

OPINION OF MR ADVOCATE GENERAL
VERLOREN VAN THEMAAT
DELIVERED ON 7 DECEMBER 1982 ¹

*Mr President,
Members of the Court,*

1. Introduction

In Case 124/81 the Commission seeks a declaration that the United Kingdom, by making imports of UHT milk and cream subject to certain restrictions and prohibitions, has failed to fulfil its obligations under Article 30 of the EEC Treaty. The term "UHT milk" may be understood as meaning milk which has been subjected for not less than one second to an ultra-high temperature of not less than 132.2° Centigrade and aseptically packed immediately thereafter.

The restrictions and prohibitions in question are described in detail in the Application and, in the light of the corrections thereto made by the United Kingdom in its Defence, may be summarized as follows:

- (a) UHT milk and cream, whether intended for animal or human consumption, may be imported into the United Kingdom only with a general or specific licence issued by the appropriate minister. In fact only specific import licences are issued. An import licence is, however, not necessary in respect of imports into Northern Ireland direct from Ireland.

- (b) In England, Wales and Scotland UHT milk intended for human consumption, regardless of whether it originates in the United Kingdom or in other countries, may only be marketed by approved dairies or distributors holding a dealers' licence. The dealers' licence is only granted on condition that the milk undergoes UHT treatment on premises registered by the local authority.

- (c) In Northern Ireland UHT milk and cream for human consumption may only be sold subject to conditions analogous to those mentioned under (b) above.

I refer to the pleadings for a summary of the legislation on which the provisions governing importation and distribution are based.

As is apparent from the summary set out above, the legislative provisions may be separated into those governing importation, on the one hand, and those governing distribution on the other. With regard to the Commission's application, I shall examine below each set of provisions in so far as they apply to imported UHT milk and cream, keeping in mind however that they also apply in fact to other milk and cream. I shall examine each set of provisions first in the light of Article 30 and then in the light of Article 36 of the EEC Treaty.

¹ — Translated from the Dutch.

2. The applicability of Articles 30 and 36 of the EEC Treaty to the provisions governing imports

2.1 *Examination of those provisions in the light of Article 30 of the EEC Treaty*

Apart from the unrestricted importation of milk originating in Ireland and intended for Northern Ireland, the importation of *inter alia* milk and cream into all parts of the United Kingdom is only possible by means of a general or specific licence issued by the appropriate minister. It appears from the pleadings of the United Kingdom and its reply to a question asked by the Court that the importation of milk and cream, including UHT milk and cream, from other Member States is always subject to a prior specific licence. From that reply and the further details given at the hearing it is clear that such a licence is issued automatically and immediately, subject to the condition that on importation the milk is accompanied by a certificate that the milk or cream, as the case may be, has either been pasteurized or has undergone UHT treatment at 140° Centigrade for three seconds, depending upon the disease status of the place of origin. A specific licence may cover either an individual importation or may be valid for a given period. An import licence is refused if, at the time of the application, a disease which has broken out in the area of production is out of control. A control on quality in the case of an importation so authorized is carried out only where after shipment a change in the health status of the production area appears to have occurred. By virtue of the specific licence

the authorities already know, before actual importation, both the origin and the identity of the importer. In the event of an outbreak of disease in the exporting country after shipment not only may further shipments and imports be banned during the continuance of the emergency but also any infection in the milk already imported may be combated. No specific complaints about the working of that system in practice were raised during the procedure.

Contrary to the view expressed by the United Kingdom in its defence, the judgments of the Courts in Joined Cases 51 to 54/71 (*International Fruit Company NV v Produktschap voor Groenten en Fruit* [1971] ECR 1107, at paragraph 9), Case 41/76 (*Criel, née Donckerwolke, and Schou v Procureur de la République* [1976] ECR 1921, at paragraphs 19 and 20), Case 68/76 (*Commission v France* [1977] ECR 515, at paragraphs 14 and 16) and Case 251/78 (*Denkavit v Minister für Landwirtschaft* [1979] ECR 3369, at paragraph 26) make it clear that legislative provisions of that kind governing imports are in breach of Article 30 of the EEC Treaty, subject to the possible applicability of Article 36. In all those judgments the requirement of an import licence, even purely as a formality, was held to fall within the terms of Article 30.

