OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 9 JUNE 1982 [1]

Mr President,
Members of the Court,

1. Introductory remarks

1.1 Differences from previous cases concerning the allocation of tariff quotas for frozen beef and veal

The cases which I am to deal with today, Joined Cases 213 to 215/81, on which the Hessischer Verwaltungsgerichtshof [Higher Administrative Court, Hesse] has asked the Court for a preliminary ruling, are not the first in which national criteria for the allocation of tariff quotas for frozen beef and veal have been at issue. On three previous occasions, namely in Case 131/73 *(Grosoli* [1973] ECR 1555), Case 35/79 *(Grosoli* v *Ministry of Foreign Trade* [1980] ECR 177) and Case 124/79 *(van Walsum* v *Produktschap voor Vee en Vlees* [1980] ECR 813), the Court has been asked to answer questions on this subject.

However, there are at least two fundamental differences between the present cases and the previous cases concerning the criteria for the allocation of tariff quotas for frozen beef and veal.

First of all, in the first question the Court is requested to rule on the question whether Article 3 of the relevant enabling regulation, Regulation No 2956/79 (Official Journal 1979, L 336, p. 3), is compatible with superior principles of Community law and in particular with the principle of equal treatment of traders established in the various Member States of the European Community; in principle that question has not been raised before. The remaining questions referred to the Court raise other aspects of a general principle of equal treatment.

A second, no less important, difference from the previous cases is that those cases are solely concerned with criteria for allocation which were related to specific domestic requirements for imports of frozen beef and veal. In the first *Grosoli* case the question was whether quota shares might be reserved for direct consumption; the Court said that they might not. In the second *Grosoli* case the particular issue was whether a part of the quota might be reserved to the Ministry of Defence and the remainder allocated in fixed proportions to local consumer bodies, commercial and industrial undertakings and retailers. Those last three groups were allocated shares largely on the basis of their imports from non-member countries in the past. Finally, in the *van Walsum* case the issue was whether part of the quota might be reserved to the meat-processing industry.

The cases now before the Court, however, mainly concern the question how far criteria for allocation which are based on purchases by national under-

1 — Translated from the Dutch.

takings from national intervention agencies and on imports from, or exports to, other Member States or exports to non-member countries are also permissible. The court which referred the questions for a preliminary ruling has rightly indicated that such criteria not related to domestic requirements for frozen beef and veal imported from non-member countries prompt questions about the proper operation of the common market and the common organization of the market in beef and veal which did not arise in the previous cases submitted to this Court.

1.2 Principle to be found in the previous decisions of the Court

Despite the above-mentioned differences from previous cases a number of principles may be deduced from the cases cited which are also relevant to the present cases. In particular, the judgment in the first *Grosoli* case (Case 131/73) provides abundant guidance.

First of all, after explaining in paragraphs 4 and 5 of that judgment the general background — including the underlying commercial policy — to the question of the allocation of tariff quotas, the Court established an important starting point by stating in paragraph 7 that against that background *only the institutions have the right to prescribe a use for a quota.* However, the Court immediately went on to state that: "In so doing they (the institutions) can keep the quota open to all who wish to make use of it, themselves prescribe the use to which it is to be put, or, again, give the Member States a free hand to use it in accordance with their own interests." But to that possibility was added the important restriction that "the failure to prescribe a use for a quota must . . . be interpreted as *freedom for all concerned to have access to it*". Paragraph 8 went on to clarify that principle in these terms: "Any provision by a Member State allocating a Community quota on conditions it had decided for itself would run the risk of compromising the objectives of the Community's economic policy as well as *equality of treatment for all within its jurisdiction*". In the same paragraph it was further explained that national implementing provisions were "designed to ensure compliance with the general terms of the quota and the *principle of equal treatment for those entitled to take advantage of it*". In paragraph 9 it was then added: "As soon . . . as a Member State introduces conditions regarding use in pursuit of *objectives of economic policy* which are not the subject of provisions adopted by the Community, these administrative powers are exceeded."

