In Case 272/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Sixth Chamber of the Gerechtshof (Regional Court of Appeal), The Hague, for a preliminary ruling in the criminal proceedings pending before that court against

FRANS-NEDERLANDSE MAATSCHAPPIJ VOOR BIOLOGISCHE PRODUCTEN BV, whose registered office is at 54 Oudorpweg, Rotterdam,

on the interpretation of Article 30 of the EEC Treaty in the light of the Netherlands Law of 1962 relating to plant protection products,

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco, O. Due and A. Touffait (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: S. Rozès
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts of the case, the procedure and the written observations may be summarized as follows:

I — Facts and procedure

1. By judgment of 4 December 1979 of the Arrondissementsrechtbank [District Court], Rotterdam, the private limited company Frans-Nederlandse Maatschappij voor Biologische Producten BV was fined the sum of HFL 1 000 for an offence contrary to the Bestrijdingsmiddelenwet [Law relating to plant protection products], 1962. During the proceedings before the Arrondissementsrechtbank it was found that

the defendant company had, on 16 February 1978, through the intermediary of a representative, sold or delivered, or both, in the Netherlands, to the company Noord-Nederlandse Bottelmaatschappij BV, a certain quantity of a product called "Fumicot Fumispore", a plant protection product within the meaning of Article 1 of the above-mentioned Law, which is designed in particular for use in the food-processing industry but did not appear to have been approved in the Netherlands in accordance with the Bestrijdingsmiddelenwet since its packaging did not indicate its name or its approval number. The product was used by the company Noord-Nederlandse Bottelmaatschappij BV to fumigate and disinfect a sugar silo so as to eliminate any traces of mould.

2. The defendant company lodged an appeal against that sentence, claiming in particular that the prohibition laid down in Article 2 of the Bestrijdingsmiddelenwet restricting the importation and marketing in the Netherlands of the product in question constituted a quantitative restriction or a measure having equivalent effect prohibited by Article 30 of the EEC Treaty. Counsel for the company stated that the product in question was imported from France where it was lawfully marketed after it had been approved in accordance with the relevant French legislation which sought to protect exactly the same interests, namely those of public health, as the Netherlands legislation, and to the like extent. In those conditions, a requirement that the product in question should, on importation into the Netherlands, be the subject of a fresh approval was not necessary in order to satisfy an overriding requirement nor did it justify an exception to the fundamental right of the free movement of goods. Nor, furthermore, did it constitute the most suitable means since, at the same time, it did not restrict trade to the least extent possible. Moreover, the examination to which the product must be subjected in the Netherlands for the purpose of obtaining approval involved costs which were completely disproportionate to the turnover which could be achieved in the Netherlands.

3. The product in question

It appears from the Plant Health Index for Insecticides, Fungicides and Herbicides . . ., laid down by the French Association for Technical and Agricultural Coordination, that it is a product under the name "Fumicot Autocomburant Fumispore", marketed by LCB (Chemical and Biological Laboratory), La Salle, France. The product contains an active substance, parahydroxyphenyl-salicylamide, and is packed in a container comparable to a soft-drinks carton.

According to the Plant Health Index:

"This substance, better known in pharmacology under the name of 'Driol', exists in the form of a fine powder, not readily soluble in water, purplish grey and with a faintly acrid smell. It has been found to have fungicidal properties in regard to numerous fungi or moulds in storage premises (Penicillium, Cladosporium, Altenaria, Rhizopus . . .). When used it is mixed with a smoke-producer which disperses and suspends it at a rate of concentration of 5%. *Application:* disinfection of premises used for the manufacture and storage of food products (0.15g/m³)."

This product is used mainly in the food industry in bakeries, premises used for cheese-making and dairies.

In France, it was the subject of sales approval No 74 00 949, the grant of which was most recently extended by approval dated 17 July 1980. On the other hand, no approval of the product has been issued in the Netherlands. A request to that effect was, however, made on 3 May 1967.

