

Editorial News

And the Cow Jumped over the Moon?

The impression left by the mad cow saga is that it may not just be some of the cows that are mad. Hysteria, whipped up by the media, claiming that extreme measures are needed to restore consumer confidence, is never the best atmosphere in which to take decisions, particularly when the decline in confidence is largely due to the attitude of the media in the first place. The blame cannot entirely be laid at the door of the media, however, and the United Kingdom government's handling of the affair is less than wholly adroit. Indeed, the change in the rules governing heat treatment must be laid firmly at the altar of the sacred cow of deregulation.

The Community mechanisms functioned as they are meant to. The Commission decided to follow the advice of the standing Committee. Whether the motives behind the Commission's action were entirely motivated by considerations of animal welfare and the protection of human health now appears somewhat uncertain in the light of remarks attributed to Commissioner Fischler. The need to protect the Community's remaining meat trade (including exports) is perhaps reminiscent of the background to the decision of the Court in Case 15/79 *Groenveld*¹ in which the interest of safeguarding the export of Dutch meat products lay behind the apparently positively perverse approach of the Court.² Having adopted that approach in the special circumstances of the case, the Court was not to be moved from it when confronted with the more general application of Article 34 EC to rules applicable irrespective of the destination of the product. It may be hoped that the same fate does not lie in wait for the Commission's future action.

Of course the Community Institutions are bound to

take into account a number of potentially conflicting interests in arriving at their evaluation of what is necessary to protect the interests of farmers, consumers and the Community budget. In the evaluation of complex conflicting interests the Commission has traditionally been allowed a wide margin of discretion by the Court of Justice, which is reluctant to interfere. Given also the conflicting views of veterinary experts and medical sages, it is perhaps understandable that the Commission took the line of least resistance which was also the most cautious approach. In that regard the intervention by John Major in getting the Committee to sit again was counter-productive, as that Committee's appetite for humble pie was absent. And so the export of British beef was prohibited. Mad cows and Englishmen stay home in the noonday sun.

Whatever the final measures – and most people agree that to slaughter the entire bovine population in the United Kingdom would be manifestly excessive – there is a profound sense of dissatisfaction over the whole affair. Whatever the difficulties the Commission faced in balancing interests, the feeling must be that Fischler's lack of caution in letting the cat out of the bag (the Dutch say letting the ape out of the sleeve) will have simply increased the lack of confidence of the United Kingdom authorities in any proposals to give the Commission more extensive executive powers in the application and implementation of Community law. The Eurosceptics must be having a field day. Given the export ban, however, no British cow will jump over the moon!

¹[1979] ECR 3409.

²Ignoring the well-reasoned approach of Advocate General Capotorti's Opinion.