The first point about those passages which strikes me as material to the questions before the Court is that they show that in the first *Grosoli* case the Court considered that the fact that it is possible for a Community quota to be allocated at national level is not *by itself* contrary to Community law. That finding is material to the first question before the Court, as are the Court's dicta to the effect that, as regards a quota which is to be so allocated by a Member State, there must be "freedom for all

concerned to have access to it" and that national implementing provisions must be designed *inter alia* to "ensure the principle of equal treatment for those entitled to take advantage of it". On the other hand, the principle laid down in paragraph 9 to the effect that a Member State may not introduce conditions regarding use in pursuit of objectives of economic policy which are not the subject of provisions adopted by the Community is indirectly relevant to the questions concerning a number of specific criteria for allocation applied by the Federal Republic of Germany.

In the second *Grosoli* case (Case 35/79) the principle that those entitled to take advantage of the quota should be treated equally was confirmed in paragraph 7 but then enlarged upon in the subsequent paragraphs of the judgment. Of particular relevance to the questions before the Court is the finding in paragraph 9 that "the administration of that share (Italy's quota share) may, under the specific conditions of the market for frozen beef and veal within the territory of a Member State, reasonably involve the expediency or even the necessity of defining the different categories of persons concerned and of determining in advance the total quantity to which each of those categories may lay claim". This shows that the allocation in advance of the total quantity of a national quota between different categories of persons cannot *per se* be regarded as contrary to the principle of equal treatment. However, in paragraph 10 the Court immediately went on to state the circumstances in which such allocation is permissible: it must not "deprive some persons concerned of access to the share allocated to that State and the different categories of traders as well as the total quantities to which those categories have access [must] not [be] determined in an arbitrary manner".

Paragraph 11 of the judgment in the second *Grosoli* case contains an even more precise definition of the expression "persons concerned" appearing in Article 3 of the enabling regulation in force at that time. However, I shall consider that expression, which plays an important part in those proceedings, together with the decisions the Court has given upon it, separately.

The judgment in *van Walsum* is relevant to the cases now before the Court primarily because the issue in that case was, as in these cases, whether an import quota for the meat-processing industry is permissible. However, the *van Walsum* case was different from the instant cases in one important respect: it clearly concerned processing undertakings which imported beef and veal themselves and whose quotas were allocated in the same way as those of undertakings which imported for resale, namely according to their previous imports from non-member countries. The judgment again confirms that national criteria for allocation may not exclude certain groups of importers (even in the long term — see paragraph 12). Finally, that judgment is also relevant because in paragraph 14 it expressly places the allocation of quotas "in the context of the common organization of the market in beef and veal". The Court enunciated the same principle, by the way, in the last sentence of paragraph 6 of the decision in the first

Grosoli case. This would immediately appear to refute the contention put forward by the German Government in its written observations on the present cases that the two subjects are quite distinct.

1.3 The expression "all persons concerned" ("tous les opérateurs intéressés", "alle betroffene Marktteilnehmer") appearing in Article 3 of Regulation No 2956/79

The fourth question submitted to the Court concerns a specific aspect of the expression "persons concerned" appearing in Article 3 of the relevant Council regulation, namely the question whether it also includes a person who buys up beef and veal in a Member State and subsequently disposes of it abroad. However, it became apparent during the written and oral procedure that that expression is also relevant to the answers to be given to the first three questions. Therefore I shall first deal with that expression in a general manner and later, so far as necessary, incorporate my conclusion in the answers which I shall give to each of the questions put to the Court.

I should preface my general observations with the remark that although paragraph 11 of the decision in the second *Grosoli* case places a lower, though very generally phrased, limit on the expression, it sets no upper limit. In fact it states that: "It is essential to state in this regard that the concept of 'persons concerned' ('opérateurs intéressés') in Article 3 of Regulation No 2861/77 has a wider scope than that of 'importers' concerned referred to in previous regulations, for example in Article 3 of Council Regulation No 3167/76 of 21 December 1976 opening the Community tariff quota for frozen beef and veal for 1977 (Official Journal, L 357, p. 14)." For the purpose of the questions submitted on that occasion that finding was sufficient to justify *inter alia* the allocation of import quotas to the Ministry of Defence, local consumer bodies and the retail trade.

