OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 17 JANUARY 1979 [1]

Mr President,
Members of the Court,

Article 13 of Regulation (EEC) No 805/68 of the Council on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187) as amended by Council Regulation (EEC) No 425/77 (Official Journal L 61 of 5 March 1977, p. 1), provides that the levy which was to be applied to young male bovine animals intended for fattening, of a live weight of 300 kilograms or less, may be totally or partially suspended, taking into account the supply situation for the young bovine animals in question and the foreseeable trend of market prices for bovine animals in the Community. For this purpose, before 1 December each year, the Council is to draw up an estimate of young male bovine animals which may be imported under the arrangements laid down in the said article. In accordance with the Management Committee procedure each quarter the quantity which may be imported and the rate of suspension of the levy are to be determined. Import licences, which are required for imports, are then issued for a quantity falling within the limits of the quantity laid down each quarter.

To that end implementing provisions were adopted in several Commission regulations. Thus Article 11 of Regulation (EEC) No 585/77, as amended by Regulation (EEC) No 1384/77 (Official Journal L 157 of 28 June 1977, p. 16) stipulates that applications for import licences may be made by natural or legal persons carrying on business in the "meat and livestock" sector and officially registered in a Member State. Article 3 of Regulation (EEC) No 612/77 (Official Journal L 77 of 25 March 1977, p. 18) provides that when determining the quantity which may be imported each quarter "the supply needs of certain regions of the Community may be taken into account".

For the period 1 January to 31 March 1978 the maximum quantity referred to in Article 13 (4) (a) of Regulation (EEC) No 805/68 was fixed at 50 000 head of young male bovine animals for fattening, of a live weight of 300 kilograms or less, by Regulation (EEC) No 2902/77 of 22 December 1977 (Official Journal L 338 of 28 December 1977, p. 12). That regulation provided at the same time that of those bovine animals at least 45 000 head must be imported into and fattened in Italy and that the rate of the levy was to be reduced by 50%. Article 1 (5) of that regulation then goes on to say:

"Within the quantity reserved for Italy, import licences may be issued directly to agricultural producers or their organizations in respect of a maximum of 30 000 head.

Italy shall, for this purpose, specify the categories of applicants in the communication referred to in Article 11 (2) of Regulation (EEC) No 585/77".

It remains also to be mentioned that Regulation (EEC) No 2902/77 was amended by Regulation (EEC) No 345/78 of 20 February 1978 (Official Journal L 49 of 21 February 1978, p. 9). Article 1 (1) of that regulation reads:

1 — Translated from the German.

"The quantities of 50 000 and 45 000 head specified in Article 1 (1) of Regulation (EEC) No 2902/77 are increased by 30 000 and 27 000 head respectively".

Paragraph (3) of that article provides further that:

"The quantity of 30 000 head specified in Article 1 (5) of Regulation (EEC) No 2902/77 is increased by 18 000 head".

With reference to the quantity reserved for Italy a circular dated 28 February 1978 issued by the Italian Ministry for Foreign Trade stipulated that the expression "agricultural producers" within the meaning of Regulation No 2902/77 was to be deemed to apply only to those who satisfied the requirements of the Italian Law of 9 May 1975 for the implementation of Council Directives Nos 72/159 (Official Journal, English Special Edition 1972 (II), p. 324), 72/160 (Official Journal, English Special Edition 1972 (II), p. 332) and 72/161 (Official Journal, English Special Edition 1972 (II), p. 339) all of which were adopted on 17 April 1972. According to that law — leaving cooperatives out of account — only those persons qualified whose principal occupation is farming, in so far as they devote at least two-thirds of their working-time to farming and derive therefrom at least two-thirds of their earned income.

