In Case 49/82

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Alberto Prozzillo, assisted by Thomas van Rijn, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

KINGDOM OF THE NETHERLANDS, represented by Adriaan Bos, Deputy Legal Adviser at the Ministry of Foreign Affairs at The Hague, acting as Agent, with an address for service in Luxembourg at the Netherlands Embassy,

defendant,

APPLICATION for a declaration that the Kingdom of the Netherlands has failed to fulfil its obligations under the EEC Treaty by authorizing the packing in small packages of butter from non-member countries in customs warehouses, contrary to the provisions of Article 1 of Council Directive 71/235/EEC of 21 June 1971 on harmonization of the provisions laid down by law, regulation or administrative action relating to the usual forms of handling which may be carried out in customs warehouses and in free zones (Official Journal, English Special Edition 1971 (II), p. 398),

THE COURT

composed of: P. Pescatore, President of the Second Chamber, acting as President, A. O'Keeffe and U. Everling (Presidents of Chambers), G. Bosco, T. Koopmans, K. Bahlmann and Y. Galmot, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

In order to prevent differences between national customs warehousing procedures from provoking deflection of trade and diversion of customs revenue, particularly in view of the fact that if goods are placed in warehouses, no customs duties, charges having equivalent effect or agricultural levies may be collected, on 4 March 1969 the Council adopted Directive 69/74/EEC on the harmonization of provisions laid down by law, regulation or administrative action relating to customs warehousing procedure (Official Journal, English Special Edition 1969 (I), p. 82).

The first subparagraph of Article 9 (1) of Directive 69/74/EEC provides that: "It must be possible for goods deposited in warehouses to undergo there, under the conditions laid down by the competent authorities, such usual forms of handling as are needed to ensure preservation or to improve packaging or marketable quality." Article 9 (2) provides that: "Goods which undergo treatment other than the usual forms of handling referred to in paragraph (1) shall be subject to the rules in force relating to inward processing." The common list of usual forms of handling which may be carried out in the different types of warehouses was established, in accordance with the second subparagraph of Article 9 (1) of Directive 69/74 by Council Directive 71/235 of 21 June 1971.

The Netherlands legislation adopted pursuant to Directive 71/235 is in conformity with the provisions of Community law inasmuch as Article 210 of the Decree implementing the Algemene Wet inzake Beschuit de Douane en Accijnzen [General Law on Customs and Excise, hereinafter referred to as the "the General Law"] as amended by the Royal Decree of 9 February 1976 (Stbl. 1976 No 58), refers to the list of authorized usual forms of handling which is set out in Article 1 of Directive 71/235. However, the view of the Netherlands authorities regarding the contents of the list is at variance with the manner in which those contents have been defined by the Council.

By letter of 27 February 1979, which was sent to the Commission in response to the latter's request for information of 6 February 1978, the Netherlands Permanent Representation stated that the packing in small packages of butter imported from non-member countries and stored in customs warehouses prior to re-exportation was carried out in the Netherlands as a "usual form of handling" under the customs warehousing procedure, in accordance with the provisions of Article 1 of Directive 71/235.

By letter of 14 March 1980, the Commission initiated against the Netherlands the procedure provided for in Article 169 of the EEC Treaty. In the Commission's opinion, the packing of butter in small packages, as it is carried out in the Netherlands, cannot be regarded as a "usual form of handling" within the meaning of Directive 71/235 inasmuch as the requirement that an operation must be simple in order to be

regarded as a "usual form of handling" precludes mixing or separation of foodstuffs as well as shaping and weighing since such operations involve, in addition, the use of large amounts of equipment.

Taking the view that authorization to pack butter in small packages constituted an infringement of the provisions of Directive 71/235, the Commission requested the Netherlands Government to submit its observations within a period of one month.

In its reply of 21 April 1980, the Netherlands Permanent Representation stated that the Netherlands Government regarded the packing of butter as a usual form of handling within the meaning of subparagraph 8 of Article 1 (1) of Directive 71/235 since packing was involved. The fact that the packing machines used to carry out the packing work and shape the butter without adding any other substance to it cannot in any way affect the description of the form of handling. The Permanent Representation added that the word "simple" in subparagraph 8 of Article 1 (1) of the directive relates solely to decanting and transfer into other containers and not, for example, to packing. That is clear, it is claimed, from both the Dutch and the French versions of the directive.