Before the questions now before the Court are answered it seems to me that an attempt at further clarification is needed. First, the commercial policy of ensuring that certain patterns of trade with non-member countries are maintained (first recital in the preamble to Council Regulation No 2956/79) seems to me to be relevant in this regard. Also relevant, in my opinion, is the second recital in that preamble, which states that "equal and continuous access to the quota should be ensured for all persons concerned". Finally, that recital also states: "... the said allocation [1] should be proportionate to the requirements of the Member States calculated with reference to statistical data on imports from third countries during a representative reference period and to the economic prospects for the quota year in question". In answer to a question put to him at the hearing the Commission's representative explained that when considering such economic prospects the Commission at any rate had regard in particular to the total import requirements of each Member State for beef and veal originating in the Community

1 — To judge by the context, this would appear to mean the allocation of the Community tariff quota between the Member States. However, as I shall argue later, the assumption underlying this passage — that the allocation of quotas must be determined by the requirements (of frozen beef) and veal imported from non-member countries — also seems to be relevant to the subsequent allocation of quotas *by* the Member States.

and in non-member countries. In my view no other aim can be deduced from the general phrase "proportionate to the requirements of the Member States" contained in the passage cited.

At the hearing the plaintiffs in the main action stated, in short, that in view of the said aims of the regulation special consideration must be given to traders who are particularly affected by the decline in traditional patterns of trade as a result of the common organization of the market. This, they argue, is borne out by the word "betroffen" which precedes the word "Marktteilnehmer" appearing in the German version of Article 3 of the regulation. It is also borne out by the fact that, according to the passages cited, traditional imports in the past of (frozen) beef and veal from non-member countries represent the first criterion for the allocation of the tariff quota between Member States and by the fact that — as appears from the second *Grosoli* case, *van Walsum* and the present cases — a similar criterion is by far the most important in the allocation of national quotas, at any rate in Germany, Italy and the Netherlands. Finally, traditional importers from non-member countries presumably have acquired special, valuable experience of purchasing beef and veal in those countries which, as the plaintiffs in the main proceedings have argued, may greatly assist in guaranteeing continuity of trade.

In my view, the arguments of the plaintiffs in the main proceedings do have considerable force and cannot be dismissed out of hand. I am thinking in particular of their arguments based on the wording of Article 3 and on the commercial policies pursued by the regulation. Nevertheless the second criterion for the allocation of the tariff quota between the Member States cannot be simply ignored. The mere fact that some Member States' requirements for imports have increased means that room must be created on the import market for new undertakings. Furthermore, the decision both in the second *Grosoli* case and in *van Walsum* show that even the expression "traditional importers" can by no means be restricted to import *traders.* In the second *Grosoli* case the Italian Ministry of Defence was found to belong to the category of traditional importers, as was the meat-processing industry, both in that case and in *van Walsum.* Finally, I agree with the Commission when it points out the danger of monopolization or ossification of import channels if they are wholly or largely reserved to traditional import traders. However, the Commission clearly goes too far in simply equating the expression "persons concerned" in Article 3 of the regulation with the expression "Marktteilnehmer" [traders]. Quite apart from the fact that the expression "Marktteilnehmer" does not appear in the Dutch version, all the language versions cited use a narrower expression. The traders in question must be "betroffen" or they must be "opérateurs intéressés" or "persons concerned". Having regard to the scheme of the regulation, this narrower definition can hardly signify anything other than "concerned or having a direct interest in the importation of frozen beef and veal from non-member countries". Nor can I deduce

from the judgment in the second *Grosoli* case that the Court there intended to say that *all* traders may be regarded as "persons concerned". In my view, the Court merely said that the expression no longer covers importers alone within the meaning of the original regulation. Moreover, at that time a narrower definition of the expression was not necessary for the purpose of answering the questions put to the Court in that case. Now, however, it is. As will become clear later, that provisional conclusion is also supported by the fact that in its decisions the Court has consistently emphasized the need to take account of the principle of equal treatment of all persons concerned in the Community.