4. The relevant national laws

In the Netherlands the importation and marketing of plant protection products such as the product in question are governed by the Bestrijdingsmiddelenwet and by its implementing decrees. Article 2 (1) of that Law provides:

"It shall be an offence to sell, to store or to use a plant protection product where it is not shown that the said product has been approved pursuant to this Law."

Approval is granted by a decision of the Minister for Agriculture and Fisheries or by the Minister for Public Health and Environmental Hygiene, once it has been established that the product is fit for the use for which it is intended, does not give rise to any harmful effect and that its content of active substances does not exceed that necessary for the purpose which it is designed to achieve (Article 3). Applications for approval are addressed to the Plant Protection Products Approvals Committee and involve the payment of a fixed amount for their examination (Article 4 of the Decree relating to the approval of Plant Protection Products of 28 November 1980).

The details of the approval procedure are laid down in the above-mentioned decree. Approval is granted for a maximum period of 10 years and may be made subject to conditions relating to use and safety. Finally, there is a procedure by which an appeal may be brought against a decision to refuse or withdraw the approval.

On the other hand, the competent authorities are under no duty to have regard to analyses, examinations and tests carried out in other Member States where the product is approved.

5. In France, Law No 525 of 2 November 1943 relating to the organization and control of anti-parasitic products for agricultural use (in the version now in force) prohibits the importation, sale, marketing or distribution (even free), of such products, which doubtless include Fumicot Fumispore, without prior approval (Articles 1 and 1 bis). Approval is granted once it has been established that the products are effective and harmless to public health, users and plants and animals. Products in respect of which a request for approval is made must undergo physical, chemical or biological tests in the laboratories and departments of the Ministry of Industrial and Scientific Development and decisions are taken by the Minister for Agriculture and Rural Development, acting on a proposal from an approvals committee (Article 3).

Provisional sales approvals of four years' duration may also be granted and the approvals (which are renewable) are granted for a maximum period of 10 years. There is a right of appeal for aggrieved parties. The packaging or labelling of products which have been approved must clearly state the

composition and name of the product and the fact that it has been approved, as well as precautionary measures and counter-indications.

As the Commission states in its replies to the Court dated 12 June 1981, the French legislation is comparable to and seeks to protect the same interests of public health as the Netherlands legislation with certain minimal differences.

6. By judgment of 29 October 1980, registered at the Court on 10 December 1980, the Gerechtshof [Regional Court of Appeal], The Hague, referred the following question to the Court:

"Is the scheme of the Netherlands Law of 1962 relating to plant protection products compatible with Article 30 of the EEC Treaty in so far as that Law prohibits the marketing in the Netherlands of a product originating in another Member State in which that product has been lawfully marketed and in which it meets the legislative requirements which protect the same overriding requirements of public health as the Netherlands Law?"

7. In accordance with Article 20 of the Protocol in the Statute of the Court of Justice of the EEC, written observations were submitted on 19 February 1981 by the Commission of the European Communities, represented by its Legal Adviser, Rolf Wägenbaur, acting as Agent, assisted by Thomas Van Rijn, a member of its Legal Department; on 6 March 1981 by the appellant in the main proceedings, the company Frans-Nederlandse Maatschappij voor Biologische Producten BV, represented by W. L. Nouwen; on 13 March 1981 by the Netherlands Government, represented by M. F. Italianer, Secretary-General of the Ministry of Foreign Affairs; on 19 March 1981 by the Danish Government, represented by Laurids Mikaelsen, Legal Adviser at the Ministry of Foreign Affairs; on 23 March 1981 by the Government of the Italian Republic, represented by Arnaldo Squillante, Head of the Department of Diplomatic Legal Affairs, Treaties and Legislative Matters, and by Pier Giorgio Ferri, State Advocate; on the same date by the United Kingdom, represented by Mrs G. Dagtoglou, Treasury Solicitor's Department.

8. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure and to invite the Commission to reply in writing to certain questions before the hearing.

