valid for the whole of the Community, before the goods are dispatched to other Member States. Common rules on the levying of health inspection charges are compatible with the rules of the Treaty provided that the amount of the charges is sufficiently closely related to the actual cost of the inspections.

2. The health inspection of goods imported from non-member countries is carried out in a different factual and legal context from the inspection of goods originating in the Community. In such a context the levying of health inspection charges by the Member States does not appear to be prohibited in principle, provided, however, that there is a sufficiently close connection between the amount of those charges and the actual cost of the inspections.

3. Article 11 of Directive 72/461 on health problems affecting intra-Community trade in fresh meat permits the levying on imports of fresh meat from non-member countries of a charge to cover the cost of issuing an authorization to import based on the national legislation on health controls, provided that there is a sufficiently close connection between the amount of the charge levied and the cost of the controls.

The legality of the levying of a charge for health controls on fresh meat imported from non-member countries cannot be subject to the proof of the existence of comparable charges in all the other Member States of the Community, if the amount of the charge corresponds to the cost of the controls.

In Case 1/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bayerisches Verwaltungsgericht München [Bavarian Administrative Court, Munich], for a preliminary ruling in the proceedings pending before that court between

IFG INTERCONTINENTALE FLEISCHHANDELSGESELLSCHAFT MBH & CO. KG, an undertaking trading in meat and having its registered office in Munich,

and

FREISTAAT BAYERN [Free State of Bavaria],

on the interpretation of Council Directive 72/461/EEC of 12 December 1972 on health problems affecting intra-Community trade in fresh meat, in relation to the charging of a national fee for the issue of an authorization to import,

THE COURT

composed of: J. Mertens de Wilmars, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, G. Bosco, O. Due, U. Everling and C. Kakouris, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

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

Article 20 (2) 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 that, save as otherwise provided in the regulation or where derogation therefrom is decided by the Council, the levying of any charge having an effect equivalent to a customs duty and the application of any quantitative restriction or measure having equivalent effect are to be prohibited.

Regulation (EEC) No 2759/75 of the Council of 29 October 1975 on the common organization of the market in pigmeat (Official Journal L 282, p. 1) contains a virtually identical provision in Article 17 (2), which also prohibits charges having an effect equivalent to customs duties and quantitative restrictions or measures having equivalent effect.

Health problems affecting intra-Community trade in fresh meat are the subject of Council Directive 72/461/EEC of 12 December 1972 (Official Journal, English Special Edition 1972 (31 December), p. 3, corrigenda published in the Consolidated Edition of Corrigenda 1952-72 of July 1975). That directive provides for a system for controlling the consignment of meat in the exporting country. Article 11 of the directive provides that, until Community provisions relating to importation of fresh meat from non-member countries are implemented, national provisions relating to fresh meat imported from those countries are not to be more favourable than those resulting from the directive.

Council Directive 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), p. 7) provides in Articles 22 to 25 for a Community system of animal and public health inspections. As regards the periods prescribed for the implementation of the directive, Article 32 (2) provides that the Member States are to comply with the provisions involving a Community procedure laid down by the directive not later than 1 January 1977.

The implementation of the Community inspection procedure requires the adoption by the competent Community authorities of a number of implementing measures.

Thus the list provided for in Article 3 of Directive 72/462 of non-member countries from which the Member States authorize imports was drawn up by Council Decision 79/542/EEC of 21 December 1976 [sic] (Official Journal 1979 L 146, p. 15); the animal health conditions to which imports must, according to Article 16, be subject were laid down, in particular in relation to Romania, by Commission Decision 82/132/EEC of 4 February 1982 (Official Journal L 60, p. 16); the list of establishments approved for the purpose of the importation of fresh meat into the Community, provided for in Article 4, was drawn up, as regards Romania, by Commission Decision 83/218/EEC of 22 April 1983 (Official Journal L 121, p. 23).

Prior to the publication of those implementing measures under Directive 72/462, IFG Intercontinentale Fleischhandelsgesellschaft mbH & Co. KG [hereinafter referred to as "IFG"], an undertaking established in Munich, specializing in the importation into the Federal Republic of Germany of fresh beef and pigmeat from non-member countries, had in December 1977, pursuant to Paragraph 7 (1) of the Klauentiere-Einfuhrverordnung [German Order on the importation of ungulates] as published on 30 August 1972 (BGBl. I, p. 1593) and subsequently amended, requested veterinary health authorization for the importation of meat from Romania. According to Paragraph 15 (1) 1 of the Order, such authorization is to be issued where there is no reason to fear the introduction or spread of epizootic diseases.

By decision of 19 December 1977, the Bavarian State Ministry for the Interior granted IFG authorization to import 1 000 tonnes of beef and pigmeat from Romania. The Bavarian authorities, pursuant to the Bayerisches Kostengesetz [Bavarian Law on Costs] as published on 25 June 1969 (Gesetz- und Verordnungsblatt, p. 165) and most recently amended by the Law of 14 April 1980 (Gesetz- und Verordnungsblatt, p. 179), charged a fee of DM 856 in respect of the importation.

That charge was levied on the basis of the following provisions of the Kostengesetz:

Paragraph 1 (1):

"The State authorities shall charge costs (fees and expenses) in accordance with the provisions of this chapter, in respect of duties performed by them in pursuance of their official powers, (administrative acts) . . ."

Paragraph 2 (1):

"Costs shall be payable by the person at whose instance the official act was performed and by the person in whose interests it was performed . . ."

Paragraph 6 (1):

"The amount of the fees shall be calculated according to a schedule of costs . . ."