In view of the Court's previous decisions and the need to take account of new import requirements, I would provisionally define the expression "persons concerned" appearing in Article 3 of the Council Regulation No 2956/79 as "all undertakings which have or acquire in the importation of frozen beef and veal from non-member countries a direct interest which must be taken into account when the principle of equal treatment is applied".

1.4 The arrangement of the rest of the opinion

I do not think that I can summarize the relevant facts and written observations any better than the Report for the Hearing. In Part 2 of my opinion I shall therefore simply adopt that summary.

For the observations made in the written procedure I need merely refer at this point to the summary contained in the Report for the Hearing. I should, however, point out that at the hearing the Commission in particular, in answer to questions from the Court, provided further important details and clarification of its position, and of course it has not yet been possible to incorporate these in the Report. Where necessary I shall separately examine particular written or oral observations in the rest of my opinion.

In the remaining sections of my opinion I shall examine in turn the questions referred to the Court. I shall then conclude my opinion with some final general observations.

2. The 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 (Verordnung über die Grundsätze für die Verteilung der deutschen Quote des Gemeinschaftszollkontingents 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 to 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 from 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 greater quantity 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.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, at the hearing it asked Gedelfi and the Commission to answer a number of questions and to clarify certain points. Where necessary I shall, as I have said, revert to those points when dealing with each of the questions.

3. The first question

I will remind the Court that the first question reads as follows:

"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 State is concerned?"

In its written observations the German Government had said, not entirely incorrectly, that this question really concerns the validity of Article 3. The reasons given for the order for reference do indeed point in this direction. But in my opinion neither the wording nor the purpose of the question renders such an interpretation necessary.

Taken in isolation the question could, for the reasons set out below, simply be answered in the negative. But in view of the subsequent questions I think that greater clarification is called for. With regard to the various aspects of the question which were highlighted in the written and oral procedure, my views are as follows.

As the Court has already explained in its judgment in the second *Grosoli* case, the conferment on Member States of the power to allocate the Community quota is not *per se* to be regarded as contrary to Community law, provided that, in the absence of further provisions of the Community institutions on the use of the quota, all persons concerned have free access to it (paragraph 7 of the decision). As the Commission rightly stated in its written submissions, the Community quota should be allocated between the Member States on the basis of the principle of equal treatment and in accordance with the same objective criteria in each Member State; that point, however, is not in issue in these proceedings.

As I observed earlier, the judgment in the second *Grosoli* case confirmed that the principle of free access for all persons concerned implies that all those entitled to take advantage of the quota should be treated equally (paragraph 7 of the decision). In the same judgment the Court went on to state that it was not necessarily contrary to the principle of equal treatment for certain quantities to be reserved for certain categories of persons concerned, provided that such a system did not deprive some persons concerned of access to the quota (paragraphs 9 and 10 of the decision).

From all the questions posed in the cases now before the Court it appears that it is now necessary to define this principle of equal treatment of all persons concerned more precisely. As far as the first question is concerned, it seems particularly important to point out that in applying Article 3 (1) of the regulation Member States must observe Articles 7, 30, 34, 40 (3) and 52 of the EEC Treaty, those being the provisions most relevant to the principle of equal treatment. That is how I also understood the Commission's answer at the hearing to questions which the Court had previously put to it. I consider clarification of this point important first of all because, in answer to another question, the Commission stated that when the quota is allocated between the Member States imports from non-member countries carried out by transit traders established in other Member States are ascribed to the county of destination. Therefore Belgian, Danish, French or Netherlands transit traders must be able to claim a quota share in Germany if in

accordance with Article 52 of the EEC Treaty they have set up an agency, branch or subsidiary there. Conversely, by virtue of Article 34 of the EEC Treaty, neither Germany nor any other Member State may refuse interested persons a quota share solely on the ground that an undertaking established there wishes to use the import quota to export to another Member State. As to the entirely separate question whether export is by itself an acceptable criterion for allocation, I shall revert to that later. The only point inherent in the nature of the system is that undertakings which are not established in Germany or which have not availed themselves of Article 52 do not qualify for the allocation of a quota in Germany since, according to the criteria for the allocation of the quota between the Member States and in view of the principle of equal treatment, this is reserved to other Member States.

