In Case 15/79,

REFERENCE to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry], The Hague, between

P. B. GROENVELD B.V., Haarlem,

and

PRODUKTSCHAP VOOR VEE EN VLEES [Cattle and Meat Board], Rijswijk,

on the interpretation of Article 34 of the EEC Treaty having regard to the national rules applicable in the Netherlands prohibiting any manufacturer of processed meat products from having in stock or processing the meat of solipeds,

THE COURT (Second Chamber)

composed of: A. Touffait, President of Chamber, P. Pescatore and Lord Mackenzie Stuart, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

I — Facts and procedure

1. Article 3 (1) of the Verordening Be- en Verwerking Vlees 1973 [Processing and Preparation of Meat Regulation 1973], adopted on 5 December 1973 by the Produktschap voor Vee en Vlees, hereinafter referred to as "the Produktschap", prohibits any manufacturer of processed meat products from having in stock and processing the meat of solipeds.

2. The company P. B. Groenveld B.V., the plaintiff in the main action, carries on in the Netherlands the business of

wholesale import of and trade in fresh and frozen horsemeat and also makes smoked horsemeat.

As it wished to extend its operations to the manufacture of horsemeat sausages, Groenveld, in accordance with Article 9 of the above-mentioned regulation, asked the President of the Produktschap, the defendant in the main action, to exempt it from the prohibition contained in Article 3 (1) of that regulation.

The application was rejected and Groenveld then started proceedings before the College van Beroep voor het Bedrijfsleven.

3. By order of 26 January 1979, that court stayed the proceedings and decided to refer the following question to the Court of Justice for a preliminary ruling:

"Must Article 34 of the Treaty establishing the European Economic Community, read possibly in conjunction with any other provision of that Treaty and/or with any principle fundamental to that Treaty, be interpreted to mean that the prohibition on having in stock, preparing and processing horsemeat set out in Article 3 (1) of the Verordening Be- en Verwerking Vlees 1973 of the Produktschap — having regard *inter alia* to the purpose and scope of that prohibition as they have been set out in Point 7 of this order — is incompatible with that article of the Treaty?"

Point 7 of the order the College to which reference is made in the above question reads as follows:

"7. Also of relevance in this connexion is the explanatory note to the Verordening Be- en Verwerking Vlees 1959 [Preparation and Processing of Meat Regulation 1959] which preceded the present regulation and Article 2 (1) of which contained the same prohibition as that in Article 3 (1) of the present regulation. Part of that explanatory note may be summarized as follows:

— Primarily in Anglo-Saxon countries objections exist to meat products containing processed horsemeat (at the hearing it was further observed on behalf of the respondent in this connexion that the prohibition is imposed in order to avoid the possibility of such meat products' being exported, as otherwise the Anglo-Saxon countries — which form an important part of the export market for Netherlands meat products — might introduce a ban on imports from the Netherlands of all meat products, including products containing no processed horsemeat).

— It is not possible to determine whether horsemeat is present in meat products.

— Therefore with regard to meat products intended for export a prohibition of exports of meat products containing processed horsemeat can offer no solution.

— Appropriate steps to prevent the processing of horsemeat in meat products intended for export can be taken by prohibiting manufacturers of meat products for export from having in stock, preparing or processing horsemeat."

The order of the national court was lodged at the Court Registry on 2 February 1979.

4. In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by the Produktschap, the defendant in the main action, represented by its President, and by the Commission of the European Communities, represented by its Legal Adviser, Rolf Wägenbaur, acting as Agent, assisted by Auke Haagsma, an official in the Legal Department.

On 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. By an order of 30 May 1979 it decided, in pursuance of Article 95 of the Rules of Procedure, to assign this case to the Second Chamber.

II — Written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — The *Produktschap voor Vee en Vlees*, the defendant in the main action, explains in its written observations the reasons which led it to adopt the rules in dispute. These rules essentially originate in the aversion felt by certain countries, particularly the United States, the United Kingdom and the Federal Republic of Germany, which constitute the principal export markets for processed meat products from the Netherlands, to any such products containing horsemeat.

The Produktschap states that exports of processed meat products to the United States must be accompanied by a certificate stating in particular that the products in question comply with provisions which are at least equivalent to those laid down by the American rules on this subject. The American regulations prohibit any manufacturer of processed meat products from keeping horsemeat on his premises.

