In Case 35/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunale Amministrativo Regionale del Lazio [Regional Administrative Court], for a preliminary ruling in the action pending before that court between

GROSOLI S.P.A.,

FIORUCCI CESARE S.P.A. AND EUROPORK S.P.A.,

ULTROCCHI S.P.A. AND M.A.R.R. S.P.A.,

S.C.I. (SOCIETÀ ITALIANA CARNI) S.N.C. and

CONSORZIO ITALIANO MACELLATORI

and

THE MINISTRY OF FOREIGN TRADE

and also concerning

THE MINISTRY OF DEFENCE,

THE ENTE COMUNALE DI CONSUMO DI ROMA AND OTHERS

on the interpretation of Council Regulation No 2861/77 of 19 December 1977 (Official Journal 1977, L 330, p. 7) opening, allocating and providing for the administration of a Community tariff quota for frozen beef and veal falling within subheading 02.01 A II b) of the Common Customs Tariff (1978),

THE COURT

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts giving rise to the case, the procedure and the observations presented under Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

Under the GATT agreements and the Geneva Protocol of 1962, the European Community undertook to authorize, upon favourable conditions, the import of frozen beef and veal from non-member countries within annual "tariff quota" limits (originally 22 000 tonnes; then from 1973, 38 500 tonnes). The favourable conditions consist of exempting the goods from levies and applying to them a uniform, consolidated common customs tariff rate of 20%. By Council Regulation No 2861/77 of 19 December 1977 (Official Journal 1977, L 330, p. 7) the Community opened a Community tariff quota for frozen beef and veal for 1978, expressed as boned or boneless meat, of 38 500 tonnes. This quota was distributed between the Member States and a total of 11 050 tonnes was allocated to Italy.

The choice of a system to administer the quota shares is left to each Member State. Article 3 (1) of Regulation No 2861/77 states:

"The Member States shall take all appropriate steps to guarantee all persons concerned, established within their territories, free access to the quota shares allocated to them".

The decree by the Ministry of Foreign Trade of 20 May 1978 (Gazzetta Ufficiale of 25 May 1978 No 143) regulated the use by traders of the share allocated to Italy. This decree provided for allocation among the traders who had applied within 30 days after the publication of the decree, the economic categories concerned having been defined in advance. Quotas expressed as a percentage of the total quota were allocated to each of those categories. The allocations were:

(a) 10% to the Ministry of Defence;

(b) 10% to local consumer organizations (these bodies are commercial public undertakings active in the distribution sector);

(c) 80% to undertakings active commercially and industrially in the frozen beef and veal sector.

These provisions were subsequently amended by a Ministerial Decree of 22 June 1978 (Gazzetta Ufficiale of 23 June 1978, No 174) by which retailers of frozen beef and veal were included in category (c).

The effect of the two decrees was that the 80% of category (c) was divided up between the various applicants according to the following criteria:

— 30% in equal shares;

— 10% upon the basis of payments of value added tax (VAT);

— 60% was divided up as follows:

  — 4 420 tonnes, in proportion to the quantity of frozen beef and veal imported from non-member countries in 1977;

  — 884 tonnes, in proportion to purchases made from AIMA (the Italian intervention agency) upon the basis of Regulation No 2453/76 of 5 October 1976 [1] (purchases reserved only to retail butchers).

Grosoli and Others challenged the Ministerial Decree of 22 June 1978 before the Tribunale Amministrativo Regionale del Lazio, claiming in particular that it was incompatible with Regulation No 2861/77.

By an order of 4 December 1978 the Tribunale decided to stay the proceedings and under Article 177 of the Treaty of Rome to refer the following questions to the Court of Justice:

"1. Is it possible to infer from Regulation No 2861/77 and the other regulations concerning the market in meat, as well as from the Treaty, that a 'management system' (as mentioned in the fourth recital in the preamble to the said regulation) for the national share of the quota based on a number of criteria for apportionment corresponding to objective differences in the situations of the traders concerned is acceptable in so far as compatible with the principles of liberty and equality to which reference has been made?

