2. **Orders the Commission to pay the costs of the proceedings, including those of the intervener, except for the costs of the application for interim measures which are to be borne by the applicant.**

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 6 March 1979.

A. Van Houtte
Registrar

H. Kutscher
President

## OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 24 JANUARY 1979 [1]

*Mr President,*
*Members of the Court,*

The common organization of the market in beef and veal (Regulation No 805/68 of the Council, Official Journal, English Special Edition 1968 (I), p. 187), in order to ensure the competitiveness of the processing industry and to keep it supplied with frozen meat provides for a special import system — the complete or partial suspension of the levy on imports from non-member countries. The original arrangements were such that meat intended for the manufacture of tinned corned beef could be imported without any levy and any quantitative restrictions. In the case of meat intended for the manufacture of other products the levy was totally or partially suspended as respects quantities which were to be fixed in an estimate; if stocks held by the intervention agencies had reached a certain level the suspension could be made conditional on the purchase of specific quantities of the meat stored with these agencies.

In 1974 a market situation of crisis proportions — large surpluses accumulated on the Community market — necessitated the application of protective measures which were also applicable to

1 — Translated from the German.

the above-mentioned privileged imports. This was the situation until 1 April 1977.

In 1977, in order to protect the Common Market, the rules for trade with non-member countries as well as the special import system applicable to frozen meat processors was substantially altered. Article 14 of Regulation No 805/68 was amended by Council Regulation No 425/77 of 14 February 1977 (Official Journal, L 61 of 5 March 1977, p. 1) and now paragraph (1) (a) thereof provides "for total suspension of the levy on meat intended for the manufacture of preserved food which does not contain characteristic components other than beef and jelly" (corned beef) and paragraph 1 (b) provides for the total or partial suspension of the levy on meat intended for the manufacture of other products. For this purpose before 1 December each year the Council shall draw up an estimate of meat which may be imported under the special arrangements and this estimate shall mention separately the quantities of meat to be used for the above-mentioned purposes. Furthermore Article 14 (3) reads:

"For meat of the types referred to in paragraph 1:

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

(b) importation under total suspension of the levy may be made conditional, as far as necessary, on production of a purchase contract for frozen meat held by an intervention agency."

Then Article 14 (4) provides that the Management Committee in accordance with the procedure laid down in Article 27 shall determine:

"(a) each quarter, the quantities of meat of the types referred to in paragraph 1 (a) and (b) respectively which may be imported and the rate of suspension of the levy in the case of the meat referred to in paragraph 1 (b);

(b) the relationship between the quantities which may be imported and the quantities covered by the purchase contract referred to in paragraph 3 (b)."

Rules for the implementation of this provision have been adopted in several Commission regulations. Thus Commission Regulation No 585/77 of 18 March 1977 on the system of import and export licences for beef and veal (Official Journal 1977 L 75, p. 5), as amended by Commission Regulation No 1384/77 (Official Journal L 157 of 28 June 1977, p. 16) and Commission Regulation No 2901/77 (Official Journal L 338 of 28 December 1977, p. 9), contains a description of the class of persons entitled to apply for a licence and provisions relating to the obligation to process the imported meat. In so far as Article 11a is relevant in this case it provides that:

"1. In order to qualify for the special import arrangements provided for in Article 14 (3) (b) of Regulation (EEC) 805/68

(a) all applications for a licence submitted by any one applicant shall be accompanied by the original of a purchase contract for frozen meat held by an intervention agency, drawn up in accordance with Regulation (EEC) No 2900/77 during the quarter in which the application

is made, and by proof that the purchase price shown in the contract has been paid; . . .

. . .

2. Applications for licences shall be considered only if:

(a) the applicant is a natural or legal person who for at least 12 months has been carrying on business in the meat and livestock sector and is officially registered in a Member State;

(b) in a case of an application referred to in Article 9, the applicant proves to the satisfaction of the competent authorities of the Member State where the application is lodged that the person responsible for the establishment indicated in the application has agreed to the manufacture on those premises of the preserves in question.

. . .

5. When lodging an application for a licence the applicant shall undertake in writing either to carry out himself, or to have carried out on his responsibility, in the Member State indicated in that undertaking, being the State where the products will be put into free circulation, the following operations, as appropriate:

(a) the processing referred to in Article 14 (1) (a) of Regulation (EEC) No 805/68;

(b) the processing referred to in Article 14 (1) (b) thereof.

. . ."

Mention must be made of Commission Regulation No 597/77 (Official Journal L 76 of 24 March 1977, p. 1) laying down detailed rules for the application of special import arrangements for certain types of frozen beef intended for processing, Article 2 whereof provides that "Article 14 (3) (b) of Regulation (EEC) No 805/68 may be applied when it is found that the quantities of frozen meat held by an intervention agency exceed or are likely to exceed 10 000 tonnes". Reference must also be made to Commission Regulation No 2900/77 laying down detailed rules for the sale of beef held by the intervention agencies to enable the import with total suspension of the levy of frozen beef and veal intended for processing (Official Journal No L 338 of 28 December 1977, p. 6). Article 1 thereof provides:

"1. Importation with total suspension of the levy as provided for in Article 14 (3) (b) of Regulation (EEC) No 806/68 shall be conditional upon the submission of a purchase contract for frozen meat held by an intervention agency, concluded in accordance with this regulation.

