2. The harmonized system of public health inspections, introduced in particular by Directive 64/433, has as its purpose the abolition of barriers to intra-Community trade in fresh meat by the harmonization of public health measures. That system, which is based on the principle that the public health guarantees required by all the Member States are equivalent, accordingly has as its purpose 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, whilst at the same time giving the Member State of destination the opportunity of ensuring that the guarantees provided by the system of inspections thus standardized are in fact given.

   In those circumstances, systematic public-health inspections at the frontier of the products referred to in the above-mentioned directive are no longer necessary or, consequently, justified under Article 36 of the Treaty.

   Only occasional inspections are permissible, provided that the number is not increased to such an extent as to constitute a disguised restriction on trade between Member States.

   Those considerations must be extended, for the same reasons, to the products covered by Directive 71/118 on problems affecting trade in fresh poultry-meat.

3. It follows from the provisions of Directives 64/433 and 71/118, taken as a whole, that the public health inspections carried out in the exporting country also relate to the transport of meat and poultry and, consequently, extend to their state of preservation throughout transportation, including therefore the time at which a frontier is crossed.

   Consequently, a systematic public health inspection on the occasion of the importation of meat and poultry, carried out in order to ascertain any changes in their condition whilst in transit from the exporting State and their state of preservation on entering the territory of the State of destination, falls within the scope of the public health inspection carried out in the exporting country in accordance with Directives 64/433 and 71/118.

In Joined Cases 2 to 4/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Première Instance [Court of First Instance], Brussels, for a preliminary ruling in the three actions pending before that court between

SA DELHAIZE FRÈRES "LE LION", having its registered office in Brussels (Case 2/82),

SA G.B.-INNO-BM, having its registered office in Brussels (Case 3/82),

SA METSDAGH, having its registered office in Gosselies (Case 4/82),

and

the BELGIAN STATE, represented by the Minister for Public Health and the Environment, Brussels,

on the interpretation of Council Directives 64/432/EEC of 26 June 1964 (Official Journal, English Special Edition 1963-64, p. 164), 64/433/EEC of 26 June 1964 (Official Journal, English Special Edition, 1963-64, p. 185) and 71/118/EEC of 15 February 1971 (Official Journal, English Special Edition 1971 (I), p. 106) and of Articles 30 and 36 of the EEC Treaty,

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The judgment making the reference, the course of 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 procedure

The three undertakings Delhaize Frères "Le Lion" (hereinafter referred to as "Delhaize"), G.B.-Inno-BM and Metsdagh, the plaintiffs in the main action, imported on a regular basis butcher's meat and poultry-meat (Metsdagh imported only butcher's meat) from other Member States.

At the time of those imports, the Belgian authorities carried out public health inspections which the national court described as systematic. By way of consideration for those inspections, the plaintiffs paid inspection charges of a total amount provisionally estimated at

BFR 9 201 270 in the case of Delhaize, BFR 3 450 000 in the case of G.B.-Inno-BM and BFR 4 164 544 in the case of Metsdagh.

The inspections and the payment of the charges relating thereto were effected in accordance with the following provisions of national law:

As regards the importation of butcher's meat, the Law of 5 September 1952 on the inspection of and trade in meat (Moniteur Belge of 16/17 March 1953) and the Royal Decree of 12 March 1965 on the importation of meat (Moniteur Belge of 25 May 1965, p. 6256), as subsequently amended, most recently by the Royal Decree of 21 June 1979 (Moniteur Belge of 23 June 1979, p. 7221).

As regards the importation of poultry, the Law of 15 April 1965 on the inspection of and trade in fish, poultry, rabbits and game, which amended the Law of 5 September 1952 on the inspection of and trade in meat (Moniteur Belge of 22 May 1965, p. 6173) and the Royal Decree of 21 September 1970 on the inspection of and trade in poultry-meat (Moniteur Belge of 30 October 1970, p. 10994), as subsequently amended, most recently by the Royal Decree of 29 September 1979.