On 18 February 1981, the Commission delivered a reasoned opinion in accordance with the first paragraph of Article 169 of the EEC Treaty. In that opinion, it concluded that "the Kingdom of the Netherlands, by authorizing the packing in small packages of butter stored in warehouses and imported from non-member countries, has failed to fulfil its obligations under the EEC Treaty". The opinion, which was forwarded to the Netherlands Government on 20 February 1981, contained a request that it should be complied with within a period of two months.

On 22 May 1981, the Netherlands Government re-stated its point of view and emphasized, in particular, that, despite the use of considerable amounts of equipment, the operation was essentially a simple one, regard being had to the quantities and the speed and efficiency of the contested form of handling, and that it must therefore be regarded as a "usual form of handling".

The Commission lodged this application at the Court Registry on 11 February 1982.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided in accordance with Article 21 of the Statute of the Court of Justice and Article 45 of the Rules of Procedure, to hold a preparatory inquiry.

By letter of 18 November 1982, the Registrar of the Court wrote to the Commission and the Kingdom of the Netherlands.

1. In that letter he asked them both to reply to the following questions:

   (a) How does the "inward processing" procedure differ from the "customs warehousing" procedure? Does the latter, generally speaking, confer greater advantages on undertakings than the former? If so, what are they?

   (b) Has the grant by the Netherlands Government of authorization to pack butter in small packages under the "customs warehousing" procedure had the effect of endowing that operation with certain advantages in spite of the fact that it was expressly excluded from the scope of the "inward processing" procedure from 15

January 1976 to 1 April 1980 by Regulation (EEC) No 3066/75 of the Council of 24 November 1975 (Official Journal L 307, p. 3), by Council Regulation (EEC) No 875/77 of 26 April 1977 (Official Journal L 106, p. 23) and by Regulation (EEC) No 3352/75 of the Commission of 23 December 1975 (Official Journal L 330, p. 28)? If so, what were those advantages?

2. He also requested the Kingdom of the Netherlands to specify the purpose of the contested form of handling, including:

   (a) the state of the butter before and after packing;

   (b) the precise nature of each of the operations involved.

II — Conclusions of the parties

The *Commission* claims that the Court should:

1. Declare that, by authorizing the packing in small packages of butter imported from third countries and stored in customs warehouses, the Kingdom of the Netherlands has failed to fulfil its obligations under the EEC Treaty;

2. Order the Kingdom of the Netherlands to pay the costs.

The *Kingdom of the Netherlands* contends that the Court should:

1. Dismiss the application as unfounded;

2. Order the Commission to pay the costs.

III — Submissions and arguments of the parties

The *Commission* considers that the packing of butter which is authorized in the Netherlands does not come within any of the forms of handling referred to in subparagraph 8 of Article 1 (1) of Directive 71/235 of the Council of 21 June 1971, namely, "packing, unpacking, change of packings, repair of packings, decanting and simple transfer into other containers". In particular, working, shaping and weighing cannot come within the concept of packing. The argument to the effect that those operations, which precede and are necessary for packing, all form part of a single continuous process is not relevant since packing is, in reality, only the final stage of the contested form of handling.

According to the Commission, the usual forms of handling within the meaning of Article 1 (1) of Directive 71/235/EEC can only be simple operations, as is clear from the use of the adjective "simple" in subparagraphs 5, 8, 10, 11, 12 and 19 of the same provision, and that that rules out the employment of large amounts of equipment.

In the Commission's opinion, the expression "usual form of handling" must be strictly interpreted in view of the nature and the function of customs warehouses. According to the sixth recital in the preamble to Directive 69/74, the essential purpose of customs warehouses, in which goods may be placed pending their shipment to another destination, is to store the goods and not to provide facilities for preparation or processing. It was only in order to take economic realities into account that some forms of handling were authorized with a view to ensuring preservation of the goods or improvement of their packaging or marketable quality. Such

authorizations must however be regarded as exceptions to the rule.

The Commission states that although Article 9 (1) of the framework directive, Council Directive 69/74 of 4 March 1969, provides for the establishment of a "common list" of the usual forms of handling, that certainly does not mean that the list constitutes an inventory of all the usual practices authorized in the Member States. An inventory of national practices is drawn up only in the first stage of harmonization when various factors are taken into consideration. In the explanatory note to Article 1 (1) of Directive 71/235, attached to the proposal for the directive in question, the Commission points out that the list of usual forms of handling was "drawn up on the basis of: the usual forms of handling in force in the Member States, traditional commercial practices, existing requirements of users of customs warehouses and of free zones and the development of techniques and of means of control" (Working Paper No 54/71 of 4 June 1971, p. 14). Accordingly, certain usual forms of handling authorized in the Member States were included in the "common list" definitively adopted by the Council whilst others were excluded from it.

