In Joined Cases 141 to 143/81

REFERENCES to the Court under Article 177 of the EEC Treaty by the Kantongerecht [Cantonal Court], Apeldoorn, for a preliminary ruling in the separate actions instituted against —

1. GERRIT HOLDIJK,

2. LUBBARTUS MULDER,

3. VEEVOEDERBEDRIJF "ALPURO" BV,

on the interpretation of the relevant provisions of Community law in order to enable that court to decide whether the Netherlands legislation regarding enclosures for fatting calves is compatible with those provisions,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, A. Chloros and F. Grévisse, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. The defendants in the main proceedings are fatteners of calves (Cases 141 and 142/81) and an undertaking engaged in the production of

feeding-stuffs for animals (Case 143/81) which places those feeding-stuffs, and also young calves, at the disposal of the fatteners who, for their part, provide the necessary accommodation and labour in consideration for agreed remuneration; the calves remain the property of the undertaking.

2. The defendants in the main proceedings are accused of having kept fatting calves in enclosures which did not meet the requirements of Article 2 (b) of the Royal Decree of 8 September 1961 (Staatsblad [Official Gazette] 296) implementing Article 1 of the Law on the Protection of Animals (hereinafter referred to as the "Mestkalverenbesluit" [Decree on fatting calves]). In fact, the dimensions of the enclosures were such that the animals were not able to lie down on their sides unhindered.

Article 2 of the above-mentioned Royal Decree is worded as follows:

"The conditions to which enclosures intended for keeping fatting calves must conform are as follows:

(a) between sunrise and sunset there must be at least enough light to enable the animals and their immediate surroundings to be clearly distinguished;

(b) the dimensions of the enclosure must be such as to allow the animals easily to lie down on each side and to be able to stand easily and, in the standing position, to move their heads freely."

3. Considering that the matter before it raised questions of Community law, the Kantongerecht decided, pursuant to Article 177 of the EEC Treaty, to stay the proceedings and to ask the Court:

"whether or not the Royal Decree of 8 September 1961 (Staatsblad, p. 2961) laying down rules for the implementation of Article 1 of the Law on the Protection of Animals is contrary to or incompatible with the EEC Treaty as regards the keeping of fatting calves and if so whether that is also the case if a specific set of rules, which still do not exist, are adopted in an amended decree in this regard concerning the enclosure in which a calf is kept."

4. In the last part of its question, the court making the reference appears to be referring to the draft decree entitled "Mestkalverenbesluit 1981", which is intended to replace the Royal Decree of 8 September 1961. That draft has not yet entered into force.

The draft contains *inter alia* the following provisions:

"Article 4:

Fatting calves must be able to lie down on each side in a natural manner; they must be able to stand and, when in a standing position, must be able to move their heads freely.

Article 5:

(1) The internal width and length of the enclosures in which fatting calves weighing not more than 100 kg are kept must be at least 60 cm and 160 cm respectively.

(2) The internal width and length of the enclosures in which fatting calves weighing more than 100 kg are kept must be at least 70 cm and 170 cm respectively.

...

Article 7:

In derogation from the provisions of Article 5, it is permitted to keep in

enclosures existing at the time of publication of this decree and for a period of five years

(a) fatting calves weighing no more than 100 kg, provided that the internal width and length of the enclosures are at least 55 cm and 155 cm respectively;

(b) fatting calves weighing more than 100 kg, but less than 190 kg, provided that the internal width and length of the enclosures in question are at least 69 cm and 160 cm respectively;

(c) fatting calves weighing 190 kg or more, provided that the internal width and length of the enclosures are at least 65 cm and 165 cm respectively."

5. No secondary Community legislation regarding the protection of fatting calves exists at the present time.

However, the Council has adopted a decision concerning the conclusion of the European Convention for the Protection of Animals kept for Farming Purposes (Decision No 78/923/EEC of 19 June 1978, Official Journal 1978, L 323, p. 12). The first article of that decision provides that the Convention in question is approved on behalf of the European Economic Community and Article 2 provides that the President of the Council is to deposit the instrument of approval; however, that instrument has not yet been deposited.

