categories of traders and the total quantities to which those categories have access are not determined in an arbitrary manner. Such a system does not end equal treatment of those persons if it is applied by the States concerned to all persons established within their territories.

2. It is not contrary to Article 7 (1) of Regulation No 805/68, the aim of which is to avoid any disturbance of the market when products bought in by intervention agencies are disposed of and to ensure equal access to goods held by those agencies, for a Member State to take account, to a limited extent, of purchases of beef and veal held by intervention agencies as a criterion for allocating its share of the Community tariff quota for frozen beef and veal. However, it is not proper to take account solely of purchases from a particular intervention agency.

3. The financial advantage which traders derive from receiving a share in a Community tariff quota is not granted through State resources but through Community resources because the levy which is waived is part of Community resources. Therefore any incorrect application of Community law, even if taking the form of an incorrect allocation of a tariff quota, may only be dealt with as a breach of the relevant provisions of Community law; it may not be regarded as State aid or aid granted through State resources.

4. It is not contrary to Council Regulation No 2956/79 for a Member State to take account of imports and exports of beef and veal in other Member States and exports of beef and veal to non-member countries when allocating its share of the Community tariff quota for frozen beef and veal.

In Joined Cases 213 to 215/81,

REFERENCES to the Court under Article 177 of the EEC Treaty by the Hessischer Verwaltungsgerichtshof [Higher Administrative Court, Hesse] for a preliminary ruling in the actions pending before that court between

NORDDEUTSCHES VIEH- UND FLEISCHKONTOR HERBERT WILL, Hamburg,

TRAWAKO, TRANSIT-WARENHANDELS-KONTOR GMBH & CO., Hamburg,

GEDELFI GROSSEINKAUF GMBH & CO., Cologne,

and

BUNDESANSTALT FÜR LANDWIRTSCHAFTLICHE MARKTORDNUNG [Federal Office for the Organization of Agricultural Markets], Frankfurt am Main,

on the interpretation of Article 3 (1) of Council Regulation (EEC) No 2956/79 of 20 December 1979 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 (Official Journal 1979, L 336, p. 3) and Article 7 (1) of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I) p. 187),

THE COURT

composed of: J. Mertens de Wilmars, President, U. Everling and A. Chloros (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, G. Bosco and T. Koopmans, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

Pursuant to an obligation undertaken under the General Agreement on Tariffs and Trade (GATT), the Community opens each year a tariff quota for frozen beef and veal falling within subheading 02.01 A II (b) of the Common Customs Tariff. For 1980 that quota, which is subject to a customs duty of 20 % and exempt from any levy, was fixed at 50 000 tonnes by Regulation No 2956/79. That regulation allocates a share of the quota to each Member State. Under Article 3 (1) Member States are to "take all appropriate steps to guarantee all persons concerned, established within their territories, free access to the quota shares allocated to them".

Until 1979 access to the quota in the Federal Republic of Germany was reserved almost entirely to undertakings which habitually imported beef and veal from non-member countries. A new system of allocation was introduced by

the Order of 19 December 1979 of the Federal Minister of Finance concerning the principles for allocating the German share of the Community tariff quota for 1980 (Bundesanzeiger No 241, p. 2).

Under Article 2 of that order 75 % of the quota share is to be allocated between importers according to their imports into the Federal Republic of Germany from 1977 to 1979, 85 % of that quantity being reserved to importers who have imported beef and veal from non-member countries and 15 % to importers of beef and veal from Member States of the EEC. A further 15 % of the German quota share is allocated on the basis of exports to non-member countries and to Member States of the EEC, the reference years also being 1977 and 1979. The remaining 10 % is allocated according to the amounts of beef and veal purchased from the intervention agency, the Bundesanstalt für landwirtschaftliche Marktordnung [Federal Office for the Organization of Agricultural Markets]. The intervention agency is also responsible for administering the allocation of the quota, which is done by means of quota certificates.

Since the Community prices for beef and veal are much higher than in the main non-member overseas countries producing those commodities, the sale of frozen beef and veal imported under the quota is very advantageous and so participation in the quota provides traders with high profits.

The undertakings Will, Trawako and Gedelfi habitually import into Germany frozen beef and veal from non-member countries. In 1980, after the new rules on the allocation of the quota had entered into force, they were allocated a share of the German quota which was less than their share in previous years. Taking the view that the Order of the Federal Minister of Finance of 19 December 1979, which gave rise to the reduction, was contrary to Community law, each of the three undertakings brought actions before the Verwaltungsgericht [Administrative Court] Frankfurt am Main seeking from the German authorities quota certificates for a quantity greater than they had been granted. Those actions were dismissed by the court of first instance but by three orders of 25 June 1981 the Hessischer Verwaltungsgerichtshof, to which they appealed, referred to the Court of Justice under Article 177 of the EEC Treaty the following questions for a preliminary ruling;

"1. Is Article 3 (1) of Council Regulation (EEC) No 2956/79 of 20 December 1979 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 (1980) (Official Journal 1979, L 336, p. 3) to be interpreted as meaning that the equal treatment of the 'persons concerned' established in the various Member States of the European Communities is suspended as far as the allocation of the respective shares of the 1980 Community tariff quota for frozen beef and veal by the individual Member States is concerned?

