In Case 15/79,

REFERENCE to the Court under [Article 267 TFEU] by the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry], The Hague, between

P. B. GROENVELD B.V., Haarlem,

and

PRODUKTSCHAP VOOR VEE EN VLEES [Cattle and Meat Board], Rijswijk,

on the interpretation of [Article 35 TFEU] having regard to the national rules applicable in the Netherlands prohibiting any manufacturer of processed meat products from having in stock or processing the meat of solipeds,

THE COURT (Second Chamber)

composed of: A. Touffait, President of Chamber, P. Pescatore and Lord Mackenzie Stuart, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Decision

1 By an order of 26 January 1979, which was received at the Court Registry on 2 February 1979, the College van Beroep voor het Bedrijfsleven referred to the Court under [Article 267 TFEU] a preliminary question on the interpretation of [Article 35 TFEU] in order to establish whether Article 3 (1) of the Verorderiing Be-en Verwerking Vlees 1973 [Processing and Preparation of Meat Regulation 1973], adopted on 5 September 1973 by the Produ ktschap voor Vee en Vlees [Cattle and Meat Board], which prohibits, subject to express exceptions, any manufacturer of sausages from having in

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stock or processing horsemeat, is compatible with [Union] law.

2 That question was raised in the course of proceedings instituted by a wholesaler of horsemeat, who wishes to extend his operations to the manufacture of sausages from horsemeat, against the refusal of the Produktschap, the defendant in the main action, to exempt him from the prohibition set out in Article 3 (1) of the above-mentioned regulation.

3 The order for reference, in particular Point 7, shows that the regulation in question was adopted for the purpose of protecting Netherlands exports of meat products both to Member States and to non-member countries which constitute important export markets and where there are objections to the consumption of horsemeat or indeed where the importation of products containing horsemeat is prohibited. As it is practically impossible to determine the presence of horsemeat in meat products the sole means of ensuring that such products do not contain horsemeat is to prohibit manufacturers of meat products from having in stock, preparing or processing horsemeat. Thus exports of meat products to the United States must be accompanied by a certificate that the products in question meet requirements at least equivalent to those laid down by United States rules in that field, whereby a similar prohibition is imposed. Article 3 (1) of the above- mentioned regulation applies solely to the industrial manufacture of meat products but not to the stocking or retail sale of horsemeat by butchers. The file further establishes that the regulation in question does not affect imports or re-exports of horsemeat originating in other Member States or non-member countries.

4 Since the College van Beroep voor het Bedrijfsleven doubts whether that regulation is compatible with [Union] law it has submitted the following question:

"Must [Article 35 TFEU], read possibly in conjunction with any other provision of that Treaty and /or with any principle fundamental to that Treaty, be interpreted to mean that the prohibition on having in stock, preparing and processing horsemeat set out in Article 3(1) of the Verordning Been Verwerking Vlees 1973 of the Produktschap - having regard *inter alia* to the purpose and scope of that prohibition as they have been set out in Point 7 of this order -is incompatible with that article of the Treaty?"

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5 As a preliminary observation it should be pointed out that the market affected by the national measure in question, that in horsemeat, is not governed by any specific [Union] regulation. Council Directive No 79/99/EEC of 21 December 1976 (Official Journal 1977, L 26, p. 85) on health problems affecting intra-[Union] trade in meat products, cited by the Commission in its observations, concerns a problem entirely distinct from that which forms the subject-matter of the national measure in question. It follows that the compatibility of a measure of the kind referred to in the main action with [Union] law must be settled solely on the basis of [Article 34 TFEU] *et seq.*.

6 [Article 35 TFEU] provides that "quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States".

7 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 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. This is not so in the case of a prohibition like that in question which is applied objectively to the production of goods of a certain kind without drawing a distinction depending on whether such goods are intended for the national market or for export.

8 The foregoing appreciation is not affected by the circumstance that the regulation in question has as its objective, *inter alia,* the safeguarding of the reputation of the national production of meat products in certain export markets within the [Union] and in non-member countries where there are obstacles of a psychological or legislative nature to the consumption of horsemeat when the same prohibition is applied identically to the product in the domestic market of the State in question. The objective nature of that prohibition is not modified by the fact that the regulation in force in the Netherlands permits the retail sale of horsemeat by butchers. In fact that concession at the level of local trade does not have the effect of bringing about a prohibition at the level of industrial manufacture of the same product regardless of its destination.

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9 The reply to the question submitted must therefore be that in the present state of [Union] law a national measure prohibiting all manufacturers of meat products from having in stock or processing horsemeat is not incompatible with [Article 35 TFEU] if it does not discriminate between products intended for export and those marketed within the Member State in question.

Costs

10 The costs incurred by the Commission of the European [Union], which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the question referred to it by the College van Beroep voor het Bedrijfsleven by an order of 26 January 1979, hereby rules:

In the present state of [Union] law a national measure prohibiting all manufacturers of meat products from having in stock or processing horsemeat is not incompatible with [Article 35 TFEU] if it does not discriminate between products intended for export and those marketed within the Member State in question.

Touffait Pescatore Mackenzie Stuart

Delivered in open court in Luxembourg on 8 November 1979.

A. Van Houtte A.Touffait

Registrar President of the Second Chamber

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