The above-mentioned Convention, prepared under the auspices of the Council of Europe, includes *inter alia* the following provisions:

"Article 3:

Animals shall be housed and provided with food, water and care in a manner which — having regard to their species and to their degree of development, adaptation and domestication — is appropriate to their physiological and ethological needs in accordance with established experience and scientific knowledge.

Article 4:

(1) The freedom of movement appropriate to an animal, having regard to its species and in accordance with established experience and scientific knowledge, shall not be restricted in such a manner as to cause it unnecessary suffering or injury.

(2) Where an animal is continuously or regularly tethered or confined, it shall be given the space appropriate to its physiological and ethological needs in accordance with established experience and scientific knowledge."

6. The judgments making the reference were received at the Court Registry on 5 June 1981.

By order of 15 July 1981 the Court decided to join the three cases for the purposes of the procedure and 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 Netherlands Government, represented by the Secretary General of the Ministry of Foreign Affairs, F. Italianer; by the Danish Government, represented by Laurids Mikaelsen, Legal Adviser to the Ministry of Foreign Affairs; by the defendant in the main proceedings in Case 143/81, represented by J. W. Becks, of the Hilversum Bar; and by the Commission of the European Communities, represented by J. F. Verstrynge, 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 inquiry.

By order of 25 November 1981 issued pursuant to Article 95 (1) of the Rules of Procedure, the Court decided to assign the case to the Second Chamber.

II — Written observations submitted to the Court

A — The defendant in the main proceedings in Case 143/81, *Veevoederbedrijf "Alpuro" BV* (hereinafter referred to as "Alpuro") points out that in the Netherlands 83 % of calves for slaughter are kept in enclosures which are between 55 and 64 cm wide and that the calves are usually sold as soon as they attain a weight of about 200 kg.

It states that 90 % of Netherlands veal production is exported, that practically the whole of such exports are to other Member States and that the Netherlands is far from being the biggest veal exporter in the Community. Consequently, the position of veal in the Netherlands meat sector might possibly be seriously threatened by the existence of conditions of production which distorted competition in the Community. Moreover, the major part of Community production of skimmed-milk powder is used for the fattening of calves. It would be impossible to find other outlets for that product, of which there is a considerable surplus in the Community, otherwise than by means of much larger subsidies than those granted in respect of milk powder used for the feeding of calves. A decrease in the fattening of calves would moreover bring great pressure to bear on the prices of very young calves.

Alpuro adds that these cases are the first in which the Public Prosecutor's Office has applied the Mestkalverenbesluit. In consequence of the application of that decree, fatting calves must be accommodated in enclosures at least one metre wide so that they can lie down unhindered on each side. The use of the existing cattle-sheds in the Netherlands would therefore no longer be permitted for the production of veal, which would result in a transfer of veal production to other countries in the Community.

In that regard, Alpuro drew attention to the fact that fatting calves fall within the scope of Regulation No (EEC) 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, p. 187) and that national measures which might alter the pattern of imports or exports or influence the formation of market prices are incompatible with such an organization (judgment of 29 November 1978 in Case 83/78 *Pigs Marketing Board* [1978] ECR 2347). Within the framework of such organizations, the Member States are not permitted to adopt additional measures which are such as to jeopardize the equality of treatment of traders throughout the Community and thus to distort the conditions of competition between the Member States — judgment of 7 February 1979 (Joined Cases 15 and 16/76 *France* v *Commission* [1979] ECR 321, paragraph 31 of the decision).

It refers also to Article 40 (3) of the Treaty which provides that the market organizations are to exclude any discrimination between producers or consumers within the Community.

The Court has held on several occasions that national restrictions on production affect — or at any rate are capable of affecting — trade within the Community and must therefore be regarded as measures having an effect equivalent to quantitative restrictions within the meaning of Article 30 of the Treaty

(judgment of 30 October 1974 in Case 190/73 *Van Haaster* [1974] ECR 1123; judgment of 18 May 1977 in Case 111/76 *Van den Hazel* [1977] ECR 901).

The application of the disputed Netherlands provisions would affect such trade since it would entail a fall in production by reason of the fact that the number of calves permitted to be kept in each production unit would be lower, the cost price of fatting calves would increase and the fatting-calf trade would move to countries which apply less strict rules.