2. Must Article 7 (1) of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal [Official Journal, English Special Edition 1968 (I), p. 187] be interpreted as meaning that the general equal treatment of all persons buying goods from the national intervention agencies is to be ensured until the completion of the individual transaction? Or does

that provision permit purchasers of intervention products in a particular Member State later to be granted, in the form of a share in the Community tariff quota, advantages which such purchasers in another Member State do not receive?

3. Is the allocation of a share in the 1980 Community tariff quota for frozen beef and veal to German importers who imported beef and veal from Member States of the European Communities and to German exporters, in particular those who exported beef and veal to Member States of the European Communities, compatible with Regulation No 2956/79 or does it, in particular, constitute aid granted through State resources?

4. Does the term 'persons concerned' within the meaning of Article 3 (1) of Regulation No 2956/79 include a person who buys up beef and veal in a Member State and then disposes of it abroad?"

In stating the grounds for its orders the Hessischer Verwaltungsgerichtshof set out the reasons which prompted it to request an interpretation of Community law.

It considers that such an interpretation is necessary to determine:

(a) whether Regulation No 2956/79 is itself valid, since its provisions (particularly Article 3 (1)) would appear to conflict with superior rules of Community law; and

(b) whether the national rules on the allocation of the share of the tariff quota accorded to Germany are compatible with Community law inasmuch as they grant access to the quota to several categories of traders who were not taken into consideration under the rules previously in force.

The orders for reference were registered at the Court on 20 July 1981.

Owing to the connexity between the questions and the identical nature of the facts underlying the disputes the Court decided by order of 16 September 1981 to join the three cases for the purposes of the oral procedure and the judgment.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the Government of the Federal Republic of Germany, represented by its Agent, Martin Seidel; by the undertaking Will represented by Peter Wendt and Hans E. Hein, Rechtsanwälte, Hamburg; by Trawako, represented by Fritz Modest and Partners, Rechtsanwälte, Hamburg; by Gedelfi, represented by Dietrich Ehle and Partners, Cologne; and by the Commission of the European Communities, represented by Jörn Sack, a member of its Legal Department acting as Agent.

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 enquiry. However, at the hearing it asked Gedelfi and the Commission to answer a number of questions and to clarify certain points.

II — Observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

(a) The first question

Will considers that Article 3 (1) of Regulation No 2956/79 is simply the logical consequence of the division of the tariff quota, in Article 2, into national quota shares according to each Member State's requirements. As such, those rules are entirely compatible with Article 40 (3) of the EEC Treaty.

That view is shared by *Gedelfi,* which considers that traders on the Community market are still treated equally if Member States are allocated different quota shares which are then allocated in accordance with rules of national law, provided however that the action of Member States is entirely restricted to administering the allocation of the national quota share (cf. judgment of the Court of 12 December 1973 in Case 131/73 *Grosoli* [1973] ECR 1555). National rules on the allocation of quotas must not affect the mechanisms of Community law and market policy governing the market organization in question. Otherwise the common elements of the organization of the market would be in jeopardy and in determining the criteria for allocating the tariff quota, which receives favourable treatment as regards customs duties, Member States would be able to pursue a national agricultural policy benefiting certain undertakings on the national market, which as such no longer exists.

Trawako contends that the Community nature of GATT quotas requires "equal and continuous access" to those quotas to "be ensured for all persons concerned" in the Community (second recital in the preamble to Regulation No 2956/79).

Therefore in principle the allocation of those quotas into shares reserved to the various Member States is incompatible with their Community nature. Moreover, the fourth recital in the preamble to Regulation No 2956/79 shows that the Council permitted such division and left the choice of a system for administering the quota shares to the Member States simply because of the relatively low volume of the quotas.

After observing that the first question really concerns the validity of Article 3 of Regulation No 2956/79 the *Government of the Federal Republic of Germany* states that that provision is not discriminatory and does not therefore infringe any superior rule of Community law.

Under the general principle of equality contained in the EEC Treaty similar situations should not be treated differently "unless the differentiation is objectively justified". However, it is objectively necessary to allocate the share which each Member State receives of a Community tariff quota according to the place of establishment of the persons concerned in order to avoid deflections of trade which could lead to Member States' quotas being used in a manner inconsistent with the allocation effected by the Council.

The *Commission* stresses first of all that in its previous judgments on national measures to implement the Community tariff quota the Court has never taken objection to the allocation of that quota

between Member States on the basis of objective criteria or to the delegation to Member States of powers to administer the quota within the limits of the share allocated to them.