Finally, by virtue of Article 30 of the EEC Treaty a Member State may not apply any criteria for allocation which indirectly hinder the importation of beef and veal from other Member States. This point is also important for the answer to be given to the second qustion submitted to the Court.

In view of the foregoing arguments and with due regard to my previous general observations on the expression "persons concerned", I propose that the first question should be answered as follows:

"In the application of Article 3 (1) of Council Regulation (EEC) No 2956/79 of 20 December 1979 the general provisions of the EEC Treaty concerning the equal treatment of traders, in particular Articles 7, 30, 34, 40 (3) and 52, must be observed with respect to all undertakings which have a direct interest in the importation into the Member States concerned of frozen beef and veal from non-member countries and which are established in that Member State in accordance with Article 52. By virtue of the principle of equal treatment of all Community nationals which has been developed in a consistent line of decisions on the allocation of tariff quotas, no criteria for allocation may be applied which by their nature result in discrimination in favour of a Member State's own nationals and against the nationals of other Member States in the common market.

4. The second question

By its second question the Hessischer Verwaltungsgerichtshof asks the Court, in short, whether Article 7 (1) of Regulation (EEC) No 805/68 (Official Journal, English Special Edition 1968 (I), p. 187) permits purchasers of intervention products in a certain Member State to be later granted, in the form of a share in the Community tariff quota, advantages which such purchasers in another Member State do not receive.

I will remind the Court that Article 7 (1) reads as follows: "Disposal of the products bought in by the intervention agencies in accordance with the provisions of Article 5 and 6 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."

It was in connection with this question that the German Government expressed the view, which in my introductory remarks I said does not accord with the decisions of the Court, that the allocation of tariff quotas is quite distinct from the market organization.

To me it is manifest that for a Member State to apply, contrary to the practice prevailing in other Member States, an allocation criterion of the kind at issue in these cases is contrary to the said articles and to the general principle of equal treatment which in the second sentence of my proposed answer to the first question I deduced from the previous decisions of the Court. That is because a Member State's own nationals are given an advantage over the nationals of other Member States when buying beef and veal from the national intervention agencies. If each Member State does not apply a similar criterion this disadvantage is not offset by similar advantages which nationals of other Member States would enjoy when purchasing beef and veal from the intervention agencies of those Member States. Finally, the Commission has rightly pointed out that such a criterion encourages purchases by a Member State's own nationals from its own intervention agency and discourages purchases by a Member State's own nationals from the intervention agencies of other Member States. I have already said that this also constitutes a breach of Article 30 of the EEC Treaty.

I cannot subscribe to the Commission's view that the inequality of treatment caused by the application of such a criterion is an inevitable effect of the system employed. During the proceedings it was not disputed that the criterion in question was introduced in the interests of the meat-processing industry in particular, although the criterion is not restricted to that industry. In this connection it is not unimportant to recall that, according to the seventh recital in the preamble to Regulation No 805/68, special measures in respect of the importation of frozen beef and veal from non-member countries were considered desirable in the interests of the meat-processing industry. However, the judgments in the second *Grosoli* case and in *van Walsum* show that it is perfectly possible to achieve that aim by directly relating the allocation of quotas for the meat-processing industry to its imports from non-member countries during a reference period in the past. In so far as the processing industry has not imported meat directly in the past, the industry could, in addition to the criteria for allocating the quota between the Member States mentioned by the Commission at the hearing, be granted a fair share of the quota on the basis of the estimated amount of frozen meat which it needs to import from non-member countries. According to the summary of the facts in the second *Grosoli* case, that is what happens in Italy.

In my view the second question must accordingly be answered as follows:

It is contrary to 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) for purchasers from intervention agencies in a particular Member State later to be granted, in the form of a share in a Community tariff quota, advantages which such purchasers in another Member State do not receive; this is true even if the purchasers of one Member State also enjoy that advantage when purchasing beef and veal from intervention agencies in other Member States.