However, by summons of 5 April 1979 and by a further summons of 6 December 1979, the plaintiffs sued the Belgian State for reimbursement of the inspection charges paid on the ground that the payment of such charges was contrary to Community Directives 64/432/EEC, 64/433/EEC and 71/118/EEC (referred to above) which, according to the plaintiffs, established a system for intra-Community trade in butcher's meat and poultry-meat prohibiting in particular any public health inspection by the authorities of the importing Member State and *a fortiori* the collection of any charge in respect thereof.

The plaintiffs contended in the national proceedings that the inspection carried out by the Belgian authorities was merely a repetition of the first inspection performed in the exporting State in accordance with the requirements of the relevant Community directives. The plaintiffs maintained that such an inspection was incompatible with the provisions of those directives, as was clear from the Court's judgment of 15 December 1976 in Case 35/76 *Simmenthal* [1976] ECR 1871.

In the opinion of the Belgian Government, however, the second inspection was distinct from that carried out in the exporting State in so far as its purpose was to ascertain any changes in the condition of the meat or poultry whilst in transit and its state of preservation. Such an inspection therefore fell outside the scope of the directives in question and was justified in the light of the Court's judgment of 7 April 1981 in Case 132/80 *United Foods* [1981] ECR 995. Moreover, the inspection was intended, according to the Belgian Government, to detect residues of bacteriostatic substances with hormonal or anti-hormonal action, falling outside the scope of the EEC directives.

The national court was of the opinion that Community law and, in particular, the principles laid down by the Court in the *Simmenthal* and *United Foods* judgments, cited above, permitted the Member States to carry out certain public health inspections which were jus-

tifiable on objective grounds relating to the protection of health and life of humans, although such inspections should not in any case be systematic where the imported product had been the subject of harmonization directives, as was the case in these proceedings. In any event, an inspection of that kind should not be tantamount to a disguised restriction on intra-Community trade. According to the court making the reference, such a restriction occurred almost unavoidably where the inspection carried out in the country of destination was the same as that performed in the exporting country.

In its subsequent analysis of the inspection carried out by the Belgian authorities, the court making the reference considered in the first place that, in so far as the inspection related to compliance of the imported goods with the Belgian rules, it manifestly constituted a systematic repetition of the first inspection carried out in the exporting country and was in that respect incompatible with the applicable provisions of Community law. It remained to be determined whether or not this systematic inspection, in so far as its purpose was to ascertain any changes in the condition of the goods whilst in transit from the exporting State and their state of preservation on entering Belgian territory, was compatible with the provisions of Community law applicable in this case.

In order to resolve that problem, the Tribunal de Première Instance, Brussels, by judgment of 8 October 1981, decided, pursuant to Article 177 of the EEC Treaty, to stay the proceedings pending a preliminary ruling by the Court of Justice on the following questions:

"Does a (systematic) public health inspection on importation of meat and poultry, which was the subject-matter of Council Directives 64/432, 64/433 and 71/118 on animal health problems affecting intra-Community trade in bovine animals and swine, in fresh meat and in fresh poultry-meat respectively, carried out to ascertain any changes in the condition of the meat and poultry whilst in transit from the exporting country and their state of preservation on entering Belgian territory, fall within the scope of the public health inspection carried out in the exporting country in accordance with the aforementioned directives?

If not, is that inspection compatible with Article 30 *et seq.* of the EEC Treaty and may it possibly be justified by virtue of Article 36 of the EEC Treaty?

In considering the question raised regard should be had to the fact that the Belgian public health inspection on importation involves, on the one hand, measures which merely repeat the inspection carried out in the exporting country in accordance with the requirements of the relevant directives and, on the other hand, measures intended, as stated above, to ascertain any changes in the condition of the goods concerned whilst in transit from the exporting State and also their state of preservation on entering Belgian territory."

