In Case 70/77

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura, Alessandria, for a preliminary ruling in the proceedings pending before that court between

SIMMENTHAL S.P.A.

and

AMMINISTRAZIONE DELLE FINANZE DELLO STATO (State Finance Administration)

on the interpretation of certain provisions of Regulation No 14/64/EEC of the Council of 5 February 1964 on the progressive establishment of a common organization of the market in beef and veal (Journal Officiel of 27 February 1964, p. 562) and 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) and on the interpretation and validity of Council Directive No 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat from third countries (Official Journal, English Special Edition 1972 (31 December); Journal Officiel L 302, p. 28)

THE COURT

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

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

gives the following

## JUDGMENT

## Facts and Issues

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

## I — Facts and procedure

The beef and veal sector was regulated first by Regulation No 14/64/EEC of the Council of 5 February 1964 on the progressive establishment of a common organization of the market in beef and veal (Journal Officiel of 27 February 1964, p. 562) and later by Regulation No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal, which repealed and replaced Regulation No 14/64 with effect from 29 July 1968 (Official Journal, English Special Edition 1968 (I), p. 187). Article 12 of Regulation No 14/64 and Article 20 of Regulation No 805/68 prohibit in trade with third countries the levying of any customs duty or any charge having equivalent effect. However, Article 20 of Regulation No 805/68 enables the Council to derogate from this prohibition.

In addition, two Council directives of 26 June 1964 organize the health inspection of intra-Community trade in bovine animals and swine (Directive No 64/432, Official Journal, English Special Edition 1963-1964, p. 164) and in fresh meat (Directive No 64/433, Official Journal, English Special Edition 1963-1964, p. 185), and a Council directive of 12 December 1972 (Directive No 72/462, Official Journal, English Special Edition 1972 (31 December); Journal Officiel L 302, p. 28) organizes the health inspection of imports from third countries of fresh meat of bovine animals and swine. Article 23 (1) of the latter directive places a duty on the Member States to ensure that the fresh meat is subjected "without delay ... to an animal health inspection ...", and Article 23 (4) provides that: "All expenditure incurred pursuant to this article shall be chargeable to the consignor, the consignee or their agents, without repayment by the State", but by virtue of Article 32 no obligations arise for Member States under that directive before 1 October 1973 at the earliest.

On 29 November 1971 and 11 January 1973 Simmenthal, the plaintiff in the main action, imported into Italy two consignments of frozen beef and veal from Uruguay. In application of Italian laws and regulations the imports were subjected to an animal health inspection against payment of inspection charges. The plaintiff in the main action took the view that those inspection charges constituted charges having an effect equivalent to customs duties on imports from third countries prohibited by Article 12 of Regulation No 14/64 (and Article 20 of Regulation No 805/68) and that none of the above-mentioned directives provided exemption from that prohibition, and it brought proceedings before the Pretura, Alessandria, for an order for the restitution of the sums paid with interest as provided for by law.

The Pretura considered that the dispute gave rise to questions concerning the interpretation or the assessment of the validity of the aforesaid provisions, and by an order of 28 May 1977 it referred the following questions to the Court of Justice:

"1. Are Article 12 of Regulation No 14/64/EEC and Article 20 (2) of Regulation (EEC) No 805/68 to be interpreted as meaning that any pecuniary charge whatever imposed in a Member State in respect of a veterinary and public health inspection and levied at the frontier on bovine animals and meat imported from third countries constitutes a charge having an effect equivalent to a customs duty?

2. If the first question is answered in the affirmative, *on what date* did the prohibition against the levying of the said pecuniary charges take effect?

3. Is Council Directive No 72/462 EEC of 12 December 1972 on

health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat from third countries, in particular Articles 23 (4) and 26 thereof, to be interpreted as authorizing the Member States to reintroduce health inspection charges on goods imported from third countries, *and with effect from what date,* or, on the other hand, do not the said provisions reinforce the prohibition on such charges having equivalent effect in that they oblige the States to charge to traders *only the actual expenditure* incurred in connexion with health inspection at the Community frontier?

4. If Directive No 72/462/EEC authorizes the Member States to reintroduce health inspection charges, is that directive, in particular Articles 12 (8), 23 (4) and 26 thereof, valid having regard to the fact that:
   - — The Community measure in question is wholly devoid of a statement of grounds for the derogation from the prohibition laid down in article 20 (2) of Regulation (EEC) No 805/68;
   - — The directive does not lay down either the amount or even the procedure or conditions for imposition of the pecuniary charge established thereunder, with the result that the charge is not a uniform and standard one and, in consequence, jeopardizes the uniformity of the system of protection at the Community frontier;
   - — The wording of the directive implies a delegation of power to the Member States to derogate from the prohibition on charges having equivalent effect;
   - — Since the directive does not provide for the proceeds of the charge established thereunder to be entered in the budget of the Community, it was adopted in contravention of the so-called "Own Resources" decision of the Council of the Communities of 21 April 1979, in particular the provisions of Article 2 (a) thereof (Official Journal, English Special Edition, 1970 (I), p. 224)?
5. If, on the other hand, the directive authorizes the Member States to charge to traders only the actual expenditure incurred in connexion with inspections, ought the directive to be supplemented by provisions relating to the determination of the amount of the expenditure and also to the procedure and conditions for payment thereof and, if the reply is in the affirmative, ought those provisions to be included:
   - — In a Community measure and thus be uniform and standard throughout the territory of the Community; or
   - — In national provisions for implementation of the directive?
6. In any event, in a case where one or more of the Member States have failed to put Directive No 72/462/EEC into effect, are traders still obliged to make the required payments for the health inspections provided for by the rules in questions?"

The order making the reference was registered at the Court Registry on 6 Juny 1977.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the Council and the Commission of the European Communities, the Italian Government and the plaintiff in the main action.

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

open the oral procedure without any preparatory inquiry.

## II — Observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

### *A — Observations of the plaintiff in the main action*

The plaintiff in the main action observes first of all that the six questions asked by the referring court in fact amount to two, more fundamental, questions:

(1) The Court is asked, first, to elucidate its earlier decisions concerning the application of the concept of charges having an effect equivalent to customs duties to charges in respect of health inspections carried out upon importation of fresh beef or veal from a third country (Questions 1 and 2).

(2) It is then asked whether Directive No 72/462/EEC restricted the prohibition on levying such charges in respect of inspections carried out upon importation of beef or veal from third countries.