5. The third question

By its third question the Hessischer Verwaltungsgerichtshof asks the Court whether 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, is compatible with Regulation No 2956/79 or whether, in particular, it constitutes aid granted through State resources.

I observe first of all that this question is not sufficiently abstract and, what is more, not entirely correctly put inasmuch as Article 92 of the EEC Treaty (so far as, in accordance with Article 42 of the EEC Treaty, Regulation No 2956/79 does not derogate further from Article 92 than the relevant general rules on the common agricultural policy [1]) not only declares aid granted "through State resources in any form whatsoever" to be incompatible with the common market, it also prohibits other aid granted by a Member State, and it is quite possible to argue that the independent grant by Member States of pecuniary advantages which are not paid for by the Member States is caught by Article 92. Advantages which come to mind here are, on the one hand, reduced rates which Member States might require private electricity companies or haulage contractors, for example, to grant (without reimbursement) to certain undertakings or in respect of certain products. One might, on the other hand, include the independent grant of benefits financed by the Community, as in the present cases. In so far as the Member States have some discretion in the disbursement of Community resources such as the Social Fund, the Regional Fund or funds from the European Investment Bank, these may also spring to mind. Finally, arguments might be deduced from legal practice to support the view that when granting pecuniary advantages to individual undertakings the Community itself is also bound by Article 92 of the EEC Treaty. I do not believe that it is necessary to examine those questions any further since the question whether the advantages granted in the instant case are in the nature of unacceptable aid is just a specific way of putting the general question. I would merely point out that I am not in fact

1 — See, in particular, Regulation No 26/62, as amended by Regulation No 49/62.

aware of any clear case-law or clear views of academic writers on the complicated question of "aid granted by a Member State" which is particularly relevant in these cases and that I consider the answer which the Commission has proposed to this specific subsidiary question to be no more satisfactory than the answers proposed by the German Government and by the plaintiffs in the main proceedings.

In fact I consider it unnecessary to answer the aforesaid specific question because in my view the criteria in question clearly offend against the principle of equal treatment of all Community nationals which I deduced from the previous decisions of the Court in the second sentence of my answer to the first question.

In the first place, the importers and exporters in question cannot, in my view, be regarded as "persons concerned", within the meaning of Article 3 of Regulation No 2956/79, in the importation of frozen beef and veal from non-member countries.

Even if the Court should dismiss that objection, the criteria in question strike me as being incompatible with the basic principles of the regulation.

As I have pointed out, according to the second recital in the preamble to the regulation, the allocation of the Community quota should be proportionate to the amount of frozen beef and veal which Member States need to import from non-member countries. To me it is plain that the national criteria for allocation must also be related to those needs and that the particular requirement, repeatedly laid down by the Court, that all interested persons in the Community should be treated equally compels an examination of those needs. As a matter of fact, it is difficult to see from where else objective criteria for a general allocation of the quota which are the same for all concerned could be derived. Therefore it seems plain to me that the application of the aforesaid criteria offends against the principle of equal treatment of all persons in the Community having an interest in the Community quota, if those criteria are not applied by every Member State. German importers of beef and veal from other Member States then receive a clear, financially measureable, competitive advantage over firms which export to Germany from other Member States. German firms which export beef and veal produced in the Community to non-member countries or to other Member States also receive a clear competitive advantage over exporters from other Member States in the form of a share in the tariff quota which the Commission too considers to be a considerable financial advantage. It is worth noting here that the Commission considers any export aid in trade between Member States to be a distortion of competition which is incompatible with the common market, even if its effect on trade between Member States is slight.

I therefore propose that the Court should answer the third question as follows:

It is compatible with Regulation (EEC) No 2956/79, and particularly with the principle established in case-law that all persons in the common market

having an interest in the allocation of the tariff quota should be treated equally, for a Member State to grant a share in the 1980 Community tariff quota for frozen beef and veal to importers established in that Member State who have imported beef and veal from other Member States and to exporters established in that Member State who have exported beef and veal to other Member States or to non-member countries.