2. Secondly, can such criteria consist in establishing in advance, as is the case with the Ministerial Decree of 22 June 1978, that the three specified categories of traders shall each have individual access to three separate portions of the national share of the Community quota?

3. Thirdly, can one of those predetermined portions be assigned in advance to one of the persons concerned, albeit one with very distinctive characteristics?"

The order making the reference was received at the Court Registry on 1 March 1979.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by Grosoli, represented by Emilio Sivieri; by Fiorucci Cesare, represented by Leopoldo Cimaschi, of the Genoa Bar, and Luigi Bonifazi, of the Rome Bar; by Consorzio Italiano Macellatori, Ultrocchi, M.A.R.R. and S.C.I. (Società Italiana Carni) all represented by Piero Castellini, of the Padua Bar; by the Ente Comunale di Consumo, represented by Sebastiano Ferlito, of the Rome Bar; by the Government of the Italian Republic, represented by its Ambassador, Adolfo Maresca, acting as Agent, assisted by the Avvocato dello Stato, Pier Giorgio Ferri; and by the Commission of the European Communities, represented by its Legal Adviser, Richard Wainwright, acting as Agent, assisted by Guido Berardis, of the Commission's Legal Department.

Upon 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, the Government of the Italian Republic and the Commission of the European Communities were invited to reply to certain questions put to them by the Court.

1 — Official Journal 1976, L 279, p. 3.

II — Summary of the written observations lodged with the Court

Fiorucci Cesare S.p.A. first of all observes that Article 1 of Regulation No 2861/77 defines the quota as "a Community ... quota". This description also applies to the national shares resulting from the apportionment of the quota.

In the absence of any specific provision in Regulation No 2861/77 enabling each Member State to use this quota for its own purposes, the power of administration conferred upon them can only be understood in a restrictive sense to mean the mere implementation of technical and procedural rules.

In order to answer the first question it is first necessary to interpret the expression "persons concerned" introduced by Regulation No 2861/77 and substituted for the expression "importers", which was used in previous regulations on the subject. The amendment of the wording is attributable to the desire to avoid wrong interpretations and not to any intention to make a substantial alteration of the meaning. In fact the Commission has always described those who effect imports as importers whatever their name or commercial form and irrespective of whether or not they belong to any specific occupational category.

All these categories — wholesalers, industrialists or retailers — may therefore have access to the quota, provided they satisfy the basic condition of being persons "concerned" with imports of frozen beef and veal from non-member countries.

Equality of treatment and free access to the quota are linked to the parameter of the volume of imports into the different Member States from non-member countries during a sufficiently representative period. It is in fact possible to establish the concern of traders only upon that single factor.

As regards the second question, Fiorucci Cesare refers to the judgment of the Court of 12 December 1973 (Case 131/73, *Grosoli* [1973] ECR 1555) in which the Court held in particular that:

(a) meat imported under a GATT quota cannot be subject to provisions designed to govern the use to which the allotted quantities are put;

(b) in the management of their shares Member States may not pursue national objectives of economic policy which are not expressly laid down by Community rules;

(c) at all events, the principle of equality of treatment for Community citizens must be ensured.

Prior subdivision of the quota into shares (expressed as a percentage) reserved for certain categories not even founded on an objective parameter of reference constitutes a clear and particularly serious breach of the said principles.

Furthermore, whatever criterion is adopted as the basis for the apportionment, it is absolutely necessary for it to be an objective criterion, placing all persons concerned on the same level.

The reply to the third question may therefore be derived directly from the foregoing observations.

In conclusion Fiorucci Cesare proposes that the Court should reply to the questions put by the national court as follows:

"(1) If the principle of free access to the quota for all 'persons concerned' irrespective of the category to which they belong (wholesalers, processors, retailers) — which is irrelevant for the purpose of determining that 'concern' — is accepted, what needs to be considered is not a number of apportionment criteria corresponding to a presumed number of categories but only one and the same criterion, identical for all, consisting of the volume of imports from non-member countries during a sufficiently representative period in the past; those imports cannot in any event constitute a basis for discrimination as regards apportionment; the activity to be taken into account for this purpose is purchases from intervention agencies, restricted to specific traders, and to the exclusion of other traders even if such restrictions have been fixed or allowed, in one way or another, by Community regulations.

