

In Case 35/76

Reference to the Court under [Article 267 TFEU] by the Pretura di Susa for a preliminary ruling in the proceedings pending before that court between

S1MMMENTHAL SPA., Monza,

and

ITALIAN MINISTER FOR FINANCE

on the interpretation of [Article 28 TFEU] *et seq.*, [Article 34 TFEU] *et seq* and [Article 110 TFEU] and also of Article 12 of Regulation No 14/64/EEC of the Council and Article 22 of Regulation (EEC) No 805/68 of the Council,

THE COURT

composed of: H. Kutscher, President A. M. Donner and P. Pescatore, President of Chambers, J. Mertens de Wilmars, M. Sorensen, Lord Mackenzie Stuart, A. O'Keefe, G. Bosco and A. Touffait, Judges,

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

gives the following

JUDGMENT

**Law**

1 By an order of 6 April 1976, which was received at the Court Registry on the following 22 April, the Pretura di Susa referred to the Court, pursuant to [Article 267 TFEU], several questions relating

to the interpretation of [Articles 28 to 30 TFEU], [Articles 34 to 36 TFEU] and [Article 110 TFEU], of Article 12 of Regulation No 14/64/EEC of the Council of 5 February 1964 on the progressive establishment of a common organization of the markets in beef and veal (JO 34 of 27. 2. 1964) and of Article 22 of Regulation (EEC) No 805 of the Council of 27 June 1968 on the common organization of the market in beef and veal (OJ English Special Edition 1968 (I), p. 187) and also of the provisions of the two Council Directives Nos 64/432/EEC (OJ English Special Edition 1963-1964, p. 164) and No 64/433/EEC (OJ English Special Edition 1963-1964, p. 185) both of 26 June 1964 on animal health problems, the first affecting intra-[Union] trade in bovine animals and swine, the second affecting intra-[Union] trade in fresh meat. These questions were raised during proceedings brought by the plaintiff in the main action against the Italian administrative authority for recovery of fees charged for a veterinary inspection, carried out pursuant to national legislation, of a consignment of beef and veal intended for human consumption and imported on 26 July 1973 from France into Italy.

- 2 The plaintiff in the main action takes the view that the fees have been charged unlawfully, on the one hand because the organization of compulsory and systematic veterinary and public health inspections - which are concerned in the present case - since the implementation of the veterinary and public health directives of 26 June 1964 has been a measure having an effect equivalent to a quantitative restriction prohibited by the Treaty, which is the reason why the imposition of fees on this occasion was unlawful and, on the other hand because, in any event, the charging of fees for such inspections is an infringement of [Articles 28 and 30 TFEU] which prohibit the imposition of any charges having an effect equivalent to a customs duty on imports. Since these directives standardize national provisions relating to the veterinary and public health inspection of certain meat, bovine animals and swine and lay down that measures ensuring that this supervision is carried out must be taken by the exporting Member State, they have made systematic inspections at the frontiers of the said products unnecessary and, consequently, unjustifiable under Article 36 [TFEU].
- 3 The Government of the Italian Republic has denied that the veterinary and public health inspections of the products referred to in the directives which it organized were carried out systematically" and produces documents in support of its view that this is not the case. Consequently it has expressed doubts as to the relevance of the questions referred.

- 4 [Article 267 TFEU] is based on a distinct separation of functions between national courts and tribunals on the one hand and the Court of Justice on the other hand and it does not give the Court jurisdiction to take cognizance of the facts of the case, or to criticize the reasons for the reference.

The Court is entitled to pronounce on the interpretation of the Treaty and of acts of the institutions but cannot apply them to the case in question since such application falls within the jurisdiction of the national court.