2. The sale shall take place by way of tender, pursuant to Regulation (EEC) No. 216/69, and in particular Articles 6 to 14 thereof, subject to the special and derogating provisions laid down in this regulation."

Article 2 thereof provides:

"1. A general notice of invitation to tender shall be published at the latest on the date of publication of the first partial invitation to tender.

2. Under the tendering system, the intervention agencies shall issue partial invitations to tender every quarter.

. . ."

According to Article 3 of this regulation tenders could be submitted only between 20 and 30 January 1978; they had to be for a total quantity of not less than five tonnes and not more than 100 tonnes. Article 4 provides that on the 18th day of each quarter (the first occasion was on 6 February 1978) the Member States shall inform the Commission of the list of tenderers and the quantities of products for which tenders have been submitted. Finally Article 5 states that different minimum prices may be fixed according to the use for which the meat is intended.

The Council estimate mentioned in Regulation No 805/68 "of supply and demand for beef and veal in the processing industry for the period 1 January to 31 December 1978" was published in the Official Journal of 23 December 1977 (Official Journal L 330, p. 30). According to this estimate it was necessary to proceed on the basis of a deficit in meat for processing in 1978 of 50 000 tonnes.

"In light of the experience gained in 1977" this deficit was apportioned so that:

"(a) 20 000 tonnes of meat intended for the manufacture of processed food, which does not contain characteristic components other than beef and jelly, shall qualify for the total suspension of the levy, and

(b) 30 000 tonnes of meat intended for the processing industry for the manufacture of products other than the preserved food referred to in (a) shall qualify for the total or partial suspension of the levy".

A "General notice of periodic invitations to tender for the sale of frozen beef held by the intervention agencies to enable the import with total suspension of the levy of frozen beef and veal intended for processing" was published in the Official Journal of 13 January 1978 (No C 11, p. 16). It quotes "The regulations on which the sale is based" and states that "The goods will be sold to the highest bidders." Furthermore Section 6 (b) of this estimate provides:

"If the price tendered is lower than the minimum price fixed by the Commission of the European Communities, the tender shall be rejected."

and Section 6 (d) provides:

"Each tenderer shall be informed without delay by the intervention agency of the outcome of his participation in the invitation to tender . . ."

Page 34 of the same number of the Official Journal contains "Notice of invitation to tender No It. P 1 — Regulation (EEC) No 2900/77 — for the sale of certain frozen unboned (bone-in) beef held in stock by the Italian intervention agency". It states *inter alia* the quantity of beef to be sold by the Italian intervention agency.

The applicant, the Simmenthal firm, which has since 1923, owned a canning factory specializing in the production of corned beef and — according to particulars which it supplied itself — processes annually about 20 000 tonnes of beef and veal, also participated in this invitation to tender. However it had no chance of being awarded a contract because the price it tendered was lower than the minimum price fixed by the Commission in a Decision of 15 February 1978 (Official Journal L 69 of 11 March 1978, p. 36), in which the maximum quantities of beef for importation in the first quarter of 1978 were also given. The Italian intervention agency AIMA informed the applicant of this in a letter of 23 February 1978.

Since the applicant was convinced that the Commission decision and the system upon which it is based were from several points of view objectionable it brought an application before the Court of Justice on 13 April 1978. Its statement of claim in its original form asked for a large number of acts to be annulled, namely:

— Commission Decision of 15 February 1978;

— Notice of invitation to tender No It. P 1 — Regulation (EEC) No 2900/77;

— The General notice of periodic invitations to tender for the sale of frozen beef held by the intervention agencies to enable the import with total suspension of the levy of frozen beef and veal intended for processing;

— Commission Regulation No 597/77 and in particular Article 11 thereof as amended by Commission Regulation No 1384/77 and Article 11a thereof added by Commission Regulation No 2901/77;

— Commission Regulation No 2900/77;

— Commission Regulation No 2901/77, in so far as it relates to the total suspension within the framework of the special import system for frozen beef and veal.

A few days after the application was lodged the applicant amended its statement of claim thereby requesting the Court to annul the said acts or to declare them to be inapplicable; the statement of claim was further clarified in the reply to the effect that it only asked for the annulment of the Commission Decision of 15 February 1978 and consequently for a declaration that the acts set out in the statement of claim are inapplicable.

My opinion on these claims is as follows:

## I — Admissibility

As your Lordships are aware the Commission has raised various objections to the admissibility of the application.

1. In so far as the statement of claim in its original form requests the Court not only to annul Commission Decision of 15 February 1978 but also a number of other acts of general application, it would, as the Commission rightly points out, have to be held to be inadmissible for the very simple reason that — apart from the legal nature of the acts in question — as far as this aspect of the matter is concerned, the periods within which proceedings are to be instituted would have expired even if the periods by which they could be extended on account of distance had been added to them.

