JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 8 MARCH 1979 [1]

Salumificio di Cornuda S.p.A. v Amministrazione delle Finanze dello Stato (preliminary ruling requested by the Corte di Cassazione of Italy)

"Common organization of the market in beef and veal — safeguard clauses"

Case 130/78

Agriculture — Common organization of the market — Beef and veal — Import from non-member countries — Protective measures adopted by a Member State — Commission decision requiring abolition — Direct effect
(Regulation No 14/64 of the Council, Art. 16 (2); Commission Decision No 66/474)

Following a Commission decision adopted under Article 16 of Regulation No 14/64 requiring a Member State to abolish a national protective measure, the Member State concerned is no longer entitled to rely, as against a trader, with regard to an importation occurring after that decision took effect, on the national provisions introduced by virtue of the protective measure which the Commission required to be abolished, even though those provisions were not repealed within the domestic legal order until after the decision of the Commission took effect.

In Case 130/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Corte di Cassazione [Court of Cassation] of Italy for a preliminary ruling in the action pending before that court between

1 — Language of the Case: Italian.

SALUMIFICIO DI CORNUDA S.P.A., Cornuda,

and

AMMINISTRAZIONE DELLE FINANZE DELLO STATO [State Finance Administration]

on the interpretation of Articles 189 and 191 of the EEC Treaty, of Article 16 of Regulation No 14/64 of the Council of 5 February 1964 on the progressive establishment of a common organization of the market in beef and veal, of Articles 1 and 3 of Council Decision No 66/455 of 28 July 1966, authorizing the Italian Republic to increase the levies applicable to certain imports of beef and veal from non-member countries and of Article 1 of Commission Decision No 66/474 of 28 July 1966, requiring the Italian Republic to abolish the protective measures taken in respect of adult bovine animals and calves,

THE COURT (Second Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, P. Pescatore and A. Touffait, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following:

JUDGMENT

Facts and Issues

The facts of the case, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Regulation No 14/64 of the Council of 5 February 1964 on the progressive establishment of a common organization

of the market in beef and veal (Journal Officiel 1964, p. 562) provides, in Article 5, for the charging of a levy by the importing Member State on the importation of calves, adult bovine animals and derived products from non-member countries.

Article 18 of Regulation No 14/64 enables the Council, acting on a proposal from the Commission, to take any measures in derogation from the regulation in order to take account of special circumstances which might exist in regard to the products to which it applies.

Applying that provision, the Council, considering that the production within the Community of certain types of domestic bovine meat for processing was insufficient to meet the needs of the users, adopted Regulation No 42/66 of 21 April 1966, temporarily suspending the levies chargeable on imports of certain frozen beef and veal for processing under customs supervision (Journal Officiel 1966, p. 1141). Regulation No 42/66 authorized Member States, in derogation from Article 5 of Regulation No 14/64, to suspend, in relation to non-member countries, for the period from 1 May to 31 July 1966, the levies on imports of frozen domestic beef and veal intended for processing under customs supervision.

The Italian Republic decided to make use of this authorization for the period from 2 May to 31 July 1966.

Article 16 (1) of Regulation No 14/64 provided that, if, as a result of the application of the measures concerning the progressive establishment of a common organization of the market in beef and veal, this market suffered or was threatened with serious disturbances on account of imports, in one or more Member States, liable to endanger the objectives laid down in Article 39 of the Treaty, the Member State or States concerned might, during the transitional period, take the necessary protective measures concerning importation of the products in question.

According to the first subparagraph of Article 16 (2) any Member State concerned was required to notify its protective measures to the other Member States and to the Commission not later than the date of their entry into force.

Consequently the government of the Italian Republic informed the Commission by a telex message from its Permanent Representation sent on 23 July 1966 that, owing to the persistently depressed state of the market in beef and veal, which had been further aggravated in the course of the last few days, it had decided to have recourse to protective measures in accordance with the procedure laid down by Article 16 of Regulation No 14/64. These measures, which came into force on 24 July 1966, consisted in charging, on the importation of bovine animals and meat from non-member countries, a supplementary amount of 60 % on the levy determined in accordance with Article 5 of Regulation No 14/64.

The notification to the Commission indicated that bovine animals for fattening, weighing less than 340 kg, and frozen beef and veal for the processing industry were excluded from the measure.

