

JUDGMENT OF THE COURT

11 FEBRUARY 1971<sup>1</sup>

**Norddeutsches Vieh- und Fleischkontor GmbH**  
**v Hauptzollamt Hamburg-St. Annen<sup>2</sup>**  
**(Reference for a preliminary ruling**  
**by the Finanzgericht Hamburg)**

**Case 39/70**

**S u m m a r y**

*1. Regulation — Uniform application — Implementation by the national authorities — Recourse to national rules — Limits*  
(EEC Treaty, Article 189)

*2. Agriculture — Common organization of the markets — Levy — Suspension — Special system — Complete nature of Community rules — Implementation by the national authorities — Requirements*

(Regulation No 805/68 of the Council, Article 14 (3) [OJ L 148, p. 24; OJ (English Special Edition) 1968 (I), p. 187]; Regulation No 888/68 of the Council, Article 1 [OJ L 156, p. 7; OJ (English Special Edition) 1968 (I), p. 239])

1. The uniform application of Community provisions allows no recourse to national rules except to the extent necessary to carry out the regulations.

2. Where Community rules introducing a special system for imports lay down all the conditions for the applicability of the system as well as the arrangements for security and supervision designed to prevent fraud, national authorities may not subject the im-

porters to whom the special system applies to additional requirements arising under national law, in particular where such requirements are incompatible with the criteria on which the Community rules are based; the position is the same where the applicability of such a special system is made dependent upon a subjective assessment on the part of the national authority.

In Case 39/70

Reference to the Court under [Article 267 TFEU] by the Fifth Senate of the Finanzgericht Hamburg, for a preliminary ruling in the action pending before that court between

**NORDDEUTSCHES VIEH- UND FLEISCHKONTOR GMBH**

**and**

**HAUPTZOLLAMT HAMBURG-ST. ANNEN**

1 — Language of the Case: German.

2 — CMLR.

on the interpretation of (EEC) Regulations No 805/68 of the Council of 27 June 1968 (OJ, L 148, p. 24; OJ (English Special Edition) 1968 (I), p. 187) No 888/68 of the Council of 28 June 1968 (OJ L 156, p. 7; OJ (English Special Edition) 1968 (I), p. 239) and No 1082/68 of the Commission of 26 July 1968 (OJ L 181, p. 9; OJ (English Special Edition) 1968 (II), p. 369),

## THE COURT

composed of: R. Lecourt, President, A. M. Donner and A. Trabucchi (Rapporteur), Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore and H. Kutscher, Judges,

Advocate-General: A. Dutheillet de Lamothe  
Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Issues of fact and of law

#### I — Facts and procedure

The facts and procedure may be summarized as follows:

Article 14 (3) (a) of EEC Regulation No 805/68 of the Council on the common organization of the market in beef and veal provides that the Council shall adopt 'general rules for applying total suspension of the levy in respect of meat intended for the manufacture of the preserved foods described in the first subparagraph of paragraph (2)'. This was done by Regulation No 888/68 laying down general rules on special import terms for certain frozen meats intended for processing. Article 1 (1) of this Regulation makes the total suspension of the import levy conditional upon:

- (a) a written declaration being made by the importer at the time of importation that the frozen meat is intended for use in the importing Member State for the manufacture of pre-

served meat of the kinds mentioned at the end of the first subparagraph of Article 14 (2) of Regulation (EEC) No 805/68;

- (b) a deposit being lodged by the importer, in an amount equal to the levy, guaranteeing such manufacture;
- (c) a written undertaking being given by the importer, at the time of importation, to pay the additional sum specified in paragraph (5) if the proof specified in paragraph (3) is not furnished in respect of the whole quantity of frozen meat imported.