The plaintiff in the main action, whose principal activity is the production of feeding-stuffs, apparently came to an agreement at the end of February 1978 with the defendant in the main action, which as a limited partnership is mainly engaged in fattening bovine animals and calves on a large tract of land, for supplying it with a specific quantity of maize. The obligation was to become void if the purchaser should not obtain an import licence for 100 calves. On 10 March 1978 the purchaser informed the plaintiff that it considered the order to be cancelled because the said condition subsequent had been fulfilled. The competent regional authority had in fact explained to the plaintiff that it could not receive any import licences because it was a company and because the conditions laid down in the circular of the Italian Ministry for Foreign Trade had not been fulfilled by the partners and managers. For this reason it did not even apply for the issue to it of import licences.

The plaintiff takes the view that the rules and regulations on imports are governed entirely by Community law; according to that law every agricultural producer is entitled to be granted an import licence, whereas the Member States only have certain organizational tasks in this field and in particular cannot lay down supplementary conditions restricting the category of applicants. Since this is what the said circular purported to do, it must be regarded as unlawful and therefore irrelevant. When in the light of the ministerial circular the defendant refrained from making an application this must be treated as a mistake for which it must accept liability. Consequently the plaintiff commenced proceedings before the Pretura di Cecina for specific performance of the contract and for delivery of the consignment to be supplied.

By an order of 13 May 1978 the Pretura, before which the matter was brought, stayed proceedings and pursuant to Article 177 of the EEC Treaty referred the following questions to the Court of Justice for a preliminary ruling:

(a) Whether the national authorities, within the framework of the special arrangements for the importation of young male bovine animals for fattening laid down in Article 13 of Regulation (EEC) No 805/68, which arrangements were last amended by Regulations (EEC) Nos 585/77 and 2902/77, may extend and supplement at their discretion the conditions for admission to the benefit thereof, in particular by restricting the issue of import licences to certain categories of persons unilaterally distinguished from the generality of agricultural producers; or whether on the other hand the above-mentioned Community provisions confer upon all proprietors, whether natural or legal persons, of agricultural undertakings, in particular persons who are engaged in stock-farming, the right to apply in all cases for an import licence which the national authorities of the Member States have no discretionary power to refuse.

(b) On the assumption that the Member States may impose further and more restrictive conditions upon admission to the category of agricultural producer, whether the national authorities may determine the persons entitled to benefit according to the criteria on which they have relied in implementing the Community directives on the modernization of agricultural structures (Directives Nos 72/159, 160 and 161/EEC), that is, with a view to a sort of State intervention the means and objectives of which are entirely distinct from and independent of those adopted in connexion with the marketing of individual agricultural products — the said criteria being moreover entirely unrelated to the actual practice of stock-farming and such as to entail the unjustified exclusion of a very large number of stock-farming undertakings, including all those having the structure of a firm or company.

My observations on these questions are as follows:

1. The Italian Government has in its written observations expressed the opinion that it is extremely doubtful whether the questions referred by the Pretura have any relevance at all to the determination of the action brought before it.

These doubts cannot be simply brushed aside. According to the wording of the contract which is disputed in the main action the order was in fact to be treated as cancelled if the purchaser was unable to obtain licences for the importation of 100 calves from non-member countries in accordance with the applicable Community provisions. Since however under the general rules application could certainly be made for import licences and since it is not absolutely clear that the contracting parties were concerned with imports subject to a *reduced* levy, it is certainly difficult to understand why the court making the reference, in order to decide the case, should need an interpretation of Community law and in particular a ruling on the special arrangements for imports described at the beginning of my opinion. Moreover, it must indeed be conceded that the determination of this question depends on the interpretation of the agreement at issue and consequently on a ruling on a question of domestic law into which the Court does not in principle intrude. Since, moreover, there can scarcely be said to have been a manifestly erroneous interpretation by the national court and as a result a manifestly mistaken determination of its relevance to the decision I

would not recommend to the Court that the application for a preliminary ruling be dismissed as inadmissible by reason of its failure to comply with the conditions laid down in Article 177 of the EEC Treaty.

2. As far as the problem raised by the Pretura di Cecina is concerned I would first like to recall the views of the parties to the action.