There can be no question of applying the test of reasonableness laid down in the judgment in Case 8/74 (*Procureur du Roi v Dassonville* [1974] ECR 837, at paragraph 6) in view of the subsequent definition of the mitigating rule by later judgments of the Court (cf. *inter alia*, judgment in Case 113/80 *Commission v Ireland* [1981] ECR 1625, at paragraphs

10 and 11, and judgment of 2 March 1982 in Case 6/81 *Beele* [1982] ECR 707) for the simple reason that provisions governing imports by their very nature apply exclusively to imported products.

2.2 Examination of the provisions governing imports in the light of Article 36 of the EEC Treaty

There has not yet been a clear pronouncement by the Court on the question whether, and if so, under what conditions, a Member State, concerned to protect the health of humans and animals, may, in the absence of a relevant harmonizing directive or other provision of Community law, require a specific import licence for the importation of a product from other Member States.

From the elucidations given at the hearing it is clear that, in the present case, specific licences are issued immediately and automatically on condition that the UHT milk or cream imported pursuant to the licence is accompanied by a certificate proving UHT treatment in the exporting country, as I described earlier in my opinion. In general, in production areas where no infectious disease has been reported, it is however sufficient if the less stringent condition of pasteurization is satisfied. Where milk is intended for animal consumption the additional conditions concerning the re-sale of the milk, which I shall deal with later, are not applicable.

In its reply (at pages 4 to 7) the Commission states that the objective of

protecting the health of animals may be achieved just as effectively, and with consequences less restrictive of imports, by means of *general* licences which inform importers about the certificates to be produced on each importation. Since, at the hearing, it was confirmed by the United Kingdom that the provisions governing the importation of milk intended for human consumption are identical to those governing the importation of milk intended for animal consumption, the question whether the provisions governing importation are justified must likewise be examined as regards milk or cream intended for human consumption. Only the additional requirements concerning the re-sale of the latter category of milk or cream need be examined separately.

The problem raised in the present case of the justification of a system of specific import licences for the purpose of protecting the health of humans and animals has not yet been dealt with as such by the Court. From the judgment of the Court in the *Denkavit* case [1979] ECR 3369) it can merely be inferred that it is for the national courts in each particular case to determine whether the requirements laid down are *necessary* for attaining the objectives permitted by Article 36. The judgment of 15 July 1982 in Case 40/82 (*Commission v United Kingdom* [1982] ECR 2793) did in fact involve an almost identical question concerning eggs but in paragraphs 49 to 52 of that judgment the Court expressly reserved its position on that question for a later judgment. However, in his opinion of 7 July 1982 in that case Mr Advocate General Capotorti gave his view on that question. In section 11 of his opinion he concluded in that regard as follows: "Those barriers to intra-Community trade do not ... appear to be justified in order to protect the health

of animals since the procedure required for the grant of the special licence adds nothing to the safeguard provided by admission of the products pursuant to a measure of a general nature requiring documentation proving that they have been subjected to the appropriate heat treatment."

mation about the origin of the milk and the identity of the importer. However, in the exceptional cases where production of a UHT certificate is required, it does appear possible that more stringent requirements may in fact be laid down than for the UHT treatment of milk produced domestically.¹ With regard to the avoidance of discrimination between imported milk and milk produced domestically, I must make a reservation on that point.

In this case the Commission has put forward a similar argument (see in particular section IV of its reply and the further details given at the hearing). In examining that argument we must not forget that, according to the summary given by me earlier, the provisions governing imports generally require only a certificate of pasteurization to be produced at the time of importation but that compliance with that requirement — in particular if after issue of the licence there is an outbreak of foot-and-mouth disease in the exporting country — may be considered insufficient at the time of importation, and moreover that, on the basis of the information contained in the specific import licence, milk already imported may subsequently be taken off the market. In my view, the Commission has not shown (nor is it immediately apparent) that those two additional safeguards may be achieved just as effectively on the basis of a system of general licences, as advocated by it. At the time of importation a certificate of pasteurization produced in accordance with the general rule might appear insufficient and pasteurized milk already imported could under certain circumstances be traced more quickly, after an outbreak of foot-and-mouth disease in the exporting country, on the basis of a specific licence covering an actual importation than on the basis of a central register of certificates produced, even if those certificates also contained infor-

With regard to the existing system of specific import licences for milk, I have therefore come to the provisional conclusion that the provisions relating thereto of equivalent effect to quantitative import restrictions are justified under Article 36 of the EEC Treaty, in so far as those licences are issued immediately and automatically, subject to production on importation of health certificates from the exporting country, and provided that no more stringent requirements are laid down in respect of those certificates than apply to milk produced within the United Kingdom. With regard to imported UHT milk intended for human consumption this provisional conclusion will have to be further elaborated. However, in the further elaboration of my opinion on UHT milk it must be remembered, as I have already stated, that the contested provisions governing imports in fact apply to all kinds of milk

¹ — I have in mind particularly the statement in the Commission's application, which has not been disputed by the United Kingdom, that merely an uninterrupted UHT treatment for at least one second at a temperature of 132.2° Centigrade is required, whereas for imported milk originating from areas where foot-and-mouth disease has occurred a longer treatment at a temperature of 140° Centigrade is required.

and rely on that fact for their justification.