Under paragraphs (3) and (4) of this article the deposit is only returned if, within six months, proof is furnished that a quantity of the preserved meat, which is at least equivalent to the coefficients fixed by the Commission in Regulation No 1082/68, has been manufactured from imported frozen meat. By a decision of 18 September 1968 the

Hauptzollamt Hamburg dismissed an application from the Norddeutsches Vieh- und Fleischkontor GmbH of Hamburg for approval for arrangements for the use of goods subject to levy, namely frozen beef and veal. The Hauptzollamt explained its decision to dismiss this request on the ground that the plaintiff did not satisfy the conditions laid down in paragraph 55 (2) of the German Customs Law, which requires that an undertaking applying for such approval must be trustworthy ('vertrauenswürdig').

By a decision of 18 March 1969 the Oberfinanzdirektion dismissed the plaintiff's objection on the grounds that good reasons existed for suspecting that it had infringed the tax provisions concerning international trade. In particular, on the importation of beef and veal in January 1967 the plaintiff had produced an invoice to the customs showing 'for duty and customs only' an amount which was lower than that on the original invoice. This fact was claimed to be sufficient to destroy the trust which must exist between the administration and the taxpayer even though it was to be revealed in the course of legal proceedings brought at Duisburg that some reduction of the higher figure appearing in the purchaser's invoice was in fact justified by defects in the goods. It was claimed to be of little significance that the amount stated on the invoice fixed 'for duty and customs only' represented the estimated value of the goods, since it is for the customs authorities to determine the value for customs purposes.

For these reasons, even though it had to be accepted that the plaintiff had in good faith believed the value declared for customs purposes to be approximately correct, the plaintiff was considered not to be 'vertrauenswürdig'. This was considered sufficient to justify the plaintiff's being refused the customs arrangements sought, even taking account of the fact that hitherto it had carried out its trading activities irreproachably and that not inconsiderable commercial dis-

advantages might follow a refusal to grant the authorization.

On 24 April 1969 the plaintiff brought an action contesting this refusal before the Finanzgericht Hamburg, and put forward evidence of certain factors which, in its opinion, justified the production of an invoice for a smaller amount. In addition, the plaintiff observed that when making a decision on its objection against the assessments issued on 17 December 1968 and 13 January 1969, the Hauptzollamt Duisburg had failed on certain vital points to take account of criticisms made at that time by the Hamburg office for investigation of fraudulent customs transactions.

The plaintiff also pointed out that the decision of the Hauptzollamt Duisburg had moreover been contested before the Finanzgericht Düsseldorf. The fine of DM 1 000 imposed on the plaintiff on 22 September 1969 by the Hauptzollamt Duisburg was subsequently withdrawn.

The plaintiff in the main action observes that none of the allegations against it has been finally proved and also that it has been carrying on its activities for twelve years, that it has an annual turnover of approximately DM 100 million and that the tax demand by the German administration amounts only to DM 54 401.07.

The practical effect of the refusal to grant the undertaking's request for customs arrangements is to prevent it from carrying on this line of business.

In its order making the reference the Finanzgericht Hamburg states that the question whether the plaintiff's appeal against the dismissal of its request of 31 September 1968 for approval for arrangements for the use of goods subject to levy is justified or not is subject to the interpretation which must be given to Article 1 of Regulation (EEC) No 888/68, in conjunction with Articles 1 and 2 of Regulation No 1082/68 of the Commission.

If these provisions were to be regarded

as governing all the formalities to be complied with for eligibility for the preferential system laid down in respect of levies by Regulation (EEC) No 805/68 the plaintiff must be successful because in this case it would no longer be necessary to determine whether or not the head of the undertaking in question is trustworthy, within the meaning of the second sentence of paragraph 55 (2) of the German Customs Law, as Community law takes precedence over the provisions of the ordinary national legislation. If not in form certainly in practice, the defendant's decision means that the plaintiff is prevented from importing frozen beef and veal for the manufacture of preserved meats without payment of the levy. According to the Finanzgericht Hamburg the detailed nature of the Community regulations on this subject favours the view that as regards the formal requirements, Article 1 of Regulation No 888/68 and Regulation No 1082/68 contain exhaustive rules which must not and cannot be supplemented by national legal provisions, such as paragraph 55 of the German Customs Law. It considers that the very detailed nature of the rules contained in these two regulations shows that no gap exists in this body of procedural rules which has to be closed by granting permission for arrangements for the use of goods in bond under the conditions laid down in paragraph 55 of the Zollgesetz (Customs Law). If it had to be accepted that the benefit of total suspension of the levy, referred to in Article 14 (3) (a) of Regulation No 805/68, is conditional upon approval for arrangements for use of goods in bond under the Zollgesetz, the grant of exemption from the levy, which appears to derive directly from the provisions of Community law, would depend upon a discretionary decision of the German customs authorities. The German court emphasizes the scope of the discretionary power of the national authority in this field: it may, *inter alia*, make its approval of the arrangements in ques-