(2) The apportionment criteria may not consist in establishing in advance, as the Ministerial Decree of 22 June 1978 does, that the three specified categories of traders shall each have individual access to three separate portions of the national share of the Community quota.

(3) A *pre-determined* portion may not be allotted to a single trader, even one with very distinctive characteristics."

Grosoli first of all examines the question who is meant by "persons concerned" appearing in Article 3 (1) of Regulation No 2861/77.

It refers to the judgment in Case 131/73 (*Grosoli*, cited above) as evidence that the option left by this Regulation to Member States concerns only the system of administering the shares they receive, in other words, the technical and procedural rules needed to ensure that the limits of the quota are not exceeded and that the principle of equal treatment of Community citizens is upheld, both of which are binding criteria laid down by Regulation No 2861/77. The fact that the choice of a management quota system is left to the Member States does not allow the option of limits or conditions for access to the quota going beyond the technical and procedural rules apportioning the quota goods and pursuing political and economic objectives alien to the Community rules.

The effect of the preamble to the said Regulation is that the fundamental rule of *equal and continuous access* to the quota for all persons concerned must be considered against the background of the Community as a whole. This can be clearly seen from the express reference to "all persons concerned in the Community" [1] from the further extension of the tariff quota to cover "all imports" of the product in question "in all Member States" and from the provision by which the rate for the tariff quota should be applied "consistently" and "until the quota is used up".

Hence the meaning of persons in the Community concerned in the quota must

1 — *Translator's note:* The words "in the Community" do not occur in the English text of Regulation No 2861/77.

necessarily be identical with that of importers who prove by documentary evidence that they are active in the frozen beef and veal sector; indeed it is only upon this condition that it would be possible to envisage access to use of the quota which is not only free and equal but also continuous and uninterrupted.

Grosoli therefore thinks it was wrong for the Commission to state in its reply of 23 March 1978 to Written Question No 1117/77 by Mr Klinker (Official Journal 1978, C 107, p. 32) that there were in principle no express restrictions to the expression "all persons concerned". On the basis of this argument the Commission moreover stated that whilst acknowledging the need to prevent the involvement of large numbers of persons and the resulting fractionation of shares from cancelling out the economic impact of the tariff quota, Member States were nevertheless trying to extend as far as possible the number of persons concerned by this tariff quota and to ensure that the administration of the shares allocated to them was as neutral as possible.

This statement cannot, however, legitimize the practice ascribed to Member States.

According to the principles affirmed by the Court (judgment in Case 131/73, *Grosoli*, cited above), when Member States operate a management system in the absence of special powers in order to determine more or less broad categories of persons concerned, they thereby exceed the limits of the powers conferred upon them by the Community regulation. The existence of such a margin of discretion, even if kept within reasonable bounds, amounts to an infringement of the principle of the reservation of powers belonging to the Community institutions.

The fixing of separate categories of traders and access by them to quotas determined and allocated in advance exceeds the limits of the power of management conferred upon the Member States. Such a solution is not just confined to determining the technical and procedural rules for apportionment but also pursues objectives of national economic and social policy which are not intended by the Community rules.

In conclusion, Grosoli thinks that the questions submitted call for the following reply:

"1. Persons who, irrespective of any activity of their own (whether or not by way of trade or business) pursued within the territory of the Member States, have free, equal, continuous and uninterrupted access to the import of quantities covered by the Community tariff quota opened for 1978 in proportion to activity proved to be pursued in the sector of the importation of frozen beef and veal are persons concerned in the Community.

2. In any event it is not permissible for Member States, upon the basis of the power of management conferred upon them by Council Regulation No 2861/77, to determine their own criteria for access to the quota by persons concerned in the Community in order to take account of the personal characteristics or the

situations and activities of citizens established within their territories; nor is it permissible for them to decide that pre-determined categories shall have separate access to special portions of the national share of the quota or for portions of such quota to be allocated in advance to a given trader."

The *Consorzio Italiano Macellatori* and *Ultrocchi, M.A.R.R.* and S.C.I. submitted observations essentially along the same lines.