As part of the process of applying these protective measures the Italian customs administration sent circular U.T.C.D./1966.373/Dog/000 prot. No 6363 to its offices on 25 July 1966, laying down, in particular, that as from 24 July 1966 beef and veal products imported from non-member countries were to be subject to a supplementary levy equal to 60 % of the levy in force at the time of importation

and that frozen beef and veal for processing under customs supervision were likewise subject to the payment of the supplementary levy, although they remained exempt from the levy itself.

According to the third subparagraph of Article 16 (2) of Regulation No 14/64 the Commission, after consulting the Member States through the Management Committee, was to decide by means of emergency procedure, within a maximum of four working days calculated from the notification by the Member State concerned of the protective measures adopted under Article 16 (1), whether those measures should be retained, amended or abolished.

Applying that provision, the Commission adopted Decision No 66/474 of 28 July 1966, requiring the Italian Republic to abolish the protective measures taken in respect of adult bovine animals and calves (Journal Officiel 1966, p. 2796). The Commission noted, in its decision, that as the Italian market in adult bovine animals was not suffering from or threatened with a serious disturbance at the time, the conditions of Article 16 (1) of Regulation No 14/64 had not been fulfilled.

The Commission's decision was notified to the government of the Italian Republic on the same date, namely 28 July 1966.

Considering that it was necessary to take measures which would allow the price of imported products to be raised to the level of the guide price without affecting the volume of imports into Italy of bovine animals and meat more than necessary, the Council, in application of Article 18 of Regulation No 14/64, on a proposal from the Commission, adopted on 28 July 1966 Decision No 66/455, authorizing the Italian Republic to increase the levies applicable to certain imports of beef and veal from non-member countries (Journal Officiel 1966, p. 2659). By that decision the Italian Republic was authorized to increase, until 2 October 1966, the levies determined in accordance with Article 5 of Regulation No 14/64 applicable to imports from non-member countries of adult bovine animals and derived products, in particular frozen beef and veal.

The Council's decision was notified to the Italian Republic on 29 July 1966.

The Italian Republic abolished the protective measures which it had introduced with effect from 1 August 1966 and made use, as from midnight on 31 July 1966, of the Council's authorization to increase the levy on products imported from non-member countries.

On 29 July 1966 Salumificio di Cornuda S.p.A. (hereinafter referred to as "Salumificio"), whose registered office is in Cornuda, imported, through the Turin customs office, a batch of 179 179 kg of boneless frozen beef, covered by tariff heading 0.02.01, Statistical No 58. The meat came from Argentina and was intended for processing under customs supervision. Salumificio paid customs duties of 20 % in accordance with departmental circulars No 151 of 30 April 1966 and No 165 of 13 May 1966.

Following a later check on this transaction the Italian customs administration demanded from Salumificio, by an instrument notified on 8 September 1971, the payment of a sum of 16 817 380 lire as a supplementary levy.

Salumificio challenged this order on 22 September 1971 by an application to the Turin court.

The latter, by a judgment of 5 August 1972, allowed Salumificio's application.

On the appeal of the Amministrazione delle Finanze dello Stato the Corte d'Appello [Court of Appeal], Turin, by a judgment of 22 May 1975, reversed the lower court's decision and declared the order to pay the supplementary levy to be legal.

Salumificio appealed against that judgment to the Corte di Cassazione [Court of Cassation] on 8 October 1975.

The first Civil Chamber of the Corte di Cassazione, by an order of 17 February 1978, decided, pursuant to Article 177 of the EEC Treaty, to stay proceedings until the Court of Justice had given a preliminary ruling on the interpretation of Articles 189 and 191 of the EEC Treaty, of the fourth subparagraph of Article 16 (2) of Regulation No 14/64 of the Council, of Articles 1 and 3 of Council Decision No 66/455 and of Article 1 of Commission Decision No 66/484 in answer to the following questions:

1. Within the system of sources of Community law, which of the following takes precedence: a "decision" of the Commission of the European Economic Community, adopted pursuant to the said Article 16 within the field covered by the said Regulation No 14/64, or a "decision" of the Council of the European Economic Community, adopted pursuant to Article 18 of the same regulation?
2. Is the decision of the Commission of the European Economic Community adopted pursuant to the above-mentioned article and within the field indicated above at 1. directly applicable within the domestic legal system of the Member State in question (the Italian Republic), or, on the contrary, is domestic implementing legislation necessary for that purpose?
3. If Question 2 is answered in the way suggested first, that is, if the decision is directly applicable, does that decision become applicable at the time of its adoption or at the time of its notification to the State to which it was addressed?
4. If Question 2 is answered in the way suggested first, does the said "decision" of the Commission take effect, with regard to the abrogated measure, as a technical "annulment", that is, does it have effect *ex tunc* from the time of the adoption of that measure, withdrawing with retroactive effect all the consequences thereof, or does it constitute with regard to that measure a technical "repeal", that is, does it have effect *ex nunc* from the time (of adoption or of notification) of the "decision" itself?
5. If Question 2 is answered in the second way suggested, that is, if the said "decision" of the Commission requires the adoption of domestic legislation by the Member State in order to give effect to it within the legal system of that State, do the Community provisions of which an interpretation is requested provide that such domestic implementing legislation must take effect, with regard to the domestic measure which it is intended to abrogate pursuant to the Community "decision", as a technical "annulment" or as a technical "repeal" ("annulment" and "repeal" being used here in the particular sense clarified in Question 3)?

