JUDGMENT OF THE COURT
14 DECEMBER 1972[1]

S.p.A. Marimex v Italian Finance Administration[2] (Reference for a preliminary ruling by the Tribunale di Trento)

'Sanitary Inspections'

Case 29/72

Summary

1. *Free movement of goods — Restrictions — Abolition — Derogation under Article 36 of the EEC Treaty — Strict interpretation*

2. *Customs duties — Abolition — Charges having equivalent effect — Concept — Fees demanded for sanitary inspections — Prohibition*
(EEC Treaty, Article 9; Regulation No 805/68 of the Council, Article 22)

1. Article 36 must be interpreted strictly since it constitutes a derogation from the basic rule that all obstacles to the free movement of goods between Member States shall be eliminated.

2. The prohibition, in trade between Member States, of all customs duties and of all charges having equivalent effects refers to all charges demanded on the occasion or by reason of importation which, imposed specifically on imported products and not on similar domestic products alter their cost price and thus produce the same restrictive effect on the free movement of goods as a customs duty. Since this 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 determined in accordance with special criteria required because of sanitary inspections carried out by reason of the importation of goods.

In Case 29/72

Reference to the Court under Article 177 of the EEC Treaty by the President of the Tribunale di Trento for a preliminary ruling in the action pending before that before that court between

1 — Language of the Case: Italian.
2 — CMLR.

S.P.A. MARIMEX, whose registered office is at 7 Via Litta, Milan,

and

ITALIAN FINANCE Administration, represented by the Minister for Finance for the time being,

on the interpretation of Article 22 (1) of Regulation (EEC) No 805/68 of the Council of 27 June 1968 (OJ, Special Edition, 1968, I, p. 187) and of Article 95 of the EEC Treaty,

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents of Chambers, A. M. Donner (Rapporteur) and J. Mertens de Wilmars, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and the course of the procedure may be summarized as follows:

On 26 July 1971 S.p.A. Marimex (the plaintiff in the main action) imported from Germany by way of the Brenner Pass a consignment of 5 267 kg of frozen beef and veal and on 17 September 1971 it imported 30 live cattle. At the frontier post both the meat and the animals were inspected by an official veterinarian. S.p.A. Marimex paid the Fortezza customs office a sanitary charge of 10 lire per kg of meat (amounting in all to Lit. 52 670) and of Lit. 1 000 per head of cattle (in all Lit. 30 000).

Marimex considered that those sums were not payable as they constituted 'charges having equivalent effect' to customs duties and prohibited by the first indent of Article 22(1) of Regulation (EEC) No 805/68 and accordingly lodged an application on 8 May 1972 whereby it requested the President of the Tribunale di Trento to order the Italian Finance Administration, represented by the Minister for Finance for the time being to reimburse it the sums paid.

By an order of 17 May 1972 the President of the Tribunale di Trento stayed the injunction proceedings and ordered that the file should be transmitted to the Court of Justice in order that, in accordance with Article 177 of the EEC Treaty, it might give a preliminary ruling on the following question:

'Must a pecuniary charge imposed by the Italian State for the sanitary inspection of live cattle and beef and veal on crossing the frontier be considered as a charge having an effect equivalent to a customs duty within the meaning of Article 22(1) of Regulation (EEC) No 805/68 despite the fact that corresponding goods produced within the territory of the Italian State are subject to a pecuniary charge which is (a) levied by authorities other than the State and (b) calculated in accordance with criteria which are not comparable to the criteria employed to determine the amount of the pecuniary charge imposed on imported live cattle and beef and veal?'

The order referring the matter was received at the Court Registry on 26 May 1972.

S.p.A. Marimex, the Government of the Italian Republic, the Government of the Kingdom of the Netherlands and the Commission of the European Communities submitted written observations pursuant to Article 20 of the Statute on the Court of Justice of the EEC.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to dispense with a preparatory inquiry.

The plaintiff in the main action, the Government of the Italian Republic and the Commission submitted oral observations at the hearing on 4 October 1972. Marimex was represented by Mr Ubertazzi and Mr Capelli of the Milan Bar, the Italian Government by its Ambassador Mr Maresca, acting as Agent, assisted by Mr Zagari, Deputy Head of the State Legal Advisory Office, and the Commission by its Legal Advisers Mrs Dona-Viscardini and Mr Oldekop.

The Advocate-General delivered his opinion at the hearing on 21 November 1972.