On the national court's *first question*, the plaintiff in the main action points out that the charges at issue are levied at the frontier in respect of a health inspection affecting only imported goods, that they do not relate to a general system of internal taxation applied in accordance with the same criteria to domestic products and imported products alike, and finally that they are not the consideration for a service provided for the importer. Consequently, according to established case-law, they constitute charges having an effect equivalent to customs duties, and according to the judgment of 9 July 1975 (Case 21/75 *Schroeder* [1975] ECR 905) that concept must be given the same meaning irrespective of whether the imports concerned are from Member States or from third countries.

The plaintiff in the main action adds that although the "intra-Community" health Directives No 64/432 (Article 11) and No 64/433 (Article 9) contain a provision to the effect that pending the application of Community provisions relating to imports from third countries national health provisions applicable to goods from third countries shall not be more favourable than those governing intra-Community trade, such a provision does not suffice to provide exemption from the prohibition laid down in Article 12 of Regulation No 14/64 and Article 20 (2) of Regulation No 805/68 on the levying of charges having equivalent effect in trade with third countries save where derogation therefrom is decided by the Council acting by a qualified majority. The mention of third countries does not of itself amount to an implied derogation by the Council from the prohibition contained in Regulations No 14/64 and No 805/68.

Directives No 64/432 and No 64/433 do not concern the health arrangements applicable to trade with third countries (except to recommend that more favourable, discriminatory treatment should not be granted to extra-Community imports), and consequently they cannot be interpreted as derogating from the prohibition contained in Regulations No 14/64 and No 805/68 on the levying of charges having equivalent effect.

On the *first question* the plaintiff in the main action concludes that — in view of the state of the law during the period between the entry into force of Regulations No 14/64 and No 805/68 and the implementation of Directive No 72/462/EEC — the prohibition on the levying of charges having equivalent effect must rightly be regarded as being absolute and allowing of no restriction of any kind, and that the answer to the

*second question* must, according to the judgment of 7 March 1972 (Case 84/71 *Marimex* [1972] ECR 89), be that Article 12 (1) and (2) of Regulation No 14/64 took effect on 1 November 1964 and Articles 20 (2) and 22 (1) of Regulation No 805/68 on 29 July 1968.

In relation to the *third question*, which concerns the interpretation and date of applicability of Directive No 72/462, in particular the question whether it allows charges having equivalent effect to be levied in respect of health inspections or on the contrary prohibits them and allows only the actual expenditure incurred in each individual case in connexion with inspection at the external frontier to be taken into account, the plaintiff observes that Articles 12 (8), 23 (4) and 26 are unclear, particularly as regards the expression according to which the inspection costs are chargeable to traders "without repayment by the State". On a literal interpretation of the provisions concerned it may be stated that the intention was to charge to certain traders only the *actual cost* of the inspection operations.

Moreover, this point of view was adopted by the Commission in its first proposal for a directive submitted to the Council on 15 September 1965 (Journal Officiel of 26 March 1966, p. 807), and it was only because of the insistence of certain Member States upon the insertion into the directive of a provision enabling or requiring a charge to be levied that, in a spirit of compromise, payment of the cost of inspection without repayment by the State was authorized, which leads back to the concept of the actual cost of a service provided. Thus in neither case can it be suggested that the charge is by its nature necessarily a flat-rate charge, as the Advocate General pointed out in Case 89/76 *(Commission* v *Netherlands).*

The plaintiff in the main action also stresses what it considers to be the seriousness of a measure introducing a charge and thus altering the effect of the Common Customs Tariff. The plaintiff in the main action considers that the date on which the authorization for Member States to reintroduce health inspection charges took effect is the date of the adoption of the national measures for the implementation of the health inspection measures provided for in the directive. In the case of health inspection charges which already exist, they can be levied only after being restructured in accordance with the new criteria defined in the directive.

With regard to the *fourth question*, concerning the validity of Directive No 72/462/EEC, the plaintiff in the main action analyses the relationship between the provisions of Directive No 72/462 which make the cost of inspection chargeable to traders, and the first sentence of Article 20 (2) of Regulation No 805/68 which provides the possibility to make derogations from the prohibition on the levying of charges having equivalent effect in trade with third countries.

According to the plaintiff, in the aforesaid *Schroeder* case the Commission argued that the above-mentioned provisions of Directive No 72/462 can derogate from the prohibition on charges having equivalent effect, because that directive was adopted in accordance with the procedure laid down in Article 43 of the Treaty. The plaintiff in the main action challenges that argument. It is not true that the Community legislature is absolutely free to decide to make derogations from the prohibition on charges having equivalent effect on condition that it observes the procedural rules. The legislature must also observe the substantive limits which it laid down itself when it provided the possibility to make derogations.

Article 20 (2) of Regulation No 805/68 draws a distinction between current

derogations already contained in the regulation and potential derogations which the Council may decide to make. The latter must be absolutely compatible with the common commercial policy system which underlies the trading arrangements introduced by the regulation on the common organization of the markets. Therefore it must be a matter of genuine measures of commercial policy. This is indicated in the twelfth recital in the preamble to Regulation No 805/68: "whereas ... the machinery of common prices, customs duties and levies may, in exceptional circumstances, prove defective; whereas, in such cases, so as not to leave the Community market without defence against disturbances which may arise therefrom after the import barriers which existed previously have been removed, the Community should be enabled to take all necessary measures without delay".

Furthermore, a true derogation is by nature an exception and must therefore be express and precise and state the grounds on which it is based, and this is not the case in this instance, which concerns elements scattered throughout the directive which have no logical connexion with its other provisions. The vagueness of the alleged derogation justifies the question asked by the national court concerning the directive's invalidity for lack of a statement of grounds. Possible derogations must be derogations justified by the needs of the common commercial policy, which excludes derogations relating to health measures entirely alien to the commercial policy.

The other parts of the fourth question refer to the lack of uniformity of the supposed charge, to a possible delegation to the Member States of the power to derogate from the prohibition on charges having equivalent effect and to the fact that the proceeds of the charge are not entered in the budget of the Community.

The questions spring from the consideration that the charges reintroduced by the directive can only be Community charges, since the introduction of new national charges on goods imported from third countries is clearly prohibited (judgment of 13 December 1973, Joined Cases 37 and 38/73 *Diamantarbeiders* [1973] ECR 1609).

Since they are charges which the Community has the power to introduce, they must be uniform and standard both as regards the amount and as regards the procedure and conditions for their imposition, otherwise they jeopardize the proper functioning of the common external tariff.

If the charge in question is indeed a Community charge, it must be governed by a Community instrument laying down the precise criteria and detailed rules therefor.

