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.

fee for the authorization — which is granted where there is no danger that the meat will spread an epizootic disease — was DM 865, based on the Bayerisches Kostengesetz [Bavarian Law on costs]. IFG brought an action before the Bayerisches Verwaltungsgericht München [Bavarian Finance Court, Munich] on 2 January 1978, challenging the restrictions contained in the licence and the imposition of a fee. It objected in particular to the fee which, it alleged, constituted a charge having an effect equivalent to a customs duty and was therefore prohibited by the regulations on the common organization of the market in beef and veal and pigmeat.

The Free State of Bavaria did not deny that the nature of the fee was as stated by the plaintiff. However, it claimed that the levying of that fee was justified on the basis of the exception contained in 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).

In the course of the main action, the administrative authority reduced the amount of the fee to DM 100 and refunded the excess payment. The Verwaltungsgericht directed that the first question in dispute (namely, the restrictions in the authorization) be tried as a separate issue and by order of the Ninth Chamber of 27 October 1982 referred two questions to the Court of Justice for a preliminary ruling.

2. The first question reads as follows:

"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 import licence 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)?"

In order to answer that question, it seems to me that it is first of all necessary to determine whether the requirement of an authorization for the importation of beef and pigmeat from non-member countries and the corresponding levying of a fee are lawful under Community law. But that investigation is in its turn based on a premise which I would summarize in the following terms: in intra-Community trade charges having an effect equivalent to customs duties are subject to a prohibition which, being intended to ensure the free movement of goods, is absolute and subject to no exceptions (cf. Article 9 of the Treaty); in trade with non-member countries, on the other hand, decisions to abolish, maintain, amend or introduce such charges are from time to time dictated by the requirements of the common commercial policy and the Common Customs Tariff. They are provided for by means of secondary legislation.

Subject to that consideration, it is true, as the plaintiff states, that the fees levied in the Member States for health inspections on imports from outside the Community are charges having equivalent effect; and, in relation to this case, it is correct that the decision to which I have referred is given specific expression in the prohibition of such charges laid down in the regulations on the common organizations of the market

in beef and veal and pigmeat (cf. Article 20 (2) of Regulation (EEC) No 805/68, Official Journal, English Special Edition 1968 (I), p. 187, and Article 17 (2) of Regulation No 2759/75, Official Journal L 282, p. 1). However, the legislative framework which is relevant here is not limited to those regulations. The provisions on health inspection are consolidated by Council Directive No 72/462/EEC of 12 December 1972 (Official Journal, English Special Edition 1972 (31 December), p. 7) which in Articles 22 to 25 provides that imports of bovine animals, swine and fresh meat from non-member countries are subject to a Community inspection procedure.

For the application of that procedure — and this is the crux of the case — various implementing measures are required at Community and national level. According to the first indent of Article 23 (2) for example, the origin of the meat must be apparent on inspection and the non-member country from which the meat comes must be included on a list drawn up by the Council and published in the *Official Journal of the European Communities*. The third indent of Article 23 (2) provides that the meat must be accompanied by an animal health certificate, in conformity with a specimen drawn up by the Standing Veterinary Committee, and by a public health certificate corresponding to the specimen contained in Annex C to the directive. Furthermore, according to Article 4, meat may be imported into the Community only if it comes from establishments appearing on lists supplementing the list of non-member countries; according to Article 16, meat may be imported only if it complies with the health requirements laid down by the Standing Veterinary Committee; finally, Article 27 requires the Member States to draw up and communicate to the Commission lists of the inspection posts for the importing of fresh meat.

It is clear that when IFG was granted the import authorization, many of those measures had not yet been adopted. For example, the list of non-member countries provided for in Article 3 was published only in Official Journal L 146 of 14 July 1979, whilst the health requirements and the list of Romanian slaughterhouses (Articles 16 and 4) were not drawn up by the Commission until 4 February 1982 (Official Journal L 60, p. 16). The consequence of those omissions is plain. As the Member States were unable to organize the inspections provided for by the directive according to its provisions, they retained the right to carry them out on the basis of their own laws. That very right is recognized, albeit subject to a clear restriction, by the provision which the German court asks the Court of Justice to interpret. Article 11 of Directive 72/461 in fact 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."

3. IFG challenges the applicability of that provision on various grounds. First, the exception which it lays down has lapsed, and on the basis of the principle of direct effect, the rule laid down in Directive 72/462 should be applied in its place, after the expiry on 1 January 1977 of the period for compliance prescribed by the directive for the Member States.

That argument is fully unfounded. As the Court has frequently stated, direct effect may be attributed only to provisions which are not only precise in content but also complete; and a provision clearly cannot be complete where, as we have just seen, it requires numerous complicated implementing measures.