The order of the Corte di Cassazione was entered at the Court Registry on 9 June 1978.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Commission of the European Communities on 8 August 1978, by Salumificio, the appellant in the main action, on 21 August 1978, and by the Government of the Italian Republic on 7 September 1978.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, the Italian Government was invited to add a document to the file and Salumificio and the Commission were invited to reply to a question in writing.

By order of 25 October 1978 the Court decided under Article 95 (1) of the Rules of Procedure to assign the case to the Second Chamber.

II — Written observations submitted to the Court

Salumificio, the appellant in the main action, submits that on 29 July 1966 the supplementary levy of 60 % could not be charged on the meat imported by it.

(a) First question

The applicant submits that, generally speaking, the Council, by virtue of its composition and the functions which it is called upon to perform, enjoys without question a position of primacy in relation to the Commission. However, in the present case it should be noted that Council Decision No 66/455 and Commission Decision No 66/474 operate on different levels. The decision taken by the Commission under Article 16 of Regulation No 14/64 was to confirm, amend or abolish a measure envisaged by Article 39 of the Treaty; the Council's decision, taken under Article 18 of Regulation No 14/64, on the Commission's initiative, was designed to fill a lacuna and to counter various situations produced by the progressive establishment of the common organization of the market in beef and veal. Council Decision No 66/455 did not prevail over Commission Decision No 66/474; there was no question either of primacy or continuity as regards the two decisions: they were independent of each other and took effect on different levels.

(b) Second question

It follows from Articles 189 and 191 of the EEC Treaty that decisions, unlike regulations, are binding only upon those to whom they are addressed; their effect within the Member State to which they are addressed must be the result of a specific provision of domestic law.

This conclusion follows from the very wording of the decision, which imposes the requirement of notification to the State to which it is addressed.

(c) Third question

Being a provision which is binding on those to whom it is addressed, a decision becomes binding with regard to such persons only after notification: since the decision was immediately enforceable the Italian State was under a duty to abide by it immediately.

The protective measures which the State was authorized to take were of an urgent nature and of immediate necessity; so the decision confirming, amending or abolishing those measures must likewise be implemented immediately.

(d) Fourth and fifth questions

It follows from the various schemes for the common organization of agricultural markets, particularly in beef and veal, that if the protective measures taken by a Member State are not confirmed by the Commission, they are regarded, without prejudice to accrued rights, as never

having been taken: they are deprived of effect as from the time of their adoption.

The Member States were empowered to intervene only when the existence of specific, well-defined facts was established; if the Commission considered that the facts relied upon by a Member State to justify the measures which it had taken did not exist, those measures must cease to exist *ab initio,* since the facts which constituted essential conditions for the protective measures themselves had been non-existent *ab initio.*

This submission is not contradicted by the fact that, according to Article 16 (2) of Regulation No 14/64, the Commission had to decide, within a maximum of four working days calculated from the date of notification, "whether the measures should be retained, amended or abolished": the term "abolished" cannot be given a literal interpretation in this context.

The Member State in question was obliged, in order to comply with the Commission's decision, to adopt a domestic measure whereby the measures which it had applied would be annulled, that is to say regarded as if they had never existed.

A similar solution is provided for by Article 77 of the Italian Constitution.

The Commission's decision, taken under Article 16 of Regulation No 14/64, had retroactive effect when it rejected the protective measures taken by a Member State. Consequently, the Member State should, in turn, have taken a measure having retroactive effect: having regard to the principle of equality, such a provision should have deprived of all effect, *ab initio,* the measure adopted in the belief that imports of beef and veal were treatening to compromise the objectives pursued by the establishment of the Common Market.

The Government of the Italian Republic considers it necessary to make some alterations in the order of the questions submitted to the Court.