If the instrument authorizing Member States to reintroduce the charge does not lay down precise criteria and detailed rules it results in a delegation, and thus the reservation of competence to the Council prescribed in Article 20 (2) of Regulation No 805/68 is evaded. If it is indeed a question of a delegation to the Member States, its illegality is all the more patent since it amounts to giving the national authorities a free hand (judgment of the Court of Justice of 30 October 1975, Case 23/75 *Rey Soda* [1975] ECR 1279).

Finally, there is an additional ground for invalidity in the fact that the charge is levied and kept by the Member States, whereas if it were really a Community charge the proceeds of the charge should be entered in the budget of the Community.

In addition to these objections raised by the national court, the plaintiff in the main action also submits that the levying of the charges at issue violates the principle of non-discrimination and the principle of proportionality. There is

prohibited discrimination because the provisions at issue make the cost of the health inspections chargeable to "the consignor, the consignee or their agents", that is to say persons whose only connexion is that they are parties to the contract for the transport of the goods which are subjected to the inspection. Those persons were clearly chosen with the sole aim of guaranteeing payment upon the crossing of the frontier as effectively as possible. Insisting on the fact that the inspections are organized in the public interest, the plaintiff in the main action points out that Article 27 (6) of Directive No 72/462 provides that all the expenditure involved in checking the equipment at the frontier and inspection posts and in checking that the inspections are properly carried out "shall be borne by the Community". As to the observance of the principle of proportionality, the introduction of a health inspection charge is unjustified and alien to the health inspection system, and thus exceeds what is necessary in order to satisfy the public interest.

The fifth and sixth questions are asked in order to obtain a ruling from the Court that the health inspection arrangements introduced by the directive cannot be applied and have not been applied either at Community level or at national level, and in order to obtain an authoritative ruling as to the consequences of those facts.

The answer to both parts of the *fifth question* should be in the affirmative because of the uniformity and foreseeability required of a health inspection charge which is imposed by the Community and hence is not prohibited (judgment of 25 January 1977, Case 46/76 *Bauhuis* [1977] ECR 5).

If Article 32 of Directive No 72/462, laying down the time-table for the gradual implementation of the provisions of the directive, is to be interpreted in a manner compatible with the kind of health inspection arrangements which it was intended to introduce, each stage of the implementation of the Community system thus established must be preceded by the formulation of the various provisions necessary for its operation. It appears that none of these implementation measures has been adopted.

It follows that even if they wanted to, the Member States do not have the power or the right lawfully to compel traders to pay the charges relating to the health inspections.

On the *sixth question* the plaintiff considers that, first, by virtue of the prohibition on the levying of charges having equivalent effect which is contained in the regulations on the common organization of the markets, individual traders have a subjective right, which is directly conferred by the Community rules, not to pay the charge, and that, secondly, the Member States must refrain from levying charges having equivalent effect and hence health inspection charges. A measure having the same legal effect as a regulation is required in order to put an end to this legal situation. Such a measure could undoubtedly be contained in a provision of a directive, provided that it was directly applicable, otherwise it would be necessary to wait for the directive to be transposed into the national legal order.

In the present case neither of these two possibilities has occurred. Therefore the breach still exists, and this state of affairs justifies the trader's refusal to pay the charge at issue.

*B — Observations of the Italian Government*

After repeating its reservations as to the admissibility of a reference for a preliminary ruling made by an Italian court *ex parte* in the context of an application for a court order, the Italian

Government observes that the *first question*, as formulated, must be answered in the negative. It emerges from the case-law of the Court that there are two cases in which pecuniary charges imposed in respect of health inspections of goods imported from third countries do not constitute charges having an effect equivalent to customs duties, namely where they are the consideration for a service provided for the trader and where they are imposed within the framework of a general system of internal taxation.

In order to answer the *second question*, which in fact becomes devoid of purpose if the first question is answered in the negative, it suffices to state that the prohibitions laid down in Article 12 of Regulation No 14/64 and Article 20 (2) of Regulation No 805/68 took effect when the respective regulations entered into force.

The Italian Government considers that the four following questions may be answered together. Directive No 72/462 provides, in the common interest and by means of Community measures, for the compulsory and systematic inspection of bovine animals and swine and fresh meat from third countries, and also lays down as a uniform criterion that the expenditure incurred in respect of health inspections shall be chargeable to the various traders concerned. In no wise does it constitute an authorization to levy charges having an effect equivalent to customs duties, and its legality cannot be called in question.

The obligation on Member States to charge the expenditure resulting from health inspection to the traders concerned must be uniformly observed, in order to avoid any distortions of trade which might result from the existence of discrepancies between the legislation of Member States.

As it was intended to "harmonize" divergent national provisions, Directive No 72/462 regulated and did not "introduce" the financial charges resulting from health inspections. The judgment of the Court of Justice of 12 July 1977 in Case 89/76, *Commission* v *Netherlands* [1977] ECR 1355, confirms this point of view.

As to the need contemplated in the *fifth question* for additional Community measures concerning the determination of the amount of the charges and the procedure for payment thereof, it should be observed that the expenditure incurred in connexion with health inspections cannot be calculated as a single amount. All that could be established at Community level is that it is a matter of financing a service provided, which is the criterion adopted in the directive at issue for the purpose of determining the expenditure to be charged to traders. As the limits of traders' liability for the cost of the compulsory and systematic health inspection of goods imported from third countries are laid down at Community level, the determination of the charges to be paid is necessarily effected at national level.

The *sixth question* is relevant only where, at the time when the directive was adopted, national legislation did not already charge the expenditure incurred in connexion with health inspections to the traders concerned. On the other hand, by reason of the very objective of the Community directive, the question does not arise where national legislation already charges the cost of those inspections to individuals.

*C — Observations of the Commission*

The Commission observes, first, that pursuant to the time-limits laid down in Article 32 of Directive No 72/462, that directive is not applicable to the imports in question.

The Court of Justice has held that, in answering the question as to the application of charges having an effect equivalent to customs duties in trade

with third countries, account must be taken both of the requirements resulting from the establishment of the Common Customs Tariff and of those resulting from a common commercial policy, and it is for the Commission or the Council to evaluate these requirements in each case (judgment of 13 December 1973, Joined Cases 37 and 38/73 *Diamantarbeiders* [1973] ECR 1609).

Making use of that power, in Article 12 (2) of Regulation No 14/64 the Council prohibited the levying of any customs duty or charge having equivalent effect, other than as provided in the regulation itself, in respect of imports of beef and veal and bovine animals from third countries. That provision took effect on 1 November 1964 (judgment of 7 March 1972, Case 84/71 *Marimex* v *Italian Ministery for Finance* [1972] ECR 89, at p. 98). Article 20 (2) of Regulation No 805/68 repeated that prohibition whilst reserving power to the Council derogate therefrom.