II — Written observations submitted to the Court pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

1. Observations of the appellant in the main proceedings

The appellant in the main proceedings states that the system of the Netherlands Law relating to plant protection products constitutes, in respect of all those products intended to be used on the Netherlands market, an identical obstacle to their approval. The Law makes no reference to Community law and, for the purposes of its application, it is of no consequence that a product originating in another Member State has been lawfully marketed there and that it also satisfies in that country legislation designed to guarantee the same requirements of protection of public health as the Netherlands Law.

The appellant in the main proceedings contends that the absence of harmonization within the Community, under Article 100 of the Treaty, of the conditions governing the approval of plant protection products does not justify the existence of systems which are incompatible with Article 30 et seq. It states that that view is founded on reasoning *a contrario* which is based without qualification on the judgment in Case 148/78 *Ratti* [1979] ECR 1629, and which, in view of the judgments of the Court of 20 February 1979 in Case 120/78 *Rewe* [1979] ECR 649 and of 26 June 1980 in Case 788/79 *Gilli and Andres* [1980] ECR 2071, is far too broad. In its opinion those judgments only permit a derogation, by virtue of Article 36 of the EEC Treaty, from the prohibition laid down in Article 30 where the subsisting obstacle to trade is strictly necessary to protect the interests enumerated in Article 36.

This restriction upon recourse to Article 36 of the EEC Treaty also applies where the matter is not governed by a directive based on Article 100 of the Treaty.

Since the product satisfies French legislation which protects the same requirements of public health, Article 36 may no longer be invoked in relation to the application of Article 30 to the product in question.

As to the extent to which relevant legislation in the Member State where the product is first placed on the market also covers the overriding considerations mentioned in Article 36, the appellant in the main proceedings argues that that question must be decided by the court of the Member State in which the product is marketed again and where national legislation imposes restrictions on the marketing of the product.

Therefore, the defendant company proposes that the following reply should be given to the preliminary question:

"To the extent to which the Law of 1962 relating to plant protection products duplicates, as regards its application and its objective, the French legislation to which the product in question is subject, the system established by the said Law is not binding under the law of the European Economic Community which is in force."

2. Observations of the Commission

The Commission states that, in all the Member States with the exception of Ireland, the marketing of plant protection products is subject to the grant of prior approval, subject to substantive conditions which the Commission considers to be comparable. It is generally required that the products should present no danger to the health of humans and animals or an unreasonable danger to the environment and that they should be effective (with the exception of Luxembourg and the United Kingdom as regards the latter point). The administrative provisions for the implementation of national laws vary, according to the Commission, to a large extent in their scope. The Commission observes that the conditions laid down in these provisions are generally neither mandatory nor complete. In general, however, Member States have gradually made their national provisions conform to the recommendations of the Council of Europe relating to the detailed rules governing the approval and registration of plant protection products. But what is different is the application of those provisions which varies according to agricultural or ecological conditions and the scientific evaluation of the information supplied.

So far as Community law is concerned, the Commission goes on to refer to its proposal for a Council directive concerning the placing of EEC-accepted

plant protection products on the market and the establishment, in collaboration with experts from the Member States, in draft form of a number of uniform principles based to a large extent on the recommendations of the Council of Europe.

The Commission proposes in its observations with regard to the meaning of the preliminary question that the question should be reformulated so as to place the problem of the interpretation of Article 30 of the EEC Treaty in the context of the facts of the case.

The Commission considers moreover that the problem falls to be examined in the context of the implications of the decision of the Court in Case 120/78 referred to above and of subsequent decisions. The Commission states that, according to well-established case-law, in the absence of common rules governing the production and marketing of pesticides, it is for the Member States to regulate within their respective territories all matters concerning the production and marketing of those products, even if that amounts to a measure having an effect equivalent to a quantitative restriction on imports within the meaning of Article 30 of the Treaty. The interpretation of the Court, in Cases 120/78 and 788/79 mentioned above, according to which products lawfully produced and marketed in another Member State must be capable of being imported and marketed freely in the other States is limited to Article 30 and thus leaves open, in the Commission's view, the possibility that national restrictions may in exceptional cases be justified by one or more of the considerations mentioned in Article 36 of the Treaty.

