JUDGMENT OF THE COURT
OF 1 FEBRUARY 1979 [1]

Giuseppe Bardi v Azienda Agricola Paradiso (preliminary ruling requested by the Pretura di Cecina)

"Common organization of the market in beef and veal"

Case 121/78

Agriculture — Common organization of the markets — Beef and veal — Young male bovine intended for fattening — Import quota at a reduced rate of levy — Beneficiaries — Agricultural producers — Concept — Definition by Member States — Restriction to farmers practising farming as their main occupation — Permissibility

(Commission Regulation (EEC) No 2902/77, Art. 1 (5), Council Directive No 72/159)

Under Commission Regulation (EEC) No 2902/77 of 22 December 1977 fixing the quantity of young male bovine animals which may be imported on special terms in the first quarter of 1978 the Member States concerned were entitled to specify the categories of agricultural producers who might benefit from the import quota of young male bovine animals under partial or total suspension of the levy within the framework of a policy intended to help to improve cattle rearing and beef and veal production structures.

To allow only farmers practising farming as their main occupation so to benefit is in accordance with the obligations on the Member States arising from Council Directive No 72/159 of 17 April 1972 on the modernization of farms.

In Case 121/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura di Cecina (Italy) for a preliminary ruling in the action pending before that court between

1 — Language of the Case: Italian.

GIUSEPPE BARDI, a farmer, residing at Cecina/Livorno, Italy,

and

AZIENDA AGRICOLA PARADISO, a farming undertaking, situated at Castagneto Carducci/Donoratico,

on the interpretation of certain provisions of the Community rules relating to the importation, subject to special conditions, of young bovine animals from non-member countries,

THE COURT

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

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

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

The second subparagraph of Article 10 (1) of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187) provides for a levy in trade with non-member countries on imports into the Community of calves and adult bovine animals falling within subheading 01.02 A II of the Common Customs Tariff.

On 14 February 1977 the Council adopted Regulation (EEC) No 425/77 (Official Journal L 61, p. 1) amending Regulation (EEC) No 805/68 by adding to it, *inter alia*, an amended Article 13.

As provided for in Article 13 (1) of Regulation No 805/68, as amended by Regulation No 425/77, the levy which was to be applied to young male bovine animals intended for fattening, of a live weight of 300 kilograms or less, may be totally or partially suspended, taking into account the supply situation and the foreseeable trend of market prices for bovine animals in the Community.

For this purpose Article 13 (2) provides that the Council shall each year draw up an estimate of young male bovine animals which may be imported under total or partial suspension of the levy. That estimate shall take account, on the one hand, of expected Community supplies of young bovine animals intended for fattening, and, on the other hand, of the needs of Community breeders.

Under Article 13 (4) (a) the Commission shall determine each quarter the quantity which may be imported and the rate of suspension of the levy.

Under Article 13 (3) importation under total or partial suspension shall be made conditional on production of an import licence issued for a quantity falling within the limits of the quantity laid down each quarter.

The detailed rules for the application of the system of import licences were laid down by the Commission in its Regulation No 585/77 of 18 March 1977 (Official Journal L 75, p. 5).

Article 8 of Regulation No 585/77 fixes a minimum of 50 animals to which the application for a licence must relate, specifies the endorsements which the application for a licence and the licence itself shall contain and states that the percentage reduction in the levy shall be that valid for the quarter in which the application for a licence is lodged.

Article 11 of the regulation deals *inter alia* with the period during which applications for licences may be lodged (paragraph (1)), the passing of specific information to the Commission by the Member States (paragraph (2)), the date of the issue of the licences (paragraph (3)) and the release of the security (paragraph (5)); Article 11 (8) provides that the applicant shall undertake in writing to carry out the fattening himself or have it carried out under his responsibility.

