On those grounds,

THE COURT (First Chamber),

in answer to the questions submitted to it by the Bundesfinanzhof by order of 27 October 1981, hereby rules:

1. **Council Regulation (EEC) No 425/77 of 14 February 1977 must be interpreted as meaning that buffalo meat of non-domestic species is covered by the common organization of the market in beef and veal.**

2. **Consideration of the second question has disclosed no factor of such a kind as to affect the validity of Council Regulation (EEC) No 425/77 of 14 February 1977.**

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 9 December 1982.

P. Heim
Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 14 OCTOBER 1982 [1]

Mr President,
Members of the Court,

The action pending before the Bundesfinanzhof [Federal Finance Court] out of which the reference to be considered today arose concerns the question whether levies and monetary compensatory amounts may be charged on meat of what was described as wild buffalo, imported from Australia.

The following details in relation to the case must first be mentioned:

1 — Translated from the German.

The Common Customs Tariff, as laid down in Regulation No 950/68 (ABl. L 172 of 22 July 1968, p. 1), includes under tariff heading 01.02, entitled "Live animals of the bovine species", both domestic species (under A) and also "Other" (under B), which according to the Explanatory Notes to the Customs Tariff of the European Communities means animals of the non-domestic bovine species. Under the title "Meat and edible offals of the animals falling within heading No. 01.01, 01.02, 01.03 or 01.04, fresh, chilled or frozen", tariff heading 02.01 originally included in A II ("Meat of bovine animals") both (a) meat of domestic bovine animals and (b) other meat of bovine animals.

The common organization of the market in beef and veal (Regulation No 805/68, Official Journal, English Special Edition, 1968 (I), p. 187) originally applied — in so far as is relevant here — only to "Meat of domestic bovine animals" (tariff subheading 02.01 A II (a)). Tariff subheading 02.01 A II (b), "Meat of bovine animals — other", on the other hand, was included in the Annex to Regulation No 827/68 (Official Journal, English Special Edition, 1968 (I), p. 209) and thereby included in the special common organization of the market set up by that regulation for certain products listed in Annex II to the Treaty.

On 14 February 1977 the Council adopted Regulation (EEC) No 425/77 amending Regulation (EEC) No 805/68 on the common organization of the market in beef and veal and adapting Regulation (EEC) No 827/68 and Regulation (EEC) No 950/68 on the Common Customs Tariff (Official Journal 1977, L 61, p. 1). It amended Article 1 (1) of Regulation (EEC) No 805/68 — in so far as is relevant here — so as to include in the common organization of the market "Meat of bovine animals" (tariff subheadings 02.01 A II and 02.06 C I (a)). According to Article 9 (2) of Regulation No 805/68, as amended by Article 3 of Regulation No 425/77, a levy is to be charged on those products, *inter alia*. Tariff subheading 02.01 A II was amended by Article 5 (4) of Regulation No 425/77 so that it no longer distinguished between meat of domestic bovine animals and meat of other bovine animals but referred only to "Meat of bovine animals", divided into (a) ("Fresh or chilled") and (b) ("Frozen"). Finally, the words "II. Of bovine animals: (b) Other" used in respect of subheading 02.01 A II in the Annex to Regulation No 827/68 were deleted by Article 6 of Regulation No 425/77.

In December 1977 the plaintiff in the main action applied for customs clearance in respect of frozen boneless wild buffalo meat, parts of the hind- and forequarters, imported from Australia under tariff subheading 02.01 A II (b) 4 (bb) 33 of the Common Customs Tariff. Levies and monetary compensatory amounts were charged on the goods because that tariff subheading is listed in the Annex to Commission Regulation (EEC) No 2599/77 of 25 November 1977 fixing the import levies on frozen beef and veal (Official Journal 1977, L 302, p. 19) and also in Part 3 of Annex I to Commission Regulation (EEC) No 938/77 of 29 April 1977 fixing the monetary compensatory amounts and certain rates for their application (Official Journal 1977, L 110, p. 6).