Moreover, the Commission acknowledges that the prohibition of the importation and marketing of plant protection products without prior approval by the importing Member State is justified by the absence of Community rules obliging Member States to recognize or validate approvals granted by other Member States even where, as in the present case, two Member States have rules inspired by the same concerns in regard to the protection of public health.

The Commission maintains that its viewpoint remains valid even in the light of the judgment of 16 December 1980 in Case 27/80 *Fietje* [1980] ECR 3839, particularly since in the field of consumer information, which was at issue in that case, it is possible to be more flexible than in questions of public health. Not only the public, but also the State which is responsible for ensuring the health of its citizens, must be certain that a plant protection product does not pose any threat to health. The Commission's view is that there is undoubtedly a presumption to that effect if the product is a product approved in another Member State following a procedure and as a result of examinations which are probably, but may not always be, equivalent. But the Commission points out that a presumption does not amount to a certainty. Therefore the Commission goes on to state that as long as the question of the recognition of approvals (granted according to mutually agreed criteria) has not been resolved at Community level, there can be no question of inferring that recognition from the application of Article 30.

If however there should be an inclination to make the answer depend upon whether or not there are equivalent conditions for the approval of plant protection products, the Commission points out that it must be borne in mind that "it is for the national court to make the findings of fact" in that respect "in order to establish whether or not there is such equivalence" (judgment in Case 27/80 mentioned above, paragraph 2 of the decision). The Commission states

that if it is not thought sufficient to verify the provisions laid down by laws and regulations but that it is also necessary to take into account examinations and analyses actually carried out in respect of each product, the national court might easily find that task beyond it, in view of the complexity of the matter.

The Commission concludes by stating that the solution which it proposes may be inferred from the judgment recently delivered by the Court in Case 53/80 (judgment of 5 February 1981, *Officier van Justitie* v *Koninklijke Kaasfabriek Eyssen BV* [1981] ECR 409).

In the result, the Commission proposes that the following reply should be given to the preliminary question:

"Articles 30 and 36 of the EEC Treaty are to be understood as meaning that rules of a Member State prohibiting, in the absence of the approval required in the interests of public health, the marketing of a product originating in another Member State do not come within the prohibition of measures having an effect equivalent to quantitative restrictions even if that product is lawfully marketed in the Member State of origin and has there obtained the required approval."

3. Observations of the Netherlands Government

The Netherlands Government underlines the need to adopt legislative measures to ensure the mandatory protection of the human, animal and plant environment against the harmful effects of plant protection products.

The Netherlands Government does not in any way deny that a national system of approval for plant protection products does indirectly impede the importation of those products but it considers that as long as no Community rules in the matter have been adopted Member States are free, as regards their own territory, to adopt rules governing all matters concerned with the placing on the market and the use of plant protection products. The resulting obstacles to intra-Community trade are, in the view of the Netherlands Government, necessary by reason of the overriding requirements relating *inter alia* to the protection of health and life of humans and animals, the preservation of plant life, or the protection of the environment, and must be validated under Article 36 of the Treaty provided such national measures are justified and do not give rise to unreasonable consequences.

The Netherlands Government considers that a national control is wholly justified in order to enable a Member State to adopt provisions which are more precise and better suited to the climatic and geographical conditions which differ fundamentally from one country to another. This cannot be guaranteed by the original approval alone.

The Netherlands Government adds that the fact that a proposal for a Council directive concerning the placing of EEC-accepted plant protection products on the market (Official Journal 1976, C 212, p. 3), which was submitted by the Commission to the Council on 4 August 1976, has not yet been adopted, is an indication that the Member States consider that the conditions governing the use of plant protection products inevitably vary too widely from one State to another.