Paragraph 8:

"In fixing the basic fees, the authority shall take into account in particular the administrative expense involved in the performance of the administrative act on

the part of the authorities and departments concerned in connection therewith, the importance of the matter for the persons concerned and the economic circumstances of the person to whom the costs are chargeable".

IFG challenged the fee levied against it on the ground that it was a charge having an effect equivalent to a customs duty, prohibited by Article 20 (2) of Regulation No 805/68 and Article 17 (2) of Regulation No 2759/75.

The Free State of Bavaria for its part, whilst not disputing that the contested fee constitutes a charge having an effect equivalent to a customs duty, considers that it is justified in the light of Article 11 of Directive 72/461. Since many charges are levied in intra-Community trade, the charge at issue is needed in order to prevent discrimination against intra-Community trade.

On 2 January 1978, IFG brought an action before the Verwaltungsgericht München [Administrative Court, Munich] challenging the fee imposed upon it and certain restrictions by which the authorization to import was accompanied.

The Verwaltungsgericht ordered that the other matters in dispute be tried as a separate issue and took note of the fact that the authorization fee had been reduced to DM 100, the sole amount still in dispute, by an administrative decision of 24 July 1980.

By order of the Ninth Chamber of 27 October 1982, the Verwaltungsgericht decided to stay the proceedings until the Court of Justice had given a preliminary ruling under Article 177 of the EEC Treaty on the following questions:

"1. Does Article 11 of Council Directive 72/461/EEC of 12 December 1972 on health problems affecting intra-Community trade in fresh meat (Official Journal, English Special Edition 1972 (31 December), p. 3 — corrigenda published in the Consolidated Edition of Corrigenda 1952-72 of July 1975) permit the charging of a fee to cover the cost of issuing an import authorization under Paragraphs 7 and 15 of the Klauentiere-Einfuhrverordnung [Order on the importation of ungulates] as published on 30 August 1972 (BGBl. I p. 1363) and most recently amended by Order of 5 April 1976 (BGBl. I p. 914)?

2. If the answer to Question 1 is in the affirmative: Does the legality of the charging of such a fee depend on whether comparable charges are levied in all Member States of the Community in trade with non-member States?"

The order of the Verwaltungsgericht München was lodged at the Court Registry on 4 January 1983.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 8 March 1983 by the Commission of the European Communities, represented by Jörn Sack and Bernhard Jansen, members of its Legal Department, on 22 March by IFG, the plaintiff in the main action, represented by Dietrich Ehle, Rechtsanwalt of Cologne, on 30 March 1983 by the Government of the Federal Republic of Germany, represented by Jochim Sedemund, Rechtsanwalt of Cologne, and on 7 April 1983 by the Government of the Italian Republic, represented by Arnaldo Squillante, Head of the Department for Contentious Diplomatic Affairs, Treaties and Legislative Matters in the Ministry of Foreign Affairs, assisted by Sergio Laporta, Avvocato dello Stato.

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 Government of the Federal Republic of Germany to reply in writing to a question; that reply was received within the period prescribed.

II — Written observations submitted to the Court

According to the *plaintiff in the main action,* the charging of a fee for the issue of an authorization to import is incompatible with the prohibition of charges having an effect equivalent to customs duties laid down in Article 17 (2) of Regulation No 2759/75 and Article 20 (2) of Regulation No 805/68.

Such a fee cannot be based on Article 11 of Directive 72/461; that provision is not applicable in this case and does not confer authority to levy charges of this kind. Nor can the contested fee be justified by Directive 72/462 on imports of meat from non-member countries. Moreover, the charging of the fee is a breach of the prohibition of discrimination under Community law.

(a) First question

The charging of a fee for the issue of an authorization to import constitutes a charge having an effect equivalent to a customs duty, prohibited in trade with non-member countries by Article 17 (2) of Regulation No 2759/75 and Article 20 (2) of Regulation No 805/68. Derogations from that prohibition are permitted only if they are provided for in the regulations themselves or are decided upon by the Council, acting by a qualified majority on a proposal from the Commission.

With regard to the first question submitted to the Court, it is necessary only to decide whether Article 11 of Directive 72/461 permits the charging of the contested fee.

The legality of the charging of the fee cannot be evaluated on the basis of Article 11 of Directive 72/461: health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat from non-member countries are governed exclusively by Directive 72/462. As a result of the expiry of the period prescribed in Article 32 (2) of the directive and the failure to implement the directive, it has since become directly applicable. It is true that the Court stated in its judgment of 28 June 1978 in Case 70/77 *(Simmenthal* v *Amministrazione delle Finanze dello Stato,* [1978] ECR 1453) that, in the absence of implementing measures, certain provisions of that directive were not yet applicable. However, the continuing failure to act on the part of the Community and national authorities can no longer be tolerated; in the interests of uniformity and harmonization in that sector, the Court ought to declare Directive 72/462 directly applicable. Account should be taken of Article 32 (3) of the directive, which provides in detail for the earlier rules to be revoked, without making such revocation conditional upon positive action on the part of the Community authorities or Member States to implement the new rules.

Directive 72/462, which is of exclusive application in this case, does not itself contain any provision which may be relied upon in support of the charging of fees for the issue of an import authorization.