Similarly, according to Alpuro, the measures at issue cannot be justified by virtue of Article 36 of the Treaty, which refers only to the health of animals and not to their well-being.

Alpuro adds that in its judgment of 2 July 1974 in Case 173/73 *Italy* v *Commission* [1974] ECR 709, paragraph 19 of the decision, the Court admitted that changes in production costs brought about by unilateral national measures necessarily affect trade between the Member States. The Court further recognized, in its judgment of 6 June 1978 in Case 147/77 *Commission* v *Italy* [1978] ECR 1307, paragraph 2 of the decision, that disparities in national provisions governing the protection of animals are of such a nature as to affect directly the functioning of the common market since the costs arising from such requirements are variable from one Member State to another.

The Community institutions are also aware of the need to adopt, with regard to production conditions in intensive farming, Community measures for the protection of animals, as indicated by the Council Resolution of 22 July 1980 (Official Journal 1980 C 196, p. 1) inviting the Commission to submit proposals regarding the keeping of layer hens in cages, the Commission's replies to written questions Nos 104/80 (Official Journal C 201 of 6 August 1980, p. 1), 1533/80 (Official Journal C 56 of 16 March 1981, p. 14) and 2232/80 (Official Journal C 134 of 4 June 1981, p. 36), in which the Commission announced that a research programme was being initiated regarding other animal species as well, and the Proposal for a Directive which the Commission submitted to the Council on 5 August 1981 laying down minimum standards for the protection of laying hens kept in battery cages (Official Journal C 208 of 18 August 1981, p. 5).

For those reasons Alpuro considers that protection for animals in intensive farming must be provided by Community provisions applicable to all producers in the Community, ensuring that conditions of competition are not distorted.

Accordingly, Alpuro proposes that the question submitted should be answered as follows:

"Article 30 of the Treaty (. . .) and Regulation (. . .) No 805/68 exclude all unilateral national provisions laying down rules regarding the minimum dimensions for enclosures intended for the keeping of fatting calves, in so far as such rules differ from those which are permissible and usual in the other Member States."

B — The *Government of the Netherlands* points out that the Mestkalverenbesluit is intended to establish certain basic rules intended to ensure the well-being of fatting calves. In that respect, that decree conforms to the European Convention

for the Protection of Animals kept for Farming Purposes.

It considers that Articles 38 to 47 of the Treaty do not preclude a measure such as the one at issue.

It points out that in its judgment of 8 November 1979 in Case 15/79 *Groenveld* [1979] ECR 3409, the Court interpreted the prohibition contained in Article 34 of the Treaty as a principle of non-discrimination, in so far as that Article "concerns national measures which have as their specific object or effect the restriction of patterns of export and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for the domestic market of the State in question at the expense of the production or of the trade of other Member States".

It notes that the Court attributed a much wider scope to the prohibition contained in Article 34, interpreted within the context of a market organization, namely that it is a prohibition which excludes any national system of regulations which might impede directly or indirectly, actually or potentially, trade within the Community (judgment in Case 190/73 *Van Haaster* cited above and judgment of 26 February 1980 in Case 94/79 *Vriend* [1980] ECR 327). According to that interpretation, a measure which does not exclusively refer to exports, and even a measure which refers exclusively to the production stage, may fall within the prohibition (judgments in Case 190/73 *Van Haaster* and in Case 111/76 *Van den Hazel*.

That broad interpretation of Article 34 in the context of market organizations must be considered in relation to the objectives and the régimes of such organizations, namely the standardization of conditions of production and marketing within the Community in order to enable traders to compete on the same terms and to ensure the proper functioning of the market (judgment of 23 January 1975 in Case 31/74 *Galli* [1975] ECR 47; judgment of 29 June 1978 in Case 154/77 *Dechmann* [1978] ECR 1573). In the fields covered by the common organizations of the markets, such organizations must in general operate on an exclusive basis. On the other hand, where a national measure falls outside those fields, that argument is not applicable and there is no reason to attribute to Article 34 an interpretation which extends beyond the principle of non-discrimination.