The Commission wishes to emphasize that when the Netherlands Government forwarded the list of usual forms of handling authorized within its territory, it merely referred to Articles 15 (2) and 40 of the General Law and that it was impossible for the Commission to conclude on the basis of the wording of those provisions that the contested form of handling fell within one of the categories specified therein.

The Commission also points out that the infringement of Community law by the Netherlands authorities cannot be justified by the fact that the contested form of handling is authorized in another Member State, namely the Federal Republic of Germany. In any event, the packing of butter in German customs warehouses was forbidden as from 24 June 1980.

In the Commission's opinion, the fact that the contested form of handling is not a usual form of handling which is subject to the rules relating to customs warehouses is beyond dispute since, in the first place, the Committee for Customs Processing Systems had expressed support, at its meeting on 25 and 26 January 1978, for the proposition that the packing of bulk butter into small packages for sale by retail was an operation which could not be carried out as a usual form of handling but which was subject to the rules in force governing inward processing and, secondly, the Commission had already expressed that view in Regulation (EEC) No 3352/75 of 23 December 1975 prohibiting the use of inward processing arrangements in respect of butter (Official Journal L 330, p. 28).

According to the *Netherlands Government*, the restrictive interpretation proposed by the Commission on the basis of the function of customs warehouses is incorrect, in so far as it takes no account whatsoever of the manner in which the list of the usual forms of handling was drawn up.

The Netherlands Government recalls that according to Article 9 (1) of the framework directive, Council Directive 69/74 of 4 March 1969, it must be possible for goods deposited in warehouses to undergo there "under the conditions laid down by the competent authorities" the usual forms of handling set out in "the common list" which was to be drawn up by the Council on a proposal from the Commission.

According to the Netherlands Government, it is clear from that provision that the common list set out in Article 1 (1)

of Directive 71/235 of 21 June 1971 reflects the usual, that is to say traditional, practices which at the time were authorized and applied by the Member States and were recorded by the Council. The fact that not all the usual forms of handling authorized by the Member States were included in the common list in no way detracts from the validity of that proposition.

The Netherlands Government emphasizes that since the packing operation referred to in Articles 15 (2) and 40 of the Netherlands General Law concerns different kinds of goods, it did not consider it necessary to specify that the packing of butter was authorized on the basis of those provisions.

The Netherlands Government considers that the argument to the effect that the usual forms of handling must be simple operations reflects only the Council's initial intentions. A comparison of the text of the proposal submitted to the Council on 3 March 1971 (Doc. R/319/71 — Eco 32), which is attached to the rejoinder, with the final text of Directive 71/235, reveals in particular that the expression "if only simple operations are involved" was maintained only in certain specific cases. Furthermore, the nature of the operations referred to in subparagraph 20 of Article 1 (1) of the directive shows that the usual forms of handling specified in Directive 71/235 are not always simple operations.

The Netherlands Government contends that, contrary to the Commission's argument, the various operations which precede the packing of butter, namely working, shaping and weighing, must be regarded not as separate operations but as forming part of a continuous process.

Contrary to the view expressed by the Commission, Regulation No 3352/75 of 23 December 1975 does not, it is claimed, provide that the packing of butter cannot be carried out in customs warehouses and must therefore come within the scope of the inward processing procedure. The Netherlands Government considers that the regulation merely provides that the packing of butter falls outside the scope of the rules relating to inward processing. In its opinion, that cannot imply that the packing of butter in customs warehouses is prohibited.

The Netherlands Government takes note of the fact that in the Federal Republic of Germany the contested form of handling is now prohibited, whilst pointing out that the sole purpose of its observations in that connection was to show that the Member States quite clearly had differing views concerning the application of the directive.