From that it must therefore be concluded that this method of administering the tariff quota is basically compatible with its Community nature. It is not perhaps the best possible solution but it does offer many advantages: it ensures a wide regional distribution of the commodity; it enables the particular needs of traders established in the territory of the Member States to be better assessed; it involves a simpler administrative procedure for the allocation of the quota.

Thus the allocation of a Community quota between the Member States is justified on objective grounds which rule out any breach of the principle of equal treatment. Although the administration by the Member States of their shares in the Community quota might lead to some differences in the treatment of traders in the various Member States, that is kept in sufficient check by the operation of the prohibition of arbitrary action and the guarantee which all traders have under Community law of equal access to the quota.

The Commission therefore suggests that the answer to the question should be that, in delegating to Member States the power to administer on their own responsibility the tariff quota shares allocated to them, Regulation No 2956/79 does not offend against the principle of equal treatment.

(b) The second question

Will, Gedelfi and *Trawako* take the view that this question should be answered in the negative. They contend that the new German regulation clearly offends against Community law.

They point out that, according to Article 7 of Regulation No 805/68, when the commodities bought in by the intervention agencies are disposed of (a) any disturbance of the market must be avoided, (b) all interested persons must be allowed access to the goods, and (c) all purchasers must be treated equally. The allocation of 10 % of the quota to persons established in Germany who have purchased meat from the intervention agency offends against each of those principles.

They contend that a disturbance of the market will occur where an undertaking established in Germany which has bought meat from intervention stocks derives financial advantages from having a share in the tariff quota when all other undertakings established in other Member States are excluded from those advantages.

Not all traders have the same access to the commodity. Because a large quantity of the beef and veal sold by the intervention agency is subject to a condition that it must be used for processing, only the trading branch of the processing industry is entitled to buy it. Normally operators in that branch are "traditional importers" of beef and veal However, in Germany they receive an additional advantage because some sales of meat held in intervention are channelled towards their sector with the result that the processing industry's quota share is increased more than the share of undertakings which only import meat.

Finally, the acquisition of a share in a GATT quota is an advantage which is

repugnant to the principle that all purchasers of commodities held in intervention should enjoy equal treatment. Because they receive a benefit in the form of a right to import meat under the GATT quota owing to their purchases of meat from their intervention agency, the undertakings established in Germany are thus also able, when answering a new invitation to tender for meat held in intervention, to tender a better price than competitors from other Member States who do not receive the same benefit.

Trawako adds that GATT quotas are opened in order to maintain and develop trade relations with traditional meat-exporting countries and thus — partly for political reasons — to prevent trade patterns which have existed for a long time from being jeopardized, altered or broken off. However, purchases of commodities held in intervention have nothing to do with trade relations with the beef-exporting countries, nor are they likely to maintain or promote those relations.

The *Government of the Federal Republic of Germany* recalls first of all that the Court has already held that national rules allocating a specific share of the national quota on the basis of previous purchases from the intervention agency are compatible with Community law (*Grosoli* v *Ministry of Trade* [1980] ECR 177). It then makes some observations on the relationship between the common organization of the market in beef and veal, on the one hand, and the GATT tariff quota on the other. It considers that, contrary to the opinion of the national court, which would appear to want the GATT provisions and those of the market organization to correspond, the GATT tariff quota represents a deliberate departure, for reasons of trade policy, from the principles of the common organization of the market. That departure necessarily involves some interference in the mechanisms of the market organization, no matter what allocation system is adopted.

In adopting the provisions on the GATT quota the Council adopted rules distinct from those governing the organization of the market and the limits to their validity are only to be found in the EEC Treaty itself.

The *Commission* believes that the question submitted to the Court contains two aspects which should be kept separate:

(a) may Member States use purchases from intervention agencies as a criterion for the allocation of their share of the GATT quota;

(b) are they permitted to take account solely of purchases from their own intervention agency?

On the first point the Commission observes that the Court has attributed a wider meaning to the term "person concerned" used since Regulation (EEC) No 2861/77 than the term "importer" used in the previous regulations and that it is therefore compatible with Community law to take into account other groups of traders besides importers of meat from non-member countries. In this respect purchases of beef and veal from intervention agencies may be considered an entirely suitable criterion for selection.

The Commission recognizes that the fact that purchasers of meat held in intervention who are established in Germany have a share in the GATT quota might cause purchasers in the Community to be treated unequally but stresses that this is the result of the power given to Member States to

administer their quota shares and is an inevitable consequence of the system. The limits which the decisions of the Court place on Member States cannot be regarded as having been exceeded in this regard.

The question becomes more complicated when it is borne in mind that some sales of meat held in intervention are done by tender, in which case German buyers can tender a higher price than their competitors because by being able to have a share in the GATT quota they obtain an advantage which is not given to buyers from other Member States. However, the advantage actually received must be very slight because the number of participants is very large and the total quantity of meat distributed in that way is very small.