The Commission, by its Regulation (EEC) No 612/77 of 24 March 1977 laying down rules for the application of the special import arrangements in respect of certain young male bovine animals for fattening (Official Journal L 77, p 18), adopted special provisions with the object of ensuring that such bovine animals are not used for other purposes.

The Commission by Regulation No 1384/77 of 27 June 1977 (Official Journal L 157, p. 16) amended Regulations Nos 585/77 and 612/77. Article 11 (1) of Regulation No 585/77 was supplemented by the addition *inter alia* of a provision to the effect that the applicant for a licence must be a natural or legal person carrying on business in the meat and livestock sector and officially registered in a Member State.

The Commission in Article 1 (1) of Regulation No 2902/77 of 22 December 1977 (Official Journal L 338, p. 12) fixed for the period 1 January to 31 March 1978 the maximum quantity of animals which might be imported under total or partial suspension of the levy at 50 000 head of young male bovine animals for fattening, of a live weight of 300 kilograms or less, of which at least 45 000 head must be imported into and fattened in Italy.

Article 1 (2) of that regulation fixed the levy to be charged on imports of those animals at 50% of the levy applicable on the day of import.

The first subparagraph of Article 1 (5) of that regulation provided that, within the quantity reserved for Italy, import licences might be issued directly to agricultural producers or their organizations in respect of a maximum of 30 000 head; the second subparagraph of that provision states that "Italy shall, for this purpose, specify the categories of applicants in the communication referred to in Article 11 (2) of Regulation (EEC) No 585/77".

The Commission, by Regulation (EEC) No 345/78 (Official Journal 49, p. 9), which amended Regulation No 2902/77, increased the maximum quantity of young male bovine animals which might be imported into the Community under suspension of the levy in the first quarter of 1978 from 50 000 to 80 000 head (Article 1 (1) of Regulation No 2902/77), the quantity reserved for Italy from 45 000 to 72 000 head and the number of head in respect of which import licences might be issued directly in Italy to agricultural producers or their oganizations from 30 000 to 48 000 head (Article 1 (5)).

On 20 February 1978 the Azienda Agricola Paradiso, a farming undertaking legally constituted under Italian law as a limited partnership, owning land at Castagneto/Carducci, Donoratico, agreed in writing to buy 40 quintals of maize for animal feed from Giuseppe Bardi, a farmer residing at Cecina/Livorno. This order was to be deemed to have been cancelled if the Azienda did not, pursuant to the Community regulations in force, obtain a licence for the importation of 100 calves from non-member countries.

The Directorate General for Imports and Exports of the Italian Ministry for Foreign Trade notified by Circular No 1/170.332 of 28 February 1978 its decision that agricultural producers wishing to import at a lower rate of levy young male bovine animals for fattening, in accordance with Article 1 (5) of Regulation No 2902/77, had to certify that they fulfilled the conditions laid down in Article 12 (1) of Law No 153 of 9 May 1975 on the implementation of the Council directives (of 17 April 1972) on agricultural reform (Council Directive No 72/159 on the modernization of farms; Council Directive No 72/160 concerning measures to encourage the cessation of farming and the reallocation of utilized agricultural area for the purpose of structural improvement; Council Directive No 72/161 concerning the provision of socio-economic guidance for and the acquisition of occupational skills by persons engaged in agriculture (Official Journal, English Special Edition 1972 (II), p. 324, p. 332 and p. 339 respectively).

Under Article 12 (1) of Law No 153 a person who devotes at least two-thirds of his total working time to farming and who derives therefrom at least two-thirds of his total earned income is regarded as a person practising farming as his main occupation.

The Azienda by a letter dated 10 March 1978 gave Mr Bardi notice that, since it did not fulfil the conditions specified in the circular of 28 February 1978, it had not applied for the import licence as arranged and that the contract of 20 February was to be considered void.

On 12 April 1978 Mr Bardi summoned Azienda Agricola Paradiso to appear before the Pretura di Cecina with a view to obtaining an order for specific performance of the contract.

