OPINION OF ADVOCATE GENERAL STIX-HACKL delivered on 7 March 2006 [1]

I — Introduction

1. In its order for reference the Netherlands court essentially asks whether a charge which is levied when shrimp are landed by fishing vessels flying the Netherlands flag infringes Article 25 EC or Article 90 EC in so far as this charge is used to finance installations to monitor compliance with marketing standards by such products and is levied in particular also where landing takes place in another Member State.

2. The levying of such a charge on shrimp landed in Denmark in the financial year 2000 underlies the dispute in the main action.

1 — Original language: German.

II — Legal framework

A — *Community law*

3. Article 25 EC provides as follows:

'Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.'

4. Under Article 90 EC:

'No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.'

5. Article 23 of Regulation (EEC) No 2913/92[2] contains a definition of the (non-preferential) origin of goods and states inter alia as follows:

'Article 23

1. Goods originating in a country shall be those wholly obtained or produced in that country.

2. The expression "goods wholly obtained in a country" means:

(a) ...

(e) products of hunting or fishing carried on therein;

(f) products of sea-fishing and other products taken from the sea outside a country's territorial sea by vessels registered or recorded in the country concerned and flying the flag of that country;

(g) ...

3. For the purposes of paragraph 2 the expression "country" covers that country's territorial sea.'

B — *National law*

6. The Productschap Vis is a public-law trade association incorporated under Netherlands law. Article 3(2) of the Regulation establishing the 'Productschap Vis' describes the object of this association as follows:

"The "Productschap" shall be for undertakings which

a. catch fish;

2 — Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) ('the CCC').

b. process or manufacture fish into products which, with or without further processing or manufacturing, are fit for human or animal consumption;

c. carry on trade — with the exception of import, transit and triangular trade — in fish or products obtained from fish which, with or without further processing or manufacturing, are fit for human consumption.'

7. The Verordening financiering garnalenzeven en garnalenkrakers visafslagen 2000 (2000 Regulation on the financing of shrimp sieves and peelers at fish auctions; 'the Regulation') provides as follows, in so far as is relevant here:

'Article 2

1. An operator who transports shrimp with a Netherlands fishing vessel shall, starting from the first Monday following the date of entry into force of this Regulation, pay on the shrimp he has landed and sold for human consumption, to and for the benefit of the "Productschap", a charge of HFL 0.01 per kg.

2. ...

Article 3

1. The revenue from the charge is intended to finance the purchase by the "Productschap" of shrimp sieves and peelers and the installation and maintenance of the said sieves and peelers.

2. The charge, as defined in Article 2(1), shall no longer be payable from the day following the day on which the balance of the co-authority item under shrimp sieves in the budget exceeds the amount of HFL 600 000.

...

Article 5

1. This Regulation shall enter into force on 1 January 2000.

...'

III — Facts and questions referred

8. The appellant in the main proceedings, Vissereijbedrijf D.J. Koornstra & Zn. vof ('Koornstra'), is an undertaking which lands shrimp with the Netherlands fishing vessel 'Elizabeth'. According to its statement of 1 August 2002, in the year 2000 it landed 52 984 kg of shrimp, of which 28 774 kg were sold at auction in the Netherlands and 24 210 kg were delivered directly to the market in Denmark.

9. By decision of 19 September 2002, the respondent in the main proceedings, Productschap Vis, levied on Koornstra, on the basis of Article 2(1) of the Regulation, a charge of HFL 242.10 (EUR 109.86) for the year 2000 for the 24 210 kg delivered in Denmark.

10. Koornstra raised an objection to that decision by letter of 25 October 2002.

11. The Productschap Vis dismissed this objection as unfounded by a decision of 19 March 2003. In this respect it referred in particular to a judgment of the national court making this reference of 21 February 2003. According to that judgment, the fact that the chargeable event, namely landing with a Netherlands fishing vessel, took place in Denmark does not preclude liability to the charge. Under Article 9 of the Regulation establishing the 'Productschap' the Board thereof has a margin of discretion in defining the chargeable event. Furthermore, it was clear from that judgment that the fact that the undertaking concerned claimed that it did not benefit from the activities financed from the proceeds of the charge and had already paid a charge in Denmark did not deprive the charges in question of their legal validity.

12. Koornstra lodged an appeal against this decision by a letter of 25 April 2003. As grounds for the appeal Koornstra stated in particular that the charge, insofar as it had been levied on the shrimp landed in Denmark, infringed Article 25 EC or Article 90 EC. In the view of Koornstra, Articles 25 EC and 90 EC were also infringed in that that it had paid twice for the sieving and peeling, once to Dansk Heiploeg and once to the respondent. This double charging had had a discriminatory effect on intra-Community trade.

13. In the order for reference the College van Beroep voor het Bedrijfsleven ('the College' or 'the national court') first points out that the charge provided for in Article 2(1) of the Regulation ('the charge in question') is also payable by an operator with a

Netherlands fishing vessel where landing takes place outside the Netherlands, the basis of the charge being the total amount of shrimp landed and sold for human consumption.