In order to determine whether national rules fall within a field covered by a common organization of the market, the purpose of the measures is decisive (judgment of 10 March 1981 in Joined Cases 36 and 71/80 *Irish Creamery Milk Suppliers Association and Others* v *Government of Ireland and Others* [1981] ECR 735, paragraph 19 of the decision, and judgment in Case 111/76 *Van den Hazel*, cited above).

The object of the disputed measure, namely enhancement of the welfare of fatting calves, falls within an area to which, having regard to the purpose of Regulation No 805/68, that market organization does not extend.

The fact that in general the majority of the existing market organizations still allow the Member States some scope for adopting national measures relating to the welfare of animals may be seen from the Council resolution of 22 July 1980 on the protection of layer hens in cages.

It is precisely because that scope for the adoption of measures still exists that the Council decided to harmonize the national provisions.

The Netherlands Government takes the view that neither the common organization of the market nor Article 34, interpreted in its context, precludes the measure in question. If, however, the Court were to consider that measures such as those in question fall within the scope of Article 34, they would have to be justifiable under Article 36, because the purpose for which they are adopted is the protection of the health of animals.

The Netherlands Government concludes that the Member States in principle still have the power to introduce measures intended to ensure the well-being of animals. They should not however use that power so as to jeopardize the objectives or the functioning of the common organizations of the markets. As regards the régime introduced by Regulation No 805/68 of the Council, there are no grounds for fearing such a result.

C — In its observations, the *Danish Government* confines itself to giving a general description of the manner in which national courts should, in its opinion, formulate references for preliminary rulings and present their decisions making such references.

It emphasizes in that respect that the decision making the reference must set out the question raised before the national court to which that court considers an answer necessary to enable it to give judgment.

It acknowledges that Article 20 of the Protocol on the Statute of the Court of Justice of the EEC contains no specific rules regarding the formulation of references for preliminary rulings. It points out that the Court goes to great lengths to remedy any deficiencies in decisions making references, by reformulating questions whose wording is less than perfect.

The Danish Government states that such tolerance on the part of the Court must not however be allowed to deprive of all substance the right accorded to the Member States and to other interested parties to submit observations. In view of the fact that the procedure under Article 117 is used with increasing frequency at the Community's present stage of development, the Court should be more demanding than previously with regard to national courts' decisions making references to it.

According to the Danish Government, it is incumbent upon the national court to elect to what extent it will formulate its questions in abstract terms and to what extent it will relate them to the facts of the case. On the one hand, the questions should not be formulated in a manner so abstract that they are reduced to a request for interpretation of more or less ill-defined provisions of Community law. On the other hand, it is unnecessary to repeat each detail of fact or of law in the case pending before the national court in connection with which the questions are submitted.

It is natural for the national court, aware of the danger of excessively restricting the scope of the questions, to express itself in relatively broad terms. Where the questions are formulated in such general terms, they should however at least be accompanied by a detailed presentation of the case in the part of the decision making the reference which explains the reasons for the questions.

In that respect, the Danish Government considers that decisions making references must:

(1) Set out the important facts giving rise to the case;

(2) Describe the national law in so far as is necessary;

(3) Reproduce the legal arguments expounded by the parties;

(4) Establish the extent to which the question raised is important for the purpose of deciding the case; and,

(5) Set out the reasons for the national court's doubts regarding the interpretation or validity of rules of Community law, which should be specified in detail.

None of the essential requirements set out above is satisfied in the judgments making references in the present cases, since they merely mention the "EEC Treaty" without further specifying which article of it or which area of Community law the national court has in mind. Similarly, the judgments making the references in question contain no description of the national rules, or of the decree or law which form part of them. They include only an extremely brief reference to the facts of the case and the reasons for the national court's doubts are not clearly set out. The fact that the documents relating to the case are placed before the Court of Justice is of no assistance to the Member States or other interested parties who are entitled to submit observations under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, since their knowledge of the case is based exclusively on the decisions making the references to the Court.

In the present cases, the Danish Government considers that the incomplete judgments making the references have not enabled it to decide whether or not it is appropriate to submit observations on the substance of the matters at issue.

D — *The Commission* draws attention to the fact, as regards the second part of the question referred to the Court for a preliminary ruling, that it is inappropriate for the Court to rule as to the compatibility with the Treaty of national provisions which have not yet entered into force, since the national court itself cannot yet apply them.