However it must not be forgotten that the statement of claim mentioned earlier was amended a few days after the application was lodged but — with reference to Commission Decision of 15 February 1978 — within the period during which proceedings have to be brought. In this connexion the applicant during the proceedings for the granting of an interim measure and in its reply made it clear that it was only concerned with the annulment of Commission Decision of 15 February 1978 and that as far as concerns the other acts which it mentioned it only wanted to obtain a declaration of their inapplicability. In my opinion this clarification is in no way objectionable. Consequently we should take the statement of claim as it has been determined in the reply and only consider whether there are objections to its admissibility in that form.

2. This is certainly not the case with reference to the claim that Commission Decision of 15 February 1978 should be annulled, at all events provided that the examination is confined to the question of keeping within the period for filing an application and also to the question whether the said decision was of direct and individual concern to the applicant.

As far as concerns the first point it is sufficient to refer to the date when the decision was adopted and notified — 15 February 1978 and 11 March 1978 respectively — and also to the fact that the application reached the Court on 13 April 1978.

As far as concerns the second point it is sufficient to recall the course of events as it emerges from the recital of the facts. Tenders had to be submitted by 30 January 1978 at the latest in answer to the invitation to tender published in the Official Journal of 13 January 1978. The essential particulars in the tender — the name of the tenderer, the quantity and the price — were then transmitted to the Commission. The latter determined the minimum prices and the quantities of beef and veal to be imported on the basis of all the tenders. This made it quite certain that tenders like the applicant's which were lower than the minimum price were not considered and that import licences could not be issued to such tenderers. Even though the decision, according to Article 3 thereof, was addressed to the Member States there is nevertheless no doubt that it is of *direct* concern to the applicant, because under the provisions of the decisions the Member States were not left with any freedom of action whatsoever. Similarly the decision is of *individual* concern to the applicant; for the decision only applied to interested parties who had submitted their tenders in time, that is to a closed class of ascertainable persons, upon the size of which the question whether the decision was of individual concern cannot depend. Any further submissions on this point are I am certain unnecessary in view of the case-law quoted by the applicant. In particular the judgment of 13 May 1971 in Joined Cases 41 to 44/70 *(NV International Fruit Company and Others* v *Commission of the European Communities* [1971] 1 ECR 411) is in this connexion quite clear. Even at that time, in the context of protective measures on the importation of dessert apples, the points at issue were that applications for licences had to be made by a certain date, that the Commission was notified of this and then with due regard to the market situation and on the basis of the applications for licences which had been made the Commission decided upon the volume of permissible imports. If the Court at that time assumed, having regard to the fact that the number of applications when the decision was adopted was fixed and that after the adoption of the Commission decision the Member States were left with no discretionary powers whatsoever, that the applicants who had also applied for licences were individually and directly concerned within the meaning of Article 173 of the EEC Treaty then clearly the same reasoning must apply to the present case.

3. The Commission's plea that the application is inadmissible in fact also has another objective. It is of the opinion that the applicant does not have an interest in the annulment of Commission Decision of 15 February 1978. The applicant, the Commission claims, would in fact derive no advantages from this because the award of a contract to tenderers who were successful at that time and have already concluded their business transactions cannot be retroactively withdrawn and because the tenders which were not considered for

an award at the conclusion of the tendering procedure have become devoid of purpose. Furthermore the Commission stresses that the applicant is in the main only interested in challenging the general acts to which it has referred, that is to say, in changing the special import system. On this point it must be noted, on the one hand, that there are no circumstances in which the applicant could obtain a declaration of the inapplicability of the provisions quoted in the operative part of a judgment; for Article 184 of the EEC Treaty does not afford the opportunity to bring a separate action but merely permits and additional claim challenging the general acts which form the basis of an individual decision. On the other hand, there is a definite misuse of the procedure, because the applicant, by by-passing Article 173 which precludes a direct attack by it on general regulations, intended to use Article 184 for a similar attack, and in so doing, it in any case to all intents and purposes furthered the interests of the processing industry more than its own. Finally — quite apart from the opportunity of locking for judicial protection in the national courts from which an extensive and more effective examination of Community legal provisions can be obtained through the medium of Article 177 of the EEC Treaty — the applicant can also be said to have no legal interest to protect in relation to the general acts referred to which it has challenged. For no advantage accrues to the applicant from the discontinuation of the special import system and, since in Court proceedings specific directions cannot be given for the framing of politico-economic decisions, it also has no guarantee that it will be able in the future to import free of the levy.

In my view the following detailed observations must be made on these objections.

(a) The assumption that the applicant does not have an interest in the annulment of Commission Decision of 15 February 1978, because the effects of that decision cannot be nullified retroactively after the end of the first invitation to tender and because the latter cannot be repeated with the renewed participation of the applicant does not seem to me to be at all convincing. If such considerations were acknowledged to be relevant it would never be possible to sue in respect of such decisions and this would indeed be intolerable. In this case the establishment of an interest in the action must therefore be admitted in another way. Thus one has in mind for example the prosecution of claims for compensation which the applicant does not of course mention because of the negligible prospects of success after the implementation for the first time of the procedure for such an invitation to tender. Or the fact that a continuation and repetition of the procedure in the same way is to be expected, and this certainly applies in the case of such a system which is envisaged to last for a specific period and is implemented periodically, must simply be regarded as sufficient.