By the order of 13 May 1978 the Pretura di Cecina decided, pursuant to Article 177 of the EEC Treaty, to stay proceedings until the Court of Justice has given a preliminary ruling on the following questions:

(1) Whether the national authorities, within the framework of the special arrangements for the importation of young male bovine animals for fattening laid down in Article 13 of Regulation (EEC) No 805/68, which arrangements were last amended by Regulations (EEC) Nos 585/77 and 2902/77, may extend and supplement at their discretion the conditions for admission to the benefit thereof, in particular by restricting the issue of import licences to certain categories of persons unilaterally distinguished from the generality of agricultural producers; or whether on the other hand the above-mentioned Community provisions confer upon all proprietors, whether natural or legal persons, of agricultural undertakings, in particular persons who are engaged in stock-farming, the right to apply in all cases for an import licence which the national authorities of the Member States have no discretionary power to refuse.

(2) On the assumption that the Member States may impose further and more restrictive conditions upon admission to the category of agricultural producer, whether the national authorities may determine the persons entitled to benefit according to the criteria on which they rely in implementing the Community directives on the modernization of agricultural structures (Directives Nos 72/159, 160 and 161/EEC), that is, with a view to a sort of State intervention the means and objectives of which are entirely distinct from and independent of those adopted in connexion with the marketing of individual agricultural products — the said criteria being moreover entirely unrelated to the actual practice of stock-farming and such as to entail the unjustified exclusion of a very large number of stock-farming undertakings, including all those having the structure of a firm or company.

The order of the Pretura di Cecina was registered at the Court on 25 May 1978.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 12 August 1978 by the Commission of the European Communities, on 14 August 1978 by Mr Bardi, the plaintiff in the main action, and on 28 August 1978 by the Government of the Italian Republic.

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. However, it requested the plaintiff in the main action and the Commission to answer certain questions in writing. This request was complied with within the periods specified.

II — Summary of the written observations submitted to the Court

Giuseppe Bardi, the plaintiff in the main action, after having drawn attention to the Community rules on the importation, under total or partial suspension of the levy, of young bovine animals from non-member countries, asserts that the measures adopted by the Italian Government conflict in every way with the latter rules: they lay down additional conditions, which are more restrictive and of a purely national character, upon

the issue of import licences and the submission of applications.

(a) The first question

Regulations Nos 585/77 and 612/77, as amended by Regulation No 1384/77, govern every aspect of the system of import licences. As far as the subjective conditions for the submission of applications are concerned, the applicant must be "a natural or legal person carrying on business in the meat and livestock sector and officially registered in a Member State" (Article 11 (1) (b) of Regulation No 585/77 as amended by Article 5 of Regulation No 1384/77). The objective conditions for the application, relating in particular to the security and the declarations and undertakings which are designed to guarantee the actual purpose of the imports, are exhaustively laid down by the Community rules. This means that the Member States do not have any discretion or residual power in either the legislative or the administrative field, except in so far as the receipt of the applications, the forwarding of communications and the actual issue of import licences are concerned.

The question arises whether this situation has been changed by Regulation No 2902/77, Article 1 (5) of which provides that within the quantity reserved for Italy, import licences may be issued directly to agricultural producers or their organizations in respect of a specific proportion and that Italy shall, for this purpose, specify the categories of applicants in the communication referred to in Article 11 (2) of Regulation No 585/77.

Article 1 (5) of Regulation No 2902/77 is to be considered in the context of the whole of the system introduced by the detailed rules for the implementation of the arrangements of Article 13 of Regulation No 805/68; when it is examined account must be taken of the general prohibition of discrimination, which is the principal factor connected with the implementation of the special import arrangements. By providing for the issue of import licences directly to agricultural producers it introduces a derogation from the principle of equality of treatment in that its aim is to give priority to agricultural producers; the acknowledgement that the Member State concerned has a discretion cannot be inferred from that article.