tion conditional upon the provision of a security and it may withdraw the authorization at any time. The Finanzgericht wonders whether this discretionary power is compatible with the fact that the authors of the Community regulations on this subject appear to have intended to grant the importer a *right* to the benefit of the preferential levy system. The German court states that the German customs authorities remained within the limits of their discretionary power when they refused to accept that the plaintiff was trustworthy within the meaning of paragraph 55 (2) of the German Customs Law, with the result that if it has to be accepted that the EEC regulations do not set a limit to the formal requirements necessary for obtaining the exemption from the levy provided for in (EEC) Regulation No 805/68, the application at present before the Court must fail. Although the facts on which the administration's decision not to grant the authorization requested are not finally established, according to the Zollgesetz a suspicion of an attempt to evade payment of the levy is sufficient to justify a refusal to grant the permission requested by the plaintiff, even though the evasion was not deliberate but merely occurred through negligence. The administration's suspicion is justified in law as long as it has not been shown before the courts dealing with the plaintiff's applications that this party has acted correctly. An exception to this principle is only justified where it is manifest that the applications are likely to be successful.

Therefore, by order of 25 June 1970 received at the Court Registry on 27 July 1970, the Finanzgericht Hamburg decided to stay the proceedings and to ask the Court of Justice of the European Communities to give a preliminary ruling under [Article 267 TFEU] on the following question:

'Do Regulations (EEC) No 805/68 of the Council of 27 June 1968 (OJ L 148, p. 24; OJ (English Special

Edition) 1968 (I), p. 187), No 888/68 of the Council of 28 June 1968 (OJ L 156, p. 7; OJ (English Special Edition) 1968 (I), p. 239) and No 1082/68 of the Commission of 26 June 1968 (OJ L 181, p. 9; OJ (English Special Edition) 1968 (II), p. 369) and in particular Article 1 of Regulation No 888/68 and Articles 1 and 2 of Regulation No 1082/68, lay down all the formal requirements which must be satisfied in order that the total suspension of the import levy referred to in Article 14 (3) (a) of Regulation No 805/68 may be granted, or may the national customs authority rely on provisions of its national law in order to make the grant of the benefit of the preferential levy system conditional upon additional requirements? In particular, may this authority require that an importer who seeks the benefit of this system be trustworthy in the discretionary judgment of the authority, as required under the terms of the second sentence of paragraph 55 (2) of the German Customs Law of 1961?

The plaintiff in the main action, the Government of the Federal Republic of Germany and the Commission of the European Communities submitted written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice annexed to the EEC Treaty.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure without holding any preliminary inquiry.

The plaintiff in the main action, the Government of the Federal Republic of Germany and the Commission submitted their oral observations at the hearing on 1 December 1970.

The plaintiff in the main action was represented by H. E. Müller and W. Ruthmann of the Hamburg Bar. The Government of the Federal Republic of Germany was represented by R. Mora-

witz, Ministerialrat (Ministerial Counselor) at the Ministry for Economic Affairs.

The Commission of the European Communities was represented by its Legal Adviser, P. Gilsdorf, acting as Agent.

The Advocate-General delivered his opinion at the hearing on 13 January 1971.