(a) Second question

It is clear from the case-law of the Court, in the view of the Italian Government, that, with regard to their specific content, decisions are capable of being directly applicable. In the present case it is important to establish whether or not the duty, imposed by Decision No 66/474, to repeal the national protective measures left the Italian Republic a margin of discretion in complying with the order which it contained.

It is not so much a question of establishing an order of precedence between the two decisions, which is in any case difficult to imagine, if only because of the different provisions which they contain, as a question of ascertaining in what way the decision of the Council is of importance in interpreting the decision of the Commission, having regard to the obvious connexion which exists between them since the former was adopted on a proposition from the author of the latter.

Since the order to repeal the measures was not subject to any binding time-limit and was adopted at the same time as factors causing a deterioration in the market were recognized, it allowed the Italian Republic to determine the methods and the time-table, admittedly short, for adapting its legal order in such a way as to retain control over the situation. Also, from a more general point of view, account should be taken of the special nature, in relation to the rules laid down by Article 226 of the Treaty, of the scheme for protective measures contained in Article 16 of Regulation No 14/64; Article 16 conferred

directly on each Member State a safeguard power with the obvious aim of setting up a faster, more flexible system of intervention for the purpose of correcting market anomalies. Therefore it is necessary to take account of the enormous margin of discretion which is in principle granted to the Member States in this field; Council Decision No 66/455 had recognized the existence of a market anomaly and the need to adopt measures capable of remedying it.

If the decisions of the Commission and the Council are considered together, it is clear that the exercise of the power provided for in Article 16 of Regulation No 14/64, although formally subject to control, was considered justified in this case; so it would be illogical to accept that at the very moment when they recognized the existence of the conditions for an intervention in derogation from the common rules, the Community institutions intended to deprive the State to which the two decisions were addressed of any margin of discretion, even a reduced margin, in formally adopting measures in derogation, which, in substance, had been considered justified by the situation and thus assuring a desirable continuity between the emergency remedies adopted and the measures authorized for the purpose of controlling the situation.

Thus the Commission's decision should be interpreted to mean that the order to repeal the supplementary levy introduced as a protective measure conferred a margin of discretion on the Italian Republic; so it was a decision lacking direct effect, intended to become effective within the domestic legal order as a result of the necessary implementing provisions, which remained the responsibility of the Italian Republic.

(b) The other questions

If it is accepted that the Italian Republic possessed such a discretion, the problem of determining on which date the Commission's decision first took effect becomes completely irrelevant.

It might be pointed out that the second paragraph of Article 191 of the Treaty and the fourth subparagraph of Article 16 (2) of Regulation No 14/64, expressly or by implication, make the effectiveness of the decision dependent on its notification to the addressee.

A retroactive annulment, by the Commission's decision, of the protective measures adopted under Article 16 of Regulation No 14/64 is precluded by the fact that such an effect is attributed only to the decisions taken by the Council under paragraph (3) of that provision and by the fact that notification of the measures performs a similar function to the requirement contained in Article 226 (2) of the Treaty, the effect of which is to bring into operation the Commission's power of intervention. The derogation from the general rule, arising under Article 16 of Regulation No 14/64, is based on the granting to each Member State of its own safeguard powers, the exercise of which leads to the adoption of instruments which are not liable to be either suspended or annulled as a result of the measure taken by the Commission and which are not, in themselves, subject to any control by the Commission. The breadth of the matters which the Commission must take into consideration is sufficient to prove that its decision does not simply amount to a judgment on the conformity with Community law of the protective measures adopted by the Member State; it constitutes the technical means whereby they may be accorded or denied importance within the framework of the Community by making or not making them, as the case

may be — *ex nunc* of course — a rule for the subsequent regulation of the relations between the Member States.

Consequently the third, fourth and fifth questions, in so far as they have not already been dealt with in the solution proposed for the first and second questions, should receive an answer to the effect that the fact of complying with the duty imposed by Commission Decision No 66/474 did not entail the annulment *ex tunc* of the protective measures adopted, but merely their repeal with effect from a date which could in no case be prior to the notification of the decision.

The *Commission of the European Communities* draws the attention of the Court to the fact that the departmental circular of 25 July 1966 subjected frozen beef and veal intended for processing to the supplementary levy, whilst the notification to the Commission expressly excluded such products from the application of the protective measure at issue. The failure to notify meant that the part of the Italian protective measure which was not notified was illegal as from its entry into force; individuals could plead that fact before their national courts because Article 12 (2) declares the charging of any customs duty or charge having equivalent effect otherwise than as provided for in Regulation No 14/64 to be incompatible with that regulation.