II — Observations submitted pursuant to Article 20 of the Statute

The observations submitted pursuant to Article 20 of the Statute of the Court may be summarized as follows:

1. *The admissibility of the question*

The *Commission* raises an objection to the question as it has been worded. According to the Commission the question, by referring to a pecuniary charge 'imposed by the Italian State', asks the Court to rule directly on the compatibility *vis-à-vis* Community law of the Italian charge, which forms the subject-matter of the main proceedings.

It is clear from Article 177 that the Court of Justice may only give rulings on the interpretation of the Treaty and of the acts of the institutions of the Community and their validity. For this reason the Commission suggests the deletion of the references to the particular case in the wording of the question.

2. *The question whether the charges imposed for veterinary inspections are charges having an effect equivalent to customs duties*

S.p.A. Marimex (hereinafter referred to as 'Marimex') emphasizes first of all that the Italian State may properly ensure the veterinary examination of cattle and of beef and veal on importation into Italy. This is clear both from Article 36 of the EEC Treaty and from Council Directive No 64/432/EEC of 26 June 1964 (OJ, Special Edition, 1963–1964, p. 164) and Council Directive No 64/433/EEC of 26 June (OJ, Special Edition, 1963–1964, p. 185) on health problems affecting intra-Community trade in cattle and swine and fresh meat.

The limits of the authority granted to the Member States may be found in the provision in Article 36: 'on the grounds of ... the protection of health and life of humans, andimals ...'.

Marimex reviewed the views of legal writers and the case-law of the Court of

Justice with regard to the concept of a 'charge having equivalent effect' within the meaning of Articles 12, 13 and 16 of the EEC Treaty and arrived at the conclusion that the due for veterinary inspection at the frontier is illegal because it constitutes a charge having an effect equivalent to a customs duty, referred to in Article 22(1) of Regulation (EEC) No 805/68. In this connexion it relies upon the following particular arguments:

(a) the relevant due was established by a sovereign measure of the Member State in question;

(b) it is collected on crossing the frontier;

(c) it results in an increase in the price of the relevant goods;

(d) the due does not constitute the consideration for a service rendered in the exclusive and actual interest of the private importer;

(e) since the veterinary inspection at the frontier is intended to protect a public interest, that is to say the health of the national livestock and of humans, the due is collected not as recompense for a particular service but to protect the interest of the public at large;

(f) the concept of a 'charge having equivalent effect' referred to in Article 22(1) of Regulation (EEC) No 805/68 is identical with the concept in the EEC Treaty; thus from 29 August 1968 the regulation has also abolished the due in question.

The *Government of the Italian Republic* maintains that, having regard to the provisions of Regulation (EEC) No 805/68, the lawfulness of the veterinary inspection at the frontier is beyond doubt.

With regard to the lawfulness of the due collected on the veterinary inspection at the frontier, the Italian Government observes that it constitutes a consideration for a service actually rendered by the administration to traders and is thus a consideration for the sanitary inspection. The reason for collecting the charges in question is the rendering of an actual service relating to health which is not intended solely to take into account the general interest inherent in public health and in the conservation of national livestock but also to serve the particular interest of the owner of the goods.

Furthermore, the relevant due was fixed at an amount corresponding to the expense incurred with regard to the service rendered, taking into account the staff and the methods employed. It is clear from the foregoing line of argument that the due cannot be considered as a charge having an effect equivalent to a customs duty within the meaning of Article 22(1) of Regulation (EEC) No 805/68.

The *Government of the Netherlands* shares the view of the Italian Government on the question of the lawfulness of the veterinary inspection at the frontier. The Netherlands Government expounds the following argument regarding the lawfulness of the due.

The direct interest of the importer in the inspection cannot constitute the sole criterion for deciding whether the relevant must be regarded as a consideration for a service rendered by the national administration. Account must also be taken of the indirect interests of consumers in the veterinary inspection of imported meat. The principle of equality on the economic market requires that consumers should contribute to the expenses of the sanitary inspection through the imposition of a fee with regard to the subject-matter of the inspection.

According to the Netherlands Government the principles set out by the Court of Justice in its judgment of 16 June 1966 in Joined Cases 52 and *55/65*, *Federal Republic of Germany* v *Commission of the European Economic Community* ([1966] ECR 159 *et seq.*) cannot be applied *mutatis mutandis* in the present case where it relates to a check on the quality of the goods themselves and which could improve their position on the market.

