**horsemeat is not incompatible with Article 34 of the Treaty if it does not discriminate between products intended for export and those marketed within the Member State in question.**

Touffait Pescatore Mackenzie Stuart

Delivered in open court in Luxembourg on 8 November 1979.

A. Van Houtte
Registrar

A.Touffait
President of the Second Chamber

## OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 27 SEPTEMBER 1979 [1]

*Mr. President,*
*Members of the Court,*

1. In these proceedings the preliminary question is again concerned to establish — in a situation in which there is a national prohibition against the manufacture of a specified product — the scope of the concept "measure having equivalent effect" to quantitative restrictions (on exports or imports) which is referred to in Articles 30 and 34 of the EEC Treaty.

The undertaking P. B. Groenveld, the plaintiff in the main action, carries on in the Netherlands the business of importing horsemeat and manufacturing smoked horsemeat. On 9 February 1978 it asked the national agency which supervises the production of meat (the Produktschap voor Vee en Vlees [Cattle and Meat Board]) for authority to produce sausages and other preparations from horsemeat, apart from smoked meat. That request was refused pursuant to the Verordening Be- en Verwerking Vlees [Processing and Preparation of Meat Regulation] issued by the board of the Produktschap voor Vee en Vlees on 5 December 1973; Article 3 (1) of that regulation expressly prohibits manufacturers of sausages from having in stock or processing horsemeat and products containing proteins derived from such meat.

1 — Translated from the Italian.

Groenveld challenged the refusal of the authorization requested before the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry]. By an order of 26 January 1979 that court submitted a request to the Court of Justice for a preliminary ruling to establish the following point: "Must Article 34 of the Treaty establishing the European Economic Community, read possibly in conjunction with any other provision of that Treaty and/or with any principle fundamental to that Treaty, be interpreted to mean that the prohibition on having in stock, preparing and processing horsemeat set out in Article 3 (1) of the ... regulation ... having regard *inter alia* to the purpose and scope of that prohibition as they have been set out ... is incompatible with that article of the Treaty?".

2. I think I should first of all clarify the provisions of Netherlands law governing preparations of horsemeat. The prohibition laid down for manufacturers of sausages in Article 3 (1) of the regulation of 5 December 1973 is subject to an exception in respect of "boucheries chevalines" [butchers dealing in horsemeat]: Article 5 of the regulation indicates that such "boucheries" may manufacture sausages from horsemeat provided that they sell them directly to consumers and not to middlemen. On the other hand the import and export of horsemeat sausages are not in themselves prohibited so that traders may import such products into the Netherlands (from Member States or non-member countries) or re-export them inside or outside the Community territory without encountering specific restrictions.

The question submitted by the national court to the Court of Justice thus concerns the compatibility with Article 34 of the EEC Treaty of the prohibition imposed only on large-scale production (by which is meant production on an industrial scale) of the said product.

With regard to the wording of that question I must point out that, although literally it refers to the internal provisions of a Member State, nevertheless a problem of a general nature is raised: namely whether provisions *in the nature* of those described, which are in force in the Netherlands, are compatible with the provisions of the EEC Treaty. This is the problem which I shall consider: the task of the Court of Justice is in fact to establish the scope of Community provisions and not to appraise the lawfulness of internal legislation in the light of Community law.

3. It seems to me incontestable that internal legislation containing the provisions referred to in fact constitutes an appreciable hindrance on intra-Community trade in the products in question. A situation in which sausages may not be made from horsemeat by undertakings which do not directly slaughter animals (which accordingly cannot be classified as "boucheries") or which wish to distribute the product on the market through middlemen (wholesalers or retailers) in fact constitutes an obstacle, indirect but almost insuperable, to exports. In such a situation the only horsemeat sausages which may lawfully be exported are products manufactured abroad — in another Community country or in a non-member country — and imported into the Member State where the prohibition applies, and exports of sausages made on a small scale by "boucheries chevalines", although these do not appear to me to be

of any great economic importance. The Commission is correct in observing that provisions like the Netherlands regulation constitute also an obstacle, albeit indirect, to imports: this is because such a stringent restriction on the production of horsemeat sausages ultimately reduces the importation of horsemeat, thus limiting its consumption. This case must thus be viewed in the context not anly of Article 34 of the EEC Treaty, concerning exports, but also in the light of Article 30, concerning imports in relations between Member States.

It seems to me clear that provisions of the type described above are incompatible with both articles. In fact, as we know, the words "measure having an effect equivalent to quantitative restrictions" cover, according to the settled case-law of the Court of Justice, "all trading rules of Member States which are capable of hindering, directly or *indirectly,* actually or potentially, intra-Communty trade" (as most recently embodied in the judgment of 13 March 1979 in Case 119/78 *S.A. des Grandes Distilleries Peureux* v *Services Fiscaux de la Haute-Saône et du Territoire de Belfort,* at paragraph 22 of the decision). Thus an actual obstacle, albeit indirect, like that formed by the Netherlands provisions in the present case, undoubtedly falls within the scope of the prohibitions referred to in Articles 30 and 34.