They think that Member States benefiting from the Community quota must apply the same apportionment criteria as those adopted by the Community when it allocates the whole quota.

Consequently, persons concerned should be understood to mean only those who have imported and do import frozen beef and veal from non-member countries. Each trader in the Community who obtains or arranges customs clearance for frozen beef and veal should be entitled to a quantity of the same product covered by the quota in proportion to the imports effected by him in the course of the period under consideration. This criterion is the only one which may be applied to ensure that all Community traders receive the same treatment.

They propose that the questions be answered as follows:

"EEC Regulation No 2861/77 opening, allocating and providing for the administration of a Community tariff quota for frozen beef and veal does not allow Member States to apportion the quota allocated to them between traders or categories of traders who are not importers and who have not in fact imported frozen beef and veal from non-member countries; nor does it allow them to allocate percentages of the share of the quota to those categories of persons irrespective of whether or not they have imported frozen beef and veal from non-member countries because the apportionment of the share must be for the benefit of those who import frozen beef and veal from non-member countries and in proportion to their imports in the course of the period under consideration.

It follows that any measure by a Member State to which a share of the quota is allocated, which does not comply with the principles expounded above, contravenes the Council regulation allocating that quota."

The *Ente Comunale di Consumo di Roma* thinks that the meaning of persons concerned includes persons engaged in retail sales who can prove that they have a legitimate interest. The object of such an interpretation is to avoid protectionist, monopolistic or oligopolistic criteria and to ensure on the contrary greater "freedom of access" which is more suited to the requirements of the principle of equal treatment.

According to the Ente Comunale the principles to be drawn from the case-law of the Court (the judgment in Case 131/73, *Grosoli,* cited above) does not mean that a Member State does not have to adopt appropriate criteria under its own legal system which do not impair freedom of access but, on the contrary, promote it, according to methods and criteria complying with the objective in mind.

It follows from the reply by the Commission to the written question of Mr Klinker (cited above) that a system of "advance allocation" is to be preferred which features a method of

administration taking account of the various factual situations and the requirements of those concerned in each Member State.

Therefore it appears both practical and legitimate to have several apportionment criteria on the basis of the differentiation of the specific categories having individual access to separate portions of the share of the quota allotted. The share directly allotted to local consumer organizations conforms with the criteria adopted for "advance allocation" within the limits described above. Since this is a unique and quite distinct category under Italian law there is no need to resort to subsequent processes of a technical and procedural nature.

The *Government of the Italian Republic* recalls that the judgment of the Court in Case 131/73 (*Grosoli*, cited above) distinguishes three types of Community quota as regards the system by which they are applied: (a) quotas for which Community rules assign a particular use; (b) quotas allotted as a whole to Member States so that they may use them according to their needs; (c) quotas which, not having been classified under one or the other of the categories quoted, must be understood as being capable of being used in accordance with the principle of freedom of access for all the persons concerned.

It is difficult to find justification in Regulation No 2861/77 for saying that Article 2 is intended to assign a particular use to the quota as in the case of (a). If the Community provision had intended reserving the quota solely to importers in past years, then that must consequently imply an intention to protect a limited category of traders active in the meat sector who, by being guaranteed exclusive access to the quota, would thus indirectly have the opportunity to create or consolidate a position necessarily akin to a monopoly situation. An objective of this kind would hardly be compatible with the fundamental principle of Community law contained in Article 3 (f) of the Treaty which aims at the institution of a system ensuring that competition in the Common Market is not distorted.

Regulation No 2861/77, on the contrary, made the quota subject to the rule of free access for all the persons concerned. The administrative provisions adopted by Member States must therefore remain within the limits of the technical and procedural rules designed to ensure compliance with the general terms of the quota and the principle of equal treatment for those entitled to take advantage of it. Provided that the national measure, viewed in the light of the Community legislation, remains a suitable means to the end sought, with an objective, working link between the two, the national authorities have not exceeded or evaded the limits of their powers.

Furthermore, if it is borne in mind that Community legislation set precise limits to the scope of national provisions yet none as regards the means ("all *appropriate* steps"), then the discretion left to the State regarding the choice of the most suitable means has in no respect been exceeded.