(b) The reference to proceedings which might be brought in the national courts and to applications for preliminary rulings pursuant to Article 177 of the EEC Treaty connected therewith undoubtedly has no relevance when determining what remedies are available under Community law.

The Community legal system of judicial protection is unquestionably autonomous; that is why the possible remedies available under it have to be determined in accordance with criteria established under Community law. There

are no indications anywhere in the Treaty that in this field a principle should be applied that judicial remedies under Community law are as it were subsidiary to national judicial protection. This view would be bound to meet with the most serious objections. In fact it would either mean that the Court of Justice had to rule on national remedies, and so had to interpret national law, which frequently causes difficulties, or that, if that situation were to be avoided, when doubts arose endeavours had first of all to be made to obtain a ruling from the national court, with the result that this Court could only be appealed to if it were ascertained beyond all doubt — and it could take a long time in some cases to do this — that no national remedies were available. In my opinion it is self-evident that neither of these alternatives is worth discussing. Therefore we need not concern ourselves any further with the question, which gave rise to argument during the proceedings, whether AIMA's official reply by way of a decision of 23 February 1978 could have been challenged or whether the material problems in this case could have been the subject of a different national lawsuit, for example an action against the notice to pay the levy. On this issue I will at least point out that the submissions of the applicant and of the representative of the Italian Government with reference to the case-law of the Italian Consiglio di Stato on the possibility of challenging before an Italian court AIMA's actions connected with the procedure relating to invitations to tender, which merely amount to the notification of the effects of a discretionary decision adopted at a Community level, appear to me to be convincing.

(c) If it is assumed that the Commission Decision of 15 February 1978 may be challenged then however it also follows automatically in principle from this assumption that the general acts and regulations which form the basis of the decisions have been included with good reason in the censure. Even if it is evident that it is the general regulation which is actually being challenged there cannot however be said to be a misuse of the procedure and the objection cannot also be raised that in this respect the applicant does not have an interest in the application.

The applicant has in this connexion rightly submitted, and for that purpose was able to rely on the case-law, that when a decision which has been challenged represents the direct application of a general rule, the plea that this rule is illegal is in accordance with a general legal principle. On this point it is merely necessary to call to mind the judgments of 13 June 1958 in Case 9/56 *(Meroni & Co., Industrie Metallurgische, S.p.A.* v *High Authority of the European Coal and Steel Community* [1957 and 1958] ECR 133), the judgment of 13 June 1958 in Case 15/57 *(Compagnie des Hauts Fourneaux de Chasse* v *High Authority of the European Coal and Steel Community* [1957 and 1958] ECR 211, and the judgment of 16 December 1963 in Case 18/62 *(Emilia Barge* v *High Authority of the European Coal and Steel Community* [1963] ECR 259) and the judgment of 13 July 1966 in Case 32/65 *(Government of the Italian Republic* v *Council of the EEC and Commission of the EEC* [1966] ECR 389). On the other hand it must not be forgotten that special proof of an interest is not required for such a plea, which is nothing but a specific substantiation of the claim (cf. the judgment of 13 May 1971 in Joined Cases 41 to 44/70 *NV International Fruit Company and Others* v *Commission of the European Communities* [1971] 1 ECR 411). To proceed in any

other way would in fact justify what amounts to an incomprehensible discrimination against direct legal actions as opposed to applications for a preliminary ruling which are made during proceedings before the national court; for in references for a preliminary ruling, as is well known, even if the question of validity relates to general acts, the Court of Justice does not check whether such an examination is in fact necessary in the national proceedings or not.

Moreover it must however also be accepted that in fact the applicant's interest in the judicial review of the general acts which have been mentioned and in a ruling that they are inapplicable cannot be disputed. Indeed, the applicant's concern is certainly not to bring to an end the whole system of preferential imports; it has only criticized some of the detailed rules for its application. If this criticism should prove to be well founded then there is a definite chance that the system will be modified in a manner which is to the applicant's advantage. On the other hand there is probably no one who contemplates in such circumstances bringing to an end the entire import system, the fundamental need for which has been acknowledged in Article 14 of Regulation No 805/68 with reference to the effects which the common organization of the market and the GATT import rules have on the processing industry.

(d) Although it has thus become apparent that none of the objections dealt with so far in considering the issue of admissibility can apply, there still remains for consideration the question whether any finding that one or more of the regulations which are material in this case are inapplicable may actually appear in the operative part of the judgment. On this point the Commission's view that the answer to the latter question is in the negative must surely be followed, because the plea that general acts are illegal is merely a specific way of substantiating the claim. Nevertheless awareness of this does not mean that the application, the aim of which seems to be to cause such a finding to appear in the operative part of the judgment, is to be declared to be inadmissible, but there are at all events grounds for dealing with the effects of such substantiation of the claim in the part of the judgment which the Court of Justice considers to be appropriate.

## II — The substance

When considering the statement of claim, to which I can now turn, it seems to me to be fitting to consider first of all the applicant's criticisms based on substantive law of the contested decision and of the system which this decision made possible, and only to deal with the alleged formal and procedural defects subsequently.