6. The fourth question

By its fourth question the Hessischer Verwaltungsgerichtshof asks the Court whether the term "persons concerned" within the meaning of Article 3 (1) of Regulation No 2956/79 includes a person who buys up beef and veal in a Member State and then disposes of it abroad.

It is already clear from the answers which I have proposed to the first and third questions that this question must, in my view, be answered in the negative. Application of the criterion referred to in the fourth question would also distort competition to the detriment of exporters established in other Member States, thereby offending against the principle of equal treatment. With regard to the expression "persons concerned" (betroffene Marktteilnehmer) expressly referred to in the fourth question, I need merely refer to my analysis thereof in the introduction. On this point I agree in principle with the written observations of the undertaking Will, which are summarized in that part of the Report for the Hearing which deals with the fourth question.

As I said earlier, I consider the distinction which the German Government makes, also with regard to the fourth question, between the principles governing the allocation of the tariff quota and the principles of the organization of the market to be contrary to the relevant decisions of the Court. The German Government had to argue that distinction in this case because it too admits that this criterion jeopardizes the uniform application of export refunds. Such interference with the uniform application of export refunds on beef and veal cannot therefore, on the basis of the previous decisions of the Court, be used as an argument to justify the breach of the principle that all persons concerned in the common market should be treated equally.

Finally, at the hearing the Commission admitted that in its written observations on the fourth question it failed to take account of the competitive advantages which German exporters may obtain over their competitors from other Member States as a result of the application of the criterion now in question. It also conceded at the hearing that there may be some doubt whether an exporter of beef and veal may as such be regarded as a person concerned in the importation of frozen beef and veal from non-member countries.

I therefore propose that the fourth question should be answered as follows:

It follows from the answers given to the first and third questions that the fourth question must be answered in the negative: that is to say, exporters of beef and veal produced in the Community cannot as such be regarded as "persons concerned", within the meaning of Article 3 (1) of Regulation No 2956/79, in the importation of frozen beef and veal from non-member countries.

7. Concluding remarks

The answers which I have proposed prompt the question whether in the end it might have been sufficient to answer the first question alone. The proposed answers to each of the subsequent questions all flow logically from my proposed answer to the first question, which was framed in very general terms. Nevertheless I would not recommend that such a joint answer be given to the four questions submitted to the Court. I think that the Court's answers have more force if each question submitted is answered individually and the reasons for each answer are stated.

As far as the practical effects of my proposed answers are concerned, I wish to conclude with the following observations.

My answers still allow an entire quota to be allocated in advance between important categories of persons concerned in the importation of frozen beef and veal from non-member countries. The Court also accepted that this is possible in its judgments in the second *Grosoli* case and in *van Walsum*, provided that no persons concerned are deprived of access to the quota. However, the present cases make it necessary to define the criteria for allocation more precisely than in previous cases referred to the Court on the basis of objective standards which enable the needs of all persons concerned to be compared. An analysis of the questions submitted shows that, if a Member State's own nationals are granted the advantages in question on the basis of transactions bearing no relation to requirements for imported frozen beef and veal, the market may be perceptibly disturbed to the detriment of nationals of other Member States.

Furthermore, the answers which I propose still allow quotas to be granted to newcomers to the import market, which the Commission rightly considers desirable. That may be achieved by means of various methods which are consistent with the principle of equal treatment.

Finally, my observations on the first question to some extent support the Commission's desire that it, as well as the Member States, should have at its disposal a limited quota of its own to be allocated strictly in accordance with Community criteria. In particular, a Community quota for transit traders in the various Member States might reduce

the restrictions to which, by virtue of Article 3 of Regulation No 2956/79 and notwithstanding Article 52 of the EEC Treaty, such traders are at present subject when they seek to obtain quotas in the various Member States to which they wish to export frozen beef and veal imported from non-member countries. As we have seen, when the Community quota is allocated between the Member States imports in transit are ascribed to the country of destination.