14. The national court further notes that in the main action the charge levied on Koornstra for the tax year 2000 is disputed only to the extent that it also concerns the shrimp landed in Denmark and sold for human consumption.

15. The College observes that the charge in question is not levied at the time of, or by reason of, importation from another Member State and therefore does not give rise to discrimination between domestic products and products from other Member States. However, in view of the purpose of the charge in question the compatibility thereof with Articles 25 EC and 90 EC is not obvious.

16. In this connection the College notes that the proceeds of the charge benefit only those undertakings with a Netherlands fishing vessel which land the shrimp in the Netherlands, the origin of the shrimp being irrelevant. The proceeds of the charge also benefit foreign shrimp landed in the Netherlands, but not Netherlands shrimp landed abroad.

17. The national court considers that the charge may have a restrictive effect on trade in so far as it is also levied where the shrimp are landed in another Member State and payment is made for sieving and peeling the shrimp in that other Member State.

18. In the light of the foregoing the College decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is a charge, such as the charge in dispute, levied on an operator in a Member State for landing shrimp with a fishing vessel registered in that Member State and used to finance shrimp sieves and peelers in that Member State consistent with Community law and, in particular, with Articles 25 and 90 EC, if the charge is also payable on shrimp landed by such an operator elsewhere in the Community?

(2) Is the answer to this question affected by any of the following:

(a) where the shrimp are caught;

(b) whether, after being landed elsewhere in the Community, the shrimp are transported to the Member State in which the fishing vessel is registered

(c) whether, after the shrimp have been landed elsewhere in the Community, payment for sieving and peeling is made in that place also?'

IV — Questions referred

A — *Preliminary remarks*

19. The products which form the subject-matter of the main action, namely shrimp (*Crangon crangon*), fall within the scope of Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organisation of the market in fishery and aquaculture products [3] ('Regulation No 3759/92'). Under Article 1 of Regulation No 3759/92, it comprises a price and trading system and common rules on competition.

20. Pursuant to Article 2 Regulation No 3759/92, common market standards were adopted by Council Regulation (EC) No 2406/96 [4] ('Regulation No 2406/96'). Under Article 3(2) of Regulation No 2406/96, these marketing standards are to comprise freshness categories and size categories.

21. Products for which marketing standards have been adopted may be marketed — regardless of their origin — only if they meet the requirements of Regulation No 2406/96. [5] Under Article 3(1) of Regulation No 3759/92, it is for the Member States to ensure that the marketing standards are complied with.

22. The national regulation, which forms the legal basis for levying the charge in question, clearly serves to implement this Community legal framework by securing finance for the peeling and sieving facilities to carry out the inspections referred to in Article 3(1) of Regulation 3759/92. All the parties take the view that the functioning of the machinery

3 — OJ 1992 L 388, p. 1.

4 — Regulation of 26 November 1996 laying down common marketing standards for certain fishery products (OJ 1996 L 334, p. 1).

5 — See Article 2(1) of Regulation No 2406/96.

provided for under the common organisation of the markets is not affected. [6]

23. It should further be noted at the outset that the questions do not relate to the Treaty provisions on State aid, although the Court has held that the concept of State aid can include not only certain parafiscal charges, depending on the use to which the revenue from those charges is put, [7] but also the collection of a contribution constituting a parafiscal charge. [8] This is clearly due to the fact that the national regulation in question was notified to the Commission.

24. In its written observations the Commission stated in this respect that it declared that the aid scheme concerned was compatible with the EC Treaty on 10 May 1999. By its own admission, it took this decision on the erroneous assumption that the charge concerned only undertakings which landed shrimp in the Netherlands with a Netherlands fishing vessel and accordingly not those which landed shrimp in other Member States with a Netherlands fishing vessel. Consequently, the Commission states that had it been aware of the actual legal situation it would have declared that the aid scheme concerned was incompatible with the common market.

25. However, the Commission regards its decision of 10 May 1999 as innocuous in so far as the Court has held that 'authorisation of a general scheme of taxation of domestic agricultural products ..., granted by the Commission pursuant to the Treaty provisions on State aid, does not in any way prevent national courts from examining whether a levy forming part of that scheme, such as that in issue in the main proceedings, is compatible with Articles [25 EC or 90 EC], with regard, in particular, to the use made of the revenue which it generates.' [9]

26. Accordingly, it is clear from that judgment that the questions referred must be examined irrespective of the Commission decision on State aid.

B — *Existing case-law concerning the scheme of Articles 25 EC and 90 EC*

1. Priority accorded to the application of Articles 25 EC and 90 EC

27. In the order for reference the national court rightly refers to Articles 25 EC and 90

6 — As regards the Court's relevant case-law, see for example Case 222/82 *Apple and Pear Development Council* [1983] ECR 4083, paragraph 31.

7 — See inter alia Case C-17/91 *Lornoy and Others* [1992] ECR I-6523, paragraph 28.

8 — See Case C-72/92 *Scharbatke* [1993] ECR I 5509, paragraph 20, and joined Cases C-34/01 to C-38/01 *Enirisorse* [2003] ECR I-14243, paragraph 43.