1. The applicant objects mainly to the definition of the class of persons qualified to participate in the special import system linked with the purchase of meat held by the intervention agencies. Owing to the fact that the class has not been restricted to processors, for whom the special import system was intended, and because it has not been laid down that the meat to be bought from the intervention agencies must be processed, the processors, who were in principle the intended beneficiaries, have been discriminated against. This extension of the category of participants has also led to each tenderer's only being awarded very limited quantities. In the applicant's view it would be more appropriate to restrict the class to processors or at least to give them preferential treatment and then apportion the meat

according to the processing capacities and patterns of trade existing hitherto. The applicant is also of the opinion, which too is to be viewed against the background of the criticism concerning the class of participants, that the Commission was wrong to be guided mainly by tenders from traders who, to some extent, only participated in the invitations to tender for speculative reasons, and that as a result it fixed minimum prices which were too high. In this way it has disregarded the aim of the special import system which is to supply processors with meat from non-member countries on favourable terms. It is necessary to proceed on the basis that the advantage of being exempted from the levy is as good as offset by minimum prices which were far too high; at least the aim of giving preferential treatment to processors has been neglected to an inadmissible extent in favour of endeavours to relieve the intervention agencies of stocks, and thus burdens have been imposed on processors which strictly speaking should have been borne by the general public. Finally the Commission must also be blamed for having fixed differing minimum prices for the different Member States and by so doing offending against the concept that Community law must be applied uniformly.

(a) As far as concerns these objections it must first of all be noted that the applicant has not called in question the principle upon which the relevant rules and regulations in this case are based, namely the linking of imports from non-member countries on favourable terms with the sale of meat held by the intervention agencies. Any other attitude would indeed be difficult to understand in view of the surplus of beef and veal in the Community, which early in 1978, as we were told, culminated in stocks of 450 000 tonnes.

But anyone who accepts this principle *ipso facto* acquiesces in restrictions of the imports given preferential treatment and also recognizes in connexion therewith that granting preferential treatment on importation must be made conditional upon certain reciprocal concessions which are in the public interest. In this connexion it is quite clear that the Community institutions are entitled to exercise a wider discretion when they assess these two factors. When they do so the possibility is not ruled out *a priori* all the circumstances which are to be taken into consideration and especially the market situation may lead to a considerable reduction of the privileges attaching to importation. If such reductions eventuate then every time the question whether the interests of the processing industry were given adequate consideration has to be determined account must also be taken of the fact that the system viewed as a whole provides this industry with other substantial benefits. In this connexion for example imports exempted from the levy in the context of GATT tariff quotas or of import quotas applied to ACP products are material. Aids for private warehousing are also to be regarded as such a benefit. Furthermore special sales of meat held by intervention agencies at reduced prices to the processing industry itself, such as took place for example in November 1977 and in August 1978, whereby 4 000 and 3 000 tonnes

respectively were handed over at the quite favourable price of 950 units of account per tonne, must not be forgotten.

(b) As far as concerns the question of the definition of the class of persons allowed to participate in the special procedure in question the Commission, as your Lordships are aware, attached importance to the principle, laid down in Article 7 of Regulation No 805/68 for the disposal of products bought in by the intervention agencies, according to which "equal access to goods and equal treatment of purchasers" is to be ensured. The applicant on the other hand takes the view that attention should have been focused mainly on the fact that the processors received preferential treatment. This would have meant that, if discrimination to their detriment was to be avoided, participation in the special procedure would have to be restricted to them. In fact such an attitude is also not inconsistent with the principle quoted by the Commission. On this point Regulation No 98/69 (as amended by Regulation No 429/77 — Official Journal 1977 L 61 of 5 March 1977, p. 18) gives an official interpretation. According to that regulation differentiation based on objective criteria is definitely permitted; in particular there can be exceptions and this must also apply to the "linking" system, if the goods to be disposed of are intended for specific purposes. Furthermore it is also relevant that, in the context of a similar special import system (imports of young male bovine animals intended for fattening in accordance with Article 13 of Regulation No 805/68), Regulation No 2902/77, unlike Regulation No 2900/77, which gives the trade priority, clearly accords priority to agricultural producers.

As far as concerns this controversial point it must first of all be stressed that the last-mentioned reference undoubtedly has no value as an argument, because the special import arrangements for young bovine animals is restricted to a total or partial suspension of the levy (Article 13 of Regulation No 805/68 as amended by Regulation No 425/77: Official Journal L 61 of 5 March 1977, p. 1), which means that that article does not provide for the import system to be linked to the sale of meat held by the intervention agencies, as does Article 14 of Regulation No 805/68.

The fact that the relevant rules could not be restricted to the class of processors because the said rules deal with the importation of meat and many processors, in Italy at least the smaller undertakings, do not import direct but avail themselves of the trade seems to me also to be convincing. If the rules advocated by the applicant were adopted, such interested parties would not have a chance, and that would undoubtedly amount to discrimination, because under Article 11 of Regulation No 585/79 as amended by Regulation No 1384/77 licences cannot be issued to them and then assigned by them to importers.