Moreover, if a Member State's entire quota share is allocated between a small number of undertakings importing frozen beef and veal from non-member countries the market position of those undertakings is considerably strengthened by the financial advantage which each thereby receives, so that when beef and veal are sold by tender they can offer higher prices than other traders. If, however, the financial advantage arising from having a share in the quota is spread more widely the effect which it has on undertakings' competitiveness is reduced. Therefore an allocation system which takes into consideration the largest possible number of traders provides greater equality of access to sales conducted by invitation to tender and greater equality of treatment than a system which concentrates the advantages in a few hands.

On the second point, however, the Commission considers that the German rules do offend against Community law. There is no reasonable justification for restricting participation in the GATT quota on the basis of purchases of meat from the German intervention agency. Under Community law all Community traders should in principle have access to purchases and sales of beef and veal by the intervention agencies. The foundation of that principle is that the intervention measures apply to beef and veal originating from throughout the Community and are financed by the Community. From the economic point of view intervention stocks do not belong to the various Member States but to the Community.

Therefore it is arbitrary for an economic advantage based on a Community quota to be attached to purchases made from a particular intervention agency. Purchases from any intervention agency must therefore be treated equally, for there is no reason to give preferential treatment to stocks held by the German intervention agency. Moreover, the taking into consideration of purchases from other intervention agencies does not entail administrative difficulties.

The Commission therefore suggests that the answer to the question should be that it is not contrary to Article 7 (1) of Regulation No 805/68 for a Member State to take account to a limited extent of purchases of beef and veal held by intervention agencies as a criterion for allocating the Community tariff quota for frozen beef and veal. However, it is not proper to take account solely of purchases from one particular intervention agency.

(c) The third question

Will, Gedelfi and Trawako submit that this question should also be answered in the negative.

Referring to their arguments put forward with regard to the second question, the three undertakings contend that intra-Community trade and exports to non-member countries have nothing to do with trade relations with the countries exporting frozen beef and veal, relations which the opening of the GATT quota was intended to promote. Although Member States may themselves choose the system for administering their quota shares, in making their choice they should not pursue economic policies of their own not laid down in Community law. According to Will, in adopting the new regulation governing the allocation of the quota, the German Government pursued aims entirely alien to the Community rules and even sought to remove "old-established firms" from the import market and replace traditional traders with agricultural cooperatives. Nor should Member States adopt allocation criteria which cause distortions of competition, affect trade patterns or discriminate between traders in ways which prejudice the common organization of the market. In this regard Gedelfi states that it knows of cases in which firms have repeatedly exported the same meat to other Member States and re-imported it in order to obtain a larger quota share on the basis of such involvement in intra-Community trade.

The three undertakings argue in particular that the German rules offend against the principles of the common organization of the markets and against the prohibition of State aid laid down in Article 92 et seq. of the EEC Treaty.

One of the fundamental principles of any market organization is that the same operation should not attract advantages twice under the provisions of the market organization. However, exports of beef and veal to non-member countries already attract refunds and monetary compensatory amounts under Regulation No 974/71. Intra-Community trade is already assisted by the prohibition on customs duties and charges having equivalent effect. It should not therefore enjoy further advantages in the context of the allocation of the GATT quota. The grant to undertakings which have carried out such operations of import rights bearing advantages as regards the payment of levies could also come within the concept of State aid, since that concept includes not only the payment of subsidies but also "any measure which reduces the charges which an undertaking normally has to bear".

According to Will and Trawako, the new criteria for allocation appear moreover to be overtly discriminatory because they do not take account of operations such as the supplying of ships and aircraft or deliveries to international organizations and armed forces which, although made within the territory of a Member State, under Community rules are deemed to be exports to non-member countries.

Will contends that the taking into account of exports for the purpose of allocating quota shares cannot be justified by the argument that such exports create the necessary openings for imports on the home market. In fact the kinds and quality of meat exported from the Community by no means correspond with those imported from non-member countries.

Moreover, by adopting as a criterion not only frozen beef and veal but also fresh refrigerated meat the German regulation allocating the 1980 quota is contrary to the fourth recital in the preamble to Regulation No 2957/79, according to which it is left to each Member State to choose a management system for its share of the quota "so that it may ensure an allocation which is appropriate from an economic viewpoint".

The *Government of the Federal Republic of Germany* observes that, according to the decisions of the Court, Member States may, when allocating their quota share among the persons concerned, also take account of imports in respect of which advantages in the form of reduced levies have been granted *(van Walsum* v *Produktschap voor Vee en Vlees* [1980] ECR 813) and may treat persons trading in a limited geographical area of the common market or not even considered trading undertakings as persons concerned *(Grosoli* v *Ministry of Foreign* Trade [1980] ECR 177). In view of those decisions there is therefore nothing to prevent intra-Community trade from being used as a criterion for allocation of a Community quota share.