The plaintiff does not consider that correct. It concedes that levies and, under Article 6 of Regulation No 1380/75 (Official Journal 1975, L 139, p. 37) monetary compensatory amounts may be charged on the products referred to in Article 1 (1) (a) of Regulation No

805/68 as amended by Regulation No 425/77. However, correctly interpreted, Article 1 of Regulation No 805/68 covers only meat of domestic bovine animals and not meat of wild buffalo. In that regard reference may be made to the following definition of "bovine animals" which was inserted in Article 1 of Regulation No 805/68 by Regulation No 425/77: "Live animals of the domestic bovine species other than pure-bred breeding animals falling within subheading 01.02 A II of the Common Customs Tariff". That view is also supported by the fact that it is not stated anywhere in the preamble to Regulation No 425/77 that wild buffalo meat is to be included in the common organization of the market. If it were necessary, however, to accept that that was the case, Regulation No 425/77 would be invalid *on that very ground*, because it gives no reasons for the inclusion and thus infringes Article 190 of the EEC Treaty, and consequently there would be no change in the earlier legal position which was clearly that only meat of domestic bovine animals was included in the common organization of the market in beef and veal.

It must be said, however, that that argument brought the plaintiff as little success in its objection as it did before the Finanzgericht [Finance Court] Hamburg. In its judgment of 7 November 1978, that court stated that the Commission regulations pursuant to which levies and monetary compensatory amounts were charged were wholly in conformity with the powers conferred by the Council in Regulation No 805/68, as amended by Regulation No 425/77, and in Regulation (EEC) No 974/71 (Official Journal, English Special Edition, 1971 (I), p. 257) in conjunction with Regulation (EEC) No 1380/75 (Official Journal 1975, L 139, p. 37). Indeed, having regard to Article 38 (3) in conjunction with Annex II to the EEC Treaty and the fact that wild buffalo meat was a product which might be substituted for meat of the domestic bovine species, it must be accepted, the court said, not only that it was possible for the organization of the market in beef and veal to be extended to wild buffalo meat, but also that it was in fact so extended by Regulation No 425/77. In that regard it was important that now tariff subheading 02.01 A II no longer referred to meat of *domestic* bovine animals but only to meat of bovine animals and that according to the Explanatory Notes to the Common Customs Tariff wild buffalo clearly belonged to tariff heading 01.02, which was significant because tariff heading 02.01 covered meat of the animals falling within headings 01.01 to 01.04. On the other hand, it could not be concluded from the new definition of the term "bovine animals" in Article 1 of Regulation No 805/68 that only meat of domestic bovine animals was covered by the organization of the market in beef and veal, for that provision was intended only to make it clear that any reference to bovine animals elsewhere in the regulation, for instance in Article 10, was intended to cover only live animals of the domestic bovine species. However, in so far as the plaintiff cast doubt on the validity of Regulation No 425/77 because it did not state the reasons for the extension of the field of application in question, it was important to note, first, that according to the case-law of the Court of Justice the duty to state reasons required only an account of the general situation and aims and therefore certainly did not require an account of the circumstances which led to the inclusion of wild buffalo meat, and secondly that the extension of the organization of the market to include wild buffalo meat must clearly be regarded as intentional.

The plaintiff brought an appeal on a point of law before the Bundesfinanzhof.

In an interlocutory decision of 7 May 1981, the Bundesfinanzhof found for the plaintiff and set aside the decision of the Finanzgericht Hamburg. The Bundesfinanzhof considered that Regulation No 425/77 had not in fact altered the legal position which resulted from Regulation No 805/68, according to which only meat of domestic bovine animals was covered by the organization of the market. The preamble to Regulation No 425/77 did not refer to an extension of the scope of the organization of the market to meat of bovine animals other than domestic bovine animals; moreover, it could find no reason for such an extension, as until that time wild buffalo meat had not been imported free of levy into the Community in large quantities. The above-mentioned legal definition of the expression "bovine animals" in Article 1 (2) of Regulation No 805/68 suggested similarly the conclusion that only meat of those bovine animals was covered by the organization of the market, and that of live animals of the bovine species only domestic bovine animals, and not wild buffalo, fell within the scope of the organization of the market.

However, after oral argument had been heard — under German law, an interlocutory decision of that kind operates as a judgment only if neither of the parties requests an oral hearing — the Bundesfinanzhof began to doubt whether its original view was correct. By order of 27 October 1981, therefore, it stayed the proceedings and referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty the following questions:

"1. Was it the intention that wild buffalo meat should be included in the organization of the market in beef and veal as a result of Council Regulation (EEC) No 425/77?