The provision stating that the Member State "shall specify the categories of applicants" must be read together with the obligation to notify the Commission, imposed upon Member States by Article 11 (2) of Regulation No 585/77. It is a further item of information which the Member State has to communicate to the Commission; the "categories of applicants" must simply be mentioned in that communication, a division having been effected between applicants who are "agricultural producers" and those who are "traditional traders". It does not therefore in any way confer a power upon the Member State concerned but imposes an obligation upon it to supply a prescribed and specific item of information in the context of "the communication referred to in Article 11 (2) of Regulation (EEC) No 585/77".

The expression "for this purpose" in the early part of the second subparagraph of Article 1 (5) of Regulation No 2902/77 means that the actual purpose of the new specific item of information is to allow the issue, in the context of a Community administrative procedure, of import licences directly to agricultural producers.

With regard to the nature of the Community provisions at issue and the degree of protection which they offer private individuals it should be stated that since their legislative content is complete they may be regarded as directly applicable.

The provisions in question are regulations and are consequently primary legislative sources which do not require any acts incorporating them into the domestic law of the Member States and may not be amended or adjusted by national authorities and must be applied uniformly and in their entirety in all the Member States. The only measures which national authorities may adopt are implementing and organizational measures authorized directly or indirectly by those regulations to the extent necessary for their application and they are not at any time able to modify their content and their effect. This finding applies especially in the field of the common agricultural policy, a sector in which the Member States have transferred all their legislative and administrative powers to the Community institutions and assumed a purely executive function with regard to the measures adopted at Community level.

(b) The second question

If it is assumed that the Community rules allow Member States to modify or limit their scope, the exercise of such a power cannot in any case be unrestricted.

In this connexion it should be noted that the expression "agricultural producers" used in the first subparagraph of Article 1 (5) of Regulation No 2902/77, in the light of Article 11 (1) (b) of Regulation No 585/77, refers, for the purpose of applying the special import arrangements, to anyone engaged in agriculture who carries on, more or less exclusively, the business of stock breeding. This is the only definition which it should be possible to use when laying down the subjective requirements for applying for import licences.

The limits on the exercise of any power to amend on a national level the meaning of the concept "agricultural producer" have been determined in particular in the judgment of the Court of 13 June 1978 in Case 139/77 *Denkavit Futtermittel GmbH v Finanzamt Warendorf* ([1977] ECR 1317). Those limits have been imposed by Community law and, in particular, by the rules in question; it is appropriate to refer to the wording and the objectives of the latter. In this connexion it must be recorded that the Ministerial Circular No 1/170.332 takes no account of the limits imposed by Community law and that it is therefore incompatible with that law.

The effect of the indirect reference to the Community directives is to restrict entitlement to benefit from the special import arrangements to persons practising farming as their main occupation, that is to say to the owners of farms who are in a position to expand but who need the help of State intervention in order to turn such capacity for expansion as they have to profit. This solution cannot be reconciled with the objectives of the special import arrangements. The directives meet the requirements of the reform of agriculture and are long term measures; they represent the structural aspect of the common agricultural policy and their aims, the instruments which they use and their field of application make them very different from policy measures relating to markets and prices, even though they have to be brought into line with the latter. For their part, the regulations

relating to the trading system for bovine animals and beef and veal are aimed at specific market conditions, the distinctive feature of those conditions being a surplus in the Community as a whole and a serious deficit in Italy owing to the drop in local demand due to lack of competitiveness of the national product and the discontent of breeders. It was precisely because of this local situation that Regulation No 2902/77 introduced specific rules giving preferential treatment to Italy and Italian "agricultural producers".

The autonomy of the agricultural directives in relation to the regulation on trade in animals is emphasized by the fact that the former directly exclude from the benefit of the aids for which they provide purchases of calves intended for slaughter (second indent of Article 8 (1) (b) of Directive No 72/159).