3. Examination of the distribution system for imported milk intended for human consumption in the light of Articles 30 and 36 of the EEC Treaty

3.1 Examination in the light of Article 30

As I have already stated, imported UHT milk (and in Northern Ireland also UHT cream) may only be marketed in the United Kingdom by approved distributors and after having undergone a fresh UHT treatment in a dairy approved by the local authority.

Harmonization measures at Community level have been proposed but not yet adopted.

The United Kingdom acknowledges in the last sentence of paragraph 9 and in paragraph 62 of its defence that the requirement of a second UHT treatment has the effect of making imports of UHT milk from other Member States uneconomic because of the high additional costs associated with such retreatment.

In defence of those measures the United Kingdom primarily argues that they apply without distinction to imported and domestic milk (or cream, as the case may be). Since the other requirements laid down in the *Cassis de Dijon* judgment (Case 120/78 *Rewe v Bundesmonopolverwaltung für Branntwein* [1979] ECR 649, at paragraph 8) are satisfied it is said that Article 30 cannot apply in the present case. However, the

test of reasonableness, which, as I stated earlier, was originally formulated in the *Dassonville* judgment, is, following the consistent case-law of the Court (*inter alia* the judgment mentioned above in *Commission v Ireland*), only of application with regard to provisions which apply without distinction to imported and domestic products. That requirement is not satisfied where a second UHT treatment is required for imported UHT milk or cream, whereas in respect of domestic milk only one UHT treatment is required. That defence must therefore fail. Since therefore the provisions are acknowledged to be equivalent in effect to quantitative restrictions on imports and since they do not satisfy the central criterion of the test of reasonableness by which the basic principle of the *Dassonville* judgment has been mitigated by the Court, the distribution system for imported UHT milk and cream is in principle caught by the prohibition contained in Article 30 of the EEC Treaty.

3.2 Examination in the light of Article 36

With regard to the applicability of Article 36, the United Kingdom relies in particular on the opinion of Mr Advocate General Mayras in Case 244/78 (*Union Laitière Normande v French Dairy Farmers Limited* [1979] ECR 2663). That opinion contains the following statement:

“The marketing within the territory of a Member State, which has opted for the formula of non-standardized whole milk, of standardized milk from another Member State, with a fat content not less than the guideline figure fixed by the Council, as permissible in 1978 only in accordance with the regulations in force in the importing Member State concerning pre-packaging by volume and public health protection.”

The United Kingdom asserts, particularly in its Reply, that the opinion of Mr Advocate General Mayras has never been overruled by subsequent decisions of the Court.¹ It seems to me desirable to give closer attention now to that opinion, not simply because it is an opinion of Mr Advocate General Mayras, but also because it goes to the heart of the problem raised here.

In its defence the United Kingdom also cited from Mr Advocate General Mayras's opinion a passage immediately preceding the conclusion of his opinion, which I have just cited. That passage is as follows:

"In the absence of Community harmonization measures the United Kingdom's health control is lawful, even if it contributes towards a partitioning of the markets."

With that explanatory sentence the Advocate General sets his face particularly against the Commission's viewpoint appearing on page 2689 of his opinion to the effect that "*if* the health authorities in the exporting State declare that identical or equivalent guarantees exist in their country and invite the health authorities in the importing Member State to verify this for themselves on the spot, and *if* that verification proves positive, the authorities in

the importing Member State have no need to apply their own legislation" (*italics in the original*).

I will remind the Court that that opinion related to the same questions of fact and law as the present case and for that reason also is still worthy of attention. Moreover, the Commission's view that the United Kingdom ought to have the possibility of carrying out checks in the exporting country also figures in the present case. In addition to Mr Advocate General Mayras's view that, in the absence of Community harmonization measures, checks must in principle be carried out in the importing country and not in the exporting country, it is also important to note his view that the system of bilateral coordination suggested by the Commission would be "difficult to put into practice and liable to produce discrepancies" (last paragraph on page 2689 of his opinion).