2. If the answer to Question 1 is in the affirmative: Is Council Regulation (CEE) No 425/77 invalid in so far as it infringes Article 190 of the Treaty establishing the European Economic Community?"

On those questions my view is as follows.

1. First question

The first question may be rephrased as asking whether Regulation No 425/77 in fact extended the scope of the organization of the market in beef and veal so that it no longer covered only meat of domestic bovine animals, as was originally the case under Regulation No 805/68, but included meat of any bovine animals, which according to the relevant subdivision of tariff heading 01.02 and the Explanatory Notes thereon can mean only that wild buffalo meat is now included in the market organization.

In view of the submissions on the matter which were made during the proceedings, there is in my view no doubt that that question must be answered in the affirmative.

(a) It is most important to make a comparison with the original version of Article 1 of Regulation No 805/68, which defines the scope of the organization of the market.

Article 1 (a) first refers to "Live animals of the domestic bovine species, other than pure-bred breeding animals". That remained the same, even after Regulation No 425/77 was adopted. The two following subheadings originally referred to "Meat of domestic bovine animals," one of which covered " fresh, chilled or frozen" meat (02.01 A II (a)) and the other meat "salted, in brine, dried or

smoked" (02.06 C I (a)). That has now been changed, because Regulation No 425/77 no longer refers to *domestic* bovine animals, but only to *bovine animals*.

From the fact that the first subheading was not changed and from the disappearance of the word "domestic" in the other two subheadings, the only conclusion which may be drawn is that there was a deliberate change, and in view of the fact that in tariff heading 01.02 a distinction is drawn between domestic bovine animals and other — that is to say, wild — bovine animals such a change can in fact mean only that now meat of the latter is also covered.

(b) Another important factor is the connection between Regulation No 805/68 and Regulation No 827/68, the so-called residual regulation, which contains appropriate provisions for all other products listed in Annex II to the EEC Treaty for which special organizations of the market are not provided. According to its Annex, Regulation No 827/68 originally covered, by means of a reference to tariff subheading 02.01 A II (b), "Meat of bovine animals: other", and according to the Common Customs Tariff, which referred under tariff subheading 02.01 A II (a) to meat of *domestic* bovine animals, that could mean only meat of non-domestic bovine animals. Thus it was clear that it was necessary to include that product in the Community rules. As I said earlier, the words "II. Of bovine animals (b) other" relating to tariff subheading 02.01 A II were deleted from the Annex to Regulation No 827/68 by Article 6 of Regulation No 425/77; it was thereby made clear that such products were no longer to fall within the scope of Regulation No 827/68.

That, together with the fact that there is clearly a need for rules on the subject and in view of the broader version of Article 1 (meat of bovine animals, simply) of Regulation No 805/68 which resulted from Regulation No 425/77, can mean only that such meat of other bovine animals is now itself to be included in the organization of the market in beef and veal.

(c) Finally, it is also significant that tariff subheading 02.01 A II was expressly amended by Article 5 (4) of Regulation No 425/77 so as to refer only to meat of bovine animals, so that the distinction which was made in the version of the Common Customs Tariff in force at the end of 1976 (Official Journal 1976, L 314, p. 17) between meat of domestic bovine animals (subheading 02.01 A II (a)) and meat of other bovine animals (02.01 A II (b)) no longer applies. That may in fact be explained not only by examining the 11th recital in the preamble to Regulation No 425/77, to which the plaintiff referred — in which it is stated that the effect of the amendments to the regulations on beef and veal is to amend the descriptions of certain goods — but also by the fact that a change in the scope of the organization of the market made it appear advisable to adjust the Common Customs Tariff.

(d) Nor are other arguments raised by the plaintiff capable of altering that position.

(i) That applies to the argument that in the recitals in the preamble to Regulation No 425/77 there is no particular statement of the reasons for such an extension in the scope of the organization of the market, whereas there is an explanation for another extension, namely the inclusion of pure-bred

breeding animals of the bovine species. If an analysis of the actual wording of a regulation leads to a certain conclusion, the possible absence of a statement of reasons can scarcely justify the opposite conclusion that the obvious consequences were not, in fact, intended.