The second argument is based on a overliteral interpretation of Article 11. According to IFG, the prohibition of discrimination laid down in that provision does not justify measures which are less favourable than those applicable to intra-Community trade. Nor, the plaintiff adds, is that interpretation of Article 11 incompatible with the Court's judgment in *Wigei* on the interpretation of Article 15 of Directive 71/118/EEC on health problems affecting trade in fresh poultrymeat (Official Journal, English Special Edition 1971 (I), p. 106), which also derogates from the prohibition of charges having equivalent effect in relation to imports from non-member countries. There the Court regarded as lawful a more onerous charge for public health inspections. However, whilst Article 11 provides that the national rules must not be *more favourable* than the rules within the Community, Article 15 requires that the relevant charges are to be *at least equivalent.*

Nor do I find this argument persuasive. It is true that the wording of the two rules is different, but not so much so as to distinguish the scope of the derogations which they lay down. In examining provisions of this group — which includes Article 11 — the Court has always regarded them as sharing the same standpoint. The Court has stated that they are individual examples of the campaign against discrimination conducted by the Commission and the Council; their object is, pending the introduction of Community controls on the importation of fresh meat from non-member countries, to lay down "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" *(Simmenthal,* paragraph 59). *A fortiori,* it must therefore be acknowledged that national provisions which are less favourable (that is to say, stricter or more onerous) than the Community provisions comply with that principle.

The third argument put forward by IFG in order to show that the charges levied in Bavaria do not fall within the derogation laid down in Article 11 is based on the nature of those charges and the unacceptability of charges of that kind (charges having equivalent effect) in intra-Community trade. Here again, I disagree. Article 11 does not define the content of the "national provisions" which it leaves unaltered: it must therefore be assumed that, by its standard, any type of fiscal charge on imports from non-member countries is lawful. For its part, the Court has emphasized the nature of charges levied in respect of health inspections; but only in order to lay down the requirement that they should *correspond* to the costs incurred by the administration. Thus in its judgment of 25 February 1977 in Case 46/76 *(Bauhuis* v *Netherlands* [1977] ECR 5), the Court held that a fee

which was charged to cover the cost of inspections carried out before dispatch in an exporting Member State was lawful.

From this standpoint, I wonder what difference there is between the charge in *Bauhuis* and the charge at issue in this case. Surely this charge is also intended to cover administrative costs which in this case are incurred as a result of the need to collect information on the health situation in non-member countries in the framework of the procedure leading up to the issue of an authorization. It will be stated that "to correspond" means not only to be mutually coordinated, but also to be fair and proportionate to the costs incurred (cf. *Wigei,* paragraph 15). I agree: and I would add that in this case that proportionality seems to me to be fully respected. In any event, it is for the national court to investigate that question (and possibly to ascertain whether the imports effected by IFG were subject to other charges).

4. I now come to the second question. The Verwaltungsgericht asks whether, if the first question is answered in the affirmative, the legality of the charge depends on whether comparable charges are levied in all the other Member States in trade with non-member countries. The question is essentially aimed at obtaining from the Court an explanation of a statement contained in the *Simmenthal* judgment. There the Court stated that derogations from the prohibition of charges having equivalent effect in trade with non-member countries were lawful provided that the pecuniary charges levied in addition to customs duties introduced by the Community on that trade were "uniform in all the Member States" (paragraph 27).

In my view that question must be answered in the negative. First of all, the passage which I have summarized is situated in a context which is far removed from that in this case. The derogations referred to there are contained in regulations on the common organizations of the market; therefore they concern charges for Community inspections, whereas the contested charges were levied on the basis of national rules pending the introduction of such inspections. Furthermore, it seems to me that the interpretation of Article 11 suggested by the court of reference would deprive the exception contained in that provision of all practical effect.

The reason is clear. Until Community arrangements are substituted for national arrangements, the difference between the health inspections carried out in the various Member States constitutes a factor which cannot be underestimated. If the Verwaltungsgericht's hypothesis is correct, a State cannot levy charges on imports from outside the Community in accordance with its own laws unless identical charges are levied in all the other Member States. The only result would be that products from non-member countries would enter the Community and circulate freely within it without being subject to the charges imposed on the same products forming part of intra-Community trade. Is that

the purpose of Article 11? I think not. In other words, I do not believe that that provision derogates from the principle of Community preference, whereby the Member States must prevent imports from non-member countries from being treated more favourably than those from within the Community.

5. On the basis of all the considerations which I have mentioned, I propose that the Court should answer the questions put by the Bayerisches Verwaltungsgericht by order of 27 October 1982 as follows:

In 1977, Article 11 of Directive 72/461 permitted the charging of fees to cover the costs involved in the public health controls carried out on the importation of fresh meat from non-member countries. Those fees might be levied for the issue of an authorization for purposes of veterinary health on importation provided that it was part of the national control procedure and the fees were in proportion to the administrative costs incurred.

The legality of a fee for the issue of an authorization for purposes of veterinary health on importation under Article 11 of Directive 72/461 does not depend on whether comparable charges are levied by the Member State in trade with non-member countries.