tariff quota for frozen beef and veal based upon a number of criteria to define the different categories of traders and to fix the total amounts to which each of the categories is to have access, provided that such criteria are not determined in an arbitrary way and do not result in depriving some of the persons concerned of access to the share in question.

Kutscher O'Keeffe Touffait Mertens de Wilmars Pescatore

Mackenzie Stuart Bosco Koopmans Due

Delivered in open court in Luxembourg on 23 January 1980.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 13 DECEMBER 1979 [1]

Mr President,
Members of the Court,

I — In order to comply with the obligations which the Community has undertaken under GATT, towards the end of each year it *opens* a Community quota for frozen beef and veal at a duty of 20%.

Since 1975 the total volume of this quota for boned or boneless meat has been 38 500 tonnes; it is divided into two parts, one of 22 000 tonnes and the other of 16 500 tonnes. Historically the 16 500 tonnes consists of a supplementary tariff quota opened by the Community unilaterally in favour of Argentina since 1971.

The continuation of this division of the quota is intended to enable the system of monetary compensatory amounts, established in relation to currency exchange fluctuations, to be applied to the second part since that system cannot be applied to the 22 000 tonnes which are subject to a duty bound under GATT.

1 — Translated from the French.

Since large quantities of unused frozen beef and veal exist in the Community it is essential for the Commission, as well as the national authorities, rigorously to control imports in order to avoid disturbances in the Community market for beef and veal and only imports which are justified by *immediate* needs must be authorized. Moreover one important point must not be overlooked; the opening of the quota is meant to facilitate resistance to rising prices by increasing supply.

For 1978 Council Regulation No 2861/77 of 19 December 1977 *distributed* the total volume of the quota between the Member States.

Article 2 of the Regulation allocated to Italy a total quota of 11 050 tonnes.

Article 6 provided that in the event of quantities allocated to Member States not having been used up by 1 October 1978, the Council was to make reallocations if necessary but the Council did not have to adopt such measures.

II — This case is concerned with the method adopted by Italy to *administer* this quota and in particular the *"advance allocation"* system set up by the authorities of that country.

When applying Article 3 of Regulation No 2861/77 to fix the rules for the "administration" of this quota in a decree of 20 May 1978 the Italian Ministry of Foreign Trade had two clear considerations in mind — to avoid unduly subdividing the quota and to facilitate access to it.

The decree provided that:

— The Ministry of Defence was to be allocated 10 % of the total volume (1 105 tonnes) on the basis of import certificates issued under the GATT quota for 1977;

— Local consumer bodies also received 10% upon the same basis;

— The remaining 80% (8 840 tonnes) was allocated to commercial and industrial undertakings belonging to this sector.

The 80% was itself divided up as follows:

— 10% went equally to all undertakings allowed to participate in the allocation;

— 30% was allocated on the basis of value added tax paid in 1977 on imports from non-member countries;

— Finally, 60% was allocated on the basis of quantities imported from non-member countries in 1977, and an increase of 10% was granted to industrial undertakings.

Following representations by certain categories of those concerned the Minister of Foreign Trade thought it fit to make a fresh apportionment of the quota to meet "certain requests made by persons engaged in the sale by retail of frozen beef and veal" and issued a decree on 22 June 1978.

While continuing the allocations to the Ministry of Defence and to the local consumer bodies, the decree allocated the remaining 80% (8 840 tonnes) to industrial and commercial undertakings *and also to retail traders.* The 80% was divided up in this way:

— 30% went equally to all categories allowed to participate in the allocation;

— 10% was allocated on the basis of value added tax paid on imports of frozen beef from non-member countries in 1977;

— 50% was allocated on the basis of quantities of frozen beef and veal imported from non-member countries in 1977 whether or not under the GATT quota system;

— Finally, 10% was allocated on the basis of purchases of frozen beef and veal from A.I.M.A. (the Italian intervention agency) under Council Regulation No 2453/76 of 5 October 1976 regarding the transfer to that agency of frozen beef and veal held by other Member States.

Some of the industrial and commercial undertakings, including Grosoli, then contested the decree of June 1978 before the Tribunale Amministrativo Regionale del Lazio [Regional Administrative Court] which has now referred to the Court of Justice, in substance, the problem whether the system adopted in Italy complies with the principle of free access to the quota.

Let us if necessary recall that it is not a case of a State's failure to fulfil its obligations which is before us and that the Court is not therefore asked to determine the legality of the Italian ministerial decree. It is simply a question of interpreting the Community rules.

III — In the absence of any observations from the Council, which drafted the instrument now requiring interpretation, the following points seem to me to be established:

1. As with similar earlier and subsequent regulations, one of the recitals in the preamble to the document before the Court shows that this is a relatively small tariff quota and that it "ought to be possible to provide for a system of allocation based on a *single* apportionment between the Member States, without thereby derogating from its *Community* nature". This reasoning seems to be referring to the rejection of the recommendations of the Commission which has consistently provided (and still does) for a fresh subdivision of both initial tranches of 22 000 and 16 500 tonnes into two further parts in order to constitute a reserve.

2. Although no innovation, another recital seems to me to be of fundamental importance: "it appears best to leave to each Member State the choice of a management system for its share of the quota". Since the Regulation, according to its title, is "opening, allocating and providing for the administration" of the quota in question, the effect is that Community authorities have exhausted their powers by issuing the provisions in question and that, *as regards everything else*, the choice of detailed practical rules is left to each Member State subject to "equal and continuous access to the quota" being "ensured for all persons concerned".