9 — Case C-234/99 *Nygård* [2002] ECR I-3657, paragraph 64.

EC since Articles 28 EC and 29 EC do not apply to parafiscal charges in so far as other Treaty provisions are applicable, such as, for example, Article 25 EC on charges having equivalent effect or Article 90 EC on discriminatory internal taxation.

28. According to the Court's settled case-law, the scope of Article 28 EC does not include provisions of the Treaty relating to charges having effect equivalent to customs duties (Article 25 EC) or relating to discriminatory internal taxation (Article 90 EC). [10]

29. As regards the course of the examination, this means that it must first be considered whether a measure such as that in issue in the main action falls within the scope of Article 25 EC or Article 90 EC, and only if the answer is in the negative is it necessary to consider whether the measure under examination falls within the scope of Article 28 EC or Article 29 EC. [11]

2. Scope of and distinction between Articles 25 EC and 90 EC

30. Under Article 25 EC, customs duties on imports and exports and charges having equivalent effect are to be prohibited between Member States. As far as charges having equivalent effect are concerned, the national court correctly recalls that according to the Court's settled case-law [12] the prohibition in question covers all charges levied at the time of, or by reason of, importation, which are imposed specifically on an imported product but not on a similar domestic product. The national court also rightly concludes that even pecuniary charges intended to finance the activities of an agency governed by public law can constitute charges having equivalent effect.

31. As the Court has held before on many occasions, any pecuniary charge, however small, and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having

10 — See inter alia, to this effect, Case 74/76 *Iannelli & Volpi* [1977] ECR 557, paragraph 9; Joined Cases C-78/90 to C-83/90 *Compagnie Commerciale de l'Ouest and Others* [1992] ECR I-1847, paragraph 20; *Lornoy and Others* (cited in footnote 7), paragraph 14, and *Enirisorse* (cited in footnote 8), paragraph 56.

11 — See also *Lornoy and Others* (cited in footnote 7), paragraph 15, and *Enirisorse* (cited in footnote 8), paragraph 57.

12 — See inter alia Joined Cases C-149/91 and C-150/91 *Sanders* [1992] ECR I-3899, paragraph 15.

equivalent effect, within the meaning of Article 23 EC. [13]

32. Under Article 90 EC, no Member State may impose, directly or indirectly, on the products of other Member States any internal taxation in excess of that imposed on similar domestic products. According to case-law, a charge does not constitute a charge having effect equivalent to a customs duty, but internal taxation within the meaning of Article 90 EC, if it relates to a general system of internal dues applied systematically to categories of products in accordance with objective criteria irrespective of the origin or destination of the products. [14]

33. In this context it should also be borne in mind that according to settled case-law provisions relating to charges having equivalent effect and those relating to discriminatory internal taxation cannot be applied concurrently, so that under the system of the EC Treaty the same taxation cannot belong to both categories at the same time. [15]

34. Consequently, it would appear essential to draw a distinction between Articles 25 EC and 90 EC.

35. However, the Court's case-law illustrates the difficulties arising in relation to this essential distinction. Any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 23 EC and 25 EC. [16] However, such a charge may not be so characterised if it forms part of a general system of internal dues applying systematically to categories of products according to objective criteria applied without regard to the origin of the products, in which case it falls precisely within the scope of Article 90 EC. [17] An example would be a charge which is imposed on national products processed or marketed on the national market, on the one hand, and on national products exported in an unprocessed state, on the other, in so far as the

13 — Case C-72/03 *Carbonati Apuani* [2004] I-8027, paragraph 20, with further reference to Case 158/82 *Commission* v *Denmark* [1983] ECR 3573, paragraph 18; Case C-163/90 *Legros and Others* [1992] ECR I-4625, paragraph 13; Case C-426/92 *Deutsches Milch-Kontor* [1994] ECR I-2757, paragraph 50; Joined Cases C-485/93 and C-486/93 *Simitzi* [1995] ECR I-2655, paragraph 15; and Case C-347/95 *UCAL* [1997] ECR I-4911, paragraph 18. The prohibition on charges having effect equivalent to customs duties is clear both from Article 23 EC and Article 25 EC.

14 — *Carbonati Apuani* (cited in footnote 13), paragraph 17, which in turn refers to Case 90/79 *Commission* v *France* [1981] ECR 283, paragraph 14, and *Legros and Others* (cited in footnote 13), paragraph 11.

15 — See inter alia *UCAL* (cited in footnote 13), paragraph 17; Case C-213/96 *Outokumpu* [1998] ECR I-1777, paragraph 19; and *Nygård* (cited in footnote 9), paragraph 17.

16 — See paragraph 30 above. See also Case C-90/94 *Haahr Petroleum* [1997] ECR I-4085, paragraph 20, and *Outokumpu* (cited in footnote 15), paragraph 20.

17 — See paragraph 32 above.

chargeable event is identical for both classes of products. [18]

36. As regards the classification for legal purposes of such a charge, including one such as that in the main action, for example, the Court's case-law shows that