## II — Observations submitted to the Court

The observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice may be summarized as follows:

The *plaintiff in the main action* observes that in Regulation No. 888/68 the Council of the EEC drew up and settled all the details of the requirements to which importation without payment of the levy was subject and that in Regulation No 1082/68 the Commission also laid down the conditions which must be fulfilled to prove that the frozen meat has been entirely processed into preserved meat. These two regulations are a sufficient guarantee of the interests of all parties concerned, taking into account the interests of both importers and national authorities. As the EEC legislature had drawn up a complete set of regulations in which there are no gaps, additional rules drawn up by the national legislature cannot take effect when the abovementioned regulations are applied.

If, in specific cases, the national authorities could subject exemption from the levy provided for by these Community rules to other requirements which were determined according to their discretionary assessment of the situation, it would be impossible to attain the objectives of the regulations in question.

The powers of intervention claimed by the German authorities in this matter would lead to distortions of

competition, particularly as they claim to refuse to grant the exemption provided for by the regulations in question on the basis of mere suspicion. In this way the arbitrary and unfettered assessment of the authorities in the locality concerned would be substituted for the Community system.

The *Government of the Federal Republic of Germany* considers that as regards importations exempted from payment of the levy on beef and veal intended for the preserving industry the substantive requirements were fixed by the Community, while the task of drawing up the procedural requirements was left to the Member States, as no provisions of Community law govern the procedure to be observed in customs matters.

In this connexion a consideration of the 'Vertrauenswürdigkeit' (trustworthiness) of the applicant is an essential element in German procedural requirements, but this in no way restricts the scope of Community law. The provision contained in Article 14 (3) of Regulation No 805/68 of the Council concerning special terms for certain frozen meats shows clearly that it is merely intended to fix the conditions for such preferential treatment, without encroaching on the national rules governing the procedure. This is confirmed by Regulation No 888/68 which lays down general rules concerning this special system, but does not contain rules on the payment of the deposit and its return or any procedure for checking whether any preserved meat has been manufactured within the meaning of the first subparagraph of Article 14 (2) of Regulation No 805/68. In this situation, recourse to the procedural requirements of national law is inevitable.

For practical reasons German customs supervision of the observance of the conditions of the preferential levy system is based in principle upon supervision of the accounts. This has

the particular advantage that it does not hinder commercial transactions, but is only possible provided the administration can rely on the accounts. It is for these reasons that, according to the German law on customs procedure, 'Vertrauenswürdigkeit' constitutes the indispensable basis of the supervision procedure. Unless they were incorporated into the context of the general system for the use of goods in bond established for the purposes of this type of preferential system, the Community provisions concerning frozen meat laid down by Article 14 of Regulation No 805/68 could not in practice be applied in the Federal Republic. In this context, the 'Vertrauenswürdigkeit' of the importer only constitutes a formal requirement which is necessary in order to enable evidence to be adduced that the goods have been duly processed in accordance with Article 1 (2) of Regulation No 888/68.

An effective system of supervision is especially important in the sector in question as the risk of evasion of the levy is particularly great. Since the revenue from the levies will have to be transferred to the Community the Federal Republic is acting in the interests of the Community in the true sense by using such a system.

As the courts' jurisdiction to review the concept of 'Vertrauenswürdigkeit' is unlimited, there is no risk of any objectively unjustifiable discrimination between the undertakings concerned.

The *Commission of the European Communities* emphasizes that the Community regulations in question are extremely detailed and demonstrate the concern of the Community legislature to take the necessary precautions to prevent imported frozen meat exempted from the levy from being used for purposes other than those for which the undertaking concerned obtained the benefit of the special terms. Thus, it is provided that the importer must furnish proof of the proper use of the

products and that, if this condition is not satisfied, he shall lose the deposit provided for in Article 1 of Regulation No 888/68. The general rule laid down concerning proof by Article 1 (4) of this Regulation was set out in detail by Regulation No 1082/68 of the Commission. Every importer who satisfies the conditions laid down in Article 1 of Regulation No 888/68 is entitled to seek the suspension of the levy. This follows from the fact that the Community regulations are directly applicable in the Member States and that the suspension of the levy is governed in such a way as to preclude the exercise of any discretion on the part of the national authorities. It is in accord with economic requirements and, in the final analysis, with the interest of consumers for the processing industry to be supplied with imported meat at low prices. The supplies must be acquired on the same terms throughout the whole Community and this means that Community regulations must be applied uniformly in all the Member States.