In the view of the plaintiff it is of importance that the issues are questions concerning trade with non-member countries in the context of a specific organization of the market and special import arrangements adminstered by the Commission itself. Under such circumstances everything points to the fact that the Community rules, which lay down a Community procedure for the granting of licences, are to be regarded as complete and that no discretionary powers remain vested in the Member States to define the category of persons entitled to participate. Those entitled to apply for a licence are determined therefore in principle by Article 11 of Regulation No 585/77, according to which the applicant must carry on business in the "meat and livestock" sector. Although Article 1 (5) of Regulation No 2902/77 to some extent gives preferential treatment to agricultural producers this is, taking into account the specific aim pursued by the regulation, which is to improve cattle rearing and increase the production of meat, to be understood as meaning that every person engaged in cattle rearing has the right to participate in these arrangements. In any case, since the Member States only have organizational powers, it cannot be inferred from Article 1 (5) of Regulation No 2902/77, which deals only with the content of the communications to be made by the Member States to the Commission, that the Member States have thereby been granted by implication certain powers of definition.

As against that the Italian Government advocates the view that Article 11 of Regulation No 585/77 merely laid down the minimum conditions for admission to the special import arrangements. Furthermore, in that the "categories of applicants" in the communication referred to in Article 11 (2) of Regulation (EEC) No 585/77 are to be specified, Italy is expressly given a discretionary power to define the "agricultural producers" mentioned in the preceding subparagraph. When that power was exercised the objectives of the rules as set forth in the recitals in the preamble to Regulation No 2902/77 were taken into consideration. Since they mention the improvement of cattle rearing and beef and veal production structures, Italy was therefore able with good reason to confine its intervention to producers who could be expected to improve structures Consequently the ministerial circular which is criticized rightly referred to definitions which were elaborated in the Italian law implementing Council Directives Nos 72/159, 72/160 and 72/161.

The Commission does not go quite so far, but for all that it takes the view that the Community rules are not sufficiently precise; consequently the category of addressees must be ascertained having regard to the purpose of those rules. On that basis it might be said that by the expression "agricultural producers" is meant those undertakings which are engaged in cattle rearing and beef and

veal production and are therefore in a position to help reduce supply difficulties. Since the recitals in the preamble to Regulation No 2902/77 expressly mention helping to improve cattle rearing and beef and veal production *structures* in Italy and the regulation is thereby identified as an instrument of structural economic policy there can be no objection if the most favoured Member State, in reliance upon the Council's directives on structural policy, focuses its attention on those whose principal occupation is farming.

3. In order to resolve this difference of opinion and having regard to the reasoning of the parties to the proceedings it seems to me now to be useful to refer to those parts of the Court's case-law to date which might be of help in deciding the present case.

In fields which are to some extent covered by very detailed market organizations the Court's decided cases disclose a tendency not to proceed in principle on the basis that national measures are unlawful, even if those measures go beyond the sphere of acts which are merely organizational and simply executive in nature. The decisive question in this case is rather whether there is a conflict with the objectives of the Community rules and whether their proper functioning is endangered. In this connexion reference can be made, as the Commission has done, to the judgment of the Court of 22 January 1976 in Case 60/75 *Carmine Antonio Russo* v *Azienda di Stato per gli Interventi sul Mercato Agricolo (AIMA)* [1976] ECR 45, to its judgment of 26 January 1976 in Case 65/76 *Riccardo Tasca* [1976] ECR 291, to its judgment of 14 July 1976 in Joined Cases 3, 4 and 6/76 *Cornelis Kramer and Others* [1976] ECR 1279 and to its judgment of 2 February 1977 in Case 50/76 *Amsterdam Bulb BV* v *Produktschap voor Siergewassen* [1977] ECR 137.

Next it is also important to bear in mind that in its judgment of 12 December 1973 in Case 131/73 (an application for a preliminary ruling arising out of criminal proceedings against Giulio and Adriano Grosoli [1973] ECR 1555), to which the plaintiff has referred, the Court, in connexion with the administration of Community tariff quotas for frozen beef and veal, not only stressed that the Community institutions determined the economic use of the imported meat but also held that they could also give the Member States a free hand to use their quota in accordance with their own interests. If the latter circumstance does not arise there is merely a bar on Member States introducing conditions regarding use "in pursuit of objectives of economic policy which are not the subject of provisions adopted by the Community".