The view taken by Mr Advocate General Mayras that health controls in the importing country are in principle lawful and that the importing country may not be required to abandon its own checks in favour of checks considered to be equivalent *by the exporting country* seems to me to be correct and, in particular, to accord with the letter and spirit of Article 36 of the EEC Treaty. Like the United Kingdom, I have not been able to find in the case-law of the Court anything to weaken the view taken by Mr Advocate General Mayras. On the contrary, it appears that the case-law of the Court subscribes in principle to that point of view.

In a number of respects which are material to the present case the principle of the applicability of the importing

¹ — To avoid any misunderstandings on the matter by third parties I would like to point out that the United Kingdom is paying a little too much respect to the opinions of an advocate general when it suggests in its reply that the opinion of an advocate general reflects with binding effect the current state of the law unless and until the Court itself decides otherwise. An advocate general is not a judge of first instance, even though in formulating his independent legal judgment on a point of Community law, just as a judge, he must, in the very nature of things, pay as much attention to the concerns of the Community as to the concerns of Member States or other legal subjects.

country's legislation has however been further elaborated by the decisions of the Court. Many of those decisions relate to the requirement laid down in Article 36 that the prohibitions or restrictions imposed on imports must be justified by the non-economic objectives of overriding public interest mentioned in that article, which include the protection of the health of humans. From that requirement of justification the Court has in particular derived a principle of proportionality or, in other words, has laid down the requirement that provisions less restrictive of imports must suffice wherever public health can be properly protected by such less restrictive measures. In that connection I refer in particular to the judgments in Case 104/75 (*de Peijper* [1976] ECR 613) and Case 132/80 (*United Foods v Belgian State* [1981] ECR 995). The restrictions imposed must therefore be necessary to achieve their intended purpose and the parties in the present case are in agreement that the burden of proof as to whether they are necessary rests on the country applying the restrictive measures.

From the fact that since 1977 imports of UHT cream into England, Scotland and Wales have not been required to undergo a second UHT treatment and that public health has not been harmed as a result, the Commission is right, in my view, to infer that it has not been shown that the requirement of a second UHT treatment for imported UHT milk (and in Northern Ireland of imported UHT cream as well) is in fact necessary. It goes without saying that the extension now contemplated to the whole of the United Kingdom of the requirement of a

second UHT treatment for imported UHT cream cannot alter that view. Since this case (unlike Case 53/80 *Officier van Justitie v Koninklijke Kaasfabriek Eysen* [1981] ECR 409) concerns a product whose sale is not considered by the importing country, *per se* and regardless of the origin of the product, to be incompatible with the health of humans or animals, I would moreover argue that, by analogy with Article 85 (3) (b) of the EEC Treaty, a provision which comes close in practice to a total prohibition of imports of UHT milk must be regarded *per se* as a breach of the principle of proportionality.

A further refinement in the case-law of the Court (which applies even in the absence of Community harmonizing directives on the matter) concerns the obligation to cooperate with other Member States as far as the matters protected by Article 36 are concerned with a view to reducing the necessity for provisions restricting imports. In the *Denkavit* case ([1979] ECR 3395) the Court held that a dual control operated in the exporting country and in the importing country goes further than is permitted by Article 36 where the requirements of public health may be satisfied as effectively by provisions which are less restrictive of intra-Community trade. In the *United Foods* case ([1981] ECR 995), continuing that line of reasoning, the Court stated (at paragraph 29) that: "Since in the present case, the fish has already undergone in the country of dispatch a health inspection carried out *in accordance with the rules which the actual legislation of the country of destination* prescribes, control on importation must in all cases be

limited to measures designed to counter the risks arising from transportation or from any handling following the inspection carried out on dispatch." As is clear from the passage which I have italicized, the principle enunciated by Mr Advocate General Mayras that safeguards required by the legislation of the importing country are in principle permissible was fully respected in that paragraph of the judgment. In Case 272/80 (*Biologische Produkten BV* [1981] ECR 3277) the Court enunciated in even clearer terms an obligation to cooperate with the exporting country: "Whilst a Member State is free to require a product of the type in question, which has already received approval in another Member State, to undergo a fresh procedure of examination and approval, the authorities of the Member States are nevertheless required to assist in bringing about a relaxation of the controls existing in intra-Community trade. It follows that they are not entitled unnecessarily to require technical or chemical analyses or laboratory tests where those analyses and tests have already been carried out in another Member State and their results are available to those authorities, or may at their request be placed at their disposal" (paragraph 14 of the judgment). The Court went on to state that: "For the same reasons, a Member State operating an approvals procedure must ensure that no unnecessary control expenses are incurred *if the practical effects of the control carried out in the Member State of origin satisfy the requirements of the protection of public health in the importing Member State*" (first sentence of paragraph 15, emphasis added).