As regards the United Kingdom, there is no restriction on the importation of horsemeat into the country. Nevertheless, the mere fact that British consumers might think that Netherlands exports of processed meat products might contain horsemeat would be sufficient in the view of the Produktschap to cause them substantial and even perhaps irreversible damage.

Finally the importation of prepared horsemeat is forbidden in the Federal Republic of Germany in pursuance of Article 12 of the Fleischbeschaugesetz (Law on meat inspection). The certificate which must accompany imported products must state that they do not contain any meat the importation of which is forbidden in pursuance of Article 12 of the above-mentioned Law.

Furthermore, the Produktschap remarks that as horsemeat is considerably less expensive than beef there would be unfair competition if some manufacturers of processed meat products were able to incorporate horsemeat in them.

As it is practically impossible to detect the presence of horsemeat in processed meat products, the only solution consists in prohibiting manufacturers of such products from having in stock or processing horsemeat.

As the essential purpose of the measure in question is to permit exports of processed meat products to States where there is an aversion to horsemeat or even where the importation of horsemeat is forbidden, the Produktschap concludes

that this measure cannot be considered as being incompatible with Article 34 of the Treaty.

B — According to the *Commission* on the contrary, the provision in question goes beyond the limits within which Member States are free to adopt rules on trade. The prohibition against manufacturers of processed meat products processing horsemeat into such products is an obstacle to the marketing of products based on horsemeat. It thus constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Articles 30 and 34.

The Commission refers in particular to Council Directive No 77/99/EEC on health problems affecting intra-Community trade in meat products (Official Journal L 26 of 31 July 1977, p. 85). That directive, which lays down the conditions for approval of establishments for the processing of meat-based products does not provide for any prohibition similar to that which exists in the Netherlands.

In the Commission's view the prohibition in question is not justified by considerations relating to the protection of public health (horsemeat offers no greater risks for human health than other meats), to the fairness of commercial transactions or to consumer protection (a problem which might be solved by rules on the labelling of products combined with veterinary or public health inspections at production level) or to "endangering" exports of processed meat products to another Member State (the labelling of products ought to be sufficient to convince purchasers in the importing Member States as well). There is therefore no "mandatory requirement" (within the meaning of the judgment in Case 120/78, *REWE-Zentral*, [1979] ECR 649), capable of justifying the rules in dispute.

In conclusion the Commission takes the view that the answer to be given to the College van Beroep voor het Bedrijfsleven should be that Articles 30 and 34 must be interpreted as meaning that a provision of national law under which a manufacturer of processed meat products is prohibited from having in stock or processing horsemeat constitutes a measure having an effect equivalent to a quantitative restriction.

III — Oral procedure

At the sitting on 28 June 1979 the Commission of the European Communities, represented by Mr Auke Haagsma, a member of its Legal Department, presented oral argument.

The Advocate General delivered his opinion at the sitting on 27 September 1979.

Decision

1 By an order of 26 January 1979, which was received at the Court Registry on 2 February 1979, the College van Beroep voor het Bedrijfsleven referred to the Court under Article 177 of the EEC Treaty a preliminary question on

the interpretation of Article 34 of the EEC Treaty in order to establish whether Article 3 (1) of the Verordening Be- en Verwerking Vlees 1973 [Processing and Preparation of Meat Regulation 1973], adopted on 5 September 1973 by the Produktschap voor Vee en Vlees [Cattle and Meat Board], which prohibits, subject to express exceptions, any manufacturer of sausages from having in stock or processing horsemeat, is compatible with Community law.

2 That question was raised in the course of proceedings instituted by a wholesaler of horsemeat, who wishes to extend his operations to the manufacture of sausages from horsemeat, against the refusal of the Produktschap, the defendant in the main action, to exempt him from the prohibition set out in Article 3 (1) of the above-mentioned regulation.

3 The order for reference, in particular Point 7, shows that the regulation in question was adopted for the purpose of protecting Netherlands exports of meat products both to Member States and to non-member countries which constitute important export markets and where there are objections to the consumption of horsemeat or indeed where the importation of products containing horsemeat is prohibited. As it is practically impossible to determine the presence of horsemeat in meat products the sole means of ensuring that such products do not contain horsemeat is to prohibit manufacturers of meat products from having in stock, preparing or processing horsemeat. Thus exports of meat products to the United States must be accompanied by a certificate that the products in question meet requirements at least equivalent to those laid down by United States rules in that field, whereby a similar prohibition is imposed. Article 3 (1) of the above-mentioned regulation applies solely to the industrial manufacture of meat products but not to the stocking or retail sale of horsemeat by butchers. The file further establishes that the regulation in question does not affect imports or re-exports of horsemeat originating in other Member States or non-member countries.

