REPORT FOR THE HEARING
in Case C-39/88 *

I — The relevant legislation

The Council, by Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products (Official Journal 1981 L 379, p. 1, hereinafter referred to as 'the basic regulation'), introduced a pricing system (Title III), detailed rules for the application of which were laid down by the Commission in Regulation (EEC) No 3598/83 of 20 December 1983 on the notification of prices and fixing the list of representative wholesale markets and ports for fishery products (Official Journal 1983 L 357, p. 17, hereinafter referred to as 'the wholesale prices regulation').

All the provisions at issue in the present case require Member States to provide the Commission with certain information concerning prices in order to enable it to implement the pricing system introduced by the basic regulation.

(a) *Products listed in Annex I(A) and (D) to the basic regulation*

Under Article 10(1) and (3) of the basic regulation, the Council is required to fix a guide price for the fishery products listed in Annex I(A) (such as frozen herring, fresh or chilled sardines and cod) and Annex I(D) (shrimps, fresh, chilled, or boiled in water) to that regulation. Under Article 10(2) of the basic regulation, that price is to be calculated on the basis of 'the average of prices recorded ... on representative wholesale markets or in representative ports during the three fishing years immediately preceding the year for which the price is fixed ...'.

Article 11(1) of that regulation requires Member States to notify the Commission of the prices recorded on representative wholesale markets or in representative ports. Article 1 of the wholesale prices regulation stipulates that the information notified must refer to the average price on the market day and that it must be supplied on a bi-monthly basis.

(b) *Products listed in Annex IV(B) to the basic regulation*

Member States are required under Article 11(3) of the basic regulation to notify the Commission every quarter of wholesale prices during the preceding quarter for the products listed in Annex IV(B) which are frozen on board or frozen on land (such as cod and mackerel). Under Article 2 of the wholesale prices regulation, that information must be sent by telex not later than the end of the sixth week following the quarter concerned.

II — Course of the procedure

Following a complaint addressed to Ireland concerning the fact that it had never supplied to the Commission, within the prescribed periods, the information in

* Language of the case: English.

question, the Commission, by a letter of 1 October 1986, requested that State to submit its observations. In the absence of a reply to that letter, the Commission addressed a reasoned opinion to Ireland on 19 May 1987.

By a letter of 17 June 1987, Ireland replied that it was unable to provide the information in question. With regard to the information referred to in Article 11(1) of the basic regulation, it claimed that it lacked the staff necessary to collect such data on a bi-monthly basis. As regards the information referred to in Article 11(3) of the basic regulation, it pointed out that no wholesale market existed in Ireland.

The Commission brought the present action on 2 February 1988.

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, it did decide to address one question to the Commission, the reply to which is given in Section V below.

III — Conclusions of the parties

The *Commission* claims that the Court should:

(i) declare that, save as regards products frozen on land, Ireland has infringed Article 11(1) and (3) of Regulation No 3796/81 and Articles 1 and 2 of Regulation No 3598/83;

(ii) order Ireland to pay the costs of the proceedings.

Ireland contends that the Court should dismiss the Commission's application and order it to pay the costs of the proceedings.

IV — Submissions and arguments of the parties

(a) *Failure to comply with Article 11(1) of the basic regulation*

The *Commission* points out that the infringement does not relate to the products covered by Annex I(D) to the regulation (shrimps). The implementing regulation, which lists the representative wholesale markets and ports for fishery products, does not mention any representative wholesale market or port for shrimps in Ireland. Ireland is therefore under no obligation to provide information relating to the prices of such products. On the other hand, Ireland is required to provide information in respect of the products covered by Annex I(A) and it cannot justify its failure to comply with that obligation by pleading a shortage of staff.

Ireland claims that it is impossible for it to deploy its limited number of inspectors at the representative ports with a view to collecting the pricing information in question and submitting it to the Commission on a bi-monthly basis. Those inspectors are required to monitor some 900 ports and landing points in addition to the representative ports.

Ireland points out that it submits information relating to prices on an annual basis and believes that this enables the Commission to fix the guide price.

(b) *Failure to comply with Article 11(3) of the basic regulation*

The *Commission* points out that the infringement relates only to products frozen on board, and not to those frozen on land.

With regard to products frozen on land, it had found that several Member States had experienced difficulties in collecting the information in question and that such information was not absolutely necessary for its purposes. In the light of this, it was thinking of submitting a proposal to the Council to modify the notification scheme provided for by Article 11(3) of the basic regulation.

With regard to products frozen on board, the Commission believes that there is no basis to the claim made by Ireland that there is no wholesale market in that State. Even if there is no wholesale market in the physical sense, it is always possible to determine wholesale prices when fish are landed.

Ireland gives two reasons why it believes that it is not required to supply the information in question. In the first place, there is no wholesale market in Ireland for frozen products. Secondly, no Irish fishing vessel practised freezing prior to 1988.

V — Reply to the question posed by the Court

The Commission was requested to reply to the following question:

'For what purpose or purposes does Article 11(3) of Council Regulation (EEC) No 3796/81 provide that Member States are to notify the Commission every quarter of wholesale prices for the products listed in Annex IV(B) frozen on board and frozen on land?'

The Commission replied as follows:

'The purpose of Article 11(3) of Regulation (EEC) No 3796/81 (as amended by the Act of Accession of the Kingdom of Spain and the Portuguese Republic, Official Journal L 302 of 15.11.1985) is to assist the Community in fixing the reference prices for third country products under Article 21. The prices of goods covered by Annexes I(A), (D), (E), II and III (to which Article 21 also applies) have to be communicated by the Member States by virtue of Articles 11(1), 15(2) and 17(4). Although products listed in Annex V are similarly subject to Article 21, those products do not originate in the Community and there is accordingly no question of requiring Member States to notify the market prices for these products when they originate in the Community (the obligation to communicate certain prices in the final subparagraph of Article 21(3) relates only to products originating in third countries).'

R. Joliet
Judge-Rapporteur