After stating the definition of charges having an effect equivalent to customs duties as it emerges from the case-law of the Court, the Commission points out that according to recent judgments charges imposed in respect of health controls in intra-Community trade do not constitute charges having an effect equivalent to customs duties if they are imposed by a Community provision and have the effect of encouraging trade between Member States and if they do not exceed the actual cost of the inspection (judgment of 25 January 1977, Case 46/76 *Bauhuis* [1977] ECR 5; judgment of 12 July 1977, Case 89/76 *Commission* v *Netherlands* [1977] ECR 1355). As regards health controls on imports of beef and veal from third countries for the period prior to the entry into force of the measures laid down in Directive No 72/462, the relevant provision is Article 9 of Directive No 64/433 of 26 June 1964 (Official Journal, English Special Edition 1963-1964, p. 185) on health problems affecting *intra-Community* trade in fresh meat, according to which, pending the application of Community provisions relating to imports of fresh meat from third countries, national provisions relating to imports from third countries shall not be more favourable than those governing intra-Community trade.

The Commission's view is that the inspections of imports from third countries implied by that provision fulfil the conditions whereby, pursuant to the decision in *Bauhuis*, charges imposed in respect of health controls may be regarded as falling outside the definition of a charge having an effect equivalent to a customs duty. They are imposed by Community rules and have the effect of encouraging trade between Member States by protecting it from the harm which could be caused by the existence of health controls on intra-Community trade if similar measures were not also provided for goods imported from third countries.

Therefore charges imposed by a Member State in respect of expenditure on inspections organized in order to implement Article 9 of Directive No 64/433 do not constitute charges having an effect equivalent to customs duties.

Going on to analyse Directive No 72/462, in particular Articles 12 (8), 23 (4) and 26 whereby expenditure incurred in connexion with the health controls imposed by those provisions are chargeable to the consignor, the consignee or their agents, the Commission concludes that as the inspections are made compulsory and uniform by a Community directive in the general interest of the Community, the said charges cannot be regarded as charges having an effect equivalent to customs duties since they are merely compensation, which is financially and economically justified, for the obligations imposed on all the Member States equally by Community law

(judgment of 25 January 1977, Case 46/76 *Bauhuis* [1977] ECR 5).

The Commission adds that the imposition and levying of those charges would still be legal even if they did not fulfil the conditions laid down by the Court in the aforementioned judgment, since they were introduced by the Council in accordance with the procedure laid down in Article 43 (2) of the Treaty, as is permissible under Article 20 of Regulation No 805/68.

Therefore the answer to the *first two questions* is that, although as from 1 November 1964 pecuniary charges unilaterally imposed by a Member State in respect of the health inspection of imports of beef or veal or bovine animals are in principle to be regarded as charges having an effect equivalent to customs duties on imports unless such charges relate to a general system of internal taxation applied systematically in accordance with the same criteria to domestic products and imported products alike, that is not true of charges imposed in respect of inspections organized pursuant to Article 9 of Directive No 64/433, provided that the amount thereof does not exceed the amount of the actual expenditure incurred in connexion with such inspections.

The answer to the *third question* should be that Directive No 72/462, in particular Articles 23 (4) and 26 thereof, does not authorize the Member States to reintroduce health inspection charges on goods imported from third countries, but obliges them to charge to the consignor, the consignee or their agents the actual expenditure incurred in connexion with the inspections provided for in Article 23 (1) and Article 24 of the directive respectively. However, as regards the inspections referred to in Article 23 (1) and (3), the national measures ensuring the implementation of the obligation referred to in Article 23 (4) should be brought into force not later than 1 January 1976.

As to the *fourth and fifth questions* concerning the validity of Directive No 72/462 and the question whether Article 23 thereof on the recovery of inspection costs ought to be supplemented by Community or national implementing provisions, although the Commission considers that that directive does not apply to the imports at issue, it observes that the directive gives a sufficient statement of the grounds on which it is based; that the directive does not have to harmonize the pecuniary inspection charges, since the rule that those charges must not exceed the cost is sufficient in that connexion; that the directive does not comprise any prohibited delegation; that the directive does not contravene the Council decision of 21 April 1970 concerning the Community's own resources; and, finally, that the directive does not have to be supplemented by implementing measures.

The Commission suggests that the *sixth question* may be interpreted in two ways. It may be intended to ascertain whether traders are obliged to pay the cost of health inspections to a Member State if other Member States are not yet applying Articles 12 (8), 23 (4) and 26 of the directive, or to ascertain, whether traders are obliged to pay the cost of health inspections carried out pursuant to the directive if the Member State which purports to levy them is not applying other provisions of the directive.

In either case, the answer can only be in the affirmative. In no case do the situations envisaged involve the illegality of national provisions and national measures validly adopted in partial application of the directive, with which traders are therefore obliged to comply.

*D — Observations of the Council*

After recalling and describing the steps taken by the Council and the Commission with regard to preventive

health matters in trade in meat and animals, and having analysed the case-law of the Court, the Council observes that in its judgment of 9 July 1975 (Case 21/75 *Schroeder* [1975] ECR 905, at p. 914) the Court held that charges imposed in respect of a veterinary inspection of beef or veal from a third country constituted a charge having an effect equivalent to a customs duty incompatible with the prohibition on levying such charges laid down in Article 20 of Regulation No 805/68 on the common organization of the market in beef and veal.

However, the rule laid down in that judgment is not applicable in the case of charges imposed in respect of an inspection organized on a Community basis, which was not true of the *Schroeder* case, since although beef and veal preserves are covered by the organization of the market, they do not come within the ambit of Directive No 72/462/EEC, which concerns only fresh meat.

The Council considers that the Court should extend to health inspections on imports from third countries carried out on goods covered by Directive No 72/462/EEC those of its decisions which already accept, in the case of intra-Community trade, that charges for health inspections imposed (and organized) at Community level do not constitute charges having equivalent effect, provided that the amount thereof is limited to the expenditure incurred in connexion with the inspection.

Suggesting answers to the questions referred by the Italian court, the Council considers the *third question* first. It is of the opinion that Directive No 72/462/EEC authorizes the Member States to introduce charges levied under the new Community system or to retain under that Community system charges already existing on a national basis. Although the Member States are allowed a period up to 1 October 1973 or 1 January 1976, depending on the provisions which apply, within which to adopt the measures in view, it may be considered that the Member States were entitled to implement the directive as from the day when they received notice of it — 20 December 1972. The charges were rendered lawful from that date.