It considers that the Community has the necessary authority, under Articles 40 and 43 of the Treaty, to adopt rules regarding the enclosures in which fatting calves must be kept, in so far as to do so is necessary to achieve the objectives of Article 39. So far, the European Community has not however exercised that authority.

The Commission takes the view that so long as no Community rules exist, it is the responsibility of the Member States to adopt the necessary rules. The Netherlands rules cannot therefore be contested on the ground of lack of jurisdiction. Moreover, even if the European Community had acceded to the European Convention on the Protection of Animals kept for Farming Purposes, the Netherlands rules could not be contested, as they are not incompatible with the provisions of that Convention. On the contrary, it might even be considered that the Netherlands rules give effect to the Convention.

As regards the question whether the disputed Netherlands rules are compatible with Article 30 et seq. of the Treaty, the Commission notes in the first place that those rules make no distinction between fatting calves produced in the Netherlands, fatting calves imported into the Netherlands and fatting calves intended for export from

the Netherlands. It might simply be considered that the consequence of the Netherlands rules is, in particular, to limit the production of fatting calves, since observance of those rules entails a limitation of the number of animals which may be kept in a production area of a given size.

On the other hand, it might well be claimed that the rules are capable of bringing about an improvement in the quality of veal production. However, even if it is admitted that the Netherlands rules restrict the production of fatting calves, the Commission finds it difficult to see how such a limitation might affect imports or exports between Member States.

As far as Article 30 is concerned, the Commission refers to the views already expressed in the ninth recital in the preamble to its Directive No 70/50 of 22 December 1969, based on the provisions of Article 33 (7), on the abolition of measures which have an affect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty (Official Journal, English Special Edition 1970 (I), p. 17), namely that the effects of measures which apply equally to domestic and imported products are not as a general rule quivalent to those of quantitative restrictions, particularly where the measures in question do not have an effect on the free movement of goods over and above that which is intrinsic to the rules in question. The disputed Netherlands rules, which apply equally to national and imported products, do not have any such effect.

As far as Article 34 is concerned, the Commission refers to the *Groenveld* judgment (Case 15/79) cited above, and to the judgment of 14 July 1981 in Case 155/80 *Oebel* [1981] ECR 1993), in which the Court stated, in paragraphs 7 and 15 of the respective decisions, that that provision concerns national measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade.

The Commission finds it hard to see how the Netherlands rules in question, which apply objectively to the production of fatting calves, whether intended for the national market or for export, can confer any particular advantage.

For that reason, the Commission considers that neither Article 30 nor Article 34 of the Treaty can be interpreted in the sense that the Netherlands rules are incompatible with those provisions. Even if that view were rejected and it were concluded that the Netherlands rules were incompatible either with Article 30 or with Article 34, it would, in the Commission's view, have to be admitted that, in the light of the provisions of Article 36 of the Treaty, the Netherlands rules are justified in any case on the ground of the protection of the health of animals. It does not see how those rules can constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

The Commission therefore proposes that the Court should reply as follows to the questions submitted by the Netherlands court:

"Under Community law as now in force, a national measure prohibiting the keeping of fatting calves in enclosures which do not conform to certain prescribed dimenstions is not incompatible with the provisions of the Treaty or with secondary legislation based thereon."

III — Oral procedure

At the sitting on 21 January 1982, oral argument was presented by the defendant in the main proceedings in Case 143/81, represented by J. W. Beks of the Hilversum Bar, and by the Commission, represented by J.-F. Verstrynge, a member of its Legal Department, acting as Agent.

The Advocate General delivered his opinion at the sitting on 4 March 1982.

Decision

1 By three judgments delivered on 21 May 1981, which were received at the Court on 5 June 1981, the Kantongerecht [Cantonal Court] Apeldoorn referred to the Court under Article 177 of the EEC Treaty a question for a preliminary ruling on the interpretation of Community law in order to enable it to judge whether the provisions of Netherlands law on enclosures for fatting calves are compatible with that law.