As regards the inspection and analysis of those products, operations which it considers necessary, the Netherlands Government observes that a Member State must have at its disposal the relevant information which, however, is not available when a plant protection product, which has been approved in another Member State, may, without any further requirement, be sold in another Member State. The Netherlands Government also considers it worthwhile to emphasize that any restrictions on use which may have been imposed in the

Member State which granted the original approval have no legal status in any other Member State.

The Netherlands Government finds that there is an analogy between the national systems of approval and registration for plant protection products and those governing medicinal preparations. In the case of medicinal preparations a system of approval and registration is generally considered to be acceptable and just. The Netherlands Government poses the question whether such a system is not even more necessary in the case of plant protection products and observes that in fact all Member States have a national system of approval and registration.

The Netherlands Government concludes that, in view of the problems in regard to the composition of those products, their continuing development and their widespread use, and in the absence of Community harmonization in this sphere, a system of prior national approval in each Member State remains a flexible and effective system for the protection of public health and can be applied in a way which does not give rise to discrimination and does not unnecessarily impede trade between Member States.

The Netherlands Government therefore proposes that the Netherlands legislation should be declared to be compatible with Article 30 et seq. of the EEC Treaty.

4. Observations of the Danish Government

The Danish Government submits in the first place that it is clear from the case-law of the Court that:

(i) the prohibition laid down by Article 30 of the EEC Treaty also extends, by analogy with the solutions adopted by the Court with regard to veterinary inspections, to systematic procedures for the approval of plant protection products imported from other Member States. (In this respect it cites the judgment of the Court of 5 October 1977 in Case 5/77 *Denkavit* [1979] ECR 3369 and its judgment of 20 May 1976 in Case 104/76 *Centrafarm* [1976] ECR 613.);

(ii) obstacles may be tolerated to the extent to which the national provisions are indispensable from the point of view of the protection of public health, the fairness of commercial transactions and consumer protection, as is indicated by the judgments of the Court of 20 February 1979 in Case 120/78 *Rewe* (mentioned above), of 26 June 1980 in Case 788/79 *Gilli* (mentioned above), and of 19 February 1981 in Case 130/80 *Kelderman* [1981] ECR 527.

The Danish Government, too, considers that pesticides may involve, by their very nature, risks to plants, animals or man and, in the broad sense, to the environment. As the present case shows, such considerations and concerns are at the basis of the legislative provisions adopted by the Member States. It is thus possible, according to the Danish Government, for national laws to pursue, in the general interest, certain ends which may justify exceptions to the general rules of the Treaty concerning the free movement of goods.

The Danish Government considers that Member States must be free to lay down legislative provisions which are essential for achieving the objective of the protection of public health. According to the Danish Government, it is therefore not unreasonable to require that a product which is intended to be used as a plant protection product and is approved for that purpose in another Member State, should also be made subject to approval in conformity with the legislation of the importing State.

The Danish Government is of the opinion that the measures in question imposed by the Netherlands legislation cannot be considered as discriminatory in their effect or as having been inspired

by considerations having no connection with the aims of Article 36 of the Treaty.

The Danish Government proposes therefore that the Court should reply to the question submitted to it by stating that "the application of national legislation relating to the use of plant protection products such as those mentioned in the judgment making the reference to the Court, is not incompatible with the rules of the EEC Treaty relating to the free movement of goods and that that is also the case even if the product has been lawfully marketed in the Member State of origin and satisfies analogous legislative requirements in that country".

5. Observations of the Government of the Italian Republic

The Italian Government considers that the problems raised by this case concern the application of Article 36 of the Treaty. It maintains that Article 36 confers upon the Member States a power in regard to the protection of the interests mentioned in that article, even if that involves having recourse to means which constitute a hindrance to intra-Community trade, provided that such means are necessary for the purposes of protection. In exercising that prerogative each Member State may act with complete independence and may consider, according to the case, that a product is dangerous to health or, on the contrary, harmless and therefore exempted from any restriction.

In the view of the Italian Government, it is inconceivable that the exercise by one Member State of an option open to it could bind other Member States of the Community. If that were in fact the case the other States would be deprived of the power which is conferred upon them by Article 36 and would be required to align their public health legislation with the legislation of the State which had adopted the most liberal provisions on this point.