Furthermore, Article 11 of Directive 72/461, even if it were applicable, does

not expressly authorize the Member States to charge fees for the issue of authorizations to import in trade with non-member countries. Nor can any such right be inferred indirectly from it. The prohibition of discrimination in intra-Community trade contained in Article 11 can be interpreted only as meaning that, until a Community scheme is applied, the national provisions relating to imports of fresh beef and pigmeat from non-member countries are not to be more favourable than those applicable in intra-Community trade. That prohibition of discrimination does not authorize the adoption of measures which are "below the threshold of what is favourable" or do not exist in intra-Community trade.

That interpretation of Article 11 of Directive 72/461 is not incompatible with the judgment of the Court of 22 January 1980 in Case 30/79 *(Land of Berlin* v *Wigei,* [1980] ECR 151), concerning Article 15 of Council Directive 71/118/EEC of 15 February 1971 on health problems affecting trade in fresh poultry meat (Official Journal, English Special Edition 1971 (I), p. 106): those two provisions are fundamentally different. According to Article 11, national provisions applicable to imports from non-member countries must not be "more favourable" than those applicable to intra-Community trade, whereas Article 15 states that the charges must be "at least equivalent". There is a decisive difference in the spirit and scope of those two provisions, since Article 15 permits, at least indirectly, discrimination in trade with non-member countries.

The prohibition of discrimination laid down in Article 11 of Directive 72/461 does not require the charging of fees for the issue of an authorization to import. Intra-Community trade is not placed at a disadvantage by the issue of an authorization to import meat from non-member countries without the charging of a fee. According to the judgments in *Wigei* and *Simmenthal,* the prohibition of discrimination is intended to ensure that traders who put on the market fresh meat originating within the Community are not treated less favourably than their competitors who import meat from non-member countries. Therefore, in the absence of such discrimination, the charging of fees is not justified under Article 11 of Directive 72/461.

The first question should be answered as follows:

"Article 11 of Directive 72/461 does not authorize the charging of a fee to cover the cost of issuing an authorization to import under Paragraphs 7 and 15 of the Klauentiere-Einfuhrverordnung as published on 30 August 1972 and amended by an order of 5 April 1976 on the importation into the Federal Republic of Germany of fresh beef and pigmeat from Romania."

(b) Second question

If the Court answers the first question in the affirmative, it should nevertheless rule that the charging of a fee, although lawful in principle, is subject to the condition that similar fees are charged in all the Member States in trade with non-member countries.

In *Simmenthal,* the Court stressed that the prohibition of charges having an

effect equivalent to customs duties in trade with non-member countries is intended to harmonize charges at the external frontiers of the Community and to ensure compliance with the requirements of the common commercial policy. According to that judgment, the effect of such charges on trade with non-member countries must be uniform in all the Member States. Thus the Court makes the legality of the charging of fees in trade with non-member countries depend upon whether or not similar charges are levied in all the Member States.

Only by the imposition of that requirement can distortions of competition and deflection of trade in the common market be prevented.

That approach is further justified on the ground that traders must not be required to bear alone the consequences of the failure on the part of the Community institutions and the Member States to implement Directive 72/462 within the prescribed period; in a situation of this kind, it is for the Court to create the conditions needed for harmonization.

The *Government of the Federal Republic of Germany*, after supplying the background to the questions submitted to the Court and mentioning the origin of the dispute in the main action and the positions adopted by the parties to the action, argues that authorizations to import are justified in respect of health control by the fundamental need for the protection of health from the danger of epizootic diseases. In order to meet that need, it is necessary to obtain information on imports planned as early as possible, which is the purpose of the health controls carried out by the exporting State. The importing State, for its part, must be capable of taking action before the products arrive at its border; it must also be able to make its decisions on imports subject to restrictions or special conditions in order to protect itself against the risks involved in importation. In the absence of a Community system of controls, the application of preventive health inspections in the framework of a formal authorization procedure is essential.

In intra-Community trade there is a uniform system of inspection before dispatch, making the prior authorization of imports superfluous. The application of such a system presupposes a high degree of confidence in the accuracy of the certificates drawn up in the exporting State. Such confidence may be assumed within the Community; however, in the present state of Community law, it cannot be extended to relations with non-member countries, in connection with which more stringent requirements are justified.

The fees in question cover the costs of the processing of applications by the veterinary authorities, the collection of information on the absence of disease in the exporting region, and controls at the frontier. The amount of the fees complies with the principle that costs may be covered.

Even if the formal authorization procedure in question were to be described as a measure having an effect equivalent to a quantitative restriction, it is in any event justified under Article 36 of the EEC Treaty.

With regard to the dispute in the main action, the only question to be considered is who should bear the cost of an administrative measure which is lawful under both national and

Community law and is needed for the protection of health.

(a) First question

The questions to be settled are: whether Article 11 of Directive 72/461 is applicable to the dispute in the main action; whether, in the light of the judgments of the Court of Justice, it may be regarded as a derogation from the basic prohibition of any charge having an effect equivalent to a customs duty; whether that derogation applies solely to charges for inspection or also covers administrative charges levied in the framework of measures needed for the protection of health and adopted by the competent veterinary authorities; and whether the absence of "similar" charges in intra-Community trade results in unlawful discrimination against imports from non-member countries.

The applicability of Directive 72/462

Directive 72/462 provides for the introduction at Community level of a uniform system of control for imports from non-member countries. On the entry into force of that Community system, there would be no justification for the application of special national rules which may be maintained under Article 11 of Directive 72/461 for a transitional period. Thus Article 32 (3) of Directive 72/461 provides that the various transitional provisions such as Article 11 are to be revoked on the entry into force of the Community procedure.