2 The wording of the question was identical in the three judgments which were delivered in criminal proceedings against a farmer, a dealer in fodder and a company producing animal feeding-stuffs, all of whom are accused of having kept fatting calves in enclosures which did not meet the requirements of Article 2 (b) of the Royal Decree of 8 September 1961 (Staatsblad [Official Gazette] 296) implementing Article 1 of the Law on the Protection of Animals, in so far as the dimensions of the enclosures were such that the animals were not able to lie down unhindered on their sides.

3 The Kantongerecht considered that to deal with those cases it was essential to determine whether, with regard to the keeping of fatting calves, that decree was contrary to or incompatible with the EEC Treaty and if so whether that would also be the case if a set of specific rules, which still did not exist, were adopted in an amended decree in that regard. For that reason, the court instructed the Officier van Justitie [Public Prosecutor] to send the file on the case to the Court of Justice and to ask the Court to give a ruling on that question.

The formulation of the reference for a preliminary ruling

4 In the written observations which it submitted to the Court, the Danish Government pointed out that the judgments making the references did not indicate the provisions of the Treaty or the area of Community law to which the national court referred or the reasons for its doubts as to the compatibility of the national provisions with those of Community law or for its view that a reply to the question raised was necessary for the consideration of the cases pending before it. Moreover, that information could not be gathered from the extremely succinct summary of the facts or from the reference to the national provisions. The Danish Government therefore concludes that the incomplete judgments making the references did not enable it to submit observations on the substance of the case in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC and it set out the information which in its opinion every decision making a reference should include.

5 In that regard, it should be noted that guidelines of that kind are already to be found in the case-law of the Court. Thus, in its judgment of 16 December 1981 (Case 244/80 *Foglia* v *Novello* [1981] ECR ...), the Court stated that national courts must explain on what grounds they consider an answer to their questions to be necessary for judgment of the main proceedings, if those grounds are not unequivocally evident from the file on the case. Furthermore, in its judgment of 12 July 1979 (Case 244/78, *Union Laitière Normande* [1979] ECR 2663), the Court indicated that the need to give an interpretation of Community law which was of use to the national court made it essential to define the legal context in which the interpretation requested should be placed. In its judgment of 10 March 1981 (Joined Cases 36 and 71/80, *Irish Creamery Milk Suppliers Association* [1981] ECR 735), it added that it might be convenient, if circumstances permitted, for the facts of the case to be established and for questions of purely national law to be settled at the time when the reference was made to the Court of Justice.

6 As the Danish Government has rightly emphasized, the information furnished in the decisions making the references does not serve only to enable the Court to give helpful answers but also to enable the Governments of the Member States and other interested parties to submit observations in accordance with Article 20 of the Protocol on the Statute of the Court (EEC). It is the Court's duty to ensure that the opportunity to submit obser-

vations is safeguarded, in view of the fact that, by virtue of the above-mentioned provision, only the decisions making the references are notified to the interested parties.

7 Although in the present cases the judgments making the references do not make apparent the grounds for the question referred to the Court for a preliminary ruling with the clarity advocated in the case-law mentioned above, they nevertheless enable the conclusion to be drawn that the national court's doubts relate to the question whether a condition imposed by national legislation on livestock production falling within a common organization of the market is compatible with Community law. Thus, the proceedings in question form part of a series of cases in which, in the absence of specific Community provisions, the Court has already considered whether conditions of that kind are compatible with the rules on the free movement of goods and with those establishing a common organization. Accordingly, in view of the fact that there is an opportunity to expand upon the written observations in the course of the oral procedure, it cannot be said that because of the very succinct nature of the judgments making the references the Member States have been deprived of the opportunity to submit observations relevant to the answer to be given to the question submitted for a preliminary ruling.

8 As regards the wording of the question, it should be noted that it is not for the Court, in proceedings under Article 177 of the Treaty, to adjudicate upon the compatibility of existing or proposed national rules with Community law but only upon the interpretation and validity of Community law. It is appropriate therefore to regard the question submitted as asking whether Community law must be interpreted as meaning that a Member State may not, with a view to the protection of animals, maintain or introduce unilateral rules concerning enclosures for fatting calves.