Furthermore the veterinary inspection in question cannot be considered as coming of necessity under the exclusive competence of the administration. The objective inspection of the quality of the goods may

be carried out by an independent expert. If the national provisions had merely laid down that written evidence should be produced proving that the goods had been inspected by a designated expert at the time of importation the importers would also have been obliged to incur expenses without being able to describe them as 'a pecuniary charge imposed unilaterally by reason of the fact that the goods cross the frontier'.

The due must fulfil two conditions:

(a) it must be proportional to the service rendered (in the present case to the quantity of meat inspected),

(b) it must remain within the limits of the costs actually incurred in the inspection.

The Netherlands Government concludes from the arguments advanced that the due in question cannot be regarded as 'a charge having equivalent effect' within the meaning of Article 22(1) of Regulation (EEC) No 805/68.

The Commission of the European Communities concurs in the conclusions of Marimex and the Italian and Netherlands Governments with regard to the lawfulness of the verterinary inspection in question. With regard to the lawfulness of the due, the Commission emphasizes first of all that the existence of a close link between the procedures of the sanitary inspection and the charges imposed in this connexion does not exclude the independent consideration of such charges.

In invoking the definition of charges having equivalent effect provided by the Court of Justice in its judgment of 1 July 1969 in Case 24/68, *Commission of the European Communities* v *Italian Republic* ([1969] ECR 193) (see also judgment of the same date in Joined Cases 2 and 3/69 *Sociaal Fonds voor de Diamantarbeiders* v *SA Ch. Brachfeld & Sons and Chougol Diamond Co.* ([1969] ECR 211), the Commission maintains that in principle the concept of charges having equivalent effect may extend to dues of this nature if the said charges are imposed on the imported goods by reason of the fact that they cross the frontier.

Nevertheless, the concept is not applicable if the dues are charged as a consideration for a service rendered by the administrative authorities. It is clear from the decisions of the Court that the classification of a charge as a consideration for a service rendered by the administration is subject to the following stringent conditions:

(a) the relevant service must be an administrative service constituting a definite and verifiable benefit with regard to the goods on which the charge is imposed;

(b) the charge must be proportionate to such benefit.

It follows from this that the amount of the charge cannot depend on the costs which the administration must bear in rendering the service but on the benefit and the increase in value accruing therefrom to the goods subjected to the charge.

Although the Commission concedes that, inasmuch as the relevant dues are linked with administrative operations requiring the use of specialized staff and technical equipment, they differ from the charges on which the Court has given rulings in the past, it emphasizes that veterinary inspection on importation confers no actual and verifiable benefit on the goods subject to it and that it is carried out exclusively in the public interest, that is to say, the enhanced protection of public health and the quality of national livestock. It cannot be inferred from the fact that the sanitary inspection guarantees the quality of the imported goods that their marketing prospects are improved: fitness for human consumption must be considered as an intrinsic and natural quality of the products which can in no case increase their value.

Finally the Commission observes further that under Directive No 64/432/EEC exporting Member States are obliged to make a thorough check to ensure that cattle intended for slaughter fulfil the conditions prescribed in the veterinary certificate; that when those animals are exported and arrive at the Italian frontier

they undergo another inspection carried out by the Italian health authorities; that they undergo a third inspection immediately before and after slaughter, and that in view of all those inspections it is clear that the inspection at the frontier does not confer any specific benefit on the imported goods.

The Commission arrives at the negative finding that the financial charges for the sanitary inspections carried out at the frontier do not constitute the consideration for services rendered by the administration and cannot on this ground be excluded from the prohibition against imposing charges having an effect equivalent to a customs duty.

Nevertheless, the positive finding that the above-mentioned charges constitute charges having equivalent effect is only imperative if they are imposed solely on *imported* (or exported) products, that is to say, if the charges in question cannot be considered as 'internal taxation' within the meaning of Article 95 of the EEC Treaty.

3. *The question whether the dues relating to the veterinary inspection at the frontier must be considered as internal taxation within the meaning of Article 95 of the Treaty*

Marimex discusses fully the various problems of fact and of law which are involved in deciding the question. Its arguments may be subdivided into two sections: (a) the incompatibility of the relevant dues with the provisions of Article 95 of the EEC Treaty because of their legal nature; (b) the incompatibility of the relevant dues with the provisions of Article 95 of the EEC Treaty because of their legal nature; (b) the incompatibility of those dues with the abovementioned provisions because of differences between the sanitary charges imposed on intra-Community importations of beef and veal and on similar domestic products on the other hand.