However, these considerations do not render it impossible for the national authorities to adopt internal measures in order to implement Community regulations. It is however necessary to determine the limits of the power of the national authorities in this respect. Under the German Law of 25 January 1962 on the imposition of levies the German customs provisions are applicable to the extent to which they are compatible with Community regulations. When there is conflict, therefore, the German customs regulations must give way to the Community provisions, without any need to resort to a general Community rule governing conflict of laws.

Having made these preliminary observations the Commission emphasizes that, under paragraph 55 of the Zollgesetz, an importer has no right to the benefit of arrangements for use of goods in bond, even where

there is no question that the substantive requirements for the granting of this benefit are satisfied. Case-law and academic legal writing agree on regarding the grant of the benefit as a purely discretionary decision on the part of the administration.

These German regulations are clearly based upon the idea that the benefit of the special customs arrangements constitutes an exceptional favour which assumes the existence of a 'special relationship of trust' between the administration and the citizen. This criterion is also bound up with the fact that the German customs legislation attaches little importance to other methods of safeguarding these customs arrangements, such as, for example, the obligation under Community law to furnish proof and lodge deposits.

Such wide discretionary power as that held by the German administrative authorities in this case has no parallel in the systems in force in the other Member States.

The Commission refers to the general principle confirmed by the Court in the cases concerning turkey rumps and tapioca flour which prohibits Member States from adopting, for the implementation of Community regulations, provisions which would affect the scope of such regulations. The Commission emphasizes that this principle is of fundamental importance as, if it were not respected, it would no longer be possible to ensure that Community provisions are uniformly valid throughout the whole Community.

Even when the Community provisions are as detailed as those in question in this instance, it is not absolutely impossible for Member States to adopt implementing measures, even of a legislative nature. It is clear that the Member States are entitled to adopt rules of procedure of a formal nature which define, for example, the form of the request, the competent authority

and other details which the Community provisions cannot regulate.

The Commission considers that the question whether, by applying paragraph 55 of the Zollgesetz, the German authority was merely applying the Community provisions or whether it added other requirements which were not contained in those provisions, cannot be answered in general terms. The reply to this question can only be given in relation to each of the requirements laid down in paragraph 55.

To the extent to which the provision requires the importer making the request to keep proper books of account or to draw up regular statements of account, it resorts to specific legal concepts which only leave the administration a minimum of discretionary power. These conditions satisfy the normal requirements of the administration, which are, moreover, linked to the requirement of proof contained in the Community regulations. Taken as a whole, these conditions are unlikely to create noticeable differences in the administrative practices of the Member States of the Community. Without adopting a final attitude on this point, the Commission is inclined to consider that such conditions do not affect the scope of the Community regulations.

On the other hand, the Commission maintains that it is clear that paragraph 55 of the Zollgesetz contains other factors which affect the scope of the Community regulations. Once the Community has laid down detailed rules concerning deposits, it is no longer for the national authority to decide whether to require deposits or not. The same applies to the periods within which the product must be used; these periods are fixed definitively by Community law.

The scope of the Community rules is more seriously affected if the suspension of the levy is left to the discretionary power of the administration, as is precisely the case in Germany. Such a power involves a danger that

the national authority may refuse to apply the Community system in question here on the basis of considerations which may be quite foreign to Community law. This power of the administration also involves the danger of discriminatory treatment in allowing the suspension of the levy, even if in every Member State the authorities had such a discretionary power, which in fact they have not.