The three judgments of the Tribunal de Première Instance, Brussels, were lodged at the Court Registry on 7 January 1982.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 16 March 1982 by the Commission of the European Communities, represented by H. P. Hartvig and F. Lamoureux, members of its Legal

Department, acting as Agents, on 26 March 1982 by the plaintiffs in the main action, represented by Mr Waelbroeck, of the Brussels Bar, on 30 March 1982 by the Belgian State, the defendant in the main action, represented by the Secretary of State at the Ministry of Public Health and the Environment, advised and represented by J. Putzeys, of the Brussels Bar, and, on 31 March 1982 by the French Government, represented by G. Legras, Deputy Secretary General of the Secretariat General of the Inter-Ministerial Committee on Questions of European Economic Cooperation, acting as Agent.

By order of 17 February 1982 the Court decided to join Cases 2/82, 3/82 and 4/82 for the purposes of the procedure and the judgment.

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, it requested the Belgian Government to inform the Court at the hearing whether any further public health inspections were carried out after the entry into force of the Royal Decree of 21 June 1979 amending the Royal Decree of 12 March 1965 relating to the importation of meat.

By order of 23 March 1983, the Court, in accordance with Article 95 (1) and (2) of the Rules of Procedure, assigned the case to the Second Chamber.

II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — Observations of the plaintiffs in the main action

The *plaintiffs in the main action* refer to the rules of national and Community law applicable in the present case, in the first place, and request that the Court, in spite of the restrictive nature of the question submitted to it by the national court, reply in general terms by ruling that "any systematic public health inspection on the importation of meat and poultry is incompatible with Community law". The reason for such incompatibility, in their view, lies in the system established by the directives and in the interpretation placed thereon by the Court, in particular in the *Simmenthal* judgment, cited earlier. Furthermore, a general reply in those terms would be appropriate inasmuch as it would avoid prolonging the proceedings unnecessarily.

Secondly, the plaintiffs put forward the following four arguments in support of their reply to the questions submitted for a preliminary ruling:

First argument: It is clear from the *Simmenthal* judgment that any systematic public health inspection on importation of the products covered by Directive 64/433 is incompatible with Community law since the entry into force of that directive. Occasional inspections are not prohibited provided that they do not constitute a disguised restriction on intra-Community trade. The present case in fact concerns inspections which are systematic and therefore constitute measures having an effect equivalent to quantitative restrictions prohibited by Article 30 of the EEC Treaty and not justified within the meaning of Article 36 thereof. Their incompatibility has moreover been recognized by Belgium because the Royal Decree of 21 June 1979 abolished the effect of the provisions of the Royal Decree of 12 March 1965 in relation to products from other Member States after the Commission addressed a reasoned opinion to Belgium and instituted

proceedings against it before the Court of Justice under Article 169 of the EEC Treaty.

Since Directive 71/118 concerning fresh poultry-meat was adopted as a result of the same concern for harmonization and contains provisions comparable to those of Directive 64/433, it is legitimate to conclude that the above-mentioned decision of the Court is also applicable to the system of imports of poultry-meat into Belgium.

Second argument: The aforementioned incompatibility with Community law also extends to the systematic inspection of meat and poultry in order to ascertain any changes in their condition whilst in transit from the exporting State and their state of preservation on entering Belgian territory. It is apparent first of all from the *Simmenthal* judgment that the harmonization effected by the directives in question extends to compliance with uniform public health requirements regarding storage and transport, with the result that multiple checks at the frontier to ascertain the condition of the meat in transit and its state of preservation is neither necessary nor justified within the meaning of Article 36. Furthermore, in its judgment of 12 July 1979 in Case 153/79 *Commission* v *Federal Republic of Germany* [1979] ECR 2555 the Court also refused to accept the argument that the crossing of a frontier entails an increase in the risk that fresh meat may deteriorate.

Third argument: The fact that certain provisions of the Belgian legislation fall outside the scope of the directives concerned cannot be relied upon by the Belgian State as authorization to carry out systematic inspections on importation. Although those directives contain provisions which permit the Member States to prohibit the marketing within their territory of meat unfit for human consumption or do not affect national provisions concerning certain reserved areas or embody safeguard clauses, they can in no circumstances justify systematic inspection since the principles laid down by the Court in the *Simmenthal* judgment are also applicable to such provisions.