### **The first question**

- 5 The first question asks whether [Article 34 *et seq.* TFEU], Article 12 of Regulation No 14/64/EEC as well as Article 22 of Regulation (EEC) No 805/68 - having regard to the provisions on the harmonization of laws adopted in order to give full effect to the common organization of the market in beef and veal, by Council Directives Nos 64/432/EEC and 64/433/EEC - are to be interpreted as meaning that a veterinary and public health inspection at the frontier, of a compulsory and systematic nature, constitutes a measure having an effect equivalent to a quantitative restriction on imports and on exports, and if so, as from which date.
- 6 [Article 34 TFEU] prohibits quantitative restrictions on imports and all measures having equivalent effect between Member States.

Article 12 of Regulation No 14/64/EEC and Article 22 of Regulation No 805/68/EEC contain, as far as the products covered by the common organization of the market in beef and veal are concerned similar prohibitions which entered into force on the date specified by these regulations which was in fact before the end of the transitional period.

- 7 To come within the prohibition contained in these provisions it is enough for the measures in question to be capable of acting as a direct or indirect, real or potential hindrance to imports between Member States. These conditions are satisfied as far as livestock and meat for human consumption is concerned, if compulsory, veterinary and public health inspections are carried out at the frontiers of a Member State. As a result in particular of the delays

inherent in the inspections and the additional transport costs which the importer may incur thereby, the inspections in question are likely to make importation more difficult or more costly.

- 8 It follows that veterinary and public health inspections at the frontiers - whether carried out systematically or not - on the occasion of the importation of animals or meat intended for human consumption constitute measures having an effect equivalent to quantitative restrictions within the meaning of [Article 34 TFEU], which are prohibited by that provision, subject to the exceptions laid down by [Union] law and in particular by Article 36 [TFEU]. As far as concerns the products referred to in Regulations Nos 14/64 and 805/68 on the common organization of the market in beef and veal the prohibition of such measures, subject to the exceptions mentioned above, took effect on the date when the said regulations entered into force.

### **The second question**

- 9 The national court asks whether, in the event of an affirmative answer being given to the first question, Article 36 [TFEU] is to be interpreted as meaning that a compulsory and systematic veterinary and public health inspection of the type carried out within the meaning of Article 31 of the consolidated health laws of the Italian Republic is still *justified* following the adoption of the directives mentioned above for harmonizing health laws.
- 10 Article 36 [TFEU] excepts from the prohibition restrictions on imports, exports and goods in transit if measures of this nature are justified on grounds of the protection of health and life of humans and animals. Since the restrictions authorized by Article 36 [TFEU] derogate from the fundamental principle of the free movement of goods, they only comply with the Treaty in so far as they are justified, that is to say, necessary for attainment of the objectives referred to by this provision and in particular to ensure the protection of health and life of humans and animals.
- 11 The purpose of the second question is to ascertain to what extent a compulsory and systematic veterinary and public health inspection at the frontier on the importation of bovine animals and swine and of certain fresh meat is still justified within the meaning of Article

36 [TFEU] since the expiration of the period prescribed by Directives No 64/432/EEC and No 64/433/EEC for the harmonization of animal health measures adopted by the various Member States, complemented *inter alia* by Council Directives Nos 72/461 and 72/462 of 12 December 1972 (OJ English Special Edition 1972 (31 December), pp. 3 and 7).

12 With a view to eliminating obstacles to intra-[Union] trade in bovine animals and swine and fresh meat the Council by the directives mentioned above harmonized the animal health measures in force in the Member States by making it obligatory for the latter to standardize domestic provisions in this field in accordance with the requirements of the said directives.

13 During the oral procedure the Agent of the Government of the Italian Republic submitted that Article 36 [TFEU] leaves the matters to which it refers to be dealt with by Member States under their sovereign powers and that the exercise by the Council or the Commission of certain regulatory powers in this field cannot imply the surrender by Member States of their powers or take those powers away from them.

14 The fifth recital of Directive No 64/432/EEC correctly states: 'Whereas the right of Member States under Article 36 [TFEU] to continue to apply prohibitions or restrictions on imports, exports or goods in transit justified on grounds of the protection of health and life of humans and animals nevertheless does not exempt them from the obligation to approximate the provisions on which those prohibitions and restrictions are based, in so far as the differences between those provisions hinder the implementation and functioning of the common agricultural policy'.