With regard to Article 32 (2) of Directive 72/462 it should be noted that at the time at which the contested fee was charged the competent Community authorities had not yet adopted a whole series of implementing provisions needed; the Community system of control provided for in the directive was not yet in existence. Consequently, according to the *Simmenthal* judgment, the exceptions in relation to trade with non-member countries provided for during a transitional period in the directives on intra-Community trade continued to apply pending the entry into force of the Community system and were certainly applicable in December 1977.

Derogation from the prohibition of charges having equivalent effect

It cannot be disputed that Article 11 of Directive 72/461 contains a derogation from the prohibition of charges having an effect equivalent to customs duties, similar to that expressly recognized by the Court, in *Simmenthal* and *Wigei,* in Article 9 of Council Directive 64/433 on health problems affecting intra-Community trade in fresh meat (Official Journal, English Special Edition 1963-1964, p. 185) and in Article 15 of Directive 71/118.

The differences in the wording of the three provisions are of little importance. In the *Wigei* judgment, the Court took as its basis the similar wording of Articles 15 and 9 in order to attribute to them the same derogative effect as regards the prohibition of charges having equivalent effect; the same interpretation should therefore apply to Article 11.

Furthermore, in *Simmenthal,* the Court described the three provisions — including Article 11 — as individual expressions of the Community principle of non-discrimination, whose specific purpose is to lay down on a provisional basis 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.

Both the wording of Article 11 and the common objective of ensuring Community preference result in the application to Article 11 of the principles set out by the Court in relation to the other directives.

The nature of the measure for the protection of health

It follows from the wording of Article 11 of Directive 72/461 that the legality of a charge levied on the importation of fresh meat from non-member countries cannot depend upon the nature of the health control in respect of which it is charged. In particular, there can be no distinction between an administrative transaction and an inspection in the strict sense.

Article 11 does not define the nature of the national provisions in question: according to its wording, it relates to any form of charges on imports from non-member countries in the framework of health controls on importation.

In *Simmenthal* and *Wigei,* the Court stressed the Community rule that national arrangements applicable to products from non-member countries must not be less strict or less onerous than the inspection arrangements in intra-Community trade. In relation to financial charges connected with importation, the Court uses the word "onerous" without drawing a distinction according to the nature of the health inspection upon which the charge is based.

So far as the legality of the contested charge is concerned, the only important question is whether it is lawful to levy comparable charges in intra-Community trade. In its judgment of 25 January 1977 in Case 46/76 *(Bauhuis* v *The Netherlands State,* [1977] ECR 5), the Court accepted that charges of that kind are lawful where they are fees charged to cover the costs and levied on the occasion of veterinary and public health inspections, which are prescribed by a Community provision, to be carried out before dispatch from the exporting country.

The Court makes no distinction in relation to the laying down of charges which may be levied in intra-Community trade in the framework of health inspections; it requires merely that the charges should be levied "for veterinary and public health inspections". The collection and processing of information on the absence of epizootic diseases in certain regions, carried out in the course of a procedure for the authorization of imports, is a health control measure prescribed by Community law in the interests of the protection of health in the same way as a health inspection of meat intended for export. In that case an administrative charge levied to cover the corresponding administrative costs is justified.

The meaning and object of Article 11, set out in the recitals in the preamble to the directive, are to prevent discrimination against intra-Community trade in relation to trade with non-member countries and therefore to safeguard the principle of Community preference. In view of that objective, it is necessary only to compare the total charges resulting from health controls in intra-Community trade on importation, without taking into account the nature of the health control measures in respect of which fees are levied.

The comparability of the pecuniary charges which may be levied in the framework of intra-Community trade

Since according to the judgments of the Court, the charging of a national fee for health controls on meat from non-member countries, as a derogation from the prohibition of charges having an effect equivalent to customs duties, is justified only in the event of a danger of discrimination in the case of meat from Member States, it is necessary to examine whether similar charges are levied in intra-Community trade.

It is clear from the judgments of the Court that the scope of the concept of "similarity" cannot be restricted so as to include only charges levied in respect of an identical administrative measure or transaction. The charges imposed on meat in intra-Community trade in respect of the costs of inspections on exportation must be compared with the charges affecting meat imported from non-member countries imposed in the framework of importation.

In the present state of Community law, the health controls effected in trade with non-member countries cannot normally be carried out within the framework of the control on dispatch applicable in the harmonized part of intra-Community trade which in the main makes the exporting State responsible for health inspection. That arrangement requires a high degree of mutual confidence between the health authorities of the various Member States. Such a principle of mutual confidence does not apply in relations with non-member countries; at that level, responsibility for health inspection falls mainly on the importing country. However, according to the Court, the disparities in the structure of health inspections resulting from those differences in systems does not prevent the fees from being comparable.

In view of the differences in the nature of the arrangements applicable, the "similarity" between the charges levied in respect of health inspections in intra-Community trade and those levied in trade with non-member countries must be recognized where the charges are levied in respect of measures adopted by the health authorities with the common objective of the protection of health. The absence of authorizations to import in intra-Community trade does not prevent a charge levied in respect of an authorization to import in trade with non-member countries from being lawful. The charge levied in respect of an authorization to import must be compared with charges imposed on meat in intra-Community trade in respect of health inspections in the exporting State.

In that regard, the charges imposed in intra-Community trade cannot be required to correspond exactly to those in trade with non-member countries. It is clear from *Bauhuis* that it is sufficient in intra-Community trade that the charges levied in each Member State should be fixed according to the principle of covering costs and should not exceed the expenses incurred as a result of inspection, without their necessarily being identical.