Fourth argument: The *United Foods* judgment does not reflect a trend in the Court's case-law towards acceptance of the compatibility with Community law of systematic public health inspections on importation. In contrast to the present case, the dispute in the *United Foods* case was concerned with fish imports, an area in which there were no harmonized rules. Accordingly, that judgment is not indicative of a change of direction by the Court from its decisions based on the *Simmenthal* judgment.

In conclusion the plaintiffs suggest that the answer to the question submitted should be as follows:

"Any systematic public health inspection on the importation of the products referred to in Directive 64/433/EEC is incompatible with the EEC Treaty since the entry into force of the directives in question *(Simmenthal* judgment), and the same rule applies, for the same reasons, in the case of the products referred to in Directive 71/118/EEC. Systematic inspections carried out in order to ascertain any changes in the condition of meat and poultry whilst in transit from the exporting country and their state of

preservation on entering Belgian territory are also incompatible with the EEC Treaty. The same applies to systematic inspections to determine whether goods comply with national provisions on public health, whether such provisions have been harmonized by Community directives or fall outside the scope of the harmonization directives, such as the provisions of Directives 64/433/EEC and 71/118/EEC relating to contagious diseases, reserved areas and safeguard clauses."

B — Observations of the Belgian Government

(a) The *Belgian Government* contends *primarily* that the question was referred to the Court by the national court prematurely and the Court should therefore stay the proceedings.

The question was submitted prematurely because, in the opinion of the Belgian State, the inspection carried out by it is in no way a repetition of that performed by the exporting State. Since the question whether or not the Belgian public health inspection is a repetition of that carried out in the exporting country is the decisive issue for the purpose of answering the national court's question, the proceedings should be stayed; this is particularly so since a ruling by the Court at the present stage of the main proceedings may either influence the appeal court or subsequently become unnecessary or legally inappropriate if the appeal court reviews the point at issue.

Moreover, the question is also premature because it is concerned with only public health inspections carried out within the framework of the relevant directives and not with inspections designed to detect the possible presence of substances harmful to the health of humans.

Finally, it is also premature because it does not raise the issue of whether it is compatible with Community law to impose a levy to cover the cost of public health inspection.

(b) It is merely in the alternative that the Belgian State adopts a position on the question submitted. However, before suggesting an answer to the question, it reviews the provisions in force.

As far as the provisions of Community law are concerned, it considers that Directive 64/433 fist of all allows the State of destination to carry out an inspection in order to ascertain whether the meat has not become unfit for consumption and whether the requirements imposed in the exporting State have been satisfied and, secondly, excludes from its scope provisions concerning certain harmful substances. Directives 64/432 and 71/118 also contain similar provisions.

The Belgian State goes on to examine the Belgian legislation at issue in the present case and takes the view that the legislation requires systematic inspections to be carried out in order to detect any residues of bacteriostatic substances and substances with hormonal or anti-hormonal action.

According to the Belgian State, its own legislation is compatible with the relevant Community directives since it is those directives themselves which provide for systematic public health inspection on the occasion of the importation of meat and poultry. The legality of the inspection carried out by the authorities is therefore not in doubt since the inspection is not a

repetition of that performed in the exporting State and relates only to the condition of the goods whilst in transit and to their state of preservation on entering Belgium. Furthermore, such an inspection is compatible with Community law for the further reason that the Belgian State is still empowered to carry out a public health inspection, in relation to intra-Community trade in the meat and poultry referred to in the aforementioned directives, in order to detect the presence, if any, of the abovementioned substances. However, where a public health inspection of that kind has a purpose which is not covered by the directives in question, it is necessary to consider whether it is compatible with Articles 30 and 36 of the Treaty. The Belgian Government maintains that the public health inspection at issue in the present case is based on grounds of the protection of health and life of humans. Accordingly, measures intended to ensure the performance of such inspections fall in principle within the exception provided for by Article 36, as is clear from the *United Foods* judgment.