Furthermore it must be borne in mind that "linking" under Article 14 of Regulation No 805/68 is in general permissible, because there is no clear limitation on it; therefore imports exempted from the levy cannot only be linked to the sale of meat held by the intervention agencies, which is only

suitable for processing, but also to the sale of any meat held by intervention agencies, that is of intervention agency meat intended for general consumption. In the present case it is clear that in fact the second of the two alternative combinations was chosen. This can be inferred from a statement of the applicant that meat held by the intervention agencies and intended for the processing industry was not involved. This is confirmed by the Council Estimate of 13 December 1977, which has already been mentioned, and on which the invitation to tender of January 1978 was based. It compared the requirements of the processing industry with the supplies available within the Community made up *inter alia* of quantities in public and private storage, tariff quotas and imports from ACP countries. If accordingly the conclusion was drawn that there remained a deficit of 50 000 tonnes in the processing industry's requirements of meat, to be made good by special imports, this can only mean that it was not considered necessary to reserve as well for the processing industry the meat held by the intervention agencies and linked to these imports. If however there is a linking of this kind, it naturally precludes any obligation to process the intervention agency meat in question which is what the applicant demands should be done. It must also be regarded as equally pointless to reserve the sale of such intervention agency meat to processors because in this way they would be forced to act as dealers which is not one of their functions. In such a case laying the emphasis on the principle laid down in Article 7 of Regulation No 805/68 and, as the Commission has done, giving the parties interested equal access to the "linking" system, must on the contrary be the obvious course.

To that must also be added, and this makes it abundantly clear that the Commission cannot be blamed for misusing its discretion, that all the parties interested cannot in fact be said to have received absolutely equal treatment, that on the contrary the privileged position of processors positively stood out. Care was in fact taken in an appropriate manner that other interested parties, who were entitled to effect the privileged imports, used the imported meat for the purpose specified, that is to say, for processing. In this connexion I draw attention to Article 9 of Regulation No 585/77, as amended by Regulation No 1384/77, under which in the licence the factory in which the meat is to be processed into preserved food is to be designated. Furthermore under Article 11 of this regulation the applicant for a licence has to undertake to carry out himself or have carried out under his responsibility the processing and also to prove that the person responsible for the factory indicated in the application for a licence has agreed to the manufacture in those premises of the preserved food in question. Moreover reference should be made to the corresponding wording of Article 11a which by means of Commission Regulation No 2901/77 has been added to Regulation No 585/77.

Accordingly it cannot in fact be said that the rules could only be regarded as lawful if they had been framed in accordance with the applicant's ideas. Just because they take account of the principle of equal access to meat held by

the intervention agencies and also of the principle of giving the processing industry preferential treatment it must on the contrary be recorded that they are compatible with the rules of the common organization of the market in beef and veal and in no way inconsistent with the prohibition of discrimination.

(c) The question to be looked into following on this is whether valid objections can be raised against the principle of taking into account the prices tendered against the minimum prices fixed on the strength of them and also on the ground that the same minimum quantity applied to each participant in the invitation to tender. In the applicant's view an apportionment of the quantities according to the processing capacities would have been more appropriate. It is also of the opinion that the system requires prices to be at about the same level as world market prices. But this is clearly unattainable if every possible price tendered is taken into consideration, that is to say prices tendered by processors whose costs are lower because of diversification or because they manufactured certain products themselves and also prices tendered by other interested parties who dispose of meat held by the intervention agencies to the retail trade upon terms which are favourable to them and sell imported meat to processors at a big profit.

As far as concerns this category of questions the view that the quantities available should be apportioned according to processing capacities is evidently based on the notion that only processors should participate in the special import system, a notion however, as has already been shown, which must be rejected. On this point the Commission has convincingly shown that, if the invitations to tender are restricted to processors, the determination of their processing capacities would create very great difficulties. Furthermore, since larger meat processors are to be found in other Member States, this would straightaway lead to the smaller Italian undertakings being placed at a disadvantage and thus prevent this maintenance of a balance between regions.

With regard to the methods adopted to fix the price it is clearly wrong to say that there is in general a need to approximate it to world market prices. Although it is true that a requirement of this kind applies to imported meat and may well in the main be satisfied by the interposition of traders and the inclusion of a corresponding profit margin, the obligation to process nevertheless places the processor in a strong position and thereby ensures that the importer's charges cannot be excessive. On the other hand this does not apply to meat held by intervention agencies, because it is not necessarily intended for processing. As far as that is concerned one can legitimately make sure that the price reaches a certain level. On the one hand that is justified, because it is in the interest of the intervention agencies and under the system of "linking" that interest is intended to come into its own. On the other hand it must be borne in mind that it is only by taking into consideration the highest prices tendered that a dissipation of the available quantities can be prevented which is unfortunately what happened in 1977 when another system was applied.

In this connexion it must moreover be noted that it is not entirely clear why only dealers can obtain higher prices for meat held by the intervention agencies, which from the outset is not intended for processing. In fact there is presumably no reason why processors, who participate in the invitation to tender should not also act accordingly and by so doing avoid losses by purchasing meat held by intervention agencies.