Two further judgments should be mentioned which were concerned with the concepts "agricultural holding" and "agriculture" which are used in certain Community regulations. In its judgment of 28 February 1978 in Case 85/77 *Società Santa Anna Azienda Avicola* v *Istituto Nazionale della Previdenza Sociale (INPS) and Servizio Contributi Agricoli Unificati (SCAU)* ([1978] ECR 527) the Court held that a general uniform definition of "agricultural holding" cannot be found in the Treaty or in the rules of secondary Community law; it is rather for the Community institutions to work out such a definition, where appropriate, for the purposes of the rules deriving from the Treaty. Similarly, the Court stressed in its judgment of 13 June 1978 in Case

139/77 *Denkavit Futtermittel GmbH* v *Finanzamt Warendorf* ([1978] ECR 1317) that the concept "agriculture" is not precisely defined in the Treaty and consequently must be accurately defined in secondary legislation, regard being had when interpreting it to the aim of the rules and their correlation to one another. The possibility of differing treatment in different sectors according to the definition selected cannot be ruled out; the sole prerequisite is that such variations should be the natural consequence of objective criteria.

4. Accordingly it can be stated that the powers of the Member States are not necessarily confined to purely organizational and executive matters, even within fields governed by a very exhaustive body of law relating to a common organization of the market, but that they definitely also have a certain freedom of action in the sphere of substantive law. Nor does that freedom of action even have to be conferred expressly; it may, where necessary, arise by implication from the use of undefined concepts in connexion with the indication of the objective of a regulation.

Furthermore, the decided cases which have been mentioned make it clear that the solution to the problem with which we are concerned in this case turns mainly on the context in which Regulation No 2902/77 was adopted and also — going beyond its wording — on the purpose for which it was adopted, which can in fact be deduced from the recitals in the preamble thereto.

Thence it is important that the specific import arrangements made in Regulation No 2902/77 were above all intended to operate to the benefit of Italy. The regulation in question is a measure of regional policy which was adopted in view of the existing deficit, particularly in Italy, of young male bovine animals; that deficit has its origin in the particular geographical conditions of that country, under which cattle breeders operating on a large scale are very much the exception rather than the rule.

It is also apparent that, in so far as the aim of Article 1 (5) of Regulation No 2902/77 is to give preferential treatment to agricultural producers, it had in mind cattle breeders. On this point reference can be made to the aim of the regulation as found in the recitals in its preamble; in this connexion the beforementioned yearly estimate to be drawn up by the Council pursuant to Article 13 of Regulation No 805/68, which mentions the needs of Community breeders, is also relevant.

However, I share the view of the Commission and the Italian Government that these are not the only important factors for the interpretation of the regulation and that there is no ground for the conclusion that it purports to give every cattle breeder the right to apply for a specific licence. It must not in fact be overlooked that according to the recitals in the preamble to Regulation No 2902/77 that measure is concerned with improving not only beef and veal production but also cattle rearing structures in Italy. I am convinced that the Commission is right to conclude from *that* — and not so much from the second subparagraph of Article 1 (5) of the regulation which mentions that the categories of applicants are to be specified — that some power of definition is exerciseable by Italy, which is the Member State particularly mentioned. When requirements of structural policy are at issue the Member States naturally have more accurate knowledge than the Community legislature. It can be said that in fields where structures are to be modified the Community naturally lacks the capacity to be sufficiently specific and this is why in such cases the use of a directive is preferred since such an instrument is

only binding as to the result to be achieved and leaves the ways and means to the Member States.