In any event, it must be assumed that the basis for the German regulation allocating the quota share is a Community authorization given in the context of GATT. It must therefore be judged in that light and with regard to the provisions of the EEC Treaty. The rules of the market organization are not relevent for this purpose. Nor is there any question of aid granted through State resources since the advantages in question are advantages provided under Community law itself and paid for by the Community.

The *Commission* confines itself to the question of aid granted through State resources, leaving the other issues to be dealt with in its answer to the fourth question.

It observes that it appears from the wording of Article 92 (1) of the EEC Treaty that the section of the Treaty in which that article appears only applies to aid "granted by a Member State or through State resources". Since this case concerns the administration of a tariff quota opened by the Community, it follows that the resultant financial advantage enjoyed by traders receiving shares of the quota is not granted through State resources but through Community resources because the levy which is waived is part of Community resources. The concept of "aid granted trough State resources" is admittedly wider than that of "aid granted by a Member State"; nevertheless it presupposes that the resources from which the aid is granted come from the Member State. The incorrect application of Community law, in the form of an incorrect allocation of a Community tariff quota, may only be dealt with on the basis of the infringement of the relevant provisions of that law and may not be treated as aid granted by a Member State or through State resources. If a different view were adopted the Commission would be able to prosecute breaches of Community law committed by Member States which fail to levy duties provided for under Community law or which wrongly grant benefits accorded under Community law not only under Article 169 but also under Article 93 of the EEC Treaty. That certainly cannot be so.

The Commission therefore suggests that the answer to the question should be that

measures adopted by a Member State which do no more than merely allocate a Community tariff quota do not constitute aid granted by a Member State or through State resources within the meaning of Articles 92 to 94 of the EEC Treaty.

(d) The fourth question

Gedelfi and *Trawako* take the view that a person who buys beef or veal in a Member State and then sells it in a non-member country is not a "person concerned" within the meaning of Article 3 (1) of Regulation No 2956/79. They base their view on the same arguments which they put forward with regard to the first three questions. In their view, the fact that exporters of beef and veal are given shares in the quota offends against the principle of equal treatment because it leads to the grant of a kind of "additional" refund, which is not compatible with the principle that refunds should be the same throughout the Community and is likely to disturb the market and distort competition. Gedelfi concedes that the term "persons concerned" contained in Article 3 of Regulation No 2956/79 has a wider meaning than the term "importers" used in previous regulations but disputes that this may serve as justification for the new German regulation.

Will also believes that the last question must be answered in the negative. In its view the word "person" undoubtedly has a very wide meaning but it is considerably restricted by the adjective "concerned". Only persons who "have an interest in the importation of frozen beef and veal from non-member countries" can be concerned by the opening of a Community tariff quota; in other words, the word "concerned" must be understood as meaning "having an interest in importation".

The criteria for allocating each Member State's quota share laid down in the legislation of the various Member States serve to define that interest in the importation of beef and veal. This may be done in three ways:

(a) by considering the quantities of frozen beef and veal previously imported;

(b) by identifying those groups needing imported frozen beef and veal; and

(c) by a combination of the first two methods.

Those three methods, all of which have been held permissible by the Court, necessarily involve the adoption of criteria for allocation which are objectively related to the importation of frozen beef and veal from non-member countries.

However, the criteria used in the German regulation do not take into consideration "persons concerned" within the meaning of Article 3 (1) of Regulation No 2956/79. The German rules therefore tend to prevent persons actually concerned from having free access to a large part of the quota share. The existence of an interest in *importation* cannot be demonstrated on the basis of previous *exports,* participation in *intra-Community trade* or previous purchases *from the intervention agency.* In fact the new German rules artificially create import needs for persons who would not otherwise import meat and, in the final analysis, do not take into account the persons really concerned but give arbitrary preference to other persons.

The *Government of the Federal Republic of Germany* considers that persons who export beef and veal to non-member

countries may also come under the term "persons concerned". It is true that the uniform application of export refunds in the Community might be jeopardized if in addition to the refund paid throughout the Community exporters of beef and veal were given the advantage of being able to import beef and veal on favourable terms as regards the payment of levies; but the reason for that is that the market organization and the GATT tariff quota are two distinct legislative areas each having its own separate and specific aims and thus resting on different legal bases.

Exporters are also market participants; their activity is just as much part of the "market" as importing. Like importers of meat from non-member countries, they may be regarded as "persons concerned" within the wider meaning which the Court has attributed to those words in its decisions.

The German Government concludes that all undertakings trading in meat, and thus having a legitimate interest in its importation, may be regarded as "persons concerned", irrespective of whether they trade within the Community, import or export meat from or to non-member countries or transact their business with intervention agencies.

The *Commission* considers that the inclusion of exporters of meat among the persons benefiting from the allocation of the German share of the GATT quota is not contrary to Community law; that is true both of undertakings which export to non-member countries and of those which export to other Member States of the Community.