The rule of Community law in question would thus be diverted far from its true purpose and would wrongly assume the function of an instrument for promoting the standardization of the national systems according to a reasoning and spirit completely alien to the Treaty.

The Italian Government observes that if such an interpretation were accepted it would follow that machinery other than that provided for by the Treaty (Article 100) could be used to standardize national rules affecting free trade within the common market.

The Italian Government does not consider that the relevant provisions of the Netherlands legislation constitute an impenetrable barrier to the placing on the market of foreign products or that they may be equated with a restriction on imports within the meaning of Article 30 of the Treaty, particularly since they do not discriminate between national and foreign products.

If, on the other hand, the imported product were exempted from the obligations imposed by the national public health legislation which continues to apply to national products, the Italian Government's view is that the opposite effect would be achieved, namely that of creating a privilege and consequently, an unjustified disturbance of the equilibrium of the market.

As a result, the Italian Government proposes that the Court should give the following reply to the question raised by the Netherlands court:

"(a) A Member State is empowered to prohibit, by means of its own rules, the placing on the market of a product considered as dangerous to public health, even if that prohibition affects an imported product approved under the public health legislation of the country of origin;

(b) The existence of a national rule of law laying down, for a series of

products, including plant protection products, regardless of their origin, be it national or foreign, the requirement of a prior examination by the public health authority and of a statement on the packaging indicating that approval has been granted for the product to be put on the market, does not constitute a quantitative restriction on imports."

6. Observations of the United Kingdom

The arguments of the United Kingdom are in similar vein to those of the Netherlands, Danish and Italian Governments. It agrees that the problem raised by this case is the proper interpretation of Article 36 of the Treaty and the scope of the powers reserved by the Treaty to the Member States to protect the health of their citizens.

The United Kingdom observes that Article 36 enables a Member State to restrict imports to protect public health within its frontiers and to restrict exports to protect public health elsewhere in the Community.

According to the United Kingdom the criteria justifying the restrictive measures should be:

1. whether they are imposed for the protection of public health; and

2. whether they are compatible with Article 36 and fall within the limits set by the decisions of the Court.

The United Kingdom states, moreover, that parallel or similar requirements in any two Member States may not of themselves provide the same degree of protection for public health in both States.

In the view of the United Kingdom, practical difficulties in finding out, first, whether the laws of the exporting State give equivalent protection, and secondly, whether those laws have been properly applied to the imported product, make the measures to be adopted by the importing State necessary and proportional to the risk to public health from the imported product.

The United Kingdom considers, therefore, that, in view of those problems and the absence of harmonization in this field, the full exercise of the Member States' powers remains unaffected, as is stated in the Opinion of Mr Advocate General Mayras in Case 244/78 *Union Laitière Normande* [1979] ECR 2663.

The United Kingdom concludes by stating that it would be particularly concerned at the possibility of seeing Member States exposed to serious disease hazards if the interpretation, sought by the appellant in the main proceedings, of what constitutes permissible prohibitions or restrictions on imports in this sphere were accepted.

III — Oral procedure

At the sitting on 1 July 1981 oral argument was presented by the following: A. Bos, acting as Agent, with Mr Van der Kolk, appearing as expert, for the Netherlands Government; L. Mikaelsen, acting as Agent for the Danish Government; and R. Wägenbaur, a member of the Legal Department of the Commission of the European Communities, acting as Agent, assisted by T. Van Rijn, with M. Hudson, appearing as expert, for the Commission of the European Communities.

The Advocate General delivered her opinion at the sitting on 14 October 1981.

Decision

1 By judgment of 29 October 1980, which was received by the Court on 10 December 1980, the Gerechtshof [Regional Court of Appeal], The Hague, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question relating to the interpretation of Articles 30 and 36 of the EEC Treaty so as to enable it to determine whether the Netherlands legislation relating to the approval of plant protection products is compatible with Community law.