In *Wigei* the Court stated that health inspections carried out on meat from non-member countries may be more onerous than inspections carried out in the framework of intra-Community trade. However, those fees are no longer covered by the scope of the corresponding derogation if they clearly exceed the cost of the inspections or if the inspections carried out are out of all

proportion to the objective sought. The principle of proportionality and the principle that the costs should be covered define the upper limit accepted under Community law for charges levied in respect of public health inspection of meat imported from non-member countries.

There is no indication that that upper limit is exceeded by the fee at issue in the main action.

The first question submitted to the Court should be answered as follows:

"Article 11 of Directive 72/461 justifies the levying of a charge to cover the cost of issuing an authorization to import based on the applicable provisions on health control."

(b) Second question

The judgment in *Simmenthal* did not decide that a national charge levied in the non-harmonized area on the basis of the transitional provision in Article 11 of Directive 72/461 was lawful only if comparable charges were levied in all the other Member States; the passage in that judgment stating that "the intrinsic effect of such charges on the relevant trade with third countries must be uniform in all the Member States" relates only to a harmonized system of charges. It does not permit any conclusions to be drawn in relation to the question under what conditions the Member States are entitled to maintain charges levied at national level, pending harmonization.

Article 11 of Directive 72/461 makes the legality of continuing to levy charges at national level in the non-harmonized sphere depend not upon considerations of uniformity and harmonization but exclusively on the meaning and objective of that derogation, which are to prevent discrimination against meat in intra-Community trade and to guarantee Community preference in that sphere.

The prohibition of discrimination by no means requires that a similar charge should be levied in all the Member States; on the contrary, the principle of Community preference requires that the Member States should levy charges on imports from non-member countries in order to prevent discrimination against meat in intra-Community trade where the latter may lawfully be subject to charges levied in respect of public health controls.

The only consideration is whether there are charges imposed on intra-Community trade, not the way in which other Member States deal, where necessary, with the resulting risk that products from non-member countries may be placed in an advantageous position. The fact that only one Member State levies charges which are recognized as lawful in intra-Community trade creates a risk that meat produced within the Community will be at a competitive disadvantage and will be discriminated against.

The fundamental principle of Community preference makes it unnecessary to prove actual discrimination against meat imported from a non-member country. It is necessary to compare the charge levied on imports from non-member countries with the charges provided for in the various relevant Community directives which may lawfully be levied in the framework of intra-Community trade.

The second question should be answered as follows:

"The legality of a fee charged in respect of an authorization to import on the

basis of Article 11 of Directive 72/461 does not depend on whether comparable charges are levied in the Member States of the Community in trade with non-member countries."

The *Government of the Italian Republic* considers that the principle embodied in the judgments of the Court that any discrimination against intra-Community trade must be avoided justifies the levying of a charge on products imported from non-member countries in respect of health control measures. In so far as the charge is not fundamentally different from the cost of the service performed, it constitutes a measure which is needed so as to avoid conditions unfavourable to intra-Community trade.

In addition, the objective of preventing conditions of extra-Community trade from being more favourable than those in trade between Member States would be jeopardized if the lawfulness of the levying of such charges were subject to the condition that comparable charges be levied in all the Member States. In the absence of common rules, account must be taken of the diversity of the national systems. The principle that the charge and the cost of the service should be equivalent is at present the only criterion which is capable of ensuring that substantially equivalent conditions are applied at the external frontiers of the Community. To require that comparable charges should be levied in all the States would mean that products from non-member countries would be able to enter and circulate in the Community under more favourable conditions than products covered by intra-Community trade. That cannot be the objective pursued by Article 11 of Directive 72/461.

The *Commission* considers that this case should enable the Court to examine in greater detail and consolidate its case-law on the legality of national charges on the importation of meat from non-member countries.

It may be seen in particular from the long line of cases that the charges levied by a Member State in respect of health inspections of imported meat may be lawful on certain conditions. In that regard the case-law relating, on the one hand, to intra-Community trade, concerning either national controls and fees levied unilaterally or charges imposed by a Member State in respect of harmonized health inspections and based on Community law or an international agreement, and, on the other hand, health inspections on the importation of products from non-member countries is not without ambiguity or even inconsistencies. The differences in the definitions given to the concept of charges having an effect equivalent to customs duties in particular present problems. In order to overcome the resulting difficulties, it is necessary to examine, also in relation to trade with non-member countries, whether the advantage connected with the introduction of harmonized inspections at the external frontiers of the Community, namely the simultaneous abolition of systematic inspections at national frontiers, is not substantial enough to be capable of being regarded as the provision of a service.

(a) First question

In relation first of all to the legality of the requirement of an authorization to import, it should be noted that Directive 72/462 lays down a Community inspection procedure, the application of which requires the adoption by the Community authorities of a number of implementing measures. It is common ground that at the time of the adoption of the administrative measures at issue in the main action, several important measures had not yet been adopted, so that the directive could not be applied. Therefore, according to Article 11 of Directive 72/461 in conjunction with Article 32 (3) of Directive 72/462, the Member States were obliged in trade with non-member countries to effect inspections on the basis of the provisions of national law, which were not to be more favourable than those laid down in the rules for intra-Community trade.

No objection can be made under Community law to the German provisions according to which an authorization was required in 1977 for imports of fresh beef and pigmeat from a non-member country.