The first indent of the *fourth question* concerns the invalidity of the provisions of the directive which oblige the Member States to charge the cost of the inspections to the traders concerned, for lack of a statement of grounds for the derogation from Regulation No 805/68. The Council proposes that it should be answered that the inspection charge is different in kind from charges having equivalent effect, so that it was not necessary to "derogate" from that regulation, and hence to provide a statement of grounds for a derogation which did not exist. The *fifth question* asks whether Directive No 72/462/EEC must be supplemented by national or Community provisions relating to the procedure and conditions for payment of the charges. The Council considers that under the third paragraph of Article 189 of the Treaty, Directive No 72/462/EEC is exempt from the obligation to provide for everything in detail and may be executed by national implementing measures.

However, the judgments of the Court of Justice of 25 January 1977 and 12 July 1977 in Cases 46/76, *Bauhuis*, and 89/76, *Commission* v *Netherlands*, do not exclude the possibility that additional Community measures may be necessary if the Member States diverge overmuch in their application of the directive.

The answer to the *fifth question* also allows the reply to be made that the other factors which are mentioned in the *fourth question* cannot result in the invalidity of Articles 12 (8), 23 (4) and 26 of the directive, as well as allowing

the *sixth question* to be answered in the affirmative.

The answer to the question concerning "own resources" *(fourth indent of the fourth question)* should be that the fact that Directive No 72/462/EEC leaves it to the Member States to decide on the means of fulfilling their obligations thereunder means that the proceeds of the charges to be introduced do not necessarily have to be entered in the budget of the Community and may remain within the national framework.

Finally, there remains the problem, raised in the *second question*, of the status of charges for inspections carried out on imports of beef and veal prior to the implementation of Directive No 72/462 — which is what occurred in relation to the first of the importations at issue. Could a Community inspection which did not yet exist justify the imposition of charges in respect of those inspections? In support of a solution different from that adopted in the judgment of 9 July 1975 *(Schroeder)*, the Council argues: (a) that veterinary inspection charges cannot be treated in the same way as charges having equivalent effect, as they are of a completely different nature; (b) that the Member States are prohibited from applying in their trade with third countries provisions more favourable than those governing their intra-Community trade (Article 9 of Directive No 64/433/EEC); and (c) that according to the case-law of the Court (paragraphs 43 to 46 of the Decision in the judgment of 25 January 1977 in Case 46/76 *Bauhuis* [1977] ECR 5, at pp. 19-20), for the period prior to the introduction of a Community inspection system, inspections could lawfully be carried out on the basis of Article 36 of the Treaty.

At the hearing on 16 November 1977, oral argument was presented by the plaintiff in the main action, represented by E. Cappelli, the Italian Government, represented by A. Marzano, the Commission of the European Communities, represented by its Agent, G. Campogrande, and the Council of the European Communities, represented by its Agent, C. Giorgi.

The Advocate General delivered his opinion at the hearing on 21 February 1978.

## Decision

By an order of 28 May 1977, which was received at the Court Registry on 6 June 1977, the Pretura, Alessandria, referred various questions under Article 177 of the EEC Treaty concerning, first, the interpretation of Article 12 (2) of Regulation No 14/64 of the Council of 5 February 1964 on the progressive establishment of a common organization of the market in beef and veal (Journal Officiel of 27 February 1964, p. 562) and Article 20 (2) of Regulation 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) and, secondly, the interpretation and validity of several provisions of Council Directive No 72/462 of 12 December 1972 on health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat from third countries

(Official Journal, English Special Edition 1972 (31 December); Journal Officiel L 302, p. 28).

2 Those questions are asked in the context of an application brought before the Pretura, Alessandria, by Simmenthal S.p.A. for an order under Article 633 *et seq.* of the Codice di Procedura Civile (Italian Code of Civil Procedure) for the repayment of two sums of money, Lit 128 370 and Lit 186 765, levied by the Italian authorities as inspection charges (diritti di visita) in respect of health inspections to which two consignments of frozen beef from a third country were subjected upon importation into Italy, the first consignment on 29 November 1971 and the second on 11 January 1973.

3 The plaintiff in the main action argues that the charges at issue are charges having an effect equivalent to customs duties, the levying of which is incompatible with Article 12 (2) of Regulation No 14/64 and Article 20 (2) of Regulation No 805/68, which both prohibit, subject to the exceptions and derogations for which they make provision, the levying of any customs duty or charge having an effect equivalent to a customs duty on imports into the Community from a third country of fresh, chilled or frozen meat of domestic bovine animals.

*Admissibility of the reference for a preliminary ruling*

4 The Government of the Italian Republic has raised the question whether a case may be referred to the Court of Justice for a preliminary ruling in the course of an application for a court order brought before the Italian Pretura by an individual against an administrative authority.

5 It makes the point that such a procedure has not the characteristics of a normal defended action inasmuch as the court adjudicates simply on the basis of allegations presented by the plaintiff and can make an order against the other party without having given him the opportunity to present his observations.

6 The proceedings are contested only if the party against whom the order is made raises objections to the decision.

7 It is said to follow that in the course of the proceedings only one of the parties to the main action is able to submit observations on the expediency of a reference for a preliminary ruling or, if need be, to take part or collaborate with the national court in drawing up the questions to be referred to the Court of Justice, whereas the other has no such opportunity and before the Court of Justice can neither alter nor add to the questions referred.

8 According to Article 177 of the Treaty, the procedure regarding preliminary rulings is open to any national court or tribunal.

9 It is sufficient to determine, as has moreover previously been decided, that in hearing the application for the grant of an order, the Pretura is exercising the functions of a court or tribunal within the meaning of Article 177 and that an interpretation of Community law has been considered by that court as essential for it to arrive at a decision, without its being necessary for the Court of Justice to consider the stage of the proceedings at which the question was put.

10 Nevertheless, although Article 177 does not make the reference to the Court subject to whether the proceedings during which the national court draws up the reference for a preliminary ruling were defended, it may where necessary prove to be in the interests of the proper administration of justice that a question should be referred for a preliminary ruling only after both sides have been heard.

11 However, it is for the national court alone to assess whether that is necessary.

## Substance

### *The first question*

12 The first question asks whether Article 12 (2) of Regulation No 14/64 and Article 20 (2) of Regulation No 805/68 are to be interpreted as meaning that any pecuniary charge whatever imposed in a Member State in respect of a veterinary and public health inspection and levied at the frontier on bovine animals and meat imported from third countries constitutes a charge having an effect equivalent to a customs duty.

13 That question is intended to ascertain whether the prohibitions laid down in those two provisions on the levying of charges having equivalent effect extend to pecuniary charges levied in respect of health inspections carried out on bovine animals and meat imported from third countries.