The Italian Government in fact thought fit to use the criterion of reference to imports in previous years limiting the

apportionment to 40% of the quota allocated to Italy. It came to this view after noting that since an assessment index was involved which was capable of benefiting only those persons who had imported in previous years, the exclusive use of such a criterion for the whole quota would make freedom of access illusory for the other traders active in the meat sector and interested in importing during 1978; their exclusion would be unjustifiable as has been said earlier.

It was for that reason that in addition to that criterion other parameters were used for apportionment for the purpose of "measuring" the capacity and the interest of importers other than regular importers provided that they proved they were "persons concerned" on the basis of factors other than that of having regularly effected imports in previous years.

The Tribunale Amministrativo Regionale del Lazio, was quite right in holding that "on the basis of the contested ministerial decree it is reasonable to hold that the administration has adopted differing criteria for apportionment in view of objective differences in kind between the persons concerned ... and of the presumed absence of a single criterion capable of ensuring a reasonable balancing of the conflicting interests in accordance with the principles of free access and equality of treatment".

The Italian Government argues that when these different criteria are used for the purpose of apportionment, the national share must necessarily be subdivided into as many portions as there are criteria to apply. Such a situation is simply the result of the impossibility of making a direct comparison between traders supporting their application upon different criteria for apportionment. The system adopted protects freedom of access and equality of treatment whilst enabling a valid comparison to be made, directly or indirectly, between all the applicants. The disadvantages are practically outweighed by the appropriate determination of the quantities assigned to the different criteria for apportionment, such determination having to take account, on a basis in which experience has been given its due weight, of the incidence of the different economic components taken as reference data from among all the persons who are concerned to gain access to the quota.

The reply to the last question follows from the foregoing observations; advance allocation to a single trader is objectively justified because he is a person whose position in relation to access to the quota cannot be adequately accommodated by criteria common to other applicants.

In conclusion the Italian Government considers that the provisions of the ministerial decree which gave rise to the questions raised constitute all appropriate steps to achieve the intended object of ensuring all persons concerned free access to the share of the Community quota allocated to Italy.

The *Commission* observes that the tariff quota in question is a "Community" quota.

By availing themselves of their exclusive right to decide upon the allocation of the quota, the Community institutions may either give access to a quota to all parties concerned, directly determine the use to which the goods are to be put, or allow Member States to make use of it themselves according to their own needs. This latter option, however, must be expressly provided for. Otherwise provisions delegating powers of management to Member States must be interpreted restrictively whenever national measures to regulate allocation of a Community quota according to national political criteria may affect both the objectives of economic policy pursued by the Community and equality of treatment for all citizens of the Community.

Consequently, a general delegation of powers of management of a quota to Member States enables them to determine technical and procedural rules needed to ensure general compliance with the terms of the quota and to guarantee equality of treatment for those entitled to take advantage of it but not to adopt conditions of access to the quota whose objectives of economic policy are not the subject of Community provisions.

Article 3 (1) of Regulation No 2861/77 merely effects a general delegation of administration. National measures must, in the words of Article 3, guarantee *free access* to quota shares to *all persons concerned*: that is the most important condition with which Member States must comply when administering their share.

The Commission points out that it was in this same Regulation No 2861/77 that the Council introduced the concept of "persons concerned" whilst before "importers" were spoken of. However, even before this, the Commission had understood the concept of *"importers"* in a much wider sense to mean all the natural and legal persons established within the territory of a Member State who obtain or arrange customs clearance for frozen beef and veal for consumption on that territory. A more restrictive interpretation would have been difficult to justify and, in any event, would have had to be duly reasoned. On which economic ground, in fact, must the enjoyment of a tariff quota be restricted to a single category of traders?

There are in principle no precise limits to the concept of "all persons concerned": in theory, whoever shows his interest in importation by his application for access to the quota is to be considered as a "person concerned" in the sense of the provision in question. Nevertheless, such a wide interpretation of the concept of "person concerned" is likely to provoke innumerable applications leading to the multiple subdivision of the quota which would be uneconomic in view of the limited nature of the quota.