The ministerial circular at issue reserves Community benefits to farms which have not yet been sufficiently developed and denies them to modernized and efficient farms which are in general very specialized and consequently more suited for cattle breeding, which it is the precise intention of the regulations to encourage in order to bring about an increase in Italian livestock. Thus the circular was discriminatory in that the differentiation which it introduced does not have any objective justification.

The reference in the circular to the Community directives is made by virtue of Law No 153/75; but the way in which that law implemented the directives was quite wrong.

The restriction imposed by the ministerial circular is inconsistent with the Community rules in the beef and veal sector.

The *Government of the Italian Republic* points out that the questions referred clearly have no bearing on the main action.

Article 1 (5) of Regulation No 2902/77, as amended by Regulation No 345/78 itself directly divided the Italian quota (72 000 head) into two parts: one (48 000 head) which may be reserved for "agricultural producers" and their "organizations", the other, equal to at least one-third of the quota, which may not be reserved for that "category". The Community rules themselves directly conferred on the Italian authorities certain discretionary powers of implementation for the purpose of specifically determining the share to be reserved for agricultural producers and their organizations and of specifically defining the concepts of agricultural producers and their organizations, that is to say for the purpose of specifying "the categories of applicants". Those powers of implementation were exercised by the ministerial circular in line with the recital in the preamble to Regulation No 2902/77 which reads: "the partial reduction of the levy is intended to help improve cattle rearing and beef and veal production structures in Italy"; in this connexion producers should be able to benefit directly, without going through any intermediaries, from the import arrangements under suspension of the levy. The ministerial circular considers agricultural producers who are mainly engaged in agriculture as the persons from whom the improvement of the cattle rearing structures aimed at can and must be expected. Law No 153 of 9 May 1975 treats agricultural cooperatives and associations of farmers who individually devote at least half of their working time

to and derive at least half of their income from farming in the same way as such agricultural producers. To link the rules of the special import arrangements to the rules on modernizing agricultural structures and increasing output is definitely lawful.

The questions referred should be answered as follows:

Article 1 (5) of Regulation No 2902/77 as amended by Regulation No 345/78 must be interpreted as meaning that it entrusts to the Italian authorities the task of defining the concept of "agricultural producers" and specifying the categories of accepted applicants, in accordance with the objective stated in the fifth recital in the preamble to Regulation No 2902/77, and that it is in keeping or at least does not conflict with that objective to link the concept of "agricultural producers" with that of persons whose "main occupation" is farming.

The *Commission* takes the view that, where Community agricultural rules which are not complete and exhaustive are to be implemented, it is necessary to endeavour to find out what meaning is to be given, with due regard to the objectives of those rules, to the concept of "agricultural producers" which they use but do not define.

A definition of general application cannot be evolved from the provisions of the Treaty; in the Community rules on agriculture, which are moreover very heterogeneous, the definition is far from being uniform, varying according to the specific objectives pursued by the different Community provisions in question.

The recitals in the preamble to Regulation No 2902/77 make it clear that imports subject to special terms are justified by the need to take account of the supply requirements of certain regions of the Community which have a serious deficit in bovine animals for fattening, these requirements being particularly apparent in Italy, and that the partial reduction of the levy is intended to help improve cattle rearing and beef and veal production structures in Italy. The measures provided for in that regulation are therefore addressed to agricultural producers who are full- or part-time stock breeders.

Regulation No 805/68 also suggests a more specific classification of the beneficiaries of the particular import arrangements: Article 13 (2) thereof (as modified by Regulation No 425/77) states that the estimate drawn up each year by the Council shall take account of expected Community supplies and of the needs of Community breeders.

The concept of "agricultural producers" within the meaning of those rules is equivalent to that, defined more accurately, of "breeders".