IV — Summary of written observations submitted in reply to questions put by the Court

In reply to the question of how the "inward processing" procedure differs from the "customs warehousing" procedure, the Commission and the Netherlands Government state that although under both of those procedures, it is possible to suspend for a given period the collection of taxes and duties, in particular, customs duties and agricultural levies on goods imported into the Community, they may be distinguished by reference to the following factors:

(1) Their purpose

Under the inward processing procedure, goods temporarily imported may undergo any kind of preparation or processing with a view to their exportation from the territory of the Community, whereas under the customs

warehousing procedure, the goods, which are merely placed in storage, may undergo only the usual forms of handling referred to in Article 1 (1) of Council Directive 71/235 of 21 June 1971, that is to say operations intended to ensure their preservation or to improve their packaging or their marketable quality.

(2) Conditions governing their application

Article 5 (1) of Council Directive 69/73 of 4 March 1969 (Official Journal, English Special Edition, 1969 (I), p. 75) provides that the inward processing procedure may be applied only if preparation or processing would "contribute towards providing most favourable conditions for the export of goods resulting from such processing without conflicting with essential interests of producers within the Community".

As regards the customs warehousing procedure, "economic" conditions of that kind are prescribed since the authorized forms of handling cannot, in view of their simplicity, adversely affect the interests of Community producers.

(3) Formalities

An operation carried out under the inward processing procedure generally involves a greater number of formalities than is the case with regard to the forms of handling carried out in a customs warehouse.

As regards the question relating to the advantages of the customs warehousing procedure over the inward processing procedure, the Commission states that it is difficult to compare or to classify them since the two procedures serve different purposes. The customs warehousing procedure enables traders to store imported goods for relatively long periods where, for example, the ultimate consignee of the goods is unknown at the time of importation or where the goods are released for consumption over a given period.

The purpose of the inward processing procedure is to enable Community undertakings to offer their products or services on foreign markets at competitive prices and to contribute towards making better use of the Community labour force.

It emerges from the Commission's observations that the grant by the Netherlands Government of authorization to pack butter in small packages under the customs warehousing procedure made it possible to circumvent the prohibition of the importation of butter from non-member States under the inward processing procedure during the period from 15 January 1966 to 1 April 1980 which was prescribed by Regulation No 3066/75 of the Council of 24 November 1975, by Council Regulation No 875/77 of 26 April 1977 and by Regulation No 3352/75 of the Commission of 23 December 1975.

According to the Commission, the situation of the market between 1976 and 1980 was such that it was necessary to accord priority to the marketing of EEC butter in non-member countries. One of the means of attaining that objective was to supply the processing industries of the Community with EEC butter instead of butter from non-member countries.

Thus, the effect of excluding butter imported from non-member countries from the scope of the inward processing procedure was to make any packing of such butter subject to the agricultural levy payable upon release of the product for consumption. By allowing Netherlands processing undertakings to pack

butter under the customs warehousing procedure, the Netherlands authorities had granted preferential treatment to them, in contrast to the treatment accorded to processing undertakings from other Member States.

The Netherlands Government states that although the contested packing has made it possible to sell the butter outside the Community on more favourable terms than would have been the case if the packing had been carried out under the inward processing procedure, that possibility has existed since 1968.

In explaining the purpose of the contested form of handling carried out in Netherlands customs warehouses, the Netherlands Government gives the following details:

"The butter is stored in the warehouse in boxes of 15 or 25 kg. There, the butter is weighed before being unpacked. Once unpacked, the blocks of butter are placed by hand in a machine which works the butter into a homogeneous mass. Following selection of the type of packing desired (packets of 10, 15 or 250 grams or boxes of 1 000 grams), the butter is transported by mechanical means to one of the packing machines which slices it into pieces of the desired weight and wraps it or puts it into boxes. Finally, a conveyor belt takes the packets or boxes to a packing counter where they are packed into crates by hand.

All the packets of butter are sold and delivered for use on sea-going vessels. At present, the butter processed in customs warehouses comes from Finland, Norway and Sweden and from supplies previously released for consumption in the Netherlands."

V — Oral procedure

At the sitting on 2 February 1983, oral argument was presented by A. Prozzillo, assisted by J. F. Verstrynge, acting as Agents, for the Commission of the European Communities, and by A. Bos, acting as Agent, for the Kingdom of the Netherlands.

The Advocate General delivered his opinion at the sitting on 10 March 1983.

Decision

1 By application lodged at the Court Registry on 11 February 1982, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the Kingdom of the Netherlands had failed to fulfil its obligations under the EEC Treaty by authorizing the packing in small packages of butter imported from non-member countries and stored in customs warehouses, contrary to the provisions of Article 1 of Council Directive 71/235/EEC of 21 June 1971 on harmonization of the provisions laid down by law, regulation or administrative action relating to the usual forms of handling which may be carried out in customs warehouses and in free zones (Official Journal, English Special Edition 1971 (II), p. 398).