It follows that it is not unlawful to regard the State's power of management as including the right to determine the categories of traders who, on the basis of technical and economic assessments, seem to be objectively interested in the import upon favourable conditions of frozen beef and veal. To the extent to which the determination of the categories concerned meets a valid economic

requirement and does not go beyond that requirement, the Commission thinks that this advance determination is not *in itself* incompatible with the Community rule which leaves the management of the quota to Member States.

In order to apportion the quota it is therefore essential to define objective criteria, particularly in view of the limited quantities to be apportioned.

It follows from the judgment in Case 131/73 (*Grosoli*, cited above) that, in the absence of express Community authorization, national social, political or economic objectives may not be promoted to the level of criteria for apportionment. It cannot therefore be accepted that pre-determined quantities should be automatically reserved to certain bodies or groups who are guaranteed privileged and exclusive access to specific portions of the quota.

In this case it is clear that equality of treatment for traders is adversely affected. Some are subject to selection according to specific criteria, whilst others are exempt from those criteria and are entitled to allocations fixed in advance: the Commission points out that the local consumer organizations in fact receive a fixed share which they must redistribute amongst themselves according to the number of inhabitants in each locality, whilst a body such as the Ministry of Defence is yet more favoured inasmuch as it is simply allocated an exclusive share reserved to itself alone.

Analogous reasoning applies also to the allocation of 80% of the total share to commercial and industrial undertakings and retailers.

Here criticism is levelled not so much against the pursuit of objectives of national economic policy as against the actual fixing of a percentage. The same is true for the determination within this category of fixed quantities allocated to the two categories of traders (4 420 tonnes to commercial and industrial undertakings and 884 tonnes to retailers).

The question therefore arises what are the objective criteria that a Member State must apply for the purpose of apportioning the quota in accordance with Community provisions.

In the absence of any approximation of national laws it is not possible to lay down a universally valid criterion. Moreover, the question arises whether any such criterion must be the only one to be adopted or rather if, in view of the various types of traders, several criteria should be adopted for all the different situations.

The criterion based on imports, as used by the Council for the apportionment of the quota between Member States, should not necessarily be transposed as it stands to the national level.

If not correctly adapted to the circumstances, this criterion is likely to make permanent situations which have already arisen by excluding, in particular, traders who have become engaged for the first time in the relevant sector; this would not accord with the spirit of equality which typifies both general and specific Community rules.

On the other hand the Commission thinks that in principle the adoption of different criteria for apportionment must not be ruled out since the situations of the various parties concerned cannot be objectively compared. The problem is to find a common denominator for all those

criteria which would make it possible to guarantee observance of the principles of free access to the quota for all traders and of equality of treatment.

For example, the Commission thinks that as regards retailers the criterion of purchases of frozen meat from intervention agencies may be validly used provided that unjustifiable limits incompatible with the aforesaid principles are not imposed. This condition is not satisfied by the ministerial decree in question with the unacceptable result of both excluding retailers who have not made use of the opportunities available and yet of reinforcing the favourable position of those who have.

A similar situation would arise with importers if the criterion to be adopted for apportionment were not all imports of frozen meat from non-member countries but only imports under the special GATT rules.

At all events any criteria considered should not be designed to pursue, either directly or indirectly, objectives of national social or economic policy which are not expressly laid down by Community rules.

In conclusion the Commission thinks that the questions referred to the Court by the Tribunale Amministrativo Regionale del Lazio, require the following answers:

"1. Regulation No 2861/77 opening, allocating and providing for the administration of a Community tariff quota for frozen beef and veal falling within subheading 02.01 A II b) of the Common Customs Tariff (1978) authorizes Member States to determine the categories of traders who may participate in the apportionment as well as the criterion or criteria to be adopted for the purpose of such apportionment provided that free access to the share of the quota allocated to the Member State in question is ensured for all persons concerned in a non-discriminatory manner.

2. & 3. The criteria to be taken into consideration may not consist of establishing in advance that distinct categories of traders shall each have separate access to special portions of the national share of the quota, nor is it permissible for a portion of this quota to be allotted in advance to a single trader."