The Italian authorities have added a new element to that definition by reserving the benefit of imports subject to special terms to persons whose main occupation is farming within the meaning of Law No 153 of 7 May 1975. The case-law of the Court shows that such a national provision cannot be considered as illegal merely by reason of the fact that it supplements Community rules which are directly applicable; to decide whether it may be illegal it must be examined in the light of other criteria, especially with reference to the objectives which the Community rule seeks to attain.

The reason why the said rule did not define the limits of the concept of agricultural producer is that it is extremely difficult for the Community legislature to acquire a sufficiently accurate knowledge of the situation prevailing at the place

where the Community rules are intended to produce their effects. Since the measure in question is directed at stock breeders and its aim is to make it easier for them to obtain supplies, especially with a view to helping improve cattle rearing structures in Italy, it must be regarded as an additional instrument of economic and structural policy with the same objectives as Council Directives Nos 72/159, 72/160 and 72/161. Consequently, the reference by the Italian authorities to the criteria laid down in Law No 153 on the modernization of agricultural structures in accordance with the provisons of those directives does not seem to be unjustified.

The fact that the benefits of the structural directives have been reserved for persons whose main occupation is farming, that is to say who devote at least two-thirds of their entire working time to farming and who derive at least two-thirds of their total earned income therefrom, is justified by the consideration that the improvement and modernization of agricultural structures involves intervention in key sectors of the agricultural economy which are in a position to guarantee in a satisfactory manner the attainment of those objectives by means of a proper use of the special terms offered to them.

The circular at issue, by excluding "breeders" for whom farming is an entirely secondary occupation and who earn most of their income from other sources from the benefit of importing under suspension of the levy, follows the generals trend in connexion with the improvement and modernization of agricultural structures and upholds, in the more restricted context of cattle-rearing structures, the philosophy and principles which prompt those movements.

The questions referred to the Court should therefore be answered as follows:

The fact that a Member State defines, when it actually implements a Community rule and in the light of the latter's objectives, concepts such as "agricultural producer", the precise meaning of which has not been elaborated by general and secondary Community law, is not incompatible with that law.

III — Oral procedure

The oral observations and the replies to the questions put to them by the Court of Giuseppe Bardi, the plaintiff in the main action, represented by Emilio Cappelli, Advocate at Rome, the Italian Republic, represented by Franco Favara, Avvocato dello Stato, and the Commission of the European Communities, represented by Guido Berardis, a member of its legal department, were heard by the Court on 29 November 1978.

The Advocate General delivered his opinion at the hearing on 17 January 1979.

Decision

1 By an order of 13 May 1978, which was received at the Court on 27 May 1978, the Pretura di Cecina referred to the Court of Justice for a preliminary ruling pursuant to Article 177 of the EEC Treaty two questions on the interpretation of Commission Regulation (EEC) No 2902/77 of 22 December 1977, fixing the quantity of young male bovine animals which may be imported on special terms in the first quarter of 1978 (Official Journal L 338, p. 12), in conjunction, on the one hand, with Article 13 of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal, as amended by Council Regulation (EEC) No 425/77 of 14 February 1977 (Official Journal L 61, p. 1), and also with Commission Regulation (EEC) No 585/77 of 18 March 1977 on the system of import and export licences for beef and veal (Official Journal L 75, p. 5) and, on the other hand, with the Council Directives of 17 April 1972 relating to various structural questions in the field of agriculture, in particular with Council Directive No 72/159 on the modernization of farms (Official Journal, English Special Edition 1972 (II), p. 324).

2 The Court's file shows that Giuseppe Bardi, the plaintiff in the main action, the manager of a farm within the Commune of Cecina (Province of Livorno), entered into a contract on 20 February 1978 with Azienda Agricola Paradiso (hereinafter referred to as "Azienda"), a limited partnership engaged in cattle-rearing, whose farm is within the Commune of Donoratico (Province of Livorno), for the supply to the said partnership of 40 quintals of maize for animal feed.