The aim of the new German rules is to increase the number of persons having a share in the quota and to prevent the financial advantage from being concentrated in the hands of a few firms which import beef and veal from non-member countries. That aim does not conflict with Regulation No 2956/79 or with other provisions of Community law. A wider distribution of the advantages gained from having a share in the quota tends to foster equal conditions of competition rather than to distort competition within or outside the common market.

Consequently the Commission proposes that the fourth question should be answered as follows:

"It is not contrary to Council Regulation (EEC) No 2956/79 for a Member State to take account to a limited extent of imports or exports of beef and veal from or to other Member States and exports of beef and veal to non-member countries when allocating its share of the Community tariff quota for frozen beef and veal."

III — Oral procedure

At the hearing on 21 May 1982 the following persons presented oral argument and replied to questions asked by the Court: Hans E. Hein, Rechtsanwalt, Hamburg, for Will; Klaus Landry, Rechtsanwalt, Hamburg, for Trawako; Dietrich Ehle, Rechtsanwalt, Cologne, for Gedelfi; Günter Drexelius, acting as Agent, for the Bundesanstalt für landwirtschaftliche Marktordnung; and Jörn Sack, acting as Agent, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 9 June 1982.

Decision

1 By three orders dated 25 June 1981, which were received at the Court on 20 July 1981, the Hessischer Verwaltungsgerichtshof [Higher Administrative Court, Hesse] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of Article 3 (1) of Council Regulation (EEC) No 2956/79 of 20 December 1979 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 (Official Journal 1979, L 336, p. 3) and Article 7 (1) of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187). Since the questions submitted in the three orders were worded identically the Court decided by order of 16 September 1981 to join the three cases for the purposes of the procedure and the judgment.

2 The questions were submitted in connection with three actions between the Bundesanstalt für landwirtschaftliche Marktordnung [Federal Office for the Organization of Agricultural Markets] and three German undertakings which import frozen beef and veal from non-member countries.

3 Regulation No 2956/79 opened for 1980 a Community tariff quota for 50 000 tonnes of frozen boned or boneless beef and veal. Article 2 of the regulation allocates that quantity between the Member States and allots the Federal Republic of Germany a quota share of 9 660 tonnes.

4 Whereas under the legislation in force until 1979 in the Federal Republic of Germany national shares in quotas opened by Community regulations were almost entirely reserved for undertakings which habitually imported beef and veal from non-member countries, a new system of allocation, introduced by an order of the Ministry of Finance of 19 December 1979, provided that in 1980:

(a) 75% of the German quota share would be allocated between traders on the basis of their imports and 85% of that amount would be reserved for importers of meat from non-member countries and 15% for importers of meat from the Community;

(b) a further quantity of 15% of the German quota would be allocated on the basis of exports to countries both within and outside the common market;

(c) the final 10% of the German quota would be allocated according to the amounts of beef and veal purchased from the German intervention agency; and

(d) the reference years in every case would be 1977, 1978 and 1979.

5 After the introduction of the new system the quota shares of the undertakings Will, Trawako and Gedelfi, which as habitual importers of frozen beef and veal from non-member countries had been allotted part of the German quota share in previous years, were reduced because the number of participants had increased. All three undertakings considered that the new system did not comply with Community law and brought actions before the Verwaltungsgerichtshof [Administrative Court] Frankfurt am Main to obtain quota certificates for a quantity greater than that which they had been allotted. The Hessischer Verwaltungsgerichtshof, to which they appealed after their actions had been dismissed at first instance, submitted the following questions to the Court of Justice for a preliminary ruling:

"1. Is Article 3 (1) of Council Regulation (EEC) No 2956/79 of 20 December 1979 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 (1980) (Official Journal 1979, L 336, p. 3) to be interpreted as meaning that the equal treatment of the 'persons concerned' established in the various Member States of the European Communities is suspended as far as the allocation of the respective shares of the 1980 Community tariff quota for frozen beef and veal by the individual Member States is concerned?

2. Must Article 7 (1) of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal [Official Journal, English Special Edition 1968 (I), p. 187] be interpreted as meaning that the general equal treatment of all persons buying goods from the national intervention agencies is to be ensured until the completion of the individual transaction? Or does that provision permit purchasers of intervention products in a particular Member State later to be granted, in the form of a share in the Community tariff quota, advantages which such purchasers in another Member State do not receive?

3. Is the allocation of a share in the 1980 Community tariff quota for frozen beef and veal to German importers who imported beef and veal from Member States of the European Communities and to German exporters, in particular those who exported beef and veal to Member States of the European Communities, compatible with Regulation No 2956/79 or does it, in particular, constitute aid granted through State resources?

4. Does the term 'persons concerned' within the meaning of Article 3 (3) of Regulation No 2956/79 include a person who buys up beef and veal in a Member State and then disposes of it abroad?"

The first question

6 The first question asks whether, by requiring Member States to guarantee only persons concerned "established within their territories" free access to the quota shares allocated to them, Article 3 (1) of Regulation No 2956/79 ends equal treatment of persons established in the various Member States of the Community inasmuch as it distinguishes between persons established in one Member State, who have access to the quota share allocated to that Member State, and persons established in the other Member States, who do not.