The Commission considers that the national authority cannot be regarded as entitled to refuse the benefit of the suspension of the levy on the mere ground that, in its discretionary judgment, the applicant is not 'trustworthy', and that this is so not only when this concept is a matter for discretion but even if it is to be regarded as 'an indefinite legal concept' ('unbestimmter Rechtsbegriff'), as, whichever it may be, the power of assessment of the customs authorities is extremely wide and is close to a purely discretionary power. Although it is true that this requirement may somewhat increase the chance that potential swindlers will be excluded in advance from the special customs arrangements, it also involves a danger which outweighs its possible usefulness: this is that by an *a priori* exclusion from the benefit of the special terms on the basis of very wide criteria such as are applied in practice, importers may be excluded from trade to which they would be admitted under the Community legislation in cases in which no real danger of abuse exists. Moreover, in order to prevent abuses and fraudulent practices the Community has drawn up detailed rules which emphasize the lodging of deposits and proof of proper utilization. It is within the context of the actual inspection of the proof furnished by the importers that the Member States may still take such action as they think fit. According to the Commission, it is in particular through a strengthening of the rules concerning proof that possible fraudu-

lent action may be held in check or prevented in the most effective way. It is not a valid answer to this requirement to say that it leads to an increase in work. A final consideration which militates against the acceptability of the criterion of 'Vertrauenswürdigkeit' is that its application may result in discriminatory treatment to the detriment of the nationals of other Member States. In fact, as a result of the extremely wide nature of the con-

cept of 'Vertrauenswürdigkeit' it is not inconceivable that claimants from other Member States who are not known to the national customs authorities may be more readily considered untrustworthy than domestic undertakings, or that, at the least, the 'Vertrauenswürdigkeit' of foreign importers may only be acknowledged in the light of requirements which are more stringent than those applying to nationals.

### Grounds of judgment

<sup>1</sup> By an order of 25 June 1970 received at the Court on 27 July 1970 the Finanzgericht Hamburg has referred for a preliminary ruling under [Article 267 TFEU] a question on the interpretation of Regulation (EEC) No 805/68 of the Council of 27 June 1968 and Regulation (EEC) No 888/68 of the Council of 28 June 1968 as well as of Regulation (EEC) No 1082/68 of the Commission of 26 July 1968, concerning the introduction and application of special import terms for certain frozen meats for processing.

<sup>2</sup> The Court is asked to rule whether these regulations 'lay down all the formal requirements which must be satisfied in order that the total suspension of the import levy referred to in Article 14 (3) (a) of Regulation No 805/68 may be granted', or whether the national customs authority may 'rely on provisions of its national law in order to make the grant of the benefit of the preferential levy system conditional upon additional requirements'.

The Court is asked in particular to rule whether a national customs authority is entitled to require the importer concerned to be 'trustworthy' in the discretionary judgment of that authority, as laid down in the second sentence of paragraph 55 (2) of the German Customs Law of 1961.

<sup>3</sup> In order that the Community processing industries may obtain adequate supplies, Community rules provide for the suspension of the import levy on certain meats intended for the manufacture of preserved meat.

Article 1 (1) of Regulation No 888/68 makes the total suspension of the levy conditional upon:

(a) a written declaration being made by the importer at the time of importation that the frozen meat is intended for use in the importing Member State for the manufacture of preserved meat;

- (b) a deposit being lodged by the importer, in an amount equal to the levy, guaranteeing such manufacture;
- (c) a written undertaking being given by the importer, at the time of importation, to pay the additional sum specified in paragraph (5) if the proof specified in paragraph (3) is not furnished in respect of the whole quantity of frozen meat imported.

In addition, under paragraphs (3) and (4) of that article the deposit is not to be returned unless the importer furnishes the proof required within six months.

Furthermore, in Regulation No 1082/68 the Commission fixed the coefficients determining the quantity of preserved meat which must arise from the processing of imported frozen meats.

The question put is therefore intended to ascertain whether, in the face of these detailed provisions, the national authorities may subject the application of these rules to additional conditions laid down in their customs legislation.

- 4 Where national authorities are responsible for implementing a Community regulation it must be recognized that in principle this implementation takes place with due respect for the forms and procedures of national law.