3 It was a condition of that contract that the order would be "deemed to have been cancelled if it were to prove impossible for the contracting party Azienda to obtain an import licence for 100 calves from non-member countries pursuant to the EEC regulations in force".

4 Azienda, by a letter dated 10 March 1978, notified Mr Bardi that the order of 20 February 1978 was to be regarded as cancelled in view of the fact that it had been informed that it could not apply for an import licence for calves from East European countries having regard to the provisions of a Circular of the Ministry for Foreign Trade dated 28 February 1970.

5 Mr Bardi then issued a summons against Azienda to appear before the Pretura with a view to obtaining an order for specific performance of the contract and consequently an order against Azienda to take delivery of the 40 quintals of maize which it had ordered.

6 It is clear from the arguments of the parties before the Pretura and the particulars supplied to the Court that the calves which Azienda intended to buy and for the fattening of which it placed the order for 40 quintals of maize with Mr Bardi were to have been imported as part of an import quota at a reduced rate of levy allocated to Italy by Regulation No 2902/77.

7 Azienda does not appear to have made any application for this purpose to the competent authorities, considering that it was precluded from qualifying as a beneficiary of that import quota by Circular No 1/170332 of the Ministry for Foreign Trade dated 28 February 1978.

8 In fact, as provided for in that circular, the benefit of imports at a reduced rate of levy was reserved for agricultural producers fulfilling the conditions laid down by Article 12 (1) of Law No 153 of 9 May 1975 implementing the directives of the Council of the European Communities on the reform of agriculture (Gazzetta Ufficiale 1975, p. 3298).

9 The presumed effect of the reference in the circular to that legislative provision is to reserve the benefit of the import quota in question to individual farmers who personally devote most of their time to farming, a condition which Azienda cannot fulfil because its legal form is that of an agricultural company.

10 The plaintiff shares the view of the defendant company that a circular of the Ministry for Foreign Trade could not validly restrict in this way the category of farmers who may be entitled to the advantage provided for by Regulation No 2902/77.

11 He infers from this that Azienda's obligation towards him under the contract remains intact.

12 In the context of this dispute the Pretura is of the opinion that the determination of the issue before it depends upon the interpretation of certain provisions of Community law.

13 In its view the actual question to be determined is whether the restriction of the benefits granted to all farmers by Regulation No 2902/77 solely to persons "practising farming as their main occupation" within the meaning of Article 2 (1) of Law No 153 of 9 May 1975 may not be contrary to the spirit and the letter of the Community provisions relating to the special import arrangements in question.

14 It is in order to dispel this doubt that the Pretura has referred to the Court the two questions worded as follows:

(1) Whether the national authorities, within the framework of the special arrangements for the importation of young male bovine animals for fattening laid down in Article 13 of Regulation (EEC) No 805/68, which arrangements were last amended by Regulations (EEC) Nos 585/77 and 2902/77, may extend and supplement at their discretion the conditions for admission to the benefit thereof, in particular by restricting the issue of import licences to certain categories of persons unilaterally distinguished from the generality of agricultural producers; or whether on the other hand the above-mentioned Community provisions confer upon all proprietors, whether natural or legal persons, of agricultural undertakings, in particular persons who are engaged in stock-farming, the right to apply in all cases for an import licence which the national authorities of the Member State have no discretionary power to refuse.

(2) On the assumption that the Member States may impose further and more restrictive conditions upon admission to the category of agricultural producer, whether the national authorities may determine the persons entitled to benefit according to the criteria on which they rely in implementing the Community directives on the modernization of agricultural structures (Directives Nos 72/159, 160 and 161/EEC), that is, with a view to a sort of State intervention the means and objectives of which are entirely distinct from and independent of those adopted in connexion with the marketing of individual agricultural products — the said criteria being moreover entirely unrelated to the actual practice of stock-farming and such as to entail the unjustified exclusion of a very large number of stock-farming undertakings, including all those having the structure of a firm or company.