7 Article 3 (1) of Regulation No 2956/79 provides that: "The Member States shall take all appropriate steps to guarantee all persons concerned, established within their territories, free access to the quota shares [in the Community tariff quota for beef and veal] allocated to them." It is explained in the fourth recital in the preamble to that regulation 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 "to leave to each Member State the choice of the management system for its share of the quota, so that it may ensure an allocation which is appropriate from an economic viewpoint".

8 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, which since 1980 has been fixed at 50 000 tonnes. The quotas in question are opened each year by Council regulations which determine their apportionment between the Member States and, using broadly similar terms, leave the management of the quota shares to the authorities of the Member States.

9 In its judgments of 12 December 1973 (Case 131/73 *Grosoli* [1973] ECR 1555) and 23 January 1980 (Case 35/79 *Grosoli* v *Ministry of Foreign Trade* [1980] ECR 177) the Court has already had occasion to state that the management of the shares was left to the Member States, who might apportion them according to their own administrative provisions, but that reference by the regulations to such provisions could not be interpreted as going beyond the scope of technical and procedural rules designed to ensure compliance with the general terms of the quota and with the principle of equal treatment for those entitled to take advantage of it.

10 That interpretation, which sets out the limits of the power delegated to Member States to adopt administrative measures, is also valid for Regulation No 2956/79, which opened the tariff quota for 1980 and contained the usual provisions on the administration of the quota shares by the Member States.

11 It is on that basis, therefore, that the question submitted by the Hessischer Verwaltungsgerichtshof should be answered. Although the limits of a Member State's administrative powers are exceeded if it subjects the use of the tariff quota to conditions designed to pursue objectives of economic policy which are not laid down in the provisions adopted by the Community, neither the letter nor the spirit of Regulation No 2956/79 nor the Community nature of the tariff quota in question prevents a Member State from regulating, within the limits of its administrative powers, access by the persons concerned to the quota share which it has been allocated. The administration of that share may, under the specific conditions prevailing on 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.

12 As the Court stated in *Grosoli* v *Ministry of Foreign Trade,* such a system does not exceed the limits of the administrative powers 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 so long as the different categories of traders and 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.

13 Those criteria, which are intended to ensure an allocation which is "appropriate from an economic viewpoint", may vary from one Member State to another, depending on the economic situation in each State. It follows that the prohibition of all discrimination between traders in the Community, since it can only apply to comparable situations, relates in this case solely to the persons concerned who are "established" within the territory of the Member State which has chosen this system of administration.

14 The reply to the first question must therefore be that Article 3 (1) of Regulation No 2956/79 must be interpreted as meaning that a system of administering a national share of the Community tariff quota for frozen beef and veal which is based on a number of criteria in order to define the different categories of persons concerned does not end equal treatment of those persons if the system is applied by the States concerned "to all persons established within their territories".

Second question

15 Article 7 (1) of Regulation No 805/68 of the Council of 27 June 1968, to which the second question submitted by the national court refers, provides that: "Disposal of the products bought in by the intervention agencies ... shall take place in such a way as to avoid any disturbance of the market and to ensure equal access to goods and equal treatment of purchasers." The plaintiffs in the main action maintain that the new system adopted by the Federal Republic of Germany to allocate the share of the Community quota

which it has been allotted is in breach of that provision inasmuch as it allows buyers of meat held in stock by intervention agencies, more precisely buyers from the German intervention agency, to have a 10 % share in the quota.

16 The first argument of the plaintiffs in the main action is that that system causes a disturbance of the market because undertakings established in the Federal Republic of Germany which have bought meat held in intervention derive a pecuniary advantage from participating in the tariff quota, whereas any other undertaking established within the territory of another Member State is excluded from such advantages.

17 That argument cannot be accepted. The German rules governing the allocation of the national share of the quota do not cause any disturbance of the market; on the contrary, by widening access to the quota they prevent the creation of privileged positions which might indeed have the effect of disturbing the market. Nor is equality of access to goods held in intervention affected as such. The fact that a buyer based in the Federal Republic of Germany might derive an additional advantage over his competitors based in other Member States by having a share in the quota is an inevitable consequence of the structure of the system and is, moreover, counterbalanced by other advantages which may accrue to traders based in other Member States under the systems of allocation which those States adopt.

18 The plaintiffs in the main action further contend that the German system is in breach of the principle of equal treatment of traders in the Community inasmuch as shares in the tariff quota are allocated only on the basis of purchases from the German intervention agency.

19 In this regard it should be observed that under Community law purchases from, and sales to, the intervention agencies for beef and veal should be open to all traders in the Community. It would therefore appear impermissible to make a financial advantage based on a Community quota dependent on purchases from a specific intervention agency, such as the German intervention agency in this case.