It is important to recognize the difference between national protective measures, adopted under Article 16 of Regulation No 14/64, and any measures adopted by Member States pursuant to the decisions of the Council taken under Article 18 of that regulation: the former were adopted and came into force as a result of the independent decision of the Member State, which, in adopting the measures, was not obliged to await the outcome of a Community procedure; the latter could be taken only after the Council had required, or authorized, their adoption. The former are justified in the event of serious disturbances, or threatened disturbances, in the market due to imports, such as are liable to endanger the objectives laid down in Article 39 of the Treaty; the latter may be justified by any particular situation, not necessarily of a serious nature, requiring a derogation from the general system. The Member States were entitled, once the conditions specified in Article 16 (1) were fulfilled, to adopt and to obtain protective measures, but they were not entitled to require the Council to take a decision in derogation under Article 18. As regards the measures specified by Article 16, the Community institutions were empowered to carry out a legal and economic appraisal, whilst as regards the measures authorized by Article 18 they might carry out a political and economic appraisal.

Once they had been duly notified, the protective measures under Article 16 could be legitimately applied by Member States to private traders, at least until the time of the notification of the Commission's decision ordering their amendment or abolition.

In accordance with Article 191 of the EEC Treaty the decision of the Commission, which was notified to the Italian Republic on 28 July 1966, took effect on that date. That effect relates to the binding nature of the instrument as the decision becomes binding as from the time of notification; but, as for its regulatory effects, these could be produced retroactively, subject, of course, to the

limitations imposed by the general principles governing retroactive legislation, or, alternatively, be deferred until after notification. However, retroactivity can hardly be presumed.

Article 12 (2) of Regulation No 14/64 prohibited, with direct effect as from 1 November 1964, the levying of any customs duty or charge having equivalent effect on imports of beef and veal from non-member countries. The decision of the Commission requiring the Italian Republic to abolish the protective measures notified on 23 July 1966 only renewed that prohibition. In accordance with Article 189 of the Treaty, as interpreted by the case-law of the Court, private traders could, in the national courts, rely on the legal consequences arising from the duty of the Italian Republic to comply with the prohibition on charging the supplementary levy as from the time when the Commission's decision first took effect.

That decision did not specify the date as from which the Italian Republic was to abolish the protective measures; so the charging of the supplementary levy had to be abolished as from the time when the decision became binding on the Italian Republic, that is to say from the time of its notification. There is nothing, either in the text of the decision or in the system, which would permit that obligation to be accorded retroactive effect reaching back to the time when the protective measures came into force. The system established by Regulation No 14/64 allowed Member States to adopt, with immediate effect, the measures which they considered necessary; on the other hand the Community institutions remained completely free to intervene in the area covered by the national measures and even to take action, if appropriate, to deal with the effects which those measures had already produced. Thus the Commission was entitled to order the annulment *ex tunc* of the protective measures which had been applied. As the decision was silent on this point, such a retroactive effect could not be presumed. On the other hand, in view of the technical possibility of returning any supplementary levies which might have been charged after notification of the decision, its taking effect at a date later than that of its notification could not be justified by the need to provide a technical delay for the adoption of internal repealing measures.

As to Council Decision No 66/455, notified on 29 July 1966, that was not, being in the way of an authorization, directly applicable; it left to the Member State the task of deciding whether and from what date it intended to make use of the option which it had been granted. The Italian Republic made use of that authorization from 1 August 1966. The Council's decision was designed merely to correct certain potential technical weaknesses in the system for calculating the levies, which, if they had materialized, might have been slightly disadvantageous for the Italian market. The choice of methods demonstrated the intention of the Community institutions to intervene in a completely different context from that in which the Italian Republic was acting: the intention was not to maintain, albeit at a lower level, the trade barrier erected by the protective measures, but rather to compel the Member State to abolish such a barrier completely and immediately whilst at the same time authorizing it to modify the rate of the levies; so it is not a question of a different solution to deal

with an identical situation, but rather an independent measure to be applied in the event of a change in the situation. There need not necessarily be a direct or automatic link between the abolition of the protective measures and the use of the authorization under Article 18.

The questions submitted to the Court should be answered as follows:

(a) Commission Decision No 66/474 of 28 July 1966, adopted under Article 16 of Regulation No 14/64, and Council Decision No 66/455 of the same date, adopted under Article 18 of Regulation No 14/64, have different aims and objectives; there does not exist between them any relationship of precedence within the system of sources of Community law.