It remains to be determined whether such measures exceed inspection requirements and are likely as such to impede or restrict Community trade. In that regard the Belgian Government considers that the detailed rules relating to the public health inspection at issue are justified inasmuch as Belgian public health requirements cannot be satisfied as effectively by measures which are less restrictive of intra-Community trade. Accordingly, since the public health inspection in question is justified exclusively on grounds of the protection of public health, it must be possible to carry it out in the absence of common or harmonized rules. Finally, the Belgian Government takes the view that the inspection in question is not in restraint of intra-Community trade since it is performed at the same time as the inspection provided for by the Community directives and is not detrimental to the goods in spite of their perishable nature.

The Belgian Government is therefore of the opinion that the answer to the question submitted for a preliminary ruling should be as follows:

"A (systematic) public health inspection on importation of meat and poultry, which was the subject-matter of Council Directives 64/432, 64/433 and 71/118 on animal health problems affecting intra-Community trade in bovine animals and swine, in fresh meat and in fresh poultry-meat respectively, carried out to ascertain any changes in the condition of the meat and poultry whilst in transit from the exporting country and their state of preservation on entering Belgian territory, is expressly provided for by those directives in order to enable the States of destination to prohibit the marketing within their territory of meat or poultry which has become unfit for human consumption whilst in transit.

That public health inspection is not a repetition of the public health inspection carried out in the exporting State; the latter is covered by the documents which are drawn up in the exporting State and which may be required by the State of destination.

If an additional public health inspection is carried out in compliance with national legislation on the protection of health which is in the public interest and is compatible with the relevant Community directives, such an inspection is also justified under Article 36

of the EEC Treaty, in so far as the detailed rules for the performance of the inspection have no adverse effect on intra-Community trade and do not constitute a disguised restriction on trade between Member States.

More particularly, a systematic public inspection based on national legislation which requires that goods be examined for the possible presence of certain substances harmful to the health of humans, on the basis of technical and administrative rules which do not hinder trade and which are based on objective requirements of public health inspection is justified under Article 36 of the EEC Treaty."

C — Observations of the French Government

The *French Government* considers in the first place that, as was established by the court making the reference, the contested systematic inspections have a dual purpose, comprising first a general inspection to determine whether the goods are in conformity with Belgian legislation and, secondly, an inspection specifically intended to ascertain any changes in the condition of the goods whilst in transit.

In its view, in so far as such an inspection is merely a repetition of the first inspection carried out in the exporting Member State it is incompatible with Community law, as is clear from the Court's judgment in Case 35/76 *Simmenthal* and in Case 46/76 *Bauhuis* [1977] ECR 5.

On the other hand, inasmuch as the purpose of the inspection is to ascertain any changes in the condition of the goods whilst in transit, the inspection may be justified by Article 36 of the Treaty on condition that it is carried out occasionally. However, since the detailed rules introduced by the Belgian authorities are manifestly disproportionate and excessive, the inspection in question is incompatible with Community law.

Finally, as a secondary matter, the French Government observes that the inspection charge payable constitutes a charge having an effect equivalent to a customs duty within the meaning of Articles 9, 12 and 13 of the EEC Treaty.

In its opinion therefore the answer to the question submitted should be as follows:

"1. An additional public health inspection imposed unilaterally by a Member State on meat imported from another Member State and forming the subject-matter of Council Directives 64/432/EEC, 64/433/EEC and 71/118/EEC does not fall within the scope of those directives.

2. Such an inspection therefore constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 *et seq.* of the EEC Treaty.

3. A Member State may, in accordance with Article 36 of the EEC Treaty, subject the meat referred to in the directives in question to public health or veterinary inspections, provided that such inspections do not constitute a repetition of the inspection carried out in the exporting Member State in accordance with the aforementioned directives."

D — Observations of the Commission

After reviewing the provisions of national and Community law applicable in the present case, the *Commission* points out *in limine* that its observations are confined to the question of the compatibility with Community law of the Belgian public health inspection on

importation as defined by the court making the reference, namely a systematic inspection to ascertain any changes in the condition of meat and poultry-meat whilst in transit from the exporting State and their state of preservation on entering Belgian territory.