2 Council Directive 71/235 of 21 June 1971 implements Directive 69/74 of March 1969 on the harmonization of the provisions laid down by law, regulation or administrative action relating to customs warehousing procedure (Official Journal, English Special Edition 1969 (I), p. 82).

3 Council Directive 69/74, which was adopted in order to prevent disparities between national customs warehousing procedures from leading to deflection of trade and diversion of customs revenue, provides in Article 9 (1) that it must be possible for goods deposited in warehouses to undergo there "under the conditions laid down by the competent authorities" the "usual forms of handling" set out in a common list to be drawn up by the Council on a proposal from the Commission.

4 The common list of usual forms of handling authorized in customs warehouses, adopted by the Council in accordance with the aforesaid provisions, is set out in Article 1 (1) of Directive 71/235. According to subparagraph 8 of Article 1 (1), those usual forms of handling include "packing, unpacking, change of packings, repair of packings, decanting and simple transfer into other containers".

5 The Commission considers that the packing of butter in small packages, which is authorized in the Netherlands as a usual form of handling within the meaning of Article 1 (1) of Directive 71/235, does not come within the customs warehousing procedure since working, shaping and weighing, which precede the packing of the butter, are not forms of handling referred to in the aforesaid provisions. According to the Commission, the forms of handling carried out in customs warehouses are necessarily simple operations. That requirement of simplicity, which is referred to in several subparagraphs of Article 1 (1) of Directive 71/235, stems from the function of customs warehouses which is to store goods and not to provide facilities for preparation or processing.

6 The Kingdom of the Netherlands contends that the various operations which precede the packing of the butter are simple forms of handling which form part of a single continuous process. According to the Kingdom of the Netherlands, the forms of handling authorized in customs warehouses are not all characterized by their simplicity. It is clear from the preparatory work carried out prior to the adoption of Directive 71/235 that the requirement of

simplicity was maintained only in certain specific cases. The Kingdom of the Netherlands contends, moreover, that the interpretation of Directive 71/235 proposed by the Commission on the basis of the function of customs warehouses fails to take account of the manner in which the list of usual forms of handling was drawn up. According to the Kingdom of the Netherlands, it is clear from the wording of Article 9 (1) of Directive 69/74, quoted above, that the common list set out in Article 1 (1) of Directive 71/235 reflects the usual practices traditionally applied by the Member States and recorded by the Council.

7 The latter argument, which seeks to establish that the contested packing is one of the forms of handling specified in Article 1 (1) of Directive 71/235, inasmuch as it was traditionally authorized in Netherlands customs warehouses, cannot be accepted. Although the inventory of national practices was carried out at an early stage in the preparatory work for the directive, its purpose was not to maintain them but, on the contrary, to harmonize them. The aim of harmonization is precisely to oblige the Member States to implement, within the periods prescribed, the necessary amendments and adjustments.

8 It appears from the written observations of the Netherlands Government that the contested form of handling is carried out in customs warehouses in the following manner: to begin with, the frozen blocks of butter are allowed to thaw out. They are then unpacked and placed by hand in a machine which works the butter into a homogeneous mass. Following selection of the type of packing desired (packets of 10, 15 or 250 grams or boxes of 1 000 grams), the butter is transported by mechanical means to a packing machine which slices it into pieces of the desired weight and wraps it or puts it into boxes. Finally, a conveyor belt takes the packets or boxes to a packing counter where they are packed into crates by hand. The Netherlands Government has pointed out that the packets of butter — which comes, *inter alia*, from Finland, Norway and Sweden — are intended for use on sea-going vessels.

9 In the Court's opinion, the question whether or not the contested packing comes within the scope of the customs warehousing procedure laid down by Directive 71/235 cannot be decided by reference to the wording of subparagraph 8 of Article 1 (1) of that directive; instead, the operation must be considered in the light of the objective of the customs warehousing procedure.