However, if the conclusion is thus reached that it can be inferred from the objective of the regulation and from the concepts used in connexion therewith that Italy has the power to give a more precise meaning to the concept "agricultural producer", then there can be no objection if for that purpose reference is made to a law for the implementation of directives which also pursues aims of structural policy. In fact it can scarcely be considered to be inconsistent with the aims of the measure if this resulted in giving preference to undertakings which can be regarded as being in need of help but also capable of development. On the contrary, the fact that a provision such as that adopted in Article 1 (5) of Regulation No 2902/77, which moreover, and this must not be forgotten, only applies to a fraction of possible imports, concentrates on undertakings whose agricultural operations are not merely subsidiary and from the best results are to be expected from the point of view of structural policy, must be regarded as perfectly proper.

5. However, having made this finding, which is fundamental, we must still consider the question whether some of the plaintiff's objections in the proceedings to the view substantiated in this way by the Commission do not necessitate a different appreciation. This, if I may say so straightaway, is not in my opinion the case.

As we know it was submitted that the directives of structural policy to which the Italian Government referred were intended — as emerges from the five year plans provided for — to effect long-term reforms and changes in the dimensions of undertakings, whereas the special import arrangements with which we are concerned in this case are concerned with market policy, that is with the short-term elimination of deficits in the field of male bovine animals for fattening. On this point it is sufficient to refer to the fact that Regulation No 2902/77 is clearly not a measure of structural policy of the first importance, but that on the contrary the recitals in its preamble only mention *helping* to improve cattle raising and beef and veal production structures in Italy. However, measures which only have short-term effects, particularly if they are repeatedly put into effect, can certainly "help" efforts made in the field of structural policy. It cannot therefore be said that the action provided for in Regulation No 2902/77 does not pertain to structural policy.

It was also submitted that it is doubtful whether the Italian Law of 9 May 1975, and as the Court is aware it is the definitions of that law which are at issue in this case, has correctly implemented the Council's directives on structural policy. In this connexion the plaintiff refers to the fact that according to Article 8 (1) (b) of Council Directive No 72/159 of 17 April 1972 the granting of aids for the purchase of calves intended for slaughter is precluded and he is of the opinion that the failure by the said Italian law to take companies into consideration is incompatible with Article 5 of Directive No 72/159. This contention gives rise to the question whether the procedure of Article 177 constitutes a suitable framework for examining the questions which have been raised, in respect of which the Commission at all events has not indicated that the doubts expressed are well founded and that there might be

grounds for an action for infringement of the Treaty. Moreover, as to the plaintiff's doubts the observation would have to be made that the present case is concerned with import facilities introduced by the Community itself and that Article 5 mentions an association of farmers within the meaning of Articles 2 and 3, which can scarcely refer to companies. Finally the plaintiff, with specific reference to the Court's judgment in Case 139/77 and the need to observe the prohibition of discrimination, has also expressed the opinion that the rules laid down in the Circular of 28 February 1978, which created a special category of agricultural producers, are incompatible therewith. On this point it must not however be forgotten that there is no discrimination if any departures from the norm appear to be objectively justified, and it would seem to be beyond all doubt that this applies in the present case. On this point I would draw the Court's attention again to the recitals in the preamble to Regulation No 2902/77 which mention helping to improve cattle rearing structures in Italy. It must accordingly be accepted that the selection of beneficiaries from the standpoint of structural policy is in keeping with the objectives of the regulation, all the more so because it attempts to restrict the category of persons entitled to apply and this is also regarded as appropriate in the Community directives relating to structural policy.

6. Having regard to all these considerations the questions referred by the Pretura di Cecina can, in my opinion, only be answered as follows:

In the context of the special conditions for the importation of certain male bovine animals for fattening, which are laid down in Article 14 of Regulation No 805/68 and are the subject of Regulations Nos 585/77 and 2902/77, the Italian authorities were empowered to define the category of those entitled to benefit by Article 1 of Regulation No 2902/77 with due regard to the intended purpose of the rules. In doing so they were entitled to refer to the requirements specified in connexion with the implementation of the Community directives on the modernization of farming structures (Council Directives Nos 72/159, 72/160 and 72/161).