20 The reply to the second question should therefore be that it is not contrary to Article 7 (1) of Regulation No 805/68 for a Member State to take account, to a limited extent, of purchases of beef and veal held by intervention agencies as a criterion for allocating its share of the Community tariff quota. However, it is not proper to take account solely of purchases from a particular intervention agency.

The third question

21 By the third question the national court asks in substance whether, by allowing German importers who have imported beef and veal from Member States and German exporters who have exported beef and veal to Member States to have a share in the quota, the German system is in breach of the principles of the common organization of the markets and the prohibition of State aid laid down in Article 92 et seq. of the EEC Treaty.

22 The question whether the system in question is compatible with the common organization of the market in beef and veal is best examined in connection with the fourth question submitted by the national court. As regards the alleged breach of the prohibition of State aids, it must be noted that Articles 92 to 94 of the EEC Treaty cover "aid granted by a Member State or through State resources in any form whatsoever". The financial advantage which traders derive from receiving a share in the quota is not granted through State resources but through Community resources because the levy which is waived is part of Community resources. Although the term "aid granted through State resources" is wider than the term "State aid", the first term still presupposes that the resources from which the aid is granted come from the Member State.

23 Therefore any incorrect application of Community law, even if taking the form of an incorrect allocation of a tariff quota, may only be dealt with as a breach of the relevant provisions of Community law; it may not be regarded as State aid or aid granted through State resources.

24 The reply to the third question should accordingly be that measures adopted by a Member State which do no more than merely allocate a Community

tariff quota do not constitute aid granted by a Member State or through State resources within the meaning of Articles 92 to 94 of the EEC Treaty.

The fourth question

25 By the fourth question the national court wishes to know, in substance, how the term "persons concerned" in Article 3 (1) of Regulation No 2956/79 must be understood and whether it includes persons who participate in intra-Community trade or export to countries outside the Common Market.

26 The Court has already held, in *Grosoli* v *Ministry of Foreign Trade,* that the term "persons concerned", used in all the Community regulations in this field since the time of Regulation No 2861/77, has a wider scope than the term "importers concerned", which was used in the previous regulations, and that whilst 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 importation of meat on favourable terms.

27 In fact, any person who buys beef and veal wholesale, either in order to sell it as a trader or to use it in a processing business or for direct consumption, has an interest in acquiring a share in the quota. The interest which the provision in question has in view is therefore an interest existing at the present time.

28 Although previous transactions are a good indication of a person's interest and should be taken into account both in order to maintain the previous patterns of trade and to prevent the acquisition of shares in the quota from deteriorating into mere financial speculation, they are not the only evidence of such an interest and by themselves are insufficient.

29 In that respect the allocation of part of the German share of the GATT quota to meat exporters, whether they export to non-member countries or to other Member States of the Community, is not incompatible with

Community law. The same considerations also hold true of traders who have imported beef and veal from Member States.

30 The aim of the new German system is to increase the number of persons having a share in the quota and to prevent the financial advantage from being concentrated in the hands of firms which import beef and veal from non-member countries. That aim does not conflict with Regulation No 2956/79 or with other provisions of Community law. In fact, a wider distribution of the advantages gained from having a share in the quota will tend to foster equal conditions of competition rather than distort competition within or outside the common market.

31 The reply to the fourth question should accordingly be that it is not contrary to Council Regulation No 2956/79 for a Member State to take account of imports and exports of beef and veal in other Member States and exports of beef and veal to non-member countries when allocating its share of the Community tariff quota for frozen beef and veal.

Costs

32 The costs incurred by the Government of the Federal Republic of Germany and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As the proceedings are, as far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions submitted to it by the Hessischer Verwaltungsgerichtshof by orders of 25 June 1981, hereby rules:

1. Article 3 (1) of Council Regulation No 2956/79 of 20 December 1979 must be interpreted as meaning that a system of administering a

national share of the Community tariff quota for frozen beef and veal which is based on a number of criteria in order to define the different categories of persons concerned does not end equal treatment of those persons if the system is applied by the States concerned "to all persons established within their territories".

2. It is not contrary to Article 7 (1) of Regulation No 805/68 of the Council of 27 June 1968 for a Member State to take account, to a limited extent, of purchases of beef and veal held by intervention agencies as a criterion for allocating its share of the Community tariff quota. However, it is not proper to take account solely of purchases from a particular intervention agency.

3. Measures adopted by a Member State which do no more than merely allocate a Community tariff quota do not constitute aid granted by a Member State or through State resources within the meaning of Articles 92 to 94 of the EEC Treaty.

4. It is not contrary to Council Regulation No 2956/79 for a Member State to take account of imports and exports of beef and veal in other Member States and exports of beef and veal to non-member countries when allocating its share of the Community tariff quota for frozen beef and veal.

Mertens de Wilmars Everling Chloros

Pescatore Mackenzie Stuart Bosco Koopmans

Delivered in open court in Luxembourg on 13 October 1982.

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
President