(ii) The same applies to the argument that there has apparently been no change in the position in relation to live animals, the organization of the market not having been extended to cover *live* wild buffalo. It may certainly not be concluded from that that the same must necessarily apply to meat, especially where there are sound reasons for a distinction. In this regard it may be remembered that in view of the Finanzgericht Hamburg — as is apparent from the judgment set out at the beginning — it was clear that wild buffalo meat was to be regarded as a substitute for beef and veal, so that its inclusion in the organization of the market was logical. On the other hand, the Commission made the obvious remark that the position in relation to live animals was different not only because they could be more readily distinguished from one another — which obviously does not apply to meat — but also because there was no need to include animals in the organization of the market, the importation of live wild animals being unprofitable, and such animals being found in the Community itself only in zoos or circuses.

(iii) Finally, the same also applies to the plaintiff's reference to the definition of the expression "bovine animals" which was inserted in Article 1 (2) (a) of Regulation No 805/68 by Regulation No 425/77. Although it is stated that the definition applies to the regulation as a whole, it is nevertheless difficult to accept that the *first* paragraph of Article 1 must be interpreted in accordance therewith. In fact, it would be difficult to understand why Regulation No 425/77 should first amend Article 1 (1) (a) by deleting the word "domestic", only then to reintroduce the very same criterion into the description of the goods by means of the definition contained in paragraph (2). If the legislature had had such an intention, it would have referred in Article 1 (1) directly to meat of *domestic* bovine animals and not to meat of bovine animals. It must also be conceded that extending the definition contained in paragraph (2) to paragraph (1) would be meaningless, because it would then have to be read as: "meat of live animals of the domestic bovine species". The correct view is that the definition applies only to the remainder of the regulation, and must be considered mainly in connection with Article 3 of Regulation No 805/68. In that article there had previously been a distinction between calves and adult bovine animals, to which different guide prices and levies applied. As that distinction had often proved difficult to establish, as was explained in the sixth recital in the preamble to Regulation No 425/77, it was then abolished and the definition which applied to it under the original Article 3 (3) was replaced by the definition now contained in Article 1 (2).

2. Second question

Now that analysis of Regulation No 425/77 has demonstrated that it did in fact extend the scope of the organization of the market in beef and veal as stated in the first question, there remains to be considered the further question whether

or not Regulation No 425/77 is invalid because it contains no particular statement of reasons for such an extension and thereby infringes Article 190 of the EEC Treaty.

The plaintiff in the main action pointed out that Regulation No 425/77 contained a number of different measures and particular reasons were stated for each of them, even for the extension of its scope to cover pure-bred breeding animals. Such a statement of reasons was not, however, to be found in relation to the extension of the organization of the market to cover meat of non-domestic bovine animals, or the grounds for such an extension.

Here again I am unable to share the plaintiff's view.

I have already demonstrated that it is quite clear from an analysis of the text that the scope of the organization of the market was in fact extended. That made it quite unnecessary — as regards the first part of the plaintiff's argument — for there to be a special reference in the statement of reasons to the fact that meat of bovine animals other than domestic bovine animals was to be covered in future.

On the other hand, as to *why* the scope of the organization of the market was extended, it is significant that the Finanzgericht explained at the bottom of page 6 of its judgment that wild buffalo meat was a product which might be substituted for meat of domestic bovine animals and it therefore seemed *likely* that it would be included in the organization of the market in beef and veal. That must also, therefore, have been apparent to the traders concerned. For such traders — as the Commission has shown, the plaintiff undertaking, which is thoroughly experienced in such business, is really the only one in question — a special explanation might thus appear quite unnecessary, among other reasons because the main ground, namely to avoid levy-free imports of products which may be substituted for meat falling within tariff heading 02.01 may be indirectly inferred from the ninth recital in the preamble to Regulation No 425/77.

Moreover, the Community institutions correctly argue on the basis of the case-law of the Court of Justice on the duty to provide a statement of reasons that the absence of a particular express statement of reasons for the measure in question is not to be regarded as so serious as to make the regulation void. In fact it is clear from the case-law that the extent of the duty to state reasons depends on the nature of the measure in question and on the context in which it was adopted (Cases 13/72 and 819/79 [1]). In that case-law it was also emphasized that in the case of regulations a broad explanation of the measures taken is sufficient and that a specific statement of reasons in support of every detail is not required (Case 166/78 [2]). In addition it was made clear in Case 35/80 [3] that the statement of reasons upon which a regulation is based must be regarded in the context of the body of legislation in question, which must be understood as meaning — as the Council maintains — that it is the essential trend of the legislation which is important.