(a) The Commission maintains in the first place that such an inspection is incompatible with Community law. That is clear from the *Simmenthal* judgment as far as the products covered by Directives 64/432 and 64/433 are concerned and, for the same reasons, as regards those covered by Directives 71/118 and 77/99. The State of destination may carry out occasional inspections only on condition that they are not so numerous as to constitute a disguised restriction on trade between Member States. It may carry out inspections which are both compulsory and systematic in connection with the application of a safeguard clause provided for by the directives in question. Furthermore, as regards the areas which are not covered by the directives and therefore in respect of which the health certificate does not provide any guarantees, "an inspection which is both compulsory and systematic, carried out at the frontier by the Member State of destination, cannot be regarded *a priori* as incompatible with Community law". Moreover, an inspection of that kind must be necessary for the protection of health and life of humans and animals. In the Commission's view, in the absence of detailed information regarding the inspections in question and their purpose, it is impossible, in these proceedings, to draw the conclusion that the inspection in question falls outside the scope of Directives 71/118 and 77/99. The Commission is therefore of the opinion that, in the light of the *Simmenthal* judgment, a systematic inspection at the frontier of the products in question is, by its very nature, incompatible with Community law.

(b) In any event the Commission maintains the systematic inspections to ascertain changes in the condition of goods whilst in transit and their state of preservation at the frontier fall within the scope of the relevant Community directives.

The Commission emphasizes in that connection that the purpose of the directives was to transfer supervision in matters of public health to the exporting Member State and thus to replace systematic measures of protection at the frontier with a uniform system so as to make multiple inspections at the frontier unnecessary. In addition, in order to ensure maximum freedom of movement and to abolish any restrictions on trade, the directives are very wide in scope inasmuch as they do not merely establish uniform public health requirements for the treatment of meat in slaughterhouses and cutting plants but are also concerned with storage and transport. It is clear in particular from Article 3 of Directive 64/433 that fresh meat must be transported under satisfactory hygienic conditions, in accordance with the provisions of Chapter XIII of Annex I (subparagraphs (h) and (f)). That directive also contains detailed requirements concerning the packaging of meat cut up in pieces (Chapter X) and the manner in which the various pieces of meat are to be transported. Finally, compliance with those requirements is ascertained by means of an inspection carried out by an official veterinarian prior to shipment and is attested by a health certificate which expressly states the place of origin and the place of destination and specifies the means of transport.

Similar provisions also apply in the case of fresh poultry-meat.

The Commission maintains that, in the light of all those provisions, an inspection such as that which is at issue in these proceedings is neither necessary nor, therefore, justified within the meaning of Article 36. Finally, the Commission adds that the crossing of a frontier is scarcely relevant to the question of the state of preservation of the meat or meat products transported since, under the system established by the Community directives in question, all that matters is whether the product is wholesome on arrival at its destination.

The Commission therefore suggests that the answer to the questions submitted by the Tribunal de Première Instance, Brussels, should be as follows:

"As a rule, systematic public health inspections at the frontier carried out on the products referred to in Directives 64/432, 64/433, 71/118 and 77/99 are no longer necessary or, consequently, justified within the meaning of Article 36 of the Treaty.

In particular, systematic inspections carried out in order to ascertain any changes in the condition of fresh meat and meat products whilst in transit from the exporting State and their state of preservation on entering the territory of the State of destination are to be regarded as incompatible with Community law since the provisions of Directives 64/433, 71/118 and 77/99 and the inspections carried out in the exporting Member State in accordance with those directives also apply to the conditions in which the meat and meat products are transported."

III — Oral procedure

At the sitting on 30 June 1983 oral argument was presented and answers to questions put by the Court were given by the following: Mr Vandencasteele and Mr Waelbroeck, of the Brussels Bar, for the plaintiffs in the main action; Mr Leurquin, of the Brussels Bar, for the Belgian Government, the defendant in the main action; Mr Carnelutti, Secretary at the Ministry of Foreign Relations, acting as Agent, for the French Government; and Mr Lamoureux, assisted by Mr Hartvig, acting as Agents, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 22 September 1983.

