are free from salmonellae (Article 2 (1) thereof). According to Article 9 thereof the responsible Minister may grant exemption from the provisions of this regulation, especially from those relating to systematic inspection at the frontier, where there is no reason to fear that the importation and transit of the feeding-stuffs in question are a source of introduction or propagation of epizootic disease germs. He may grant an exemption upon certain conditions. This is what happened in this case where the exemption for which the plaintiff in the main action applied was granted in consideration of its accepting the conditions set out in the question raised by the national court.

6 The national court has stated that the requirements of Articles 1 and 2 of the Viehseuchenverordnung 1957, the obligation to apply for exemption within the meaning of Article 9 and the conditions to which this exemption is made subject are measures having an effect equivalent to quantitative restrictions within the meaning of Article 30 of the Treaty, the dispute only being concerned with the question whether those restrictions are covered by the exception provided for in Article 36 of the Treaty according to which the provisions of Articles 30 to 34 shall not preclude restrictions on imports justified on grounds of the protection of health and life of humans and animals, provided that these restrictions do not however constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. It also inclines to the view that the requirement that a fee must be paid for granting the exemption is incompatible with Article 9 of the Treaty which prohibits the levying of charges having an effect equivalent to customs duties.

7 With reference to the veterinary and public health measures provided for by the domestic regulation at issue the plaintiff in the main action submits in the first place that Article 36 can no longer be invoked to justify such measures because in consequence of the Community directives adopted in the feeding-stuffs sector for the purpose of harmonizing national laws recourse by national authorities to Article 36 is no longer justified. In the second place it submits in the alternative that not only the measures imposed by the Viehseuchenverordnung 1957 itself but also the fact that an application has to be made for an exemption and the conditions attached to the grant thereof represent an accumulation, in its view unnecessary and therefore unjustified, of restrictions on the free movement of the goods at issue, such restrictions not being covered by the exception provided for in Article 36 having regard to the fact that in the exporting Member State the production of feeding-stuffs by the undertakings concerned — although there are no mandatory provisions in this respect — is nevertheless subjected to inspections comparable to those which the laws of the importing Member State require undertakings on its own territory to undergo. It is also of the opinion that the fee of DM 50, to the payment of which the granting of an exemption is linked, is incompatible with Article 9 of the Treaty.

8 It is primarily in order to be able to resolve the problems raised by the plaintiff in the main action that the question of interpretation before the Court has been referred to it by the national court.

9 The Court will first consider the interpretation to be put on Articles 30 and 36 which deal with measures having an effect equivalent to quantitative restrictions and then the construction to be put on Article 9 which must be considered in its relation to the obligation to pay a fee.

I — Articles 30 and 36 of the EEC Treaty

A — Article 30 of the Treaty

10 As the national court has rightly pointed out the Court in its decided cases continues to interpret the concept of measures having an effect equivalent to quantitative restrictions in Article 30 of the Treaty as applying to systematic veterinary and public health inspections carried out at the intra-Community frontiers. The same interpretation applies, as the Court has acknowledged in its judgment of 24 January 1978 in Case 82/77 *Openbaar Ministerie of the Kingdom of the Netherlands* v *Jacobus Philippus Van Tiggele* [1978] ECR 25, to a system under which a trader finds that he has to apply to be exempted or to derogate from a domestic measure which is itself a quantitative restriction or a measure having equivalent effect.

11 The concept of a measure having an effect equivalent to a quantitative restriction also applies to the obligation to produce a certificate to the effect that the imported feeding-stuffs have undergone specified treatment in the exporting country. The fact that there are often provisions in Community directives which are designed to harmonize and bring to an end as far as possible national veterinary and public health inspections at the frontier does not result in the requirement under national law in the importing Member State to produce a certificate from the authorities of the exporting state no longer being treated as a measure having equivalent effect. As far as their restrictive effect on intra-Community trade is concerned it is in fact impossible to compare a legal requirement laid down unilaterally by a Member State to produce a certificate, to the production of which it attaches

such legal effects as it deems advisable, with the obligation imposed by a directive on all the Member States to issue, in order to facilitate intra-Community trade, a standard veterinary and public health certificate in a system the aim of which is to transfer supervision to the exporting Member State and to replace in this way the systematic protective measures 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 inspection thus standardized are in fact given.

12 It follows from the foregoing considerations that the concept of a measure having an effect equivalent to quantitative restrictions covers national measures such as those provided for by Articles 1, 2 and 9 of the Viehseuchenverordnung 1957 and that such measures fall within the prohibition in Article 30 of the Treaty unless they fall within the exception provided for in Article 36.