14 In its judgment of 7 March 1972 (Case 84/71 *Marimex* [1972] ECR 89, at p. 97), the Court ruled that the concept of a charge having an effect equivalent to a customs duty has, in Article 12 (1) and (2) of Regulation No 14/64 and Article 20 (2) of Regulation No 805/68, the same meaning as in Article 9 *et seq.* of the Treaty.

15 Accordingly, pecuniary charges, whatever their amount, imposed by reason of veterinary or public health inspections of bovine animals and meat imported from third countries are to be regarded as charges having an effect equivalent to customs duties within the meaning of Article 12 (2) of Regulation No 14/64 and Article 20 (2) of Regulation No 805/68, unless they relate to a general system of internal taxation applied systematically in accordance with the same criteria and at the same stage of marketing to domestic products and imported products alike.

*The second question*

16 In the event of the first question being answered in the affirmative, it is then asked on what date the prohibition on the levying of such pecuniary charges took effect.

17 The answer must be that, as the Court has already found in its judgment of 7 March 1972 (Case 84/71 *Marimex* [1972] ECR 89 at p. 98), the provisions of Article 12 (1) and (2) of Regulation No 14/64 took effect on 1 November 1964, and those of Article 20 (2) of Regulation No 805/68 on 29 July 1968.

*The third and fourth questions*

18 The third and fourth questions ask whether Council Directive No 72/462 of 12 December 1972, in particular Articles 12 (8), 23 (4) and 26 thereof, authorizes the Member States to "reintroduce health inspection charges" and, where appropriate, with effect from what date (third question), and, if so, whether that directive, in particular the above-mentioned articles, must therefore be regarded as being valid (fourth question).

19 Considered in the light of Article 12 of Regulation No 14/64 and Article 20 of Regulation No 805/68, those questions are intended to ascertain whether the stated articles of Directive No 72/462 constitute exceptions or derogations within the meaning of the said Articles 12 (2) and 20 (2) from the general principle of the prohibition on the levying of charges having equivalent effect which is laid down in those provisions, and, if so, whether those regulations could validly provide for a power to make an exception to or to derogate from that prohibition.

20 It is necessary to examine first whether the Council and, where appropriate, the Commission may, in the regulations which they adopt, provide for exceptions or derogations of that nature.

21 Where the elimination of charges having an effect equivalent to customs duties is applied to trade with third countries, its objectives and legal basis are different from those which underlie and justify the prohibition of such charges in intra-Community trade.

22 In so far as intra-Community trade is concerned, the prohibition is laid down in Article 9 of the Treaty itself, and is unconditional and absolute because it is designed to establish free movement of goods within the Community.

23 On the other hand, in so far as trade with third countries is concerned, the question whether it is necessary to abolish, maintain, amend or introduce charges having equivalent effect must be related both to the requirements of the common commercial policy and to the requirements, consequent upon the introduction of the Common Customs Tariff, of harmonization of conditions of importation from third countries.

24 In view of these differences, it is not possible to apply to trade with third countries the principles stated by the Court in its judgment of 25 January 1977 (Case 46/76 *Bauhuis* [1977] ECR 5) according to which the description of charges having equivalent effect, within the meaning of Articles 9, 12 and 13 of the Treaty, does not apply to health inspection charges levied in order to cover the cost of uniform inspections, imposed by a Community regulation or directive, in the exporting Member State, which constitute steps to abolish obstacles to trade between Member States in that they are intended to make inspections at frontiers within the Community unnecessary.

25 In fact, these considerations do not apply as regards pecuniary charges relating to inspections of products from third countries, where it is a question not of abolishing the charges but rather of making them uniform and where the prohibition, maintenance, amendment or introduction of charges having equivalent effect are based both on a concern to harmonize charges at the external frontiers of the Community and on considerations of common commercial policy.

26 It follows from the same considerations that the prohibitions is not absolute in so far as trade with third countries is concerned, and that when they impose that prohibition the Council or, where appropriate, the Commission may make exceptions or derogations from it.

27 However, it follows from consideration of the objectives mentioned that in the case of pecuniary charges levied in addition to customs duties introduced by the Community the intrinsic effect of such charges on the relevant trade with third countries must be uniform in all the Member States.

28 Accordingly, the Council has not in any respect infringed the Treaty or the rules adopted for its implementation by providing in Article 12 (2) of Regulation No 14/64 and Article 20 (2) of Regulation No 805/68 that such exceptions or derogations might be made.

29 Therefore it is necessary to consider whether the charges having equivalent effect to which the national court refers come under one of the exceptions or derogations provided for in the regulations cited.

30 Article 12 (2) of Regulation No 14/64 provides that: "In respect of imports from third countries, the following shall be incompatible with the application of the present regulation: the charging of any customs duty or charge having equivalent effect, other than as provided in the present regulation . . .".

31 However, in so far as health inspection charges are concerned, that regulation does not itself provide for any exception to the prohibition which it lays down.

32 Nevertheless, it is to be observed that that regulation was repealed with effect from 29 July 1968 and replaced by Regulation No 805/68.

33 Article 20 (2) of Regulation No 805/68, which is part of Title II of that regulation concerning trade with third countries, provides that: "Save as otherwise provided in this regulation or where derogation therefrom is decided by the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, the following shall be prohibited: the levying of any charge having effect equivalent to a customs duty . . .".

34 Although Regulation No 805/68 contains no exception relating to health inspection charges, it must be considered whether the existence of a derogation such as that indicated in Article 20 (2) may be inferred from other provisions.

35 In fact the third and fourth questions asked by the referring court are essentially designed to ascertain whether Articles 12 (8), 23 (4) and 26 of Directive No 72/462 contain such a derogation.

36 Council Directive No 72/462 of 12 December 1972 (Official Journal, English Special Edition, 1972 (31 December); Journal Officiel L 302, p. 28) on health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat from third countries provides for the organization of a uniform health inspection, the detailed rules for which are to be established by the Council, the Commission or the Member States, as the case may be.

37 Article 12 (1) and (7) and Articles 23, 24 and 25 of the directive place a duty on Member States to carry out a health inspection upon importation of animals (Article 12) and fresh meat (Articles 23, 24 and 25), and Articles 12 (8), 23 (4) and 26 provide that the expenditure incurred pursuant to the articles in question "shall be chargeable to the consignor, the consignee or their agents, without repayment by the State".

38 In providing that the expenses of the veterinary and public health inspections at issue must be charged to the traders specified, those provisions do not prohibit the attribution of those expenses from being effected by means of the imposition of charges, provided that the latter do not exceed the actual cost of the inspections.