Decision

1 By judgments of 8 October 1981, which were received at the Court on 7 January 1982, the Tribunal de Première Instance [Court of First Instance], Brussels, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions, one on the interpretation of three directives concerning public health inspections of butcher's meat and poultry-meat (Council Directives 64/432 of 24 June 1964, Official Journal, English Special Edition 1963-64, p. 164; 64/433 of 26 June 1964, Official Journal, English Special Edition 1963-1964, p. 185; and 71/118 of 15 February 1971, Official Journal, English Special Edition 1971 (I), p. 106) and the other, which was submitted in the event of a negative answer to the first question, concerning the interpretation of Articles 30 and 36 of the EEC Treaty.

2 Those questions were raised in the context of proceedings instituted against the Belgian State by three Belgian undertakings engaged in the importation of butcher's meat and poultry-meat in connection with public health inspections and the charges relating thereto paid by those undertakings.

3 It is clear from the judgments making the reference that the inspections in question were carried out in accordance with the applicable Belgian legislation. However, the plaintiffs contended that the inspections were merely a repetition of the first inspection carried out by the exporting State and were therefore incompatible with the provisions of the relevant Community directives. The plaintiffs therefore claimed repayment of the inspection charges paid to the Belgian State.

4 In the proceedings before the national court, the Government of the Kingdom of Belgium challenged the plaintiffs' argument on the ground that the Belgian inspection fell outside the scope of the directives, inasmuch as it differed from that carried out in the exporting State. In its view, the main purpose of that inspection was first of all to ascertain whether any changes had occurred in the condition of the meat or poultry whilst in transit and its state of preservation and, secondly, to detect any residues of bacteriostatic substances with hormonal or anti-hormonal action which the meat might contain.

5 In its analysis of the inspection carried out by the Belgian authorities, the national court first took the view that, in so far as the purpose of the inspection was to determine whether the imported goods were in conformity with the Belgian legislation, it manifestly constituted, in the circumstances, a systematic repetition of the first inspection carried out in the exporting country and was thus incompatible with the relevant provisions of Community law.

6 Having come to that conclusion, the national court considered that it remained to be determined whether a systematic inspection, in so far as its purpose was to ascertain any changes in the condition of the goods whilst in transit from the exporting State and their state of preservation on entering Belgian territory, was compatible with the provisions of Community law applicable in the present case. It took the view that it was necessary, before giving judgment, to refer two questions to the Court for a preliminary ruling on that point.

7 The Government of the Kingdom of Belgium again denied before the Court that the public health inspections carried out by it on both butcher's meat and poultry-meat were merely a repetition of the first inspection performed in the exporting State. It also stated that such inspections were not carried out systematically at the frontier but in customs offices or sub-offices designated for that purpose.

8 It therefore expressed doubts regarding the relevance of the questions raised and asked the Court to stay the proceedings pending the judgment of the Cour d'Appel [Court of Appeal], Brussels, with which the Belgian Government had lodged an appeal against the judgment making the reference.

9 With regard to those arguments, it must be remembered that Article 177 of the EEC Treaty, which is based on a division of tasks between the national court and the Court of Justice as regards the application of Community law, does not permit the Court either to appraise the facts of the case or to question the reasons which led to the request for interpretation. The questions submitted by the national court must therefore be answered without regard to the objections which led the Belgian government to appeal against the judgment making the reference.

10 The first question asks whether a systematic public health inspection on the occasion of the importation of meat and poultry, carried out in order to ascertain any changes in their condition whilst in transit from the exporting State and their state of preservation on entering Belgian territory, falls within the scope of the public health inspection carried out in the exporting State in accordance with the aforementioned directives.