There is perfect justification for this: it is a relatively small quota and it is hard to see how the adoption of one management system or another could appreciably affect the free movement of goods or the workings of the common organization of the market in beef and veal (subject to the proviso that the apportionment of the share of the quota thus allocated to each Member State does not in

practice amount to the exclusion of a category of interested parties).

3. On the other hand it may be seen that the Regulation in question contains an innovation compared to the wording of the earlier regulations inasmuch as Article 3 speaks of *"persons concerned"* established in the territories of the Member States while the previous wording (in particular in Regulation No 3167/76 of 21 December 1976) spoke of *"importers"*.

Of course, the plaintiffs in the main action, supported to a certain extent by the Commission, minimize the implications of the use of this term.

However, it seems to me that they cannot be ignored.

In its reply of 23 March 1978 to a written question of 31 January 1978 the Commission itself admits that in principle there are no restrictions on the concept. From this point of view, it seems to me impossible to argue, as the plaintiffs in the main action do, that it can only connote "traders habitually engaged in importing by way of trade or business"; the Council deliberately used different words.

Moreover, the local consumer organizations together with the retailers (where necessary grouped in co-operatives so as to make joint purchases) had already participated in the past in the allocations arranged by A.I.M.A. and had obtained or arranged customs clearance for frozen beef and veal for consumption in Italy.

As far as the latter persons are concerned it is to be noted that under Commission Regulation No 2793/76 of 18 November 1976 adopted on the basis of Council Regulation No 2453/76 of 5 October 1976, that category of persons had been permitted to purchase some frozen beef and veal made available to the Italian intervention agency on condition *inter alia* that they were authorized so to act and that the meat thus obtained would be for direct consumption in Italy.

As regards the Ministry of Defence, I would comment that the Commission itself considers in its Regulation No 732/78 of 11 April 1978 that the sale of beef held by intervention agencies to the armed forces and similar organizations represents one of the measures which might encourage its disposal.

The words "all persons concerned" must therefore be understood in the sense of the freedom of access to the quota for any trader (direct importer, retailer, consumer group); this complies with the principle of equal treatment for all Community nationals who are not only "traditional importers". Especially if the category comprising the retailers had not been taken into consideration, the principle of free access for *all persons concerned* would not have been complied with.

Of course, a Member State could not issue rules whose practical effect would be arbitrarily to reserve a considerable part of the quota to a given category of traders to the detriment of other categories, or completely forbid the utilization of frozen meat imported under the quota for certain purposes (for example, industrial processing, upon which the Court had to rule in its judgment of 12 February 1973, *Grosoli*

[1973] ECR 1555); however it is not forbidden from arranging access to the quota in proportion to actual market trends and in accordance with the economic prospects for the quota year under consideration.

Council Regulation No 3063/78 of 18 December 1978 covering the quota year 1979, which the Court will shortly be required to construe in another reference for a preliminary ruling, puts this object still more clearly when it adds, in a recital, that "it appears best to leave to each Member State the choice of a management system for its share of the quota, *so that it may ensure an allocation which is appropriate from an economic viewpoint*".

The system adopted by the Italian authorities to administer the 1979 quota is very nearly identical to that of 1978 and the Commission has never considered, at least until the oral procedure in this case, that it was not in accordance with the principle of free access.

IV — If the Court considers, as I suggest, that even before 1979 each Member State remained free to choose a system of administering its share which suited it economically, it is clear that the detailed practical rules of such administration might vary within certain limits in each Member State.

The system adopted by the Italian authorities is primarily based on "advance allocation". This method of administration was expressly allowed by the Commission in its reply of 26 May 1971 to a written question of 17 March 1971 (in which it recognized that there did not exist any fully Community method of administering quotas) and in its reply of 23 March 1978 referred to earlier.

The method aims to avoid unduly subdividing the quota — which would not fail to occur, at least in Italy — by charging imports against the quota as consignments are presented for customs clearance under certificates of entry for consumption, taking account of the relatively small size of the quota and the fact that certain applications are not genuine. Apart from that, in common with the governments of other Member States, the Italian Government distributes the quota between users who apply before a certain date on the basis of previous imports.

Finally, this apportionment is also founded upon the desire to exert a moderating influence on prices. It is of course possible to have differing ideas about the expediency of these considerations but in the last resort they fall within the discretion of each Member State.

In this respect it seems to me that the Regulation in question and, still more clearly, Regulation No 3063/78, has expanded the scope of the powers of management delegated to the Member States or, if one prefers, the powers which the Member States originally held have been revived by that Regulation.

The goals of economic policy pursued by the Italian Government are also taken into consideration by the Community. When deciding to transfer to A.I.M.A. frozen beef and veal held by the intervention agencies of the other Member States, the Council declared, in its Regulation No 2453/76, that the economic situation in Italy was marked

at that time by a very high rate of inflation and that the meat transferred was to be placed on the Italian market, which had a shortage in that product, in order to help to stabilize *consumer* prices.

Naturally, if that were indeed the construction to be placed on Article 3 of the Regulation, one might ask if the discretionary freedom thereby left to each Member State complies with the Treaty and Community law and therefore whether the Council Regulation does not in fact derogate from the Community nature of the tariff quota, although the Council denies this. But since no one has raised any doubt on this point, I shall not enter into that discussion in the absence of the Council's views.

I conclude that the Court should answer the question as follows:

National rules adopted for the application of Regulation (EEC) No 2861/77, which result in making a part of the quota accessible to a category of persons hitherto excluded — an important factor in the system set out in Regulation (EEC) No 2453/76 — are not incompatible with the principle of free access to national quotas which Member States must ensure for all persons concerned established within their territories, or with any other provision of the Treaty or any other requirement or binding principle of Community law.