39 Thus they constitute a derogation, within the meaning of Article 20 of Regulation No 805/68, from the prohibition placed by that provision on the levying of charges having equivalent effect.

40 However, in order to enable those derogations to take effect, the inspections of which they are designed to cover the costs must have been organized in accordance with the directive and applied by the Member States concerned.

41 In fact, each of the provisions referred to clearly states that the expenditure which is to be recovered is that incurred pursuant to Articles 12, 23, 24 and 25 of the directive.

42 Article 32 of Directive No 72/462 provides that:

"1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive and its annexes:

(a) not later than 1 October 1973 as regards the provisions of Article 23 (1) and (3) (a), (b) and (c);

(b) not later than 1 January 1976 as regards all the other provisions, except those which make provisions for a Community procedure.

2. They shall comply with provisions involving a Community procedure laid down by the directive not later than 1 January 1977. However a minimum of two years must pass between the adoption of the measures adopted under these provisions and the date mentioned above."

43 Furthermore, Article 32 (3) of the directive provides that:

"On the date laid down in paragraph (2), Articles 4 and 11 of the Council Directive of 26 June 1964, on animal health problems affecting intra-Community trade in bovine animals and swine, and Article 9 of the Council Directive of 26 June 1964, on health problems affecting intra-Community in fresh meat, shall be revoked."

44 Thus, as is indicated moreover in the last recital in the preamble to Directive No 72/462, a large number of the provisions of that directive

cannot be implemented until the necessary measures have been taken by the Community authorities, particularly in the context of the Standing Veterinary Committee procedure which is referred to in Articles 29 and 30 of the directive.

45 The implementation of the veterinary and public health inspections relating to animals and fresh meat from third countries provided for in Article 12, 23, 24 and 25 of the directive requires — at all events in so far as it concerns trade and transport other than transit through the Community from one third country to another third country — various implementing measures to be adopted by the competent Community authorities.

46 Thus, according to the first indent of Article 23 (2), the inspection must show that the meat comes from a territory or part of a territory of a third country included on the list referred to in Article 3, drawn up by the Council and published in the Official Journal, whilst according to the third indent of Article 23 (2) the meat must be accompanied by an animal health certificate which is in conformity with a specimen drawn up after obtaining the opinion of the Standing Veterinary Committee and by a public health certificate complying with Annex C to the directive.

47 Furthermore, Article 4 of the directive provides that the list of third countries must be supplemented by a list of the establishments in those countries (slaughterhouses, cutting plants and cold stores) from which the Member States may authorize importation of fresh meat.

48 Article 16 provides that meat may be imported only if it complies with the health requirements to be adopted in accordance with the Standing Veterinary Committee procedure.

49 According to Article 24 (1), each batch of fresh meat must be subjected to a public health inspection on importation and to an animal health inspection carried out by an official veterinarian, and according to Article 24 (3), "the implementing rules necessary to ensure that the inspections referred to in paragraph (1) are carried out in a uniform way" shall be adopted in accordance with the procedure laid down in Article 29.

50 Finally, Article 27 provides that the Member States shall draw up and communicate to the Commission lists of the inspection posts for the

importing of animals and fresh meat, and that those posts must be approved in accordance with the Standing Veterinary Committee procedure.

51 Although it appears that the list referred to in the second indent of Article 23 (2) has been drawn up, at all events it has not been published in the Official Journal, and according to the statements of the Commission the implementing measures mentioned above have not yet been adopted, so that implementation of Articles 12, 23, 24 and 25 of the directive is not possible.

52 It follows from these considerations that, since the conditions laid down by Directive No 72/462 itself as the basis for the imposition of health inspection charges by way of derogation from the prohibition on the levying of charges having equivalent effect have not been fulfilled, at the present stage of its implementation that directive cannot justify the imposition of the said charges.

53 Moreover, it is not possible to accept the argument that, by applying the national animal health legislation in force at the time when the directive was adopted, the Member States were in some sense applying the directive in anticipation, in that, for the purposes of public health, the inspection carried out pursuant to that legislation in fact offer guarantees similar to those which the directive is intended to achieve.

54 In fact, the purpose of the directive is not to reinforce the arrangements for the protection of public health in the Member States, but to ensure the uniformity of the inspection systems with a view to preventing distortions of competition and deflections of trade within the Common Market.

55 Therefore the answer to the third and fourth questions must be as follows:

(a) The Council does not infringe any provision of Community law by providing in the regulations which it adopts, in particular in Article 12 (2) of Regulation No 14/64 and Article 20 (2) of Regulation No 805/68, for the possibility of making exceptions or derogations — to be drawn up in a form determined by the Council — from the prohibition on the levying of charges having equivalent effect in trade with third countries, provided however that the intrinsic effect of those charges on the relevant trade with third countries is uniform in all the Member States.

(b) Although, as regards expenditure on health inspection of imports of animals and fresh meat from third countries, Articles 12 (8), 23 (4) and 26 of Directive No 72/462 provide for derogations from the prohibition on the levying of charges having equivalent effect which is laid down in Article 20 of Regulation No 805/68, those derogations can take effect only after the Member States have been given the opportunity to organize as prescribed in the directive the inspections referred to in Articles 12, 23, 24 and 25 thereof.

*The fifth and sixth questions*

56 The answers given to the third and fourth questions render consideration of the other questions purposeless.

57 However, in order to provide the national court with an appropriate answer for the purpose of the application of Community law in the dispute before it, it must be considered whether an exception or derogation such as provided for in Article 12 (2) of Regulation No 14/64 and Article 20 (2) of Regulation No 805/68 should not be recognized on the basis of other provisions of Community law.

58 In this connexion, the Commission has referred to Article 9 of Directive No 64/433 of 26 June 1964 (Official Journal, English Special Edition 1963-1964, p. 185) on health problems affecting intra-Community trade in fresh meat, according to which: "If the Community provisions relating to importation of fresh meat from third countries do not apply at the time when this directive enters into force, or pending their becoming applicable, national provisions relating to imports from those countries shall not be more favourable than those governing intra-Community trade".

59 Although the said Article 9 is part of a directive on health inspections in intra-Community trade in fresh meat, its specific purpose is to lay down, on a provisional basis pending the implementation of the Community system for imports of fresh meat from third countries, a rule applicable to the national arrangements remaining in force in order to prevent their being less strict or less onerous than the inspection arrangements laid down in the directive for intra-Community trade.

60 That rule is clearly intended to ensure that traders who put on the market fresh meat originating within the Community should not be treated less

favourably than their competitors who import meat from third countries, and it therefore refers not only to the charges imposed in respect thereof.