B — The applicability of Article 36 of the Treaty

13 As far as concerns the field of application of Article 36 the national court asks, in the first place, whether that provision may still be invoked by a Member State even though Community directives or regulations make arrangements for supervision having the same objectives as those provided for by the national provisions adopted in accordance with the said Article 36.

14 The Court of Justice has held in its judgment of 5 October 1977 in Case 5/77 *Carlo Tedeschi* v *Denkavit Commerciale s. r. l.* [1977] ECR 1556 that Article 36 is not designed to reserve certain matters to the exclusive jurisdiction of Member States but only permits national laws to derogate from the principle of the free movement of goods to the extent to which such derogation is and continues to be justified for the attainment of the objectives referred to in that article. Consequently when, in application of Article 100 of the Treaty, Community directives provide for the harmonization of the measures necessary to guarantee the protection of animal and human health and when they establish procedures to check that they are observed, recourse to Article 36 is no longer justified and the appropriate

checks must be carried out and the protective measures adopted within the framework outlined by the harmonizing directive.

15 Consideration of the directives referred to by the plaintiff and considered by the national court shows — as moreover that court rightly believes — that they do not deal with, and in any case at the time when the events giving rise to the main action occurred did not deal with, the harmonization of veterinary and public health prevention and supervision of the presence of salmonellae in feeding-stuffs of animal origin and especially in compound feeding-stuffs including milk products and animal fats.

16 This is in the first place the position in the case of Council Directive No 70/524/EEC of 23 November 1970 concerning additives in feeding stuffs (Official Journal, English Special Edition 1970 (III), p. 840) and of Council Directive No 74/63/EEC of 17 December 1973 on the fixing of maximum permitted levels for undesirable substances and products in feeding-stuffs (Official Journal 1974, L 38, p. 31). In fact the wording of those directives as well as the objectives which they seek to attain show that they are in no way concerned with the presence of pathogenic agents in the feeding-stuffs in question since the said agents clearly can neither be regarded as additives nor as undesirable substances and products in respect of which a maximum level would be permitted.

17 The same applies to Council Directive No 70/373/EEC of 20 July 1970 on the introduction of Community methods of sampling and analysis for the official control of feeding-stuffs (Official Journal, English Special Edition 1970 (II), p. 535) and of the various Commission directives adopted for the implementation thereof. In fact the heading and content of those directives indicate that they do not relate to the physical requirements which are contemplated for the harmonization of national animal health measures relating to feeding-stuffs but only to the Community methods making it possible to check whether the feeding-stuffs comply with the physical requirements which have been or are to be laid down in the future.

18 These physical requirements are *inter alia* dealt with in Council Directive No 77/101/EEC of 23 November 1976 on the marketing of straight feeding-stuffs (Official Journal 1977, L 32, p. 1) and Council Directive No 79/373/EEC of 2 April 1979 on the marketing of compound feeding-stuffs (Official Journal 1979, L 86, p. 30). It is the second of those directives which deals with the type of feeding-stuffs the importation whereof gave rise to the main action. In any case neither of them was in force when the main action originated and the second of them moreover allows Member States a period not expiring until 1 January 1981 within which to adopt the laws, regulations and administrative provisions necessary to comply therewith. The consequence is therefore that those directives cannot in fact have overridden or override the powers which Article 36 confers on the Member States to except the goods at issue from free circulation. There is the further consequence that it is unnecessary to consider the question whether those directives deal with the presence of pathogenic elements in feeding-stuffs or not.

19 The Court must also reject the argument of the plaintiff in the main action that it follows from the Council Resolutions of 12 March 1968 and 22 July 1974 on the veterinary, plant health and animal feeding-stuffs sectors (Journal Officiel 1968, C 22, p. 18 and Official Journal 1974, C 92, p. 2) that the harmonization programme introduced by these resolutions shows that the Council did not think there was any point in adopting specific measures to combat salmonellosis and that the various directives taken together are exhaustive and the effect of their implementation is to forbid Member States in the entire field of animal health measures concerning feeding-stuffs to have recourse to Article 36. This argument fails to take into account the gradual and methodical action taken by the Council for the harmonization of national veterinary and public health laws and, on the other hand, the fact that in any case at the time when the events which gave rise to the dispute occurred the whole of the harmonization programme had not yet been completed.