11 It must in the first place be pointed out that, as far as fresh meat is concerned, the Court has already stated in its judgment of 15 December 1976 in Case 35/76 *Simmenthal* [1976] ECR 1871 that the harmonized system of public health inspections, introduced in particular by Directive 64/433, has as its aim the abolition of barriers to intra-Community trade in fresh meat by the harmonization of public health measures. That system, which is based on the principle that the public health guarantees required by all the Member States are equivalent, accordingly has as its purpose 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, whilst at the same time giving the Member State of destination the opportunity of ensuring that the guarantees provided by the system of inspections thus standardized are in fact given.

12 The Court also added that, in those circumstances, systematic public health inspections at the frontier carried out on the products referred to in Directive 64/433 were no longer necessary or, consequently, justified under Article 36 of the Treaty and that only occasional inspections were permissible, provided that they were not increased to such an extent as to constitute a disguised restriction on trade between Member States.

13 Those considerations must be extended, for the same reasons, to the products covered by Directive 71/118 on problems affecting trade in fresh poultry-meat.

14 It should be observed, moreover, that in order to ensure complete freedom of movement for the products referred to, the two aforementioned directives do not merely establish uniform public health requirements for the treatment of meat and poultry-meat in slaughterhouse and cutting plants, but also cover storage and transport.

15 Both directives provide, in Article 3 (subparagraphs (g), (h) and (i) in the case of Directive 64/433 and subparagraphs (e), (f) and (g) in the case of Directive 71/118), that the meat must be accompanied by a health certificate or bear a health marking, must be stored after *post mortem* inspection under satisfactory hygienic conditions in slaughterhouses, cutting plants or cold stores approved and supervised within the meaning of the relevant provisions of each directive and must be transported under satisfactory hygienic conditions.

16 The annexes to the two directives specify in detail the conditions under which the health mark must be stamped on the meat, the temperature at which the meat must be stored, the requirements for packaging poultry and the rules governing transport. Thus, the goods may be transported only in refrigerated vehicles which must remain sealed throughout transportation

and the official veterinarian must ensure before shipment that vehicles and loading conditions satisfy the hygiene requirements laid down in the chapter on transport.

17 It follows from the provisions, taken as a whole, that the inspections carried out in the exporting country also relate to the transport of meat and poultry and, consequently, extend to their state of preservation throughout transportation, including therefore the time at which a frontier is crossed.

18 The answer to the question submitted must therefore be that a systematic public health inspection on the occasion of the importation of meat and poultry, carried out in order to ascertain any changes in their condition whilst in transit from the exporting State and their state of preservation on entering the territory of the State of destination, falls within the scope of the public health inspection carried out in the exporting country in accordance with Directives 64/433 and 71/118.

19 In view of that answer the second question, which was submitted only in the event of a negative answer to the first question, no longer serves any purpose.

Costs

20 The costs incurred by the French Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 (Second Chamber)

in answer to the questions referred to it by the Tribunal de Première Instance, Brussels, by judgments of 8 October 1981, hereby rules:

A systematic public health inspection on the occasion of the importation of meat and poultry, carried out in order to ascertain any changes in their condition whilst in transit from the exporting State and their state of preservation on entering the territory of the State of destination, falls within the scope of the public health inspection carried out in the exporting country in accordance with Directives 64/433 and 71/118.

Pescatore Due Bahlmann

Delivered in open court in Luxembourg on 6 October 1983.

For the Registrar

H. A. Rühl

Principal Administrator

P. Pescatore

President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 22 SEPTEMBER 1983 [1]

Mr President,
Members of the Court,

1. The scope of the questions

In all the written and oral observations submitted in these proceedings attention has for various reasons been given to matters which were not even raised by the national court. In the light of the Court's case-law on the division of tasks between the national courts and the Court of Justice in the context of the preliminary ruling procedure and in order to avoid prejudicing the national appeal proceedings which are still in progress, in this opinion I shall go beyond the limits of the questions submitted to the Court only in so far as is necessary to ensure that the Court's answer to those questions is properly understood.

Accordingly, I shall begin by recalling the questions referred to the Court. Read

1 — Translated from the Dutch.