61 The same rule is expressed in the Council Resolution of 12 March 1968 (Official Journal, English Special Edition, Second Series, Vol. IX, p. 19) on Community measures to be taken in the veterinary sector, in Article 11 of Council Directive No 64/432 of 26 June 1964 (Official Journal, English Special Edition 1963-1964, p. 164) on animal health problems affecting intra-Community trade in bovine animals and swine, in Article 15 of Council Directive No 71/118 of 15 February 1971 (Official Journal, English Special Edition 1971 (I), p. 106) on health problems affecting trade in fresh poultrymeat and in Article 17 of Council Directive No 77/99 of 21 December 1976 (Official Journal 1977 L 26, p. 85) on health problems affecting intra-Community trade in meat products.

62 The rule was also repeated in 1972, in Article 11 of Council Directive No 72/461 of 12 December 1972 (Official Journal, English Special Edition 1972 (31 December); Journal Officiel L 302, p. 24) on health problems affecting intra-Community trade in fresh meat, supplementing Directive No 64/433.

63 According to the last recital in the preamble to Directive No 72/461, the provision in question is intended to set down "in this directive the general principle of non-discrimination; whereas it should accordingly be expressly laid down, pending specific Community rules covering imports from third countries, that the treatment to be applied to third countries by each Member State should not be more favourable than the treatment applied, pursuant to this directive, to trade between the Member States".

64 Finally, it should be pointed out that the rule is expressly referred to in Article 32 (3) of Directive No 72/462, cited by the Pretura, Alessandria, which provides that Article 9 of Directive No 64/433 shall remain in force until such time as the Member States are able to implement the provisions of the directive "involving a Community procedure".

65 It follows from these considerations that, as regards veterinary and public health inspections of fresh meat from third countries, Article 9 of Directive No 64/433 in conjunction with Article 20 (2) of Regulation No 805/68 derogates from the prohibition on the imposition of health inspection charges to the extent necessary to ensure non-discriminatory treatment, on

the one hand, of traders who put fresh meat on the market in intra-Community trade and thereby become liable to pay health inspection charges in the exporting Member State and, on the other hand, of those who import from third countries, provided that those charges do not exceed the actual cost of the inspections.

66 Although, on a literal interpretation of Article 12 (2) of Regulation No 14/64, that regulation could not strictly be said to lay down an exception, it cannot be accepted that by using the words "the present regulation" the Council intended to exclude Regulation No 14/64 alone from the application of a rule which it has taken care to repeat in a large number of provisions of the same kind.

67 The intention to maintain the principle of non-discrimination expressed in Article 9 of Directive No 64/433 is confirmed by Article 6 of Council Directive No 77/98 of 21 December 1976 (Official Journal L 26 of 31 January 1977, p. 81) amending *inter alia* Article 33 of Directive No 72/462, which in its amended version provides that when Articles 8 and 16 of Directive No 72/462 are being applied, the Community provisions to be adopted in the context of trade with third countries must lay down health requirements "at least as strict as those which the ... Member States apply in the framework of intra-Community trade".

68 This is the answer which must be given to the national court.

## Costs

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

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

On those grounds,

THE COURT

in answer to the questions referred to it by the Pretura, Alessandria, by an order of 28 May 1977, hereby rules:

1. **Pecuniary charges, whatever their amount, imposed by reason of veterinary or public health inspections of bovine animals and meat imported from third countries are to be regarded as charges having an effect equivalent to customs duties within the meaning of Article 12 (2) of Regulation No 14/64 and Article 20 (2) of Regulation No 805/68, unless they relate to a general system of internal taxation applied systematically in accordance with the same criteria and at the same stage of marketing to domestic products and imported products alike.**

2. **The provisions of Article 12 (1) and (2) of Regulation No 14/64 took effect on 1 November 1964, and those of Article 20 (2) of Regulation No 805/68 on 29 July 1968.**

3. (a) **The Council does not infringe any provision of Community law by providing in the regulations which it adopts, in particular in Article 12 (2) of Regulation No 14/64 and Article 20 (2) of Regulation No 805/68, for the possibility of making exceptions or derogations — to be drawn up in a form determined by the Council — from the prohibition on the levying of charges having equivalent effect in trade with third countries, provided however that the intrinsic effect of those charges on the relevant trade with third countries is uniform in all the Member States.**

   (b) **Although, as regards expenditure on health inspection of imports of animals and fresh meat from third countries, Articles 12 (8), 23 (4) and 26 of Directive No 72/462 provide for derogations from the prohibition on the levying of charges having equivalent effect which is laid down in Article 20 of Regulation No 805/68, those derogations can take effect only after the Member States have been given the opportunity to organize as prescribed in the directive the inspections referred to in Articles 12, 23, 24 and 25 thereof.**

4. **As regards veterinary and public health inspections of fresh meat from third countries, Article 9 of Council Directive No 64/433 in conjunction with Article 12 (2) of Regulation No 14/64 and Article**

**20 (2) of Regulation No 805/68 derogates from the prohibition on the imposition of health inspection charges to the extent necessary to ensure non-discriminatory treatment, on the one hand, of traders who put fresh meat on the market in intra-Community trade and thereby become liable to pay health inspection charges in the exporting Member State and, on the other hand, of those who import from third countries, provided that those charges do not exceed the actual cost of the inspections.**

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 28 June 1978.

A. Van Houtte
Registrar

H. Kutscher
President

## OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 21 FEBRUARY 1978

*My Lords,*

In this case the Court is once again confronted with questions as to the lawfulness of charges imposed in Italy for the veterinary inspection of imported meat. The case comes before the Court by way of a reference for a preliminary ruling by the Pretore of Alessandria.

On 29 November 1971 and on 11 January 1973, Simmenthal S.p.A., the Plaintiff in the proceedings before the Pretore, imported consignments of Uruguyan frozen beef into Italy. It cleared them through customs at Alessandria. Pursuant to Article 32 of the Italian Statute of 27 July 1934 consolidating Italian public health legislation (the "testo unico delle leggi sanitarie", G.U. No 186 of 9 August 1934, the beef was subjected, on its arrival in Italy, to veterinary inspection. For such inspections charges were prescribed by Statute No 1239 of 30 December 1970 (G.U. No 26 of 1 February 1971). They amounted to Lit 128 370 for the first consignment and to Lit 186 775 for the second. Those sums were paid by the Plaintiff to the Amministrazione delle Finanze dello Stato, which is the Defendant in the proceedings before the Pretore. In those proceedings the Plaintiff seeks