The answer to be given

9 As it stands at present, Community law contains no specific rules for the protection of animals kept for farming purposes. Accordingly, the review requested in the reference for a preliminary ruling may be confined to the general rules on the free movement of goods and on the common organizations of the markets in the agricultural sector.

10 According to Alpuro, the defendant company in one of the cases before the national court, the enclosures now in use in the Netherlands for fatting calves do not enable the animals to lie down unhindered on their sides and the majority of the enclosures also fail to conform to the more specific rules regarding dimensions contained in the draft decree referred to by the national court. Although the Netherlands rules concern only the production of calves in the Netherlands and therefore in no way affect imports into that Member State, they nevertheless, according to the company, have an effect equivalent to a quantitative restriction on exports and thus infringe Article 34 of the Treaty. Since 90% of veal production in the Netherlands is intended for export, above all to other Member States, the imposition on Netherlands producers of conditions stricter than those imposed on producers in other Member States is necessarily liable to affect the operation of the common organizations of the markets with regard not only to veal but also to milk products, since skimmed milk is an essential feeding-stuff for fatting calves. Such conditions therefore also contravene the Community rules establishing the common organizations of agricultural markets, and also Article 40 (3) of the Treaty according to which such organizations are to exclude any discrimination between producers in the Community.

11 As regards Article 34 of the Treaty, the Court has repeatedly held (most recently in its judgment of 14 July 1981 in Case 155/80 *Oebel* [1981] ECR 1993) that that article concerns national measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade, in such a way as to provide a particular advantage for national production or for the domestic market of the State in question. That is not the case where a provision lays down the minimum standards for enclosures for fatting calves, without making any distinction as to whether the animals or their meat are intended for the national market or for export.

12 As regards the rules on the common organization of the agricultural markets, it should in the first place be emphasized that the establishment of such an organization pursuant to Article 40 of the Treaty does not have the effect of exempting agricultural producers from any national provision intended to attain objectives other than those covered by the common organization, even though such provisions may, by affecting the conditions of production, have an impact on the volume or the cost of national production and therefore on the operation of the Common Market in the

sector concerned. The prohibition of any discrimination between producers in the Community, laid down in Article 40 (3), refers to the objectives pursued by the common organization and not to the various conditions of production resulting from national rules which are general in character and pursue other objectives.

13 In those circumstances, the absence of any provision for the protection of animals kept for farming purposes in the regulations establishing common organizations of the agricultural markets cannot be interpreted as rendering the national rules in that field inapplicable pending the possible adoption of Community provisions at a later stage. Such an interpretation would be incompatible with the Community's concern for the health and protection of animals, as evinced, *inter alia*, by Article 36 of the Treaty and by Council Decision No 78/923/EEC, of 19 June 1978, concerning the conclusion of the European Convention for the Protection of Animals kept for Farming Purposes (Official Journal 1978, L 323, p. 12).

14 It is appropriate therefore to state in reply to the question referred to the Court for a preliminary ruling that, as it stands at present, Community law does not prevent a Member State from maintaining or introducing unilateral rules concerning the standards which must be observed in the installation of enclosures for fatting calves with a view to protecting the animals and which apply without distinction to calves intended for the national market and to calves intended for export.

Costs

15 The costs incurred by the Government of the Netherlands, by the Danish Government and by the Commission of the European Communities, which submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the defendants in the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the questions submitted to it by the Kantongerecht Apeldoorn, by judgments of 21 May 1981, hereby rules:

As it stands at present, Community law does not prevent a Member State from maintaining or introducing unilateral rules concerning the standards which must be observed in the installation of enclosures for fatting calves with a view to protecting the animals and which apply without distinction to calves intended for the national market and to calves intended for export.

Due Chloros Grévisse

Delivered in open court in Luxembourg on 1 April 1982.

For the Registrar

H. A. Rühl

Principal Administrator

O. Due

President of the Second Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 4 MARCH 1982

My Lords,

These three references for a preliminary ruling are made by the Kantongerecht of Apeldoorn in the Netherlands. They concern what it is said are the first prosecutions under a Dutch Royal Decree of 8 September 1961 (the Mestkalverenbesluit, Staatsblad, p. 296), which gives effect to Article 1 of a Statute for the