I would add to the account I have given of the Court's case-law relating to the matter that the United Kingdom in its

defence was unable to refute the Commission's view that the requirement of a second UHT treatment affords no greater safeguards for the protection of the health of humans against disease than the first UHT treatment in the exporting country, provided that the first UHT treatment affords the same safeguards as those laid down in that respect in the United Kingdom.

Finally, I would observe that in Case 13/78 (*Eggers v Freie Hansestadt Bremen* ECR 1935, at paragraph 25) the Court stated that: "The Member States are empowered to lay down quality standards for products marketed on their territory . . . but only on the condition that such standard's . . . are not linked to a requirement that the production process for the products in question be carried out within the country but are dependent solely on the existence of the intrinsic objective characteristics which give the products the quality required by law." The rationale of that dictum likewise applies in my view to a requirement such as the one in the present case that a significant part of the production process (in this case the UHT treatment) must be carried out on the territory of the importing country. I consider that such a requirement is by definition incompatible with the principle of the free movement of goods.

Without also examining the case in the light of the second sentence of Article 36, I am of the opinion that, in accordance with the decisions of the Court cited above, the United Kingdom (without justification on the basis of Article 36 of the EEC Treaty) is in

breach of Article 30 of the Treaty by requiring a second UHT treatment in the United Kingdom in conformity with its own legislation in addition to certificates of UHT treatment in the exporting country which are produced at the time of importation either compulsorily or voluntarily and which satisfy the same conditions.

4. Final observations

To the views I have already given I should like to add the following three observations.

Since the decisions of the Court cited thus far contain no detailed reasons, I should like in the first place, in view of my academic background, to examine more fully the basis of the decisions of the Court laying down a duty to cooperate in reducing controls in the importing country which are restrictive of imports. In my view, the justification for such a duty is to be found in the wholly unique character of the Community. In that respect, I observe first that, in the light of the Court's decisions (see judgments in Case 35/76 *Simmenthal* [1976] ECR 1871, Case 5/77 *Tedeschi* [1977] ECR 1576, Case 153/78 *Commission v Germany* [1979] ECR 2566 and Case 251/78 *Denkavit* [1979] ECR 3369), Article 36 cannot be seen as a reservation of sovereignty in favour of

Member States invoking that provision. Secondly, the Court held in Case 193/80 (*Commission v Italy* [1981] ECR 3019, at paragraph 17) that: "The fundamental principle of a unified market and its corollary, the free movement of goods, may not under any circumstances be made subject to the condition that there should first be an approximation of national laws, for if that condition had to be fulfilled the principle would be reduced to a mere cipher." Although in that case it was not possible to invoke Article 36, it seems to me that the aforementioned fundamental principle is also relevant *mutatis mutandis* to the present case. Pursuant to Article 8 (7) of the Treaty, the harmonization measures proposed by the Commission in 1971 should have been implemented before the end of the transitional period. Since that did not happen (and a longer transitional period applied to the United Kingdom), the Member States may be required to relax import restrictions by mutual cooperation to the extent compatible with the safeguards contained in their national legislation for the protection of the objectives mentioned in Article 36. As regards agricultural products, that applies with greater force, pursuant to Article 38 (2) of the Treaty, following the doctrine established by the Court in Case 48/74 (*Charmasson v Minister of Economic Affairs and Finance* [1974] ECR 1383) and applied in Case 118/78 (*Meijer v Department of Trade* [1979] ECR 1387), Case 231/78 (*Commission v United Kingdom* [1979] ECR 1447) and Case 232/78 (*Commission v France* [1979] ECR 2729), since the harmonization proposal was based on Article 43 of the Treaty. Only the harmonization of the safeguards themselves with the resulting further liberalization of trade in goods and Community control measures will then have to be left to the relevant harmonizing directives. A duty to promote cooperation may also, finally,

be deduced from Articles 2 (the establishment of a common market and the promotion of closer relations between the Member States of the Community), 3 (a), 4 (1) and 5 of the Treaty. In particular, Article 4 (1) requires the Court of Justice also to ensure that the tasks assigned to the Community by Articles 2 and 3 are carried out. In conclusion it may be said, in addition to those arguments, that it is inherent in the principle of a common market that traders, who have steadily become more dependent on export opportunities to other Member States, must be able to rely on such cooperation between Member States to ensure that those export opportunities are not affected save in cases of compelling necessity based on one of the grounds mentioned in Article 36. In particular, the common market for agricultural products would be severely affected if restrictions on imports from other Member States were conceded too readily on the grounds mentioned.