A — Marimex lists the following arguments against classifying the charges in question as the internal taxation referred to in Article 95 of the EEC Treaty:

(1) Both the text of the EEC Treaty, which places Article 95 amongst 'Tax Provisions' and the Court (in its judgment of 14 December 1962 in Joined Cases 2 and 3/62, *Commission of the EEC* v *Grand Duchy of Luxembourg and Kingdom of Belgium* [1962] ECR 425) confirm that the impositions referred to in Article 95 of the EEC Treaty constitute taxation. This fiscal nature is also confirmed by Article 17 of the EEC Treaty. On the contrary, as is indeed clear from the budget, the relevant dues have an 'extra-fiscal' nature.

(2) The charges covered by Article 95 of the EEC Treaty constitute internal revenue because of their connexions with general internal taxation of which they form part of which they are intended to offset: crossing the frontier as such does not give rise to the situation which renders those taxes payable.

The charge in question does not constitute general and uniform taxation imposed upon domestic production and goods which cross the frontier. Nor can it be considered as a charge the purpose of which is to compensate for internal taxation; the fee for veterinary inspection at the frontier was introduced for reasons other than the equalization of fiscal charges on imports in relation to fiscal charges imposed on domestic products; the due for the veterinary inspection at the frontier is also imposed on the export of live animals; the origin and development of the due for the veterinary inspection at the frontier has always been independent of the origin and development of the consideration for the inspection carried out within the country; the situations from which the two charges originate must be distinguished. (According to Marimex the most important distinction follows from the fact that importations of cattle and beef and veal must meet more stringent requirements than domestic products because of the strict

rules laid down by Directives Nos 64/432/EEC and 64/433/EEC with regard to intra-Community trade.)

(3) Since the taxation referred to in Article 95 is intended to place imported goods in a comparable tax position with domestic products, like bases of calculation are a necessary condition for apportioning the tax burden between the two categories of products. In the present case, there is no such basis; the amounts of the inspection dues are calculated in terms of criteria diff ring widely from those employed in calculating the amount of the remuneration payable for the domestic veterinary inspection.

B — If the due for the sanitary inspection at the frontier can be classified as internal taxation and not as a charge having equivalent effect, Marimex maintains that the imported goods suffer discrimination. The most important factors which it adduces in support of its argument are as follows:

(1) Two veterinary charges are payable on imported goods: that is, the due for the veterinary inspection at the frontier and the fee for the call made by the local authority veterinary official referred to in Articles 13 or 17 and 28 of the Ministerial Decree of 22 December 1969 (Gazzetta Ufficiale No 16 of 20 January 1970). Although Articles 17 and 19 of Presidential Decree No 1701 of 30 December 1965 (Supplemento Ordinario to the Gazetta Ufficiale No 101 of 27 April 1966) apparently prohibit both the inspection and the fees for the local authority veterinary inspection, in reality such fees are constantly collected.

(2) The due in question goes entirely to the State whilst the fees for the domestic inspection go only partly to the local authorities of the places where they are collected. Most of the internal receipts go to the local authority veterinary official and consequently cannot be considered as taxation within the meaning of Article 95 of the Treaty.

(3) Comparison between the charges imposed on importations of live cattle or beef and veal and the total of the charges specifically imposed on similar domestic products is fraught with difficulty because of differences between the criteria and methods of calculation.

(4) If, notwithstanding those difficulties, a comparison of the respective amounts were made, it would appear that imported goods are more heavily charged.

The *Italian Government* observes that the imposition by authorities other than the State of charges on domestic products has no effect on the interpretation of Community legislation. It is of little relevance that under the particular arrangements of the administration of one State resources derived from the application of sanitary legislation are collected by local authorities when, if the inspection is carried out at the frontier, the due is collected by the agencies of the State. The Italian Government maintains that with regard to live animals there is no difficulty in comparing the criteria for calculating the charges imposed on the various categories of products. Those particular problems originate in the sanitary standards which must be required of the international trade in live animals in which the point at which the imported animal corsses the frontier constitutes an important factor within the framework of general sanitary protection.
Since the sanitary inspection carried out at the frontier forms part of a general system of sanitary supervision which is also applied internally it is pointless to make a detailed analysis of amounts imposed on the occasion of the sanitary inspection at the frontier, on the one hand, and the corresponding domestic charges, on the other.

Furthermore, the difficulty of such comparison cannot conceal the fact that similar criteria are adopted within the country in determining the charges for the sanitary services.