In relation to the legality of the fee charged for the issue of the authorization to import, it follows from the *Simmenthal* and *Wigei* judgments that derogations from the prohibition of charges having equivalent effect laid down in Article 20 (2) of Regulation No 805/68 and Article 17 (2) of Regulation No 2759/75 may be justified not only on the basis of certain provisions of Directive 72/462, which is not applicable in this case, but also on the basis of Article 11 of Directive 72/461 in conjunction with Article 32 (3) of Directive 72/462. According to the case-law of the Court, the levying of a charge is lawful where its object is to prevent discrimination with regard to intra-Community trade which is subject to health inspection charges in the exporting country. Article 11 of Directive 72/461, which provides that the national provisions relating to imports from non-member countries must not be more favourable than the provisions laid down for intra-Community trade, has the same scope as Article 15 of Directive 71/118, which requires charges to be at least equivalent. Furthermore, the Court has stated that the charges are not to exceed the actual cost of the inspections and are not to be clearly out of all proportion to the objective sought.

In *Wigei*, the Court acknowledged that the Member States have some discretion in the application of those criteria: they may require a health certificate to be drawn up on dispatch, without having to take into account the charges levied on that occasion in calculating the charge levied for inspections on importation. In the framework of an inspection procedure beginning with the issue of an import authorization, it is lawful to require at that stage a charge calculated on the basis of the cost of the inspections on importation to be carried out at a later date. That levying of charges on the issue of the authorization constitutes merely the advance fixing of the amount due. It is for the national court to ensure

that the importation itself does not give rise to the levying of other charges and that the charges levied are not more favourable than those imposed in the framework of intra-Community trade.

The first question should be answered as follows:

"In 1977, Article 11 of Directive 72/461/EEC permitted the charging of a fee to cover the cost of health inspections carried out on the importation of fresh meat from non-member countries. The Member States could, where appropriate, levy that charge on the issue of an import authorization required by them before the meat was dispatched, in so far as the authorization formed an integral part of the national inspection system and no additional charge was levied on importation."

(b) Second question

According to Article 11 of Directive 72/461 in conjunction with Article 32 (3) of Directive 72/462, the Member States are not only entitled but also obliged to charge fees to cover the costs of health inspections on the importation of fresh meat from non-member countries, since such charges are also levied in intra-Community trade. That is the only means of giving full effect to the principle of Community preference.

In the absence of a harmonized system, the amounts of the charges levied inevitably vary in the different Member States. Those differences must be accepted, in so far as the principle of proportionality and the principle that the cost of inspections must not be clearly exceeded are complied with, in accordance with the requirements mentioned in the *Wigei* judgment. The progressive application of Directive 72/462 reduces those disadvantages.

The second question should be answered as follows:

"Within the field of application of Article 11 of Directive 72/461, the Member States are not only entitled but also obliged to levy charges to cover the cost of health inspections carried out on the importation of fresh meat from non-member countries. The question whether all Member States actually levy such charges is therefore irrelevant."

III — Oral procedure

At the sitting on 12 October 1983 oral argument was presented and questions put by the Court were answered by the following: Volker Schiller, Rechtsanwalt of Cologne, for IFG, the plaintiff in the main action; Dietmar Knopp, Rechtsanwalt of Cologne, for the Government of the Federal Republic of Germany; and Bernhard Jansen and Jörn Sack, for the Commission of the European Communities.

The *plaintiff in the main action* argued in particular that the fee in question could not be justified by the prohibition of discrimination: it was a fee for the issue of an authorization to import and there was no comparable or analogous charge in intra-Community trade. With regard to the principle of proportionality, account should be taken of the overlapping of charges in trade with non-member countries and of all charges imposed on imports. The contested fee was levied in the general interest and could not be collected solely from importers.

The *Government of the Federal Republic of Germany* stressed in particular the fact that the rules at issue in the main action constituted a transitional system, with the exclusive objective of preventing discrimination against intra-Community trade. The contested fee complies with the principle of proportionality and the principle that costs may be covered. In the context of the scheme of Directive 72/461, Article 11 cannot be interpreted narrowly. Fees charged in a non-member country cannot be taken into account. The matter is governed by the principle of Community preference.

The *Commission* stated that according to the case-law of the Court the prohibition of charges having an effect equivalent to a customs duty does not prevent the charging of fees in consideration of a service, and that a distinction should be drawn between measures adopted exclusively in the general interest and those which, as in this case, provide a service for the benefit specifically of the imported goods.

The Advocate General delivered his opinion at the sitting on 29 November 1983.

Decision

1 By order of 27 October 1982 which was received at the Court on 4 January 1983, the Bayerisches Verwaltungsgericht München [Bavarian Administrative Court, Munich] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 11 of Council Directive 72/461/EEC of 12 December 1972 on health problems affecting intra-Community trade in fresh meat (Official Journal, English Special Edition 1972 (31 December), p. 3 — corrigenda published in the Consolidated Edition of Corrigenda 1952-1972 of July 1975).

2 It may be seen from the order for reference that, by a decision of 19 December 1977, the Bavarian authorities issued to the plaintiff in the main action a veterinary health authorization for the importation of a consignment of 1 000 tonnes of beef and pigmeat from Romania and levied a charge of DM 865 for the entire consignment under the applicable Bavarian legislation. That charge has since been reduced to DM 100, the amount at present contested before the national court.

3 The meat was imported at a time at which Council Directive 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) p. 7), was not yet applied by the Member States, in the absence of implementing measures still to be adopted by the Community.

4 In those circumstances, the Bavarian authorities consider that the relevant provision was Article 11 of Directive 72/461, which provides that:

"Until Community provisions relating to importation of fresh meat from third countries are implemented, national provisions relating to fresh meat imported from those countries shall not be more favourable than those resulting from this directive."