2 This question was raised in the course of an appeal against the sentence, imposed at first instance, fining Frans-Nederlandse Maatschaapij voor Biologische Produkten BV for an offence contrary to the first paragraph of Article 2 of the Bestrijdingsmiddelenwet [Law relating to plant protection products], 1962, which prohibits the sale, storage or use as a plant protection product of a product which has not been approved pursuant to that Law.

3 The company concerned had imported, sold or supplied in the Netherlands a quantity of a plant protection product called "Fumicot Fumispore", containing as an active substance a toxic product, parahydroxyphenyl-salicylamide. That plant protection product had already been lawfully marketed in France but had not received the approval which is required in the Netherlands in accordance with the above-mentioned Law.

4 The system of approval in force in the Netherlands was established by the Law of 1962 in order to protect public health. That system prohibits, in principle, the use of such products without prior approval. The conditions for approval relate to the composition, effectiveness and harmlessness of those products as well as to the information for users set out on their packaging. The costs relating to laboratory examinations were, under the legislation in force at the time of the alleged offences, to be borne by the applicant.

5 The company concerned has contended that the system of approval in question is incompatible with the provisions of Community law prohibiting quantitative restrictions on imports and measures having equivalent effect, and that therefore a prosecution brought under that system cannot be well founded.

6 To enable it to decide this issue, the Gerechtshof has referred the following question to the Court:

"Is the scheme of the Netherlands Law of 1962 relating to plant protection products compatible with Article 30 of the EEC Treaty in so far as that Law prohibits the marketing in the Netherlands of a product originating in another Member State in which that product has been lawfully marketed and in which it meets the legislative requirements which protect the same overriding requirements of public health as the Netherlands Law?"

7 The Commission maintains that so long as no recognition of approvals in the field of plant protection products has been established at Community level, Member States are free to prohibit, in the interests of public health, the importation and marketing of such products originating in another Member State in which they have been lawfully marketed.

8 The Danish, Italian and Netherlands Governments and the United Kingdom emphasize the dangers which those products are capable of causing to health and the environment in general and draw attention to the differences in controls which result in particular from the diversity of climatic conditions. Without denying that such national rules may constitute an obstacle to trade between Member States, they consider that rules of that kind are lawful under the exception provided for by Article 36 of the EEC Treaty in the case of the overriding considerations of the protection of public health.

9 Whilst it is not for the Court, in proceedings brought under Article 177 of the EEC Treaty, to pronounce upon the compatibility of rules of national law with provisions of Community law, it does have jurisdiction to provide the national court with all material concerning the interpretation of Community law which will enable that court to judge whether those rules are compatible with the rule of Community law in question. The question should therefore be construed as asking, essentially, whether, and if so to what extent, the system and the detailed procedures governing the approval of plant protection products are justified in the light of the requirements of Articles 30 and 36 of the EEC Treaty.

10 Although the question, as put to the Court, merely concerns the interpretation of Article 30 of the Treaty, it is necessary, for the purpose of answering it, to consider the system which emerges from the general rule laid down by that article in conjunction with the derogation from it contained in Article 36 of the Treaty.

11 Under Article 30 of the EEC Treaty quantitative restrictions on imports as well as all measures having equivalent effect between Member States are prohibited. That general rule, however, includes a reference, in particular, to Article 36, according to which the provisions of Articles 30 to 34 are not to preclude prohibitions or restrictions on imports which are justified *inter alia* on grounds of "the protection of health and life of humans, animals or plants". The last sentence of Article 36 states, however, that "such prohibitions or restrictions shall, however, not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."

12 It should be noted that, at the time of the alleged offences, there were no common or harmonized rules relating to the production or marketing of plant protection products. In the absence of harmonization, it was therefore for the Member States to decide what degree of protection of the health and life of humans they intended to assure and in particular how strict the checks to be carried out were to be (judgment of the Court of 20 May 1976 in Case 104/75 *De Peijper* [1976] ECR 613 at p. 635), having regard however to the fact that their freedom of action is itself restricted by the Treaty.