III — Oral procedure

At the sitting on 20 November 1979 Grosoli, represented by Emilio Sivieri of the Rome Bar, Fiorucci Cesare, represented by Leopoldo Cimaschi of the Genoa Bar, the Consorzio Italiano Macellatori and Ultrocchi, M.A.R.R. and S.C.I., represented by Piero Castellini of the Padua Bar, the Ente Comunale di Consumo di Roma, represented by Sebastiano Ferlito of the Rome Bar, the Government of the Italian Republic, represented by the Avvocato dello Stato, Pier Giorgio Ferri, acting as Agent, and the Commission of the European Communities, represented by Richard Wainwright, acting as Agent, assisted by Guido Berardis, presented oral argument.

In reply to a question from the Court, the *Commission* gave a summary of the position in the Member States as regards national apportionment of the quota.

The criterion used in the Netherlands consists of prior imports in the general sense of the expression. At first the Netherlands restricted this parameter to imports subject to levy, but at a later date this rule was amended. Those who had effected imports free from levies during the previous three years were then also included amongst the categories interested in the GATT imports.

The Federal Republic of Germany used the criterion of percentages in the broadest sense of the word. It was subsequently found that this system was not fully in accord with Community philosophy. At present a percentage of approximately 70% is allotted to the importer category in Germany, that is to those who effect or arrange imports, 20% is allotted to traders in fresh meat and 10% to sales organized by the intervention agencies.

In France a certain percentage is allotted to the Overseas Territories, a further portion to the Ministry of Defence and a very limited portion to dealers in the classical meaning of the word.

In the United Kingdom the share of the quota is mainly allotted to institutions of a social nature. A very limited portion is reserved to importers.

In Belgium and Denmark imports during previous years are used as a reference. However, those who have obtained certificates in the past and assigned them to others and those who have not used their portion of the quota or not made any imports at all are disqualified.

The Advocate General delivered his opinion at the sitting on 13 December 1979.

Decision

1 By an order of 4 December 1978, received at the Court on 1 March 1979, the Tribunale Amministrativo Regionale del Lazio, referred to the Court under Article 177 of the EEC Treaty three questions on the interpretation of Council Regulation No 2861/77 of 19 December 1977 opening, allocating and providing for the administration of a Community tariff quota for frozen beef and veal falling within subheading 02.01 A II b) of the Common Customs Tariff (1978) (Official Journal L 330, p. 7).

2 Regulation No 2861/77 opens a Community tariff quota for frozen beef and veal totalling 38 500 tonnes expressed as boned or boneless meat for 1978. Article 2 distributes this volume between the Member States, allocating a share of 11 050 tonnes to Italy.

3 The fourth recital in the preamble to the Regulation states that since the tariff quota in question is relatively small 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 and that it appears best to leave to each Member State the choice of a management system for its share of the quota. Article 3 of the Regulation provides that Member States shall take all appropriate steps to guarantee all persons concerned, established within their territories, free access to the quota shares allocated to them.

4 The use by the persons concerned of the share allocated to Italy is governed by the decree of the Minister for Foreign Trade of 20 May 1978 as amended by the decree of the Ministry for Foreign Trade of 22 June 1978 (Gazzetta Ufficiale Nos 143 and 174 respectively). In the amended version the decree provides for the share to be distributed between the persons concerned so that 10% is allocated to the Ministry of Defence, 10% to local consumer bodies on the basis of the number of inhabitants in the locality and 80% to commercial and industrial undertakings and traders engaged in retail sales. In addition the decree further divides that quantity of 80% between the commercial and industrial undertakings on the one hand and traders engaged in retail sales on the other. The subdivision between the two categories is on an equal basis as regards 30% of the said quantity, as regards 10% it is based upon the amounts of value added tax paid, and as regards 60% it is based upon the quantities of frozen beef and veal imported from non-member countries in 1977 as well as upon the proportion of purchases made from the intervention agency.

5 In the first and second questions, which are best examined together, the Tribunale Amministrativo asks whether Regulation No 2861/77 and other rules of Community law allow a management system for the national share of a Community quota which is based on a number of criteria for apportionment corresponding to objective differences in the situations of the traders concerned and whether those criteria can result in three specified

categories of traders each having individual access to three separate portions of the national share of the Community quota.