20 It follows from the foregoing considerations that the conditions making it impossible for Member States to justify having recourse to the exceptions permitted by Article 36 of the EEC Treaty were not present when the events occurred which gave rise to the main action relating to compound animal feeding-stuffs of animal origin, as regards in particular measures against pathogenic agents.

C — The concept of "a justified restriction" within the meaning of Article 36 of the Treaty

21 Having regard to the foregoing considerations it is necessary, with reference to the question put by the national court, to ascertain next whether the restrictions of the kind laid down by the Viehseuchenverordnung 1957 keep within the restrictions placed by Article 36 of the Treaty on the exceptions to the free movement of goods permitted by that provision. In fact it is clear from the wording thereof that the prohibitions or restrictions which it permits must be justified, that is to say necessary for attainment of its objective and may not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

22 In this connexion the first question is whether a double check, which consists on the one hand of the requirement of a certificate from the competent authority in the exporting country to the effect that the animal feeding-stuffs in question have been subjected to a process whereby salmonellae have been destroyed and, on the other hand, of a systematic inspection at the frontier following which importation is only permitted after confirmation that the goods are free of salmonellae, exceeds what Article 36 permits.

23 The Court held in its judgment of 20 May 1976 in Case 104/75, *Adriaan de Peijper, managing director of Centrafarm BV* [1976] ECR 613, at p. 636 that "national rules or practices do not fall within the exception specified in Article 36 if the health and life of humans can be effectively protected by measures which do not restrict intra-Community trade so much" and that "in particular, Article 36 cannot be relied on to justify rules or practices which, even though they are beneficial, contain restrictions which are explained primarily by a concern to lighten the administration's burden or reduce public expenditure, unless, in the absence of the said rules or practices, this burden or expenditure clearly would exceed the limits of what can reasonably be required". Moreover that judgment shows that if co-operation between the authorities of the Member States makes it possible to facilitate and simplify frontier checks, which continue to be permissible by virtue of the exception provided for by Article 36 of the EEC Treaty, the authorities responsible for veterinary and public health inspections must ascertain whether the substantiating documents issued as part of such co-

operation do not raise a presumption that the imported goods comply with the requirements of national veterinary and public health legislation intended to simplify the checks carried out when the goods pass from one Member State to another.

24 It is in each case for the national courts to apply these criteria in the light of all the circumstances relating to the actions brought before them taking into account the fact that it must always be the duty of a national authority relying on Article 36 to prove that the measures which it enforces satisfy these criteria.

25 The national court also wishes to know whether a system of granting import licences, the issue whereof is left to the discretion of the competent authority and is subject to the conditions described in the question put by the national court may be regarded as keeping within the limits laid down by Article 36.

26 The Court held in its judgment of 15 December 1976 in Case 41/76 (*Suzanne Criel, née Donckerwolcke and Henri Schou* v *Procureur de la République au Tribunal de Grande Instance, Lille and Director General of Customs* [1976] ECR 1921, at p. 1936) that the application to intra-Community trade of a national provision which requires, even purely as a formality, import licences or any other similar procedure is a measure having an effect equivalent to a quantitative restriction and is consequently prohibited. Nevertheless this prohibition does not apply to those cases where prohibitions or restrictions on trade may in fact be kept in being under the terms of Article 36 of the Treaty provided that they are justified within the meaning of that provision. The special licence at issue in the main action is an exception to the general rule of a double check laid down by Articles 1 and 2 of the Viehseuchenverordnung 1957 and is by definition deemed to be less restrictive than the general rule from which it derogates. Consequently a system of import licences which derogates to a large extent from a general system of veterinary and public health restrictions which is compatible with Article 36 complies itself with that provision. If it only made possible a relaxation of a general supervisory system which went beyond what Article 36

permits is would be necessary to consider it on its own merits in the light of the exceptions permitted by Article 36 of the Treaty to the prohibition of measures having an effect equivalent to quantitative restrictions.

27 From this it follows that Article 26 of the Treaty cannot be interpreted as meaning that it forbids in principle a national authority, which has imposed by a general rule veterinary and public health restrictions on imports of animal feeding-stuffs, from providing that it will be possible to derogate therefrom by individual measures left to the discretion of the administration if such derogations assist the simplification of the restrictions imposed by the general rules and if this power of derogation does give rise to arbitrary discrimination between traders of different Member States.

28 Nevertheless it does not automatically follow that each of the conditions to which the national authority subjects the grant of such authorization itself complies with what is permitted by Article 36. It is in each case for the national courts, as has been indicated above, to determine whether these conditions are necessary to attain the objective which Article 36 allows to be sought, taking into account the rule already mentioned above that it must be the duty of a national authority relying on Article 36 to prove that the measures which it imposes satisfy these criteria.