Article 36 [TFEU] is not designed to reserve certain matters to the exclusive jurisdiction of Member States but permits national laws to derogate from the principle of the free movement of goods to the extent to which such derogation is and continues to be justified for the attainment of the objectives referred to in that article.

15 According to the second and third recitals of each of the directives

of 26 June 1964 their aim is to increase the effectiveness of the regulations on the organizations of the markets in beef and veal and pigmeat by substituting 'for the numerous traditional means of protection at the frontier a single system designed in particular to facilitate intra-[Union] trade'. According to the third and fourth recitals this objective can only be attained by eliminating differences between national laws by 'approximating the animal health provisions of Member States'.

16 As far as live animals are concerned this approximation consists mainly in imposing upon exporting Member States the obligation to ensure compliance with certain veterinary and public health measures intended, *inter alia*, to guarantee that the exported animals are not a source of contagious disease. So far as fresh meat is concerned the approximation consists of enforcing fulfilment of uniform public health conditions for treating meat in slaughterhouses and cutting plants and for storage and transport.

With a view to providing the competent authorities of the Member States of destination with a guarantee that the livestock or imported meat satisfy the prescribed veterinary and public health requirements the directives lay down that the imported goods must be accompanied by a health certificate certifying that the rules relating to veterinary and public health inspections have been complied with and the inspections carried out.

17 However Article 6 of Directive No 64/432 (animals) allows the country of destination to prohibit the introduction of bovine animals into its territory if an examination made at the frontier post by an official veterinarian reveals that the animals are affected by, or suspected of being affected by, or of being contaminated by a compulsorily notifiable disease or that the provisions of Articles 3 and 4 have not been observed. Similarly quarantine measures may be taken with regard to animals suspected of being affected or contaminated by such disease. Furthermore the same provision with a view to facilitating these inspections permits each Member State to designate the frontier posts to be used for the introduction of the animals into its territory, and to require advance notification of the entry of such animals.

18 Similarly Article 5 of Directive No 64/433 (meat) allows a Member State to prohibit the marketing of fresh meat on its territory if at the time of the health inspection carried out in the country of

destination such meat is found to be unfit for human consumption or if the provisions of Article 3 have not been observed.

- 19 It is apparent from all these considerations that the harmonized system of veterinary and public health inspections introduced by the directives is based on the principle that the veterinary and public health guarantees required by each of the Member States are equivalent in nature and it is this principle which guarantees both the protection of health and the equal treatment of products.

Seen in this light the aim of the system is to transfer supervision to the exporting Member State and to replace in this way the systematic measures of protection at the frontier with a uniform system so as to make multiple frontier inspections unnecessary and at the same time to give the Member State of destination the opportunity of ensuring that the guarantees provided by the system of inspections thus standardized are in fact given. It follows that systematic veterinary and public health inspections at the frontier of the products referred to in the directives mentioned above are no longer necessary or, consequently, justified under Article 36 [TFEU] as from the latest dates specified in the directives for the entry into force of the national provisions which are necessary in order to comply with the said directives.

- 20 However it appears from Article 6 of Directive No 64/432 and from Article 5 of Directive No 64/433 that the latter articles give the Member State of destination a discretion as far as the inspections necessary to ensure that the imported fresh meat or animals meet the requirements prescribed by these directives are concerned. Although in principle a mere examination of the documents (health certificates) which are required to accompany the products should disclose whether the conditions with regard to health have been fulfilled, occasional veterinary or public inspections are not ruled out, provided that they are not increased to such an extent as to constitute a disguised restriction on trade between Member States. Moreover, in addition to the safeguard clauses laid down by Article 9 of Directive No 64/432 and by Article 8 (2) of Directive No 64/433, which according to the Commission do not come under Article 36 [TFEU], the directives leave to Member States the whole of the supervision in those cases which they do not cover (Article 8 of Directive No 64/432, Article 6 (1) of Directive No 64/433). It is for the national courts, before

which such cases may be brought, to determine, in the event of a dispute, whether the procedures adopted for the inspections, on which they are asked to give a ruling, are incompatible with the requirements of Article 36 [TFEU].