Finally, having regard to the foregoing, restricting the quantities to each tenderer can also hardly be described as unjustified. If in fact there was no such limitation, most of the available meat would go to the financially strongest undertakings, which are able to submit higher tenders. Therefore the restriction of quantities must undoubtedly be regarded, in the interest of a balanced apportionment, as being appropriate and justified.

(d) There now only remains the question whether the minimum prices in this case were fixed too high so that the advantage accruing to processors was in practice cancelled out or disproportionately reduced. Furthermore the objection that the Commission has wrongly fixed differing minimum prices for the different Member States has to be examined.

As far as concerns the price fixing the applicant, in substantiation of its view, points out that prices on the world market at that time had been about 900 units of account per tonne, that the normal selling price of beef and veal held by the intervention agencies was approximately 1 300 units of account per tonne but that the minimum price fixed by the Commission amounted to 1 600 units of account per tonne. However it overlooks in this connexion, on the one hand, that processing the meat from the intervention agencies was not obligatory, and that, what is more, the meat could be sold on the market at a profit by processors as well as by dealers. There are therefore no grounds at all for establishing an average cost price for meat for processing on the basis of the price for meat held by the intervention agencies as determined by the invitation to tender, and of the price of imported meat. On the other hand, even if it is assumed that the beef and veal to be acquired from the intervention agencies is processed, it must be borne in mind that the relevant quantity which as your Lordships are aware, amounted at the most to 100 tonnes, as a rule — I call attention to the applicant's statement that before 1974 it imported each year about 10 000 tonnes from non-member countries — is to be compared to a much larger quantity of imported meat, which, since it has to be processed, may be bought in addition by other participants in the invitation to tender who are not themselves processors. If however the cost prices are calculated on that basis then, in view of the savings in the levy of more than 1 000 units of account, even if a profit margin for the dealer is taken into consideration — and no evidence has been adduced to us that this is usually about 20 % — and even if a smaller quantity of meat is acquired from the intervention agencies at a price which is about 300 units of account per tonne more than the normal selling price of

meat held by intervention agencies an advantage must still accrue to the processors and such an advantage rules out the finding that the objective of giving them the benefit of a special import system has been neglected to an inadmissible extent.

On the question of the fixing of differing minimum prices for the different Member States it must first of all be stressed that, since the lowest level was chosen for Italy, it led to Italian undertakings receiving preferential treatment. Furthermore the Commission has shown that there are objective reasons for proceeding in this way and that consequently there cannot be presumed to be any discrimination. Thus the intervention prices vary anyway from one Member State to another; differences in quality must be taken into account and it is necessary to have regard to the different market conditions and conditions of competition and this of course also accounts for the normal selling prices for meat held by the intervention agencies not being uniform in all the Member States. If that fact had not been taken into consideration and if at the time of the invitation to tender care had not been taken to see that the minimum price in the various Member States represented about the same difference in relation to the selling price of meat held by the intervention agencies — in Italy the difference was even smaller than in the other Member States — there would have been regional imbalance and the Italian purchasers would have been the ones placed at a disadvantage as regards quantity compared with interested parties from the other Member States. However during the proceedings no conclusive evidence was adduced to show that there was any reason for fixing the minimum prices for Italy at a still lower level. This would in fact undoubtedly have upset the regional balance to the detriment of other Member States and since under those circumstances only smaller quantities would have been available for the other Member States, would in particular have made it necessary to fix the minimum prices for the latter at an even higher level than had already been reached.

(e) To sum up it must be recorded that the applicant's objection that the system is discriminatory and disregards the principle of proportionality is no more well founded than the similar objection made concerning the decision which has been directly challenged.

2. I now come to the applicant's criticism of the procedure adopted. It takes the view that a necessary condition of compliance with the principle that the administration must be impartial is that the anonymity of the tenders must be preserved; that the same procedure as that prescribed in Directive No 71/305 concerning the award of public works contracts ought to have been adopted. Instead the names of the tenders and their tenderers came to the knowledge of the national authorities, whose representatives also sit on the Management Committee, and also of the Commission, and this made it possible for the minimum prices and quantities to be fixed in such a way that unwanted tenderers were excluded.

In this connexion it must first of all be stated that, since the system — cf. Article 3 of Commission Regulation No 2900/77 — precludes, in the interest of a fair and reasonable apportionment, the submission of several tenders by undertakings in the various Member States notification to the Commission, which has to carry out the requisite supervision,

of the names of the participants in the invitation to tender, cannot be dispensed with. Furthermore the account during the oral procedure of the administrative procedure gives the impression that the way it was arranged was unobjectionable in that two lists had evidently been drawn up, one on which the tenders were listed according to the quantities each covered without giving the names of the tenderers, and one on which the tenderers were set out in alphabetical order. If however in addition the representatives of the national authorities on the Management Committee in fact brought to the notice of the Commission which tenderers submitted which tender that would not nevertheless give rise to any objection in principle. In fact the risk of the Commission's engaging in any manipulation cannot be identified, because its decision was clearly made in the main in accordance with objective criteria — the amount of the tenders and a price difference of approximately the same amount in the case of all the Member States in relation to the normal selling prices for meat held by the intervention agencies.

I do not therefore believe that the omission of any special precautions to preserve the anonymity of the tenderers in the particular way the applicant has in mind should be a ground for annulling the contested decision.