II — Article 9 of the EEC Treaty

29 Finally the national court asks the Court to interpret the application of Article 9 of the Treaty in relation to the fact that the plaintiff in the main action has to pay a fee for the grant of the above-mentioned exemption from the Viehseuchenverordnung 1957.

30 Article 9 of the Treaty contains the prohibition between Member States of customs duties and of all taxes having equivalent effect. Since that

prohibition does not admit of any distinction according to the aim in view in levying the pecuniary charges for the abolition of which it provides, it also includes fees demanded for veterinary and public health inspections carried out by reason of the importation of goods. The position would be different only if the pecuniary charges related to a general system of internal dues applied systematically in accordance with the same criteria to domestic products and imported products alike or if those charges were remuneration for a service actually rendered to the importer. Fees such as those provided for by the licence obtained in this case apply only to imported products. They are not remuneration for a service rendered to the importer either, because the operations of a State administration which are designed to maintain in the public interest a system of veterinary and health inspections — even if that system was organized in the form of measures which are individual, derogatory and more flexible than a general supervisory system — cannot be regarded as a service rendered to the importer of such a kind as to justify the levy of a pecuniary charge in consideration thereof.

31 It follows that Article 9 of the Treaty must be interpreted as meaning that a pecuniary charge levied for reasons connected with veterinary and public health checks, even if such checks take the form of a system of individual import licences and even if this system is justified within the meaning of Article 36 of the Treaty is a charge having an effect equivalent to a customs duty and consequently prohibited.

Costs

32 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of 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 question referred to it by the Verwaltungsgericht, Münster by order of 13 September 1978, registered at the Court on 10 November 1978, hereby rules:

1. The concept of a measure having an effect equivalent to quantitative restrictions covers national measures such as those provided for by Articles 1, 2 and 9 of the North Rhine-Westphalian regulation of 18 September 1957 relating to animal health measures applicable on the importation and transit of feeding-stuffs containing products of animal origin from abroad. Such measures fall within the prohibition in Article 30 of the EEC Treaty unless they fall within the exception provided for by Article 36 of the EEC Treaty.

2. Conditions making it impossible for Member States to justify having recourse to the exceptions permitted by Article 36 of the EEC Treaty were not present when the events occurred which gave rise to the main action relating to compound animal feeding-stuffs of animal origin, as regards in particular measures against pathogenic agents.

3. A double check of the kind described in the question is more than Article 36 of the EEC Treaty permits if the health and life of humans and animals can be protected as effectively by measures which are not so restrictive of intra-Community trade. If co-operation between the authorities of the Member States makes it possible to facilitate and simplify frontier checks, which continue to be permissible by virtue of the exception provided for by Article 36 of the EEC Treaty, the authorities responsible for veterinary and public health inspections must ascertain whether the substantiating documents issued as part of such co-operation do not raise a presumption that the imported goods comply with the requirements of national veterinary and public health legislation intended to simplify the checks carried out when the goods pass from one Member State to another.

4. Article 36 of the EEC Treaty cannot be interpreted as meaning that it forbids in principle a national authority, which has imposed by a general rule veterinary and public health restrictions on imports of animal feeding-stuffs, from providing that it will be possible to derogate therefrom by individual measures left to the discretion of the

administration if such derogations assist the simplification of the restrictions imposed by the general rules and if this power of derogation does not give rise to arbitrary discrimination between traders of different Member States. Nevertheless it does not automatically follow that each of the conditions to which the national authority subjects the grant of such authorization itself complies with what is permitted by Article 36 of the EEC Treaty.

5. **It is in each case for the national courts to apply these criteria in the ligth of all the circumstances relating to the actions brought before them taking into account the fact that it must always be the duty of a national authority relying on Article 36 of the EEC Treaty to prove that the measures which it imposes satisfy these criteria.**

6. **Article 9 of the EEC Treaty must be interpreted as meaning that a pecuniary charge levied for reasons connected with veterinary and public health checks, even if such checks take the form of a system of individual import licences and even if this system is justified within the meaning of Article 36 of the EEC Treaty is a charge having an effect equivalent to a customs duty and consequently prohibited.**

Kutscher O'Keeffe Touffait

Mertens de Wilmars Pescatore Mackenzie Stuart Bosco

Delivered in open court in Luxembourg on 8 November 1979.

A. Van Houtte
Registrar

H. Kutscher
President