(b) Commission Decision No 66/474 required the Member State to which it was addressed to stop charging, as from 28 July 1966, the supplementary levy adopted under Article 16 of Regulation No 14/64. That requirement produces direct effects in the relationships between the Member State to which the decision was addressed and traders and creates rights, in favour of the latter, which national courts must protect.

(c) Council Decision No 66/455 authorized the Member State to which it was addressed to increase, subject to the conditions and the limits stated in the decision itself, and for the products indicated therein, the levies fixed in accordance with Article 5 of Regulation No 14/64 and applicable to imports from non-member countries. It was incumbent on the Member State to determine, by means of the appropriate domestic provisions, the date of the entry into force of any national measures adopted pursuant to the authorrization granted.

III — Oral procedure

Salumificio, the appellant in the main action, represented by Piero Castellini, Advocate, of Padua, and the Commission of the European Communities, represented by Gianluigi Campogrande, a member of its Legal Department, presented oral argument and replied to questions put by the Court at the hearing on 18 January 1979.

The Advocate General delivered his opinion at the hearing on 8 February 1979.

Decision

1 By order of 17 February 1978, received at the Court on 9 June 1978, the Corte di Cassazione of Italy referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of Articles 16 and 18 of Regulation No 14/64 of the Council of 5 February 1964 on the progressive establishment of a common organization of the market in beef and veal (Journal Officiel 1964, p. 562), in conjunction with, on the one hand, Council Decision No 66/455 of 28 July 1966, authorizing the Italian Republic to increase the levies applicable to certain

imports of beef and veal from non-member countries (Journal Officiel 1966, p. 2659, and, on the other hand, Commission Decision No 66/474 of 28 July 1966, requiring the Italian Republic to abolish the protective measures taken in respect of adult bovine animals and calves (Journal Officiel 1966, p. 2796).

2 It appears from the file that the Government of the Italian Republic informed the Commission on 23 July 1966 that, in view of the persistently depressed state of the market in beef and veal, it had decided to have recourse to protective measures in accordance with the procedure laid down by Article 16 of Regulation No 14/64.

3 The protective measures, brought into force by means of a circular of 24 July 1966, consisted in charging a supplementary amount on imports of bovine animals and meat from non-member countries equal to 60 % of the levy fixed in accordance with Article 5 of Regulation No 14/64.

4 It was specifically stated in the notification to the Commission that "the measure does not affect bovine animals weighing less than 340 kg and intended for fattening or frozen beef or veal for the processing industry".

5 By Decision No 66/474 of 28 July 1966, notified to the Italian Government on the same day, the Commission, having ascertained that the Italian market in beef and veal was not in fact suffering from the disturbances relied on by the Italian authorities, required the Italian Republic "to abolish the protective measures notified to the Commission on 23 July 1966".

6 On the same date the Council, acting on a proposal from the Commission, adopted Decision No 66/455, under Article 18 of Regulation No 14/64, authorizing the Italian Republic to increase the levies applicable to certain imports of beef and veal from non-member countries.

7 That decision was notified on the following day, that is 29 July 1966, and with effect from 1 August 1966 the Italian Republic abolished the protective

measures which it had introduced and made use, as from the same date, of the authorization to increase the levy on the products covered by the Council's decision.

8 On 29 July 1966 the appellant in the main action imported a quantity of frozen beef and veal from Argentina.

9 That importation took place without payment of any levy in accordance with the provisions of Regulation No 42/66 of the Council of 21 April 1966, temporarily suspending the levies chargeable on imports of certain frozen beef and veal for processing (Journal Officiel 1966, p. 1141).

10 Following a later check on that transaction, the Italian customs administration addressed an instrument to the plaintiff on 8 September 1971 demanding payment of a supplementary levy of 16 817 380 lire chargeable by virtue of the above-mentioned protective measure.

11 The Tribunal di Torino [Court of Turin], by judgment of 5 August 1972, upheld the application which the appellant in the main action had lodged against that demand.

12 On the appeal of the Amministrazione delle Finanze dello Stato [State Finance Administration], the Corte d'Appello [Court of Appeal], Turin, by judgment of 22 May 1975, reversed the judgment of the Tribunale and declared the demand for payment of the supplementary levy lawful.

13 The appellant appealed against that judgment to the Corte di Cassazione [Court of Cassation] which submitted the following questions to the Court of Justice for the purpose of ascertaining, in particular, the effect of Commission Decision No 66/474 and its relationship with Council Decision No 66/455:

1. Within the system of sources of Community law, which of the following takes precedence: a "decision" of the Commission of the European Economic Community, adopted pursuant to the said Article 16 within the field covered by the said Regulation No 14/64, or a "decision" of the Council of the European Economic Community, adopted pursuant to Article 18 of the same regulation?