4. As the Court knows, despite that prohibition the Member States are not entirely deprived of power to enact provisions constituting an obstacle, direct or indirect, to intra-Community trade provided that specified conditions are fulfilled. The Court of Justice in a recent decision (judgment of 20 February 1979 in Case 120/78 *REWE* v *Bundesmonopolverwaltung für Branntwein,* in particular paragraphs 8 to 15 of the decision) stated in this connexion that the Member States retain power to introduce such restrictions as may be "necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer". That list, which only partly corresponds to Article 36 of the EEC Treaty, recognizes in fairly general terms the lawfulness of national provisions constituting an exception to Articles 30 and 34 if such provisions are *"in the general interest and such as to take precedence over the requirements of the free movement of goods,* which constitutes one of the fundamental rules of the Community" (paragraph 14 of the above-mentioned judgment of 20 February 1979).

Nevertheless it does not appear to me that in this case the Netherlands, where the actual situation permits the scope of the Community provisions in question to be established, have valid grounds of the kind indicated justifying the enactment, to which they have in fact proceeded, of domestic measures having an effect equivalent to quantitative restrictions.

In the written observations which it lodged with the Court of Justice the Netherlands agency which supervises the production of meat maintains that the restrictive provisions are to be considered lawful because their object is to promote the export of sausages containing no horsemeat to countries, such as the United Kingdom, where consumers

display an aversion to horsemeat or in which the importation of goods produced from such meat is directly prohibited (as is the case in the Federal Republic). According to the Netherlands agency it is technically very difficult and expensive to trace the presence of horsemeat in a meat product which has been processed at a high temperature; this means that it is in fact impossible for importing countries to use technical checks to determine whether the meat contained in the imported product is horsemeat or not. Accordingly the sole solution in order to secure the exportation of Netherlands meat products to the above-mentioned countries is the radical one of prohibiting the manufacture within the Netherlands of sausages containing horsemeat and of supplementing that measure by prohibiting producers from keeping horsemeat on their premises.

Those arguments do not appear to me persuasive.

I must observe first of all that the restrictive measures adopted cannot be classified as *necessary* in order to safeguard the fairness of commercial transactions and the position of consumers; such interests, as the Court recognized in the said jugdment of 20 February 1979, are undoubtedly in the general interest and may in certain circumstances take precedence over the principle of freedom of movement of goods. As Counsel for the Commission has properly pointed out it is in fact perfectly possible to provide protection for purchasers and consumers through provisions concerning the labelling of the products. Such a solution was in fact suggested in the above-mentioned jugdment of 20 February 1979; that case turned on the point whether Community rules left a Member State free to fix a level above the Community standard for the minimum alcohol content for beverages marketed on its territory and the Court ruled that it was impossible to "regard the mandatory fixing of minimum alcohol contents as being an essential gurantee of the fairness of commercial transactions, since it is a simple matter to ensure that suitable information is conveyed to the purchaser by requiring the display of an indication of origin and of the alcohol content on the packaging of products" (paragraph 13 of the decision).

Likewise with regard to the alleged need to protect national production of prepared meat it is plain that the obligation to indicate the presence of horsemeat on the external packaging of the products should be sufficient to overcome the suspicions of consumers in importing countries. Furthermore I do not think that the promotion of national products constitutes an interest of a general nature the protection of which, according to the case-law of the Court of Justice, justifies an exception to the free movement of goods within the Community. I observe finally that it is debatable whether the prohibition on the manufacture of horsemeat sausages in fact affords protection to exports: the Commission has indeed observed that other countries (for example Denmark) whose regulations do not contain any provision of this nature export horsemeat products to the same markets in which the exports from the Netherlands are traditionally distributed.

We have seen that one of the arguments advanced by the Netherlands agency is based on the fact that the Federal

Republic has prohibited the importation of horsemeat; that, we are told, obliged the Netherlands to adopt the restrictive measures in question in order to avoid jeopardizing their own exports to the German market. It is clearly inappropriate in the present case to consider whether the above-mentioned restrictive German provisions are in accordance with Community law since we have been provided only with general information on them; it will nevertheless be sufficient to point out again that the remedy, appropriate to overcoming the purported difficulties of the Netherlands undertaking, remains the provision, by means of labelling, of clear information for the consumer as to the nature of the product. On the other hand a remedy such as that adopted in the Netherlands, consisting in a complete prohibition on the production of horsemeat sausages, is certainly out of proportion to that object.

Finally it does not appear to me that the need to protect public health can seriously be put forward as a justification for restrictive measures such as those adopted by the Netherlands. It is true that in order to protect public health Member States may, under Article 36 of the EEC Treaty, impose restrictions on the free movement of goods; however, it is also common knowledge that horsemeat does not constitute a greater risk to health than the flesh of other kinds of animals intended for human consumption. It is a significant point in this connexion that the Council Directive No. 77/99/EEC of 21 December 1976 on health problems affecting intra-Community trade in meat products, in defining "meat", refers to Article 1 of Directive No 64/433/EEC thereby including the fresh meat of domestic "solipeds". This provides confirmation, if such was ever necessary, that horsemeat was not considered dangerous to health; on the contrary it received the same treatment for health purposes as any kind of edible meat.

5. In conclusion, then, I am of the opinion that the question submitted by the College van Beroep voor het Bedrijfsleven, Rijswijk, (sic) by an order of 26 January 1979 should receive the following reply from the Court of Justice:

"A prohibition on the manufacture of products from horsemeat imposed on manufacturers of sausages under the domestic legislation of a Member State comes within the concept of measures having an effect equivalent to quantitative restrictions referred to in Articles 30 and 34 of the EEC Treaty."