3. After dealing with that issue there now only remains for consideration the applicant's objection that the statements of the reasons upon which both the regulations and general acts underlying the contested decision and the decision itself are based are inadequate. In its view, since the basic Regulation No 805/68 only mentions the possibility of making imports exempted from the levy conditional upon purchases from the intervention agencies without laying down any determinative criteria for this, and since only a minimum quantity of the stocks held by the intervention agencies has been specified for the said "linking", further particulars ought to have been given in the Community act in which arrangements for "linking" for 1978 were made for the first time. In particular the volume of the stocks held by the intervention agencies and the quantities suitable for industrial processing within the meaning of Article 9 of Regulation No 1896/73 (Official Journal L 193 of 14 July 1973, p. 18) ought to have been explained and there should have been some detailed indication of the relationship between the quantities to be imported and purchases from the intervention agencies which is set out in the annex to Commission Regulation No 2901/77. Furthermore the applicant takes the view that in the contested decision, in which the quantities to be imported and the minimum prices have been fixed, there should have been guiding principles for determining the minimum prices, which should have been given according to the different processing systems and the different Member States. Last but not least, in the opinion of the applicant, the fixing of the quantities to be imported during the different periods as well as their apportionment between the different Member States and the processing system to be taken into consideration ought to have been explained.

As far as those objections are concerned it must undoubtedly be conceded that the statement of the reasons upon which the various acts in the present case were based is not very informative. On the other hand it is well established by the case-law — I only have to remind your Lordships of the recent judgment of 30 November 1978 in Case 87/78 *Welding & Co.* v *Hauptzollamt Hamburg-Waltershof* [1978] ECR 2457 — that the required standard for the statement of the reasons upon which general acts are based, and, as far as that is concerned, in a sense the decision fixing minimum selling prices is also to

be numbered among them, must not be set too high. Thus there is no need to give reasons for every detail separately but it is frequently sufficient, especially if the context of the legislation is taken into consideration, to refer to the general situation and to the general objectives which it is sought to attain by means of the rules enacted.

If the applicant's criticism is considered against this background it is first of all important to note, with reference to the first part of the complaint, that the application of the "linking" system is clearly dependent on the extent of the difficulties prevailing on the market, that is to say in particular on the size of stocks held by the intervention agencies. That is stated in Article 2 of Regulation No 597/77 which provides that if certain minimum quantities held by the intervention agencies are exceeded the "linking" system can be applied. Moreover it does not seem to me to be necessary to state the actual amount of the stocks in the regulation implementing the system so long as this is regularly reported so that circles which are interested in this aspect of the matter are kept fully informed. Similarly in my opinion it is not essential to give further particulars of the relationship between the quantities to be imported and the meat to be purchased from the intervention agencies. This of course is also determined by the amount of the stocks held by the intervention agencies and in this connexion it is of interest to note what the Council estimate provided for by Article 14 of Regulation No 805/68 states in this connexion.

On the other hand as far as the fixing of minimum prices is concerned, it is material that the General notice of periodic invitations to tender (Official Journal C 11 of 13 January 1978, p. 16) contains the legal basis for the sale of meat held by intervention agencies and that the statement of the reasons upon which Regulation No 2900/77 is based mentions invitations to tender within the meaning of Regulation No 216/69 (Official Journal, English Special Edition, 1969 (I), p. 31). The object of the tendering procedure according to the last-mentioned regulation is to obtain the best prices taking into account the actual market situation. In addition the recitals in the preamble to Regulation No 2900/77 also mention different minimum prices. Having regard to that regulation and to the before-mentioned general notice it should be clear that the minimum prices are based on the tenders submitted, which are in turn affected by the market situation and the quantities available, and that the apportionment between the different systems and the different Member States is also determined in accordance therewith. If moreover nothing special has been said about the apportionment of the amount of the deficit among the individual quarters of 1978 this must surely be interpreted as meaning that the Commission has effected a simple division into four because it assumed that the market trend would be relatively constant. Furthermore explanations could perhaps have been expected concerning the endeavour to achieve a balanced distribution among the countries of the Community by fixing differing minimum prices, which in a way amounts to a derogation from the principle that the highest tenders are determinative. I would not myself regard the absence of any such explanations as a serious defect, on the one hand, because of the wellknown fact that there are differences in quality and different market conditions in the Member States which naturally had to be taken into consideration, and, on the other hand, because of the fact, which is crucial in this case, that it was precisely the Italians

affected, among them the applicant, who benefited from the differences in the minimum prices.

Consequently, even if the statement of the reasons upon which the decision was based raises certain doubts which cannot be completely dispelled — at least on the whole there cannot be said to be serious breaches — the regulations which are unobjectionable in substance and the Commission decision which is based on them should not be declared inapplicable or annulled on the ground of formal defects.

III — In conclusion therefore I submit that Simmenthal's application, in so far as it asks for the annulment of Commission Decision of 15 February 1978 and in substantiation thereof claims that certain regulations and general acts are illegal, is certainly to be regarded as admissible but must be dismissed as unfounded. If this is the outcome of the proceedings the costs thereof should be borne by the applicant.