### **The third question**

- 21 The aim of the third question is to ascertain whether pecuniary charges levied on the occasion of veterinary and public health inspections either at the frontier on imported goods alone or on the occasion of internal inspections of both imported and domestic products constitute taxes having an effect equivalent to customs duties within the meaning of [Article 28 TFEU] and are therefore prohibited or internal taxation coming within the rule on non-discrimination laid down by [Article 110 TFEU].
- 22 As the Court has already held in its judgments of 14 December 1972 (Case 29/72, *Marimex*, [1972] ECR 1309) and of 5 February 1976 (Case 87/75, *Bresciani*, [1976] ECR 129) pecuniary charges imposed by reason of veterinary or public health inspections of goods on the occasion of their crossing the frontier are to be regarded as charges having an effect equivalent to customs duties. The position would be different only if the pecuniary charges related to a general system of internal dues applied systematically in accordance with the same criteria to domestic products and imported products alike.
- 23 Fees charged on the occasion of veterinary and public health inspections of imported goods at the frontier which are in addition to domestic inspections carried out indiscriminately on domestic and imported goods come within the concept of charges having an effect equivalent to customs duties. Moreover these inspections at the frontier are administrative operations carried out by the State which are intended to guarantee, in the public interest, public health and hygiene, cannot be regarded as a service provided for the importer which justifies the imposition of a pecuniary charge by way of consideration. On the other hand charges imposed by the various public authorities on the occasion of veterinary and public health inspections within Member States on both domestic and imported products constitute internal taxation to which the prohibition of discrimination in [Article 110 TFEU] applies.

## Costs

24 The costs incurred by the Government of the Italian Republic and by the Commission of the European Communities, which have submitted their observations, are not recoverable and as the proceedings are, so far as the parties to the main action are concerned, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds

## THE COURT

in answer to the questions referred to it by the Pretura di Susa by order of 6 April 1976 hereby rules:

- (a) Veterinary and public health inspections at the frontier, whether carried out systematically or not, on the occasion of the importation of animals or meat intended for human consumption constitute measures having an effect equivalent to quantitative restrictions within the meaning of [Article 34 TFEU], which are prohibited by that provision, subject to the exceptions laid down by [Union] law and in particular by Article 36 [TFEU].

(b) As far as concerns the products referred to in Regulations Nos 14/64 and 805/68 on the common organization of the market in beef and veal the prohibition of such measures, subject to the exceptions mentioned above, took effect on the date when the said regulations entered into force.
2. Although systematic veterinary and public health inspections at the frontier of the products mentioned in Directives Nos 64/432 and 64/433 are no longer necessary or, consequently, justified under Article 36 [TFEU] as from the latest dates specified in the directives for the entry into force of the

national provisions which are necessary in order to comply with the said directives and although, in principle, a mere examination of the documents (health certificates) which are required to accompany the products should disclose whether the conditions with regard to health have been fulfilled, occasional veterinary or public health inspections are not ruled out, provided that they are not increased to such an extent as to constitute a disguised restriction on trade between Member States.

3. (a) Pecuniary charges imposed by reason of veterinary or public health inspections of products on the occasion of their crossing the frontier are to be regarded as charges having an effect equivalent to customs duties.  
  
(b) The position would be different only if the pecuniary charges related to a general system of internal dues applied systematically in accordance with the same criteria to domestic products and imported products alike.
4. Charges imposed by the various public authorities on the occasion of veterinary and public health inspections carried out within Member States on both domestic and imported products constitute internal taxation to which the prohibition of discrimination in [Article 110 TFEU] applies.

Kutscher	Donner	Pescatore	Mertens de
Wilmars Sorensen	Mackenzie Stuart		O'Keefe
Bosco	Touffait		

Delivered in open court in Luxembourg on 15 December 1976.

A. Van Houtte  
Registrar

H. Kutscher  
President