2. Is the decision of the Commission of the European Economic Community adopted pursuant to the above-mentioned article and within the field indicated above at 1. directly applicable within the domestic legal system of the Member State in question (the Italian Republic), or, on the contrary, is domestic implementing legislation necessary for that purpose?

3. If Question 2 is answered in the way suggested first, that is, if the decision is directly applicable, does that decision become applicable at the time of its adoption or at the time of its notification to the State to which it was addressed?

4. If Question 2 is answered in the way suggested first, does the said "decision" of the Commission take effect, with regard to the abrogated measure, as a technical "annulment", that is, does it have effect *ex tunc* from the time of the adoption of that measure, withdrawing with retroactive effect all the consequences thereof, or does it constitute with regard to that measure a technical "repeal", that is, does it have effect *ex nunc* from the time (of adoption or of notification) of the "decision" itself?

5. If Question 2 is answered in the second way suggested, that is, if the said "decision" of the Commission requires the adoption of domestic legislation by the Member State in order to give effect to it within the legal system of that State, do the Community provisions of which an interpretation is requested provide that such domestic implementing legislation must take effect, with regard to the domestic measure which it is intended to abrogate pursuant to the Community "decision", as a technical "annulment" or as a technical "repeal" ("annulment" and "repeal" being used here in the particular sense clarified in Question 4)?

14 In its observations the Commission drew attention to the fact that the goods imported by the appellant in the main action — namely frozen beef and veal for the processing industry — belonged to a category which was expressly excluded by the Italian Government in the notification to the Commission of the protective measure.

15 However, it appears from the file that that exception was not repeated in the circular concerning the application of the protective measure within the domestic legal order.

16 According to the explanations given by the appellant in the main action it was able to learn of the terms of the notification addressed by the Italian

Government to the Commission only in the course of the proceedings, with the result that that argument, raised late in the day, could not be considered by the national courts although it forms part of the file of the Corte di Cassazione.

17 Should it be established that the measures adopted by the Italian authorities were extended to a category of goods excluded from the protective measure notified to the Commission, it would appear that to that extent charging the supplementary amount of 60 % of the levy constituted a charge having an effect equivalent to a customs duty, the imposition of which is prohibited by Article 12 of Regulation No 14/64.

18 However, since the Court is not competent to investigate the facts of the case and since no question has been submitted on that matter, consideration of the question raised by the Commission must be left to the national court.

19 Article 16 (1) of Regulation No 14/64 provides that "if, as a result of the application of the measures relating to the progressive establishment of a common organization of the market in beef and veal, such market should, in one or more Member States, suffer or be threatened with serious disturbance due to imports, liable to endanger the objectives laid down in Article 39 of the Treaty, the Member State(s) concerned may, during the transitional period, take the necessary protective measures concerning importation of the products in question".

20 The first subparagraph of Article 16 (2) of the said regulation provides that the Member State concerned shall be required to notify the other Member States and the Commission of such measures not later than the date of their entry into force.

21 The third subparagraph of the said Article 16 (2) provides that, after consulting the Member States through the competent Management Committee, the Commission "shall decide by means of emergency procedure, within a maximum of four working days calculated from the notification referred to in the first subparagraph above whether the measures should be retained, amended or abolished".

22 The fourth subparagraph of Article 16 (2) adds that the decision of the Commission "shall come into force immediately".

23 The decision taken by the Commission on 28 July 1966 by virtue of the aforesaid provisions, having been notified on the same day, took effect with regard to the Italian Republic at the time of that notification in accordance with the second paragraph of Article 191 of the Treaty.

24 Thus, as from 28 July 1966, the Italian Republic was, with immediate effect, under a duty to abolish the protective measures, the introduction of which had been declared to the Commission on 23 July 1966.

25 Consequently the Italian administration is not entitled to have recourse to the protective measure in question against a trader in respect of an importation which took place after the date — 28 July 1966 — on which the Commission's decision took effect with regard to the State.

26 The Italian authorities cannot dispute the full effectiveness of that decision by relying on the fact that the internal measures taken under the protective measure were not repealed until a date subsequent to that on which the decision took effect.

27 Reliance, on the part of the national administration, on its own delay in carrying out a decision of the Community authority would in fact constitute a breach of the first paragraph of Article 5 of the Treaty which provides that: "Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community".