However, the uniform application of Community provisions allows no recourse to national rules except to the extent necessary to carry out the regulations.

No such need has been established in the present instance, as the rules an interpretation of which has been requested lay down all the conditions which must be fulfilled for the levy to be suspended, as well as arrangements for security and the supervision designed to prevent fraud.

- 5 Although the national authorities are free to use all the appropriate methods which their law provides to prevent the fraudulent evasion of Community rules, this cannot apply where the national law is based upon criteria which do not conform to the system of guarantees and proof introduced by the Community rules.

In particular, such national rules must be regarded as incompatible with the Community rules when the national rules are based upon a criterion which leaves the national authorities too wide an area of discretion, such as the degree of trust to be accorded to an importer.

The application of criteria of this nature may lead to differences of treatment between the importers of the various Member States and thus endanger the essential uniformity of application of Community provisions throughout the whole of the Common Market.

It is, therefore, impossible to apply national provisions based upon criteria which are not in harmony with those adopted by the Community legislature.

- <sup>6</sup> For this reason it would be incompatible with Community rules for any customs authority to subject an importer's claim for suspension of the levy to internal legal requirements based upon subjective assessments.

### Costs

- <sup>7</sup> The costs incurred by the Commission of the European Communities and the Government of the Federal Republic of Germany, which have submitted observations to the Court, are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Finanzgericht Hamburg, the decision as to costs is a matter for that court.

On those grounds,

Upon reading the pleadings;  
 Upon hearing the report of the Judge-Rapporteur;  
 Upon hearing the plaintiff in the main action, the Commission of the European Communities and the Government of the Federal Republic of Germany;  
 Upon hearing the opinion of the Advocate-General;  
 Having regard to the Treaty establishing the European Economic Community, especially Article 177;  
 Having regard to Regulation (EEC) No 805/68 of the Council of 27 June 1968 and Regulation (EEC) No 888/68 of the Council of 28 June 1968, as well as Regulation (EEC) No 1082/68 of the Commission of 26 July 1968;  
 Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;  
 Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

### THE COURT

in answer to the questions referred to it by the Finanzgericht Hamburg, by order of that court of 25 June, 1970, hereby rules:

- 1. In the application of Regulation (EEC) Nos 805/68 and 888/68 of the Council and 1082/68 of the Commission, national authorities**

may not subject importers to whom the special system established by those regulations applies to additional requirements arising under national law which are incompatible with the criteria on which the Community regulations are based;

2. A condition making the applicability of such special system dependent upon a subjective assessment on the part of the national authority is not compatible with the system laid down by the Community rules.

Lecourt

Donner

Trabucchi

Monaco

Mertens de Wilmars

Pescatore

Kutscher

Delivered in open court in Luxembourg on 11 February 1971.

A. Van Houtte

Registrar

R. Lecourt

President

OPINION OF MR ADVOCATE-GENERAL  
DUTHEILLET DE LAMOTHE  
DELIVERED ON 13 JANUARY 1971<sup>1</sup>

*Mr President,  
Members of the Court,*

As you know, EEC Regulation No 805/68 on the common organization of the market in beef and veal, as well as Regulations Nos 888/68 and 1082/68 which were adopted in implementation thereof, contain certain provisions relating to the meat processing trade. Under certain conditions to which I will refer later the import of frozen beef and veal intended for processing gives rise to a right to a total or partial suspension of the Community levy which would normally have been imposed.

The customs authorities in each Member State are responsible for the application of this provision, particularly as the

processing must take place in the territory of the State into which the meat has been imported.

The German federal authorities have not considered it necessary to adopt special implementing measures with regard to these transactions but under a principle laid down by a law of 25 June 1962 they merely applied to the said transactions the provisions of Article 55 of the German Customs Code concerning the processing of goods in bond.

It was in these circumstances that on 13 September 1968 Fleischkontor, a company specializing in the manufacture of preserved meats, sought authorization for the Community provisions to be applied to a consignment of imported frozen beef intended for the manufacture of preserved meat.

1 — Translated from the French.