13 In that respect, it is not disputed that the national rules in question are intended to protect public health and that they therefore come within the exception provided for by Article 36. The measures of control applied by the Netherlands authorities, in particular as regards the approval of the product, may not therefore be challenged in principle. However, that leaves open the question whether the detailed procedures governing approvals, as indicated by the national court, may possibly constitute a disguised restriction, within the meaning of the last sentence of Article 36, on trade between Member States, in view, on the one hand, of the dangerous nature of the product and, on the other hand, of the fact that it has been the subject of a procedure for approval in the Member State where it has been lawfully marketed.

14 Whilst a Member State is free to require a product of the type in question, which has already received approval in another Member State, to undergo a fresh procedure of examination and approval, the authorities of the Member States are nevertheless required to assist in bringing about a relaxation of the controls existing in intra-Community trade. It follows that they are not entitled unnecessarily to require technical or chemical analyses or laboratory tests where those analyses and tests have already been carried out in another Member State and their results are available to those authorities, or may at their request be placed at their disposal.

15 For the same reasons, a Member State operating an approvals procedure must ensure that no unnecessary control expenses are incurred if the practical effects of the control carried out in the Member State of origin satisfy the requirements of the protection of public health in the importing Member State. On the other hand, the mere fact that those expenses weigh more heavily on a trader marketing small quantities of an approved product than on his competitor who markets much greater quantities, does not justify the conclusion that such expenses constitute arbitrary discrimination or a disguised restriction within the meaning of Article 36.

16 The reply to be given to the question submitted to the Court must therefore be that it follows from Article 30 in conjunction with Article 36 of the Treaty that a Member State is not prohibited from requiring plant protection

products to be subject to prior approval, even if those products have already been approved in another Member State. The authorities of the importing State are however not entitled unnecessarily to require technical or chemical analyses or laboratory tests when the same analyses and tests have already been carried out in another Member State and their results are available to those authorities or may at their request be placed at their disposal.

17 It is for the national court to examine, in the light of the foregoing considerations, whether, and if so to what extent, the procedures governing approvals laid down by the national legislation are justified under Article 36.

Costs

18 The costs incurred by the Governments of Denmark, Italy and the Netherlands, by the United Kingdom and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As the proceedings are, so far as the parties to 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,

in answer to the question referred to it by the Gerechtshof, The Hague, by judgment of 29 October 1980, registered at the Court on 10 December 1980, hereby rules:

It follows from Article 30 in conjunction with Article 36 of the Treaty that a Member State is not prohibited from requiring plant protection products to be subject to prior approval, even if those products have already been approved in another Member State. The authorities of the importing State are however not entitled unnecessarily to require

technical or chemical analyses or laboratory tests when the same analyses or tests have already been carried out in another Member State and their results are available to those authorities or may at their request be placed at their disposal.

	Mertens de Wilmars	Bosco	Due
Touffait	Pescatore	Mackenzie Stuart	O'Keeffe
Koopmans	Everling	Chloros	Grévisse

Delivered in open court in Luxembourg on 17 December 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 14 OCTOBER 1981 [1]

Mr President,
Members of the Court,

This reference for a preliminary ruling which concerns once again the interpretation of Articles 30 and 36 of the Treaty arises out of criminal proceedings brought in the Netherlands against Frans-Nederlandse Maatschappij voor Biologische Producten BV, an importer of French plant protection products.

I — (a) That company is being prosecuted for having sold in February 1978 a fungicide called "Fumicot Fumispore" to a company in Groningen which used it to disinfect its sugar silo. This product is intended to eliminate any trace of mouldiness remaining in the air in premises used for the production and storage of foodstuffs and is used mainly in dairies, in premises used for making cheese and in bakeries.

The disinfectant has been approved in France, where it is manufactured, in accordance with the rules in force (Law No 525 of 2 November 1943, as amended, relating to the organization

1 — Translated from the French.