

Case C-106/97

Dutch Antillian Dairy Industry Inc.

and

Verenigde Douane-Agenten BV

v

Rijksdienst voor de Keuring van Vee en Vlees

(Reference for a preliminary ruling
from the College van Beroep voor het Bedrijfsleven)

(Association of overseas countries and territories — Imports of butter originating in the Netherlands Antilles — Health rules on milk-based products — Article 131 of the EC Treaty (now, after amendment, Article 182 EC), Article 132 of the EC Treaty (now, after amendment, Article 183 EC), and Articles 136 and 227 of the EC Treaty (now, after amendment, Articles 187 EC and 299 EC) — Directive 92/46/EEC — Decision 94/70/EC)

Opinion of Advocate General La Pergola delivered on 15 September 1998 I-5986

Judgment of the Court, 21 September 1999 I-5997

Summary of the Judgment

1. *Agriculture — Approximation of laws — Health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products — Directive 92/46 — Provisions concerning imports from non-member countries — Application to*

products from the overseas countries and territories — Import restrictions — Justification — Protection of public health — Principle of proportionality — Whether breached — No such breach

(Council Directive 92/46, Art. 23)

- 2. Agriculture — Approximation of laws — Health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products — Directive 92/46 — Provisions concerning imports from non-member countries — Application to products from the overseas countries and territories — Provisional list of countries exporting milk and milk-based products drawn up by the Commission on the basis of a list established for other products — Decision 94/70 — Not valid*
(Council Directive 92/46, Art. 23; Commission Decision 94/70)

1. The provisions of Chapter III of Directive 92/46 laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products, which lays down health rules for imports of milk-based products from third countries, must be interpreted as applying to the placing on the Community market of such products from overseas countries and territories (OCTs) such as the Netherlands Antilles.

products satisfy the requirements of Chapter II of the Directive — are appropriate for the purpose of attaining the objective of Chapter III, which is to require of products imported into the Community guarantees as to the protection of public health equivalent to those afforded by products of Community origin. Moreover, the requirement that those products afford such guarantees does not go beyond the limits imposed by observance of the principle of proportionality. It cannot be accepted, in the absence of any controls, that the regulatory and health situation in a third country, including that in an OCT which exports to the Community, is such that the competent authority is able to supply guarantees for the purposes of the protection of public health equivalent to those provided by the competent authority of a Member State.

The means employed by Chapter III, and in particular Article 23 thereof — registration on a list of countries which export to the Community and compliance with the requirement to produce a health certificate signed by the competent authority in the country of export attesting that the milk or milk-based

2. Article 23 of Directive 92/46 laying down the health rules for the produc-

tion and placing on the market of raw milk, heat-treated milk and milk-based products must be construed as applying to imports from overseas countries and territories even where the regime laid down in that Directive for trade between the Member States has not in fact yet been introduced and where the lists of exporting countries and approved establishments have not been drawn up in accordance with the method indicated in that provision.

However, since such lists have not been validly drawn up in accordance with the method indicated in the second subparagraph of Article 23(3)(a) of the Directive — that is to say, on the basis of the lists of establishments producing milk or milk-based products which have been approved and inspected by the competent authorities — but on the basis of a list drawn up for other products, Decision 94/70, by which the Commission established the provisional list of third countries from which Member States authorise imports of raw milk, heat treated milk and milk-based products, is invalid.