They take the view that, as long as there was no Community system of inspection for imports from non-member countries, it was for the national authorities to carry out the health inspections needed, in such a way as to prevent more favourable treatment of those goods than that applied in intra-Community trade.

5 The plaintiff in the main action for its part claims that Article 11 of Directive 72/461 is no longer applicable since the period prescribed for the implementation of Directive 72/462 has expired, and since that directive has not been properly implemented, it should therefore be possible to rely upon it directly. Even if Article 11 of Directive 72/461 is applicable, the plaintiff's position is not affected by the judgment of 22 January 1980 in Case 30/79 (*Land of Berlin* v *Wigei,* [1980] ECR 151), in which the Court accepted that it was lawful to levy a charge for the health inspection of poultry meat imported from non-member countries by virtue of Article 15 of Council Directive 71/118 of 15 February 1971 (Official Journal, English Special Edition 1971 (I), p. 106). That provision, which lays down that:

"Until the entry into force of Community provisions concerning imports of fresh poultry meat from third countries, Member States shall apply to such imports provisions which are at least equivalent to those of this directive",

is in fact different in wording from Article 11 of Directive 72/461.

6 The plaintiff in the main action claims secondly that this case does not concern a genuine charge for health inspections but an administrative charge

levied on the issue of an import authorization. Finally, it claims that it has not been shown that similar fees are levied in all the Member States, contrary to the requirement laid down by the Court in its judgment of 28 June 1978 in Case 70/77 *(Simmenthal* v *Amministrazione delle Finanze dello Stato* [1978] ECR 1453, paragraph 27).

7 The Bayerisches Verwaltungsgericht München considers that a decision of the Court on the principles applicable in this area is desirable, in view of the large number of disputes arising out of the levying of charges of this kind. For that purpose it has referred to the Court the following two questions:

"1. Does Article 11 of Council Directive 72/461/EEC of 12 December 1972 on health problems affecting intra-Community trade in fresh meat (Official Journal, English Special Edition 1972 (31 December), p. 3 — corrigenda published in the Consolidated Edition of Corrigenda 1952-1972 of July 1975) permit the charging of a fee to cover the cost of issuing an authorization to import under Paragraphs 7 and 15 of the Klauentiere-Einfuhrverordnung [Order on the importation of ungulates] as published on 30 August 1972 (BGBl. I p. 1363) and most recently amended by Order of 5 April 1976 (BGBl. I p. 914)?

2. If the answer to Question 1 is in the affirmative: Does the legality of the charging of such a fee depend on whether comparable charges are levied in all Member States of the Community in trade with non-member States?"

8 It may be recalled that according to the well-established case-law of the Court, health inspection charges imposed by a Member State on products from other Member States must in principle be regarded as charges having an effect equivalent to customs duties and are accordingly prohibited as constituting an obstacle to intra-Community trade (in that regard see in particular the following judgments: judgments of 14. 12. 1972 in Case 29/72, *Marimex* v *Amministrazione Finanziaria Italiana,* [1972] ECR 1309; of 11. 10. 1973 in Case 39/73, *REWE-Zentralfinanz* v *Direktor der Landwirtschaftskammer Westfalen-Lippe,* [1973] ECR 1039; of 31. 5. 1979 in Case 132/78, *Denkavit Loire* v *French State,* [1979] ECR 1923; and of 7. 4. 1981 in Case 132/80, *United Foods* v *Belgian State,* [1981] ECR 995).

9 However, the Court has taken the view that that prohibition loses its purpose where the levying of health inspection charges is authorized by Community provisions adopted in the interests of the free movement of goods, in particular in order to permit the carrying out of public health inspections in

the State of origin, valid for the whole of the Community, before the goods are dispatched to other Member States. In that case the Court has acknowledged the compatibility with the provisions of the Treaty of common rules on the levying of health inspection charges, provided that they are sufficiently closely related to the actual cost of the inspections (judgment of 25. 1. 1977 in Case 46/76, *Bauhuis* v *The Netherlands,* [1977] ECR 5; see also judgment of 12. 7. 1977 in Case 89/76, *Commission* v *The Netherlands,* [1977] ECR 1355.

10 Finally, the Court has acknowledged that the health inspection of goods imported from non-member countries is carried out in a different factual and legal context from the inspection of goods originating in the Community and in such a context the levying of health inspection charges by the Member States does not appear to be prohibited in principle, provided, however, that there is a sufficiently close connection between the amount of those charges and the actual cost of the inspections (see the following judgments: judgments of 28. 6. 1978 in Case 70/77, *Simmenthal,* cited above; of 5. 7. 1978 in Case 138/77, *Ludwig* v *Free and Hanseatic City of Hamburg,* [1978] ECR 1645; of 22. 1. 1980 in Case 30/79, *Wigei,* cited above; and of 22. 3. 1983 in Case 88/82, *Amministrazione delle Finanze dello Stato* v *Leonelli,* [1983] ECR 1061).

11 The questions submitted to the Court must be examined in the light of those considerations.

First question

12 By its first question, the Bayerisches Verwaltungsgericht München has rightly situated the problem in the context of Article 11 of Directive 72/461. Indeed, it cannot be disputed that at the material time Directive 72/462 concerning the health inspections applicable to imports from non-member countries was not yet wholly in force, since the Community institutions had not adopted in time the implementing measures needed for its introduction. In the meantime, Article 11 of Directive 72/461, which was laid down precisely in order to take account of such a situation, was applicable. That article provides, in relation to the health inspections of meat from non-member countries, that the national health provisions are applicable, subject however to the reservation that they must not be more favourable than the provisions laid down in the same directive for intra-Community trade.