My second observation is concerned with the scope of the judgment to be pronounced by the Court. As is apparent from the judgment which constitutes a sequel to the *Dassonville* case, namely the judgment in Case 2/78 (*Commission v Belgium* [1979] ECR 1761), and from the practical implementation of the judgment of 15 July 1982 in Case 40/82 (*Commission v United Kingdom*), the mere finding that a Member State has acted in breach of Community law through the measures it has adopted leaves entirely open the question what provisions the Member State concerned

may adopt in substitution without contravening Community law. During these proceedings Counsel for the United Kingdom stated in so many words that the United Kingdom, if it was unsuccessful in resisting the application, would have to consider alternative measures which, with regard to imported milk, would afford the same safeguards for public health from cow to consumer as the present (economically prohibitive) requirement of a second treatment of imported UHT milk (see paragraphs 61 and 62 of the defence).

In discussing this problem I must state straightaway that the Court, by its nature, is not competent to specify which of the range of measures available to it the importing country concerned must adopt. Within the framework of Community law, as defined by the Court, the Member State concerned is entirely free to choose between the various alternatives for safeguarding the health of humans. The Member State concerned may of course only introduce alternative provisions which are reasonable and do not restrict imports to any greater extent than is strictly required by the safeguards for public health which are also sought in respect of domestic products. As well as inspections by officials of the importing country carried out in the dairies of the exporting country, as suggested by the Commission, it would also be possible in particular to require more details to be included in the health certificate which must be produced on the importation of UHT milk from other Member States, possibly combined with samples to test the quality of the imported milk, as is the

case in some other Member States. I would not, in the light of Article 36, regard the requirement to include further details in the certificates as being *per se* a breach of the prohibitions contained in Articles 31 and 32 against introducing new measures having equivalent effect or making existing measures more restrictive. Having regard once again to Article 36, I would however consider it to be incompatible with Articles 31 and 32 if measures were introduced containing safeguards against the spread of diseases such as tuberculosis and foot-and-mouth disease which went beyond the safeguards now operated in the case of domestic milk by means of supervision of dairies in the United Kingdom. The United Kingdom's legislation must be taken to be based on serious considerations and it must be assumed that the prescribed UHT treatment also contains adequate safeguards for public health in so far as imported milk is concerned.

I therefore consider it to be desirable that the Court should, at least in the grounds of its judgment, pay adequate

regard to this problem in order to give the United Kingdom legislature guidance in its difficult task of complying with the judgment pursuant to Article 171 of the Treaty, and also in order to give the judgment the desirable effect of reducing existing trade restrictions.

My third observation is that the requirement that both domestic and imported milk may only be sold by approved distributors cannot, in my judgment, be considered as such to be in breach of Article 30. In that respect, therefore, I believe the Commission is going too far in its submissions. If there were discrimination on the basis of nationality in the approval of distributors that would fall to be examined in the light of Article 52 of the EEC Treaty, but the Commission has not submitted that there is any such discrimination. The Commission has in fact merely challenged the condition imposed on distributors that there should be a domestic UHT treatment whenever imported UHT milk or cream is involved.

5. Conclusion

In conclusion I propose as follows:

1. The United Kingdom is not committing a breach of Article 30 of the EEC Treaty in so far as, pursuant to its provisions governing imports of milk and dairy products in general, it also makes the importation of UHT milk or cream from other Member States intended for human consumption subject to a system of specific import licences, provided that those licences are issued immediately and automatically, subject to production on importation of certificates attesting to UHT treatment in the exporting country,

and provided that no more stringent requirements are imposed as regards those certificates than apply to the UHT treatment of milk produced within the United Kingdom.

2. By requiring a second UHT treatment of imported milk or cream in the United Kingdom in conformity with its relevant legislation, in addition to certificates of UHT treatment in the exporting country which are produced at the time of importation either compulsorily or voluntarily and which satisfy the same conditions, the United Kingdom is committing a breach of Article 30 of the EEC Treaty.
3. Since the applicant has only partly succeeded in its action, each party, including the French Republic intervening in support of the Commission, should bear its own costs pursuant to Article 69 (3) of the Rules of Procedure.