The Italian Government concludes that this question must be answered in the negative, at least to the extent to which it can be shown that the charge relating to the inspection at the frontier is imposed by the Member State within the framework of a system of national sanitary protection established by law and relating to both imported and native animals and that within this framework the pecuniary charge is levied on the basis of substantially homogeneous criteria.

According to the *Commission*, it is clear from the judgment in Joined Cases 2 and 3/62 that an absolute correspondence is required between taxation imposed upon imported goods and domestic products. If this were not so, it would be impossible to compare the incidence of the charge on the two categories of products. There is a correspondence within the meaning of Article 95 if, to the charges paid for the imported products, there is a corresponding internal tax levied on similar domestic products (Judgment of the Court of 1 December 1965 in Case 45/64, *Commission of the European Economic Community* v *Italian Republic* [1965] ECR 857 *et seq.*).

In order to provide an adequate reply to the question raised by the national court, it is necessary to undertake a more detailed analysis of any differences which may exist between the fees imposed in connexion with sanitary control on the importation of the relevant products and the charges imposed for the same reasons on similar domestic products.

With regard to the charges imposed by the Member States on the imported products referred to in Regulation (EEC) No 805/68, it is sufficient to observe that they are imposed at the frontier and relate to imported products as such reckoned in accordance with their weight. According to the Commission, the inspection at the frontier is in practice restricted to checking that health certificates have been issued in the country from which the goods come and to subjecting the animals and meat to a more or less cursory examination.

The charges imposed internally on similar domestic products may differ from the above-mentioned charges in several respects:

(a) they are not always imposed by the State but may also be imposed by subordinate local bodies;

(b) they are not invariably imposed upon the goods but can also be imposed upon the undertakings which produce them;

(c) even if they were imposed upon the products, they would not always be imposed for inspections for reasons or purposes similar to those of the inspections prescribed for imported goods.

A — Differences of this nature are irrelevant to the applicability of Article 95 and in consequence the distinction between 'internal taxation' within the meaning of the said article and charges having an effect equivalent to a customs duty. The state within the meaning of the Treaty must be understood in its widest sense, that is to say both as an entity and as the subject of international law.

B — The application of Article 95 is excluded if the charges which form the counterpart of the charges imposed for the sanitary inspection of imported goods are charges imposed upon businesses and undertakings handling similar domestic products instead of upon such products themselves. In that case it is impossible to compare the amount of the charge imposed upon imported products and that imposed upon similar domestic products.

The Commission further points out that if domestic charges are imposed upon businesses and undertakings it is conceivable that such charges are imposed indirectly on imported products undergoing treatment or processing within the country.

C — In that case it is likewise impossible to concede that the correspondence required by Article 95 exists. Owing to the differences in the subject-matter and bases of the two categories of charges, comparison of the amounts imposed upon the goods is a practical impossibility. Those differences also give rise to a practice intended to extend internal controls on domestic products to imported products despite the fact that the latter have already undergone an inspection at the frontier. Such a practice is inevitable in view of the delicate nature of the relevant products and the variety of their intended uses.
It is clear from the foregoing that the two categories of products are only treated on an equal footing after importation and the imposition of charges relating to such importation.

The Commission concludes that the charges imposed at the frontier for sanitary inspections relating to the products to which Regulation (EEC) No 805/68 applies cannot be regarded as internal taxation within the meaning of Article 95 unless charges are also imposed internally in respect of sanitary inspections which are identical in origin and specific subject-matter to the inspection carried out at the frontier and unless such charges are imposed solely on domestic products and are not imposed in addition on imported goods which have already been charged at the frontier.

Grounds of judgment

1 By an order of 17 May 1972, which was received at the Court Registry on 26 May 1972, the President of the Tribunale di Trento submitted a question to the Court on the interpretation of Article 22(1) of Regulation (EEC) No 805/68 of the Council on the common organization of the market in beef and veal (OJ, Special Edition, 1968 I, p. 187).

In accordance with the provisions of Article 9 of the Treaty, this article prohibits the levying of all customs duties or charges having equivalent effect on intra-Community trade.

2 In the question submitted it is asked whether a pecuniary charge imposed when the frontier is crossed on the ground of the sanitary inspection of cattle and of beef and of veal must be considered as a charge having equivalent effect.

The court explains that the corresponding goods produced within the territory of the importing Member State are liable to a pecuniary charge imposed by authorities other than the State and determined in accordance with criteria which are not comparable to the criteria employed in fixing the amount of the pecuniary charge imposed on the same imported products.