13 In the light of the criteria established in the case-law cited above, that provision must be interpreted as authorizing the Member States to charge on imports from non-member countries the fees provided for by their respective national laws, subject to two conditions: on the one hand, those charges must not be more favourable than those levied in intra-Community trade, where inspection is carried out in the exporting State; on the other hand, there must be a sufficiently close connection between the fees and the cost of the inspections. Only the latter condition is in dispute in this case.

14 The distinction which the plaintiff in the main action has sought to establish between Article 11 of Directive 72/461 and Article 15 of Directive 71/118, to which the Court referred in its judgment of 22 January 1980 in *Wigei*, has no relevance to the answer to the question submitted, since the two provisions pursue the same objective, namely to prevent products imported from non-member countries from being treated more favourably, as regards health control, than products originating in the Community.

15 The objection by the plaintiff in the main action, to the effect that the fee charged is not a health inspection charge in the true sense of the expression but is a general administrative fee, cannot be upheld either.

16 During the procedure before the Court, the Government of the Federal Republic of Germany has in fact shown, without its being challenged, that the fee charged is justified by the fact that the authorities must, in order to facilitate imports, continually investigate and obtain information on the health situation in the States in which the goods concerned originate. The sole purpose of levying the charge at issue is therefore to pass those costs on to undertakings, at the time at which the health certificate for importation is issued to them.

17 Since Article 11 of Directive 72/461 makes a general reference to the "national provisions" applicable to imported fresh meat, a Member State cannot be prevented from passing on to the importer, either at the time at which the import documents are issued or on the occasion of importation

itself, not only the costs of specific inspections relating to the goods in question but also the burden of the administrative expenses involved in organizing the health controls.

18 The only limitation imposed by Community law in that regard is that there must be a sufficiently close connection between the amount of the charge levied and the costs involved in the controls. That is a question of fact, to be appraised by the national court.

19 The answer to the first question should therefore be that Article 11 of Council Directive 72/461 of 12 December 1972 on health problems affecting intra-Community trade in fresh meat permits the levying on imports of fresh meat from non-member countries of a charge to cover the cost of issuing an authorization to import based on the national legislation on health controls, provided that there is a sufficiently close connection between the amount of the charge levied and the cost of the controls.

Second question

20 It follows from the foregoing considerations that the reply to the second question must enable the national court to adjudicate upon an argument put forward by the plaintiff in the main action on the basis of certain passages of the decision in the judgment of 28 June 1978 in *Simmenthal* (paragraph 27, cited above).

21 In that judgment the Court, whilst acknowledging that in certain circumstances Member States are entitled to levy health inspection charges on imports from non-member countries, stated that those charges must nevertheless be limited so as to prevent distortions of competition and deflections of trade within the Common Market. It must be noted that such effects are avoided to the extent to which the health charges do not exceed the actual cost of the controls in question. Therefore it cannot be inferred from those considerations that the charging of fees for health inspections of

products imported from non-member countries is subject to proof that identical or comparable charges are levied by all the other Member States.

22 The answer to the second qeustion must therefore be that the legality of the levying of a charge for health controls on fresh meat imported from non-member countries cannot be subject to proof of the existence of comparable charges in all the other Member States of the Community, if the amount of the charge corresponds to the cost of the controls.

Costs

23 The costs incurred by the Governments of the Federal Republic of Germany and the Italian Republic and by the Commission of the European Communities, which have 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 proceedings 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 Bayerisches Verwaltungsgericht München by order of 27 October 1982, hereby rules:

Article 11 of Council Directive 72/461/EEC of 12 December 1972 on health problems affecting intra-Community trade in fresh meat permits the levying on imports on fresh meat from non-member countries of a charge to cover the cost of issuing an authorization to import based on the national legislation on health controls, provided that there is a sufficiently close connection between the amount of the charge levied and the cost of the controls.

The legality of the levying of a charge for health controls on fresh meat imported from non-member countries cannot be subject to the proof of the existence of comparable charges in all the other Member States of the Community, if the amount of the charge corresponds to the cost of the controls.

Mertens de Wilmars Koopmans Bahlmann Galmot

Pescatore Bosco Due Everling Kakouris

Delivered in open court in Luxembourg on 31 January 1984.

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 29 NOVEMBER 1983 [1]

Mr President,
Members of the Court,

1. In this case the Court is called upon for the fourth time to give a ruling on the compatibility with Community law of national charges levied for the health control of imports from non-member countries. That question has already been the subject of the judgments of 28 June 1978 in Case 70/77 *(Simmenthal* v *Amministrazione delle Finanze dello Stato,* [1978] ECR 1453), of 22 January 1980 in Case 30/79 *(Land of Berlin* v *Wigei,* [1980] ECR 151) and of 22 March 1983 in Case 88/82 *(Amministrazione delle Finanze dello Stato* v *Leonelli,* [1983] ECR 1061).

The facts of the case are as follows: by a decision of 19 December 1977 the Bavarian Staatsministerium des Innern [State Ministry for the Interior] granted IFG Intercontinentale Fleischhandelsgesellschaft mbH and Co. KG, having its registered office in Munich [hereinafter referred to as "IFG"], pursuant to the German rules on the importation of ungulates, a veterinary health authorization for the importation, subject to certain restrictions, of 1 000 tonnes of beef and pigmeat from Romania. The

1 — Translated from the Italian.