4 Since the College van Beroep voor het Bedrijfsleven doubts whether that regulation is compatible with Community law it has submitted the following question:

"Must Article 34 of the Treaty establishing the European Economic Community, read possibly in conjunction with any other provision of that Treaty and/or with any principle fundamental to that Treaty, be interpreted to mean that the prohibition on having in stock, preparing and processing horsemeat set out in Article 3 (1) of the Verordning Be- en Verwerking Vlees 1973 of the Produktschap — having regard *inter alia* to the purpose and scope of that prohibition as they have been set out in Point 7 of this order — is incompatible with that article of the Treaty?"

5 As a preliminary observation it should be pointed out that the market affected by the national measure in question, that in horsemeat, is not governed by any specific Community regulation. Council Directive No 79/99/EEC of 21 December 1976 (Official Journal 1977, L 26, p. 85) on health problems affecting intra-Community trade in meat products, cited by the Commission in its observations, concerns a problem entirely distinct from that which forms the subject-matter of the national measure in question. It follows that the compatibility of a measure of the kind referred to in the main action with Community law must be settled solely on the basis of Article 30 *et seq.* of the Treaty.

6 Article 34 of the EEC Treaty provides that "quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States".

7 That provision concerns national measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for the domestic market of the State in question at the expense of the production or of the trade of other Member States. This is not so in the case of a prohibition like that in question which is applied objectively to the production of goods of a certain kind without drawing a distinction depending on whether such goods are intended for the national market or for export.

8 The foregoing appreciation is not affected by the circumstance that the regulation in question has as its objective, *inter alia*, the safeguarding of the repu-

tation of the national production of meat products in certain export markets within the Community and in non-member countries where there are obstacles of a psychological or legislative nature to the consumption of horsemeat when the same prohibition is applied identically to the product in the domestic market of the State in question. The objective nature of that prohibition is not modified by the fact that the regulation in force in the Netherlands permits the retail sale of horsemeat by butchers. In fact that concession at the level of local trade does not have the effect of bringing about a prohibition at the level of industrial manufacture of the same product regardless of its destination.

9 The reply to the question submitted must therefore be that in the present state of Community law a national measure prohibiting all manufacturers of meat products from having in stock or processing horsemeat is not incompatible with Article 34 of the Treaty if it does not discriminate between products intended for export and those marketed within the Member State in question.

Costs

10 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 as to costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the question referred to it by the College van Beroep voor het Bedrijfsleven by an order of 26 January 1979, hereby rules:

In the present state of Community law a national measure prohibiting all manufacturers of meat products from having in stock or processing

horsemeat is not incompatible with Article 34 of the Treaty if it does not discriminate between products intended for export and those marketed within the Member State in question.

Touffait Pescatore Mackenzie Stuart

Delivered in open court in Luxembourg on 8 November 1979.

A. Van Houtte
Registrar

A.Touffait
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 27 SEPTEMBER 1979 [1]

Mr. President,
Members of the Court,

1. In these proceedings the preliminary question is again concerned to establish — in a situation in which there is a national prohibition against the manufacture of a specified product — the scope of the concept "measure having equivalent effect" to quantitative restrictions (on exports or imports) which is referred to in Articles 30 and 34 of the EEC Treaty.

The undertaking P. B. Groenveld, the plaintiff in the main action, carries on in the Netherlands the business of importing horsemeat and manufacturing smoked horsemeat. On 9 February 1978 it asked the national agency which supervises the production of meat (the Produktschap voor Vee en Vlees [Cattle and Meat Board]) for authority to produce sausages and other preparations from horsemeat, apart from smoked meat. That request was refused pursuant to the Verordening Be- en Verwerking Vlees [Processing and Preparation of Meat Regulation] issued by the board of the Produktschap voor Vee en Vlees on 5 December 1973; Article 3 (1) of that regulation expressly prohibits manufacturers of sausages from having in stock or processing horsemeat and products containing proteins derived from such meat.

1 — Translated from the Italian.