6 First of all it should be recalled that in 1962 the Community undertook under the General Agreement on Tariffs and Trade (GATT) to open each year a Community tariff quota for frozen beef and veal from non-member countries consolidated at a duty of 20%. The quotas in question are opened each year by Council regulations which determine their apportionment between the Member States and, using roughly similar terms, leave the management of the shares allotted to the authorities of the Member States.

7 In its judgment in Case 131/73 of 12 December 1973 (*Grosoli* [1973] ECR 1555) which concerned the interpretation of Council regulations on the opening of Community tariff quotas of frozen beef and veal for 1968 and 1969, the Court has already had occasion to state that the management of the shares was left to the Member States to apportion them according to their own administrative provisions but that reference by the regulations to such provisions could not be interpreted as extending the technical and procedural rules designed to ensure compliance with the general terms of the quota and the principle of equal treatment for those entitled to take advantage of it.

8 That interpretation, which sets out the limits of the power delegated to Member States to adopt administrative measures is also valid for Regulation No 2861/77 which opens the Community tariff quota for 1978. It is to be noted in this regard that Council Regulation No 3063/78 of 18 December 1978 opening the Community tariff quota for 1979 (Official Journal L 366, p. 6) also leaves the choice of the management system for the shares to the Member States whilst stating in the recitals in the preamble that such a system should ensure both equal and continuous access to the quota for all persons concerned and an allocation which is appropriate from an economic viewpoint.

9 It is on the basis of those facts that the questions submitted by the Tribunale Amministrativo should be answered. Although, as stated in the judgment of 12 December 1973 cited above, the limits of the power of administration of a Member State are exeeded by the introduction of conditions of use designed to pursue objectives of economic policy which are not the subject of provisions adopted by the Community, neither the wording nor the objects of Regulation No 2861/77 nor the Community nature of the tariff quota in question prevent a Member State from making arrangements falling within the limits of its power of administration for access to the share which it has been allocated by the persons concerned. The administration of that share may, under the specific conditions of the market for frozen beef and veal within the territory of a Member State, reasonably involve the expediency or even the necessity of defining the different categories of persons concerned and of determining in advance the total quantity to which each of those categories may lay claim.

10 Such a system of utilization does not exceed the limits of the power of administration left to the Member State concerned so long as it does not deprive some persons concerned of access to the share allocated to that State and the different categories of traders as well as the total quantities to which those categories have access are not determined in an arbitrary manner. In order to comply with those requirements the Member State concerned may find itself obliged to resort to a number of criteria.

11 Whilst it is consequently true that regular importers of frozen beef and veal cannot be disqualified from access to the national share of the quota, they are not necessarily the only traders interested in the meat imported upon favourable conditions. It is essential to state in this regard that the concept of "persons concerned" in Article 3 of Regulation No 2861/77 has a wider scope than that of "importers" concerned referred to in previous regulations, for example in Article 3 of Council Regulation No 3167/76 of 21 December 1976 opening the Community tariff quota for frozen beef and veal for 1977 (Official Journal L 357, p. 14).

12 The answer to the first and second questions of the Tribunale Amministrativo should therefore be that neither Regulation No 2861/77 nor other rules of Community law preclude a management system for the national share of the Community 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.

13 By its third question the national court wishes to know whether a part of the national share, determined in advance on the basis of a criteria for apportionment, may be allotted in advance to a single trader even one with especially distinctive characteristics.

14 It follows from the considerations put forward in relation to the first two questions that the answer to the third question must be in the affirmative so long as the position occupied by the trader in question is determined in accordance with criteria held compatible with Community law. The fact that under national law one category of traders consists of a single large-scale trader is not sufficient by itself to prove that the criteria adopted by that national law are arbitrary. The answer to the third question is therefore covered by that given to the first two questions.

Costs

15 The costs incurred by the Government of the Italian Republic 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 action 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,

in answer to the questions submitted to it by the Tribunale Amministrativo Regionale del Lazio, by order of 4 December 1978, hereby rules:

Neither Regulation No 2861/71 nor any other rule of Community law precludes a management system for the national share of the Community

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.