10 In that regard, it is clear from the first subparagraph of Article 9 (1) of Directive 69/74, the meaning of which is further clarified by the sixth recital in the preamble to that directive, that the essential purpose of customs warehouses is to provide for the storage of goods. That is why the handling authorized during storage is confined to "such usual forms of handling as are needed to ensure preservation or to improve packaging or marketable quality". It follows, therefore, that such operations are not intended, in principle, to permit the goods to pass from one stage of marketing to another and that an express provision is required for any exceptions to that rule in the case of certain operations concerning specific products.

11 Furthermore, Article 9 (2) of the same directive provides that: "Goods which undergo treatment other than the usual forms of handling referred to in paragraph (1) shall be subject to the rules in force relating to inward processing." Council Directive 69/73 of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action in respect of inward processing (Official Journal, English Special Edition 1969 (I), p. 75) provides in Article 2 (1) that inward processing arrangements are the customs arrangements whereby goods imported from non-member countries may be re-exported outside the customs territory of the Community wholly or partly in the form of compensating products. According to Article 2 (3) of that directive, compensating products are products produced by one or more of the following processes: "working of goods, including fitting or assembling them or adjusting them to other goods; processing of goods; repair of goods, including restoring them to their original condition and putting them in order."

12 It appears from the documents before the Court that the purpose and the effect of the contested operation was to place the bulk butter stored in Netherlands warehouses in a new packing suited to the needs of the ultimate recipient of the product. Since the list set out in Article 1 (1) of Directive 71/235 does not contain an express provision authorizing a form of handling of that kind in relation to butter, the conclusion must be drawn that the operation in question does not come within the scope of the customs warehousing procedure and is therefore covered by the inward processing procedure as defined in Article 2 of Directive 69/73, referred to above.

13 Moreover, that interpretation is confirmed by Regulation (EEC) No 3066/75 of the Council of 24 November 1975 (Official Journal L 307, p. 3) and by

Regulation (EEC) No 3352/75 of the Commission of 23 December 1975 (Official Journal L 330, p. 28) adopted in pursuance of the first-named regulation. The purpose of those regulations was to contribute towards the reabsorption of excess stocks of Community butter by obliging Community industries which use the product for export purpose to use exclusively butter produced in the Community. With that end in view, the aforementioned regulations merely laid down rules in respect of inward processing alone and expressly excluded from the scope thereof, for a period which was extended until 1 April 1980, "the processing of bulk butter into small packages for the retail trade". It is clear that the effect which that prohibition was expected to produce could be secured only on condition that the operation concerned could not be carried out under the equally advantageous customs warehousing procedure.

14 It is therefore necessary to conclude, in the light of the foregoing considerations, that by authorizing, under the customs warehousing procedure, the packing in small packages of butter imported in bulk from non-member countries, the Kingdom of the Netherlands has failed to fulfil its obligations under the EEC Treaty.

Costs

15 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. As the Kingdom of the Netherlands has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by authorizing, under the customs warehousing procedure, the packing in small packages of butter imported in bulk from non-member countries, the Kingdom of the Netherlands has failed to fulfil its obligations under the EEC Treaty;**

2. Orders the Kingdom of the Netherlands to pay the costs.

Pescatore O'Keeffe Everling

Bosco Koopmans Bahlmann Galmot

Delivered in open court in Luxembourg on 20 April 1983.

P. Heim
Registrar

P. Pescatore
President of the Second Chamber,
acting as President

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 10 MARCH 1983

My Lords,

This is an action brought by the Commission under Article 169 of the EEC Treaty for a declaration that the Kingdom of the Netherlands has failed to fulfil its obligations under the Treaty in that, contrary to Article 1 of Council Directive 71/235 of 21 June 1971 (OJ L 143, 29. 6. 1971, p. 28, English Special Edition, 1971 (II), p. 398), it has authorized the packing of butter from third countries stored in customs warehouses.

Customs warehouse procedure was harmonized by Council Directive 69/74 of 4 March 1969 (OJ L 58, 8. 3. 1969, p. 7, English Special Edition, 1969, p. 82). Article 2 (1) provides that the effect of the customs warehouse system "shall be that customs duties, charges having equivalent effect and agricultural levies are not collected during the period of storage of goods". When the goods leave the warehouse, they must either be cleared for home use, placed under another customs procedure or exported (see Article 2 (2)). According to the preamble, "since the essential purpose of customs warehouses is to store goods, handling of goods during storage is only permissible if its purpose is to ensure their preservation or to improve packaging or marketable quality, and where goods in store receive other handling they are no longer eligible for the customs warehousing procedure and are thus no longer governed by the rules of this directive . . .".