28 This conclusion is not invalidated by the fact that, at the very time when the Commission required the abolition of a protective measure for which it could not see any justification, the Council authorized the Italian Republic to take alternative protective measures.

29 In fact those measures rest on a different basis, namely Article 18 of Regulation No 14/64, which provides that the Council may, acting on a proposal from the Commission, take "measures in derogation" from the regulation to take account of "special circumstances" which may exist in regard to certain products covered by that regulation.

30 Moreover, it should be noted that the derogative measures authorized by the Council on that basis do not coincide, either in nature or in scope, with the protective measures which the Commission required to be abolished.

31 From that it must follow that, although the decision taken by the Commission under Article 16 of Regulation No 14/64 and the decision taken by the Council under Article 18 of the same regulation are co-existent, there does not exist any legal connexion, or *a fortiori* any hierarchical relationship, between them.

32 Hence the use made by the Italian Republic, with effect from 1 August 1966, of the authorization granted by the decision of the Council cannot be regarded as constituting a condition precedent to the removal of the effects of the protective measure as required by the decision of the Commission.

33 The reply should therefore be as follows:

As regards the first question, Commission Decision No 66/474, adopted on 28 July 1966 under Article 16 of Regulation No 14/64, took effect independently of Council Decision No 66/455, adopted on the same day under Article 18 of the same regulation.

As regards the second question, following Commission Decision No 66/474 the Member State concerned is no longer entitled to rely, as against a trader, with regard to an importation occurring after that decision took effect, on the national provisions introduced by virtue of the protective measure which the Commission required to be abolished, even though those provisions were not repealed within the domestic legal order until after the decision of the Commission took effect.

As regards the third question, in accordance with the second paragraph of Article 191 of the EEC Treaty, Commission Decision No 66/474 took effect at the time of its notification to the Italian Republic, that is, on 28 July 1966.

34 In reply to the fourth question it may be stated that the provisions of Article 16 of Regulation No 14/64 do not limit the power of the Commission as

regards fixing the time from which it may, where appropriate, require the abolition of a protective measure introduced by a Member State.

35 Whilst it is true that in principle nothing would have prevented the Commission from requiring the abolition of a protective measure which it considered unjustified as from the time of the introduction of that measure, it appears from the wording of Decision No 66/474 that the duty to abolish the measures in question was to take effect at the same time as the decision itself, namely on the day of the notification to the Italian Government, 28 July 1966.

36 In view of the reply given to the second question, the fifth question has lost its purpose.

Costs

37 The costs incurred by the Government of the Italian Republic and by the Commission of the European Communities, which have submitted written observations to the Court, are not recoverable.

38 As these proceedings are, so far as the parties to the main action are concerned, a step in the action pending before the Corte di Cassazione, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Corte di Cassazione of Italy by order of 17 February 1978, hereby rules:

1. **Commission Decision No 66/474 of 28 July 1966, requiring the Italian Republic to abolish the protective measures taken in respect of adult bovine animals and calves took effect independently of Council Decision No 66/455, also of 28 July 1966, authorizing the Italian Republic to increase the levies applicable to certain imports of beef and veal from non-member countries.**

2. Following Commission Decision No 66/474 the Italian Republic was no longer entitled to rely, as against a trader, with regard to an importation occurring after that decision took effect, on the national provisions introduced by virtue of the protective measure which the Commission required to be abolished, even though those provisions were not repealed within the domestic legal order until after the decision of the Commission took effect.

3. In accordance with the second paragraph of Article 191 of the EEC Treaty, Commission Decision No 66/474 took effect at the time of its notification to the Italian Republic, that is, on 28 July 1966.

Mackenzie Stuart Pescatore Touffait

Delivered in open court in Luxembourg on 8 March 1979.

A. Van Houtte
Registrar

A. J. Mackenzie Stuart
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 8 FEBRUARY 1979 [1]

Mr President,
Members of the Court,

The proceedings in which the request for a preliminary ruling arose concern the legality of the imposition of supplementary levies by the Italian Finance Administration on the importation, for processing under customs supervision, of boneless frozen beef and veal coming under Common Customs Tariff heading 02.01 A II, Statistical number 58, which is therefore a product which is subject to Council Regulation No 14/64/EEC of 5 February 1964 on the progressive establishment of a common organization of the market for beef and veal (Journal Officiel 1964 No 34 of 27 February 1964, p. 562).

Article 5 of the above-mentioned regulation provides for the imposition of levies, by the importing Member State, on the importation of calves and adult bovine animals, and also of derived products, from non-member States.

1 — Translated from the German.