The extent of the derogation provided for in Article 36 of the Treaty

3 The Government of the Italian Republic considers that since sanitary inspections are permitted by Article 36 of the Treaty it follows that the imposition of pecuniary charges for such inspections is also in accordance with the Treaty.

4 Article 36 of the Treaty provides that: 'The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports ... justified on grounds of ... the protection of health and life of humans, animals ...'.

Since this provision constitutes a derogation from the basic rule that all obstacles to the free movement of goods between Member States shall be eliminated it 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.

5 Consequently, although Article 36 does not prevent sanitary inspections nevertheless it cannot 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.

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

Consequently the question submitted cannot be answered with reference to Article 36 of the Treaty.

The classification of the disputed charges with regard to Article 22 of Regulation (EEC) No 805/68

6 The prohibition, in trade between Member States, of all customs duties and of all charges having equivalent effect refers to all charges demanded on the occasion or by reason of importation which, imposed specifically on imported products and not on similar domestic products, alter their cost price and thus produce the same restrictive effect on the free movement of goods as a customs duty.

7 Since this 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 sanitary 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.

8 Consequently pecuniary charges imposed on the grounds of the sanitary inspection of products when they cross the frontier and determined in accordance with special criteria which are not comparable with the criteria employed in fixing the pecuniary charges imposed upon similar domestic products are to be considered as charges having an effect equivalent to customs duties.

Costs

9 The costs incurred by the Government of the Italian Republic, the Government of the Kingdom of the Netherlands and the Commission of the European Communities, which 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 before the national court, the decision as to costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral observations of the Government of the Italian Republic, the Commission of the European Communities and Marimex S.p.A.;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 36 and 177;
Having regard to Regulation (EEC) No 805/68 of the Council, especially Article 22;
Having regard to the Protocol on the Statute of the Court of Justice of the EEC, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the question submitted to it by the Tribunale di Trento by order of 17 May 1972, hereby rules:

The pecuniary charges imposed on the grounds of the sanitary inspection of products when they cross the frontier, such charges being determined in accordance with special criteria which are not comparable with the criteria employed in fixing the pecuniary charges upon similar domestic products, are to be considered as charges having an effect equivalent to customs duties.

Lecourt Pescatore Monaco

Donner Mertens de Wilmars

Delivered in open court in Luxembourg on 14 December 1972.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 21 NOVEMBER 1972[1]

Mr President,
Members of the Court,

On 26 July 1971 and 17 September 1971 respectively Marimex, a limited company having its registered office in Milan, imported frozen beef and veal and live cattle from the Federal Republic of Germany into Italy via the Brenner Pass. At the border the meat and live animals were examined by an official veterinarian. The importing undertaking had to pay the customs authority a sanitary charge as provided for in Article 32 of the Testo Unico (legislation consolidated by the executive) relating to sanitary legislation of 27 July 1934 (completed by the law of 30 December 1970). On the first occasion the undertaking paid Lit. 10 per kilogram of meat and on the second occasion Lit. 1 000 per imported animal.
Marimex considered that this charge was unlawful. It is of the opinion that it constitutes a charge having an effect equivalent to a customs duty, that is to say, a charge the levy of which is prohibited under Article 9 of the Treaty and, in so far as it related to intra-Community trade in cattle and beef and veal, under Article 22 of Regulation No 805/68 on the common organization of the market in beef and veal (OJ, Special Edition, 1968 I, p. 187). Since Marimex further considers that the said provisions are directly applicable, creating individual rights for private persons, it applied to the President of the Tribunale di Trento to issue an order for payment to the Italian Minister for Finance in order to secure the reimbursement of the amounts paid by it for the sanitary inspection.
The President of the Tribunale di Trento thus suspended the proceedings by an order of 17 May 1972 in view of the problems arising from the application of Community law and in accordance with Article 177 of the EEC Treaty requested a preliminary ruling on the following question:

'Must a pecuniary charge imposed by the Italian State for the sanitary inspection of live cattle and beef and veal on crossing the frontier be considered as a charge having an effect equivalent to a customs duty within the meaning of Article 22(1) of Regulation (EEC) No 805/68 despite the fact that corresponding goods produced within the territory of the Italian State are subject to a pecuniary charge which is (a) levied by authorities other than the State and (b) calculated in accordance with criteria which are not comparable to the criteria employed to determine the amount of the pecuniary charge imposed on imported live cattle and beef and veal?'

1 — Translated from the German.