15 As provided for in Article 13 (1) of Regulation No 805/68, as amended by Regulation No 425/77, the levy to be applied to young male bovine animals intended for fattening may be totally or partially suspended under the conditions laid down in that article, taking into account the supply situation and the foreseeable trend of prices.

16 Under paragraph (2) of the said article the Council shall draw up each year an estimate of young male bovine animals which may be imported under the preferential arrangements laid down in paragraph (1).

17 Finally, paragraph (4) of the said article provides that detailed rules for the application of the arrangements in question shall be determined in accordance with the procedure laid down in Article 27 of that regulation, that is to say by the Commission acting in accordance with the so-called "management committee" procedure.

18 For the period under consideration the detailed rules for the preferential arrangements in question were defined by Commission Regulation No 2902/77 as a 50% reduction of the levy.

19 According to the fifth recital in the preamble to that regulation the reduction of the levy was specifically intended to "help improve cattle rearing and beef and veal production structures in Italy".

20 The same recital also goes on to state that that objective can be achieved "by giving agricultural producers and their organizations priority" when issuing the licences conferring entitlement to benefit from those particular import arrangements.

21 Article 1 (1) of the regulation in question fixed the import quota at a maximum of 50 000 head of young male bovine animals, of which at least 45 000 were to be imported into and fattened in Italy.

22 Article 1 (5) of the said regulation states that within the quantity reserved for Italy, import licences may be issued directly to agricultural producers or their organizations in respect of a maximum of 30 000 head and that "Italy shall, for this purpose, specify the categories of applicants".

23 Those provisions indicate that the arrangements for importation at a reduced rate of levy were intended, as a matter of priority, during the period under consideration, to enable Italy to improve its cattle rearing and beef and veal production structures and that that Member State was expressly empowered for that purpose to specify the categories of producers entitled to benefit from that measure.

24 It is apparent therefore that the Italian authorities were empowered to reserve the benefit of that import quota to farms the development of which they intend to encourage as provided for in the Law of 9 May 1975, which has the aim of implementing in Italy the objectives laid down by the Community directives of 17 April 1972 on the reform of agricultural structures.

25 Special reference should be made to Articles 1, 2 and 3 of Council Directive No 72/159, from which it emerges that the Member States have undertaken to introduce a system of selective incentives to farms, giving priority specifically to farm businesses the heads of which practice farming as their main occupation.

26 That undertaking has been reflected in Articles 11 and 12 of the Italian Law No 153 of 9 May 1975 to which reference is made in the Circular of 28 February 1978.

27 Therefore the answer to the questions referred must be that under Commission Regulation (EEC) No 2902/77 of 22 October 1977 the Member States concerned, and more particularly the Italian Republic, were entitled to specify the categories of agricultural producers who might benefit from the import quota of young male bovine animals under partial or total suspension of the levy within the framework of a policy intended to help improve cattle rearing and beef and veal production structures and that to allow only farmers practising farming as their main occupation so to benefit is in accordance with the obligations on the Member States arising from Council Directive No 72/159 of 17 April 1972 on the modernization of farms.

Costs

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

29 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 Pretura di Cecina, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Pretura di Cecina by an order of 13 May 1978, hereby rules:

Under Commission Regulation (EEC) No 2902/77 of 22 December 1977 fixing the quantity of young male bovine animals which may be imported on special terms in the first quarter of 1978 the Member States concerned, and more particularly the Italian Republic, were entitled to specify the categories of agricultural producers who might benefit from the import quota of young male bovine animals under partial or total suspension of the levy within the framework of a policy intended to help improve cattle rearing and beef and veal production structures.

To allow only farmers practising farming as their main occupation so to benefit is in accordance with the obligations on the Member States arising from Council Directive No 72/159 of 17 April on the modernization of farms.

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 1 February 1979.

A. Van Houtte
Registrar

For the President
J. Mertens de Wilmars