1 — Judgment of 11 January 1973 in Case 13/72 *Government of the Kingdom of the Netherlands* v *Commission of the European Communities* [1973] ECR 27; Judgment of 14 January 1981 in Case 819/79 *Federal Republic of Germany* v *Commission of the European Communities* [1981] ECR 21.

2 — Judgment of 12 July 1979 in Case 166/78 *Government of the Italian Republic* v *Council of the European Communities* [1979] ECR 2575.

3 — Judgment of 14 January 1981 in Case 35/80 *Denkavit Nederland BV* v *Produktschap voor Zuivel* [1981] ECR 45.

In that regard, it is important that the main purpose of Regulation No 425/77 was to revise the rules applicable to trade with non-member countries contained in Title II of Regulation No 805/68. Moreover, in relation to the point at issue here, the objective pursued was at least implied in the ninth recital in the preamble to Regulation No 425/77. Finally, it is possible to consider as part of the "context" which is relevant according to the case-law to which I have referred the fact that the disputed extension of the scope of Regulation No 805/68 is of relatively little economic importance (in the interlocutory decision of the Bundesfinanzhof, it is stated that economically the meat of wild bovine animals amounts to a "quantité négligeable") and that in practice only one importer, the plaintiff, was affected, as the Commission showed the Court by reffering to current practice, which is to recognize only Australian certificates of origin.

3. In view of that result, which permits a clear decision to be given in the main action, it is in my view unnecessary to consider the question described by the Commission as a preliminary issue which makes the questions submitted to the Court superfluous: that is to say, whether the goods in question in the main action — meat of Australian wild buffalo — should not in fact be regarded properly as meat of domestic bovine animals, and therefore subject to the levy and compensatory amount regardless of the scope and validity of Regulation No 425/77. The Community institutions have put forward the view that for the purposes of tariff classification — as is made clear by the wording of the Customs Tariff in other languages and the Explanatory Notes thereto — the *genus* of the animals from which the meat is obtained is decisive. Accordingly, the Australian buffalo must in fact be regarded as a domestic bovine animal, since it was brought into the country by settlers as the Asiatic domestic or water buffalo and only later became partly wild. Moreover, it appears that they are widely kept as partially domesticated animals, and it is also important that they are in any event not hunted but killed in slaughter-houses.

Now that the differences of opinion on that point have been aired in these proceedings — as you know, the plaintiff not only questions the Commission's legal premise and its information on the zoological genus of the Australian buffalo, but also insists that the Australian buffalo in fact lives freely in the wild in large numbers and is therefore an animal which is hunted, a fact which, according to the judgment of the Court in Case 149/73, [1] is important for the interpretation of the concept of "game" — it seems to me well understandable that even though that complex question should perhaps logically occupy first place, the national court did not focus attention upon it.

If the Court of Justice should nevertheless, in determining the questions submitted to it, reach a conclusion other than that which I have suggested, either because it considers that notwithstanding the adoption of Regulation No 425/77 only meat of domestic bovine animals falls within the scope of the common organization of the market, or because it considers that Regulation No 425/77 is invalid so far as

1 — Judgment of 12 December 1973 in Case 149/73 *Otto Witt KG* v *Hauptzollamt Hamburg-Ericus* [1973] ECR 1587.

the extension of the scope of the common organization of the market in beef and veal is concerned because of the absence of a statement of reasons, it would undoubtedly be necessary to consider that additional question, for the imported goods may be regarded as free of the levy and compensatory amount only if it is certain that they are not already covered by the unamended version of Regulation No 805/68.

4. In view of the above considerations I propose that the questions submitted to the Court by the Bundesfinanzhof should be answered as follows:

(a) Meat of bovine animals (buffalo), which are not domestic animals, was included in the organization of the market in beef and veal by Regulation No 425/77.

(b) It may not be concluded therefrom that in so far as it provides for the inclusion referred to under (a) Regulation No 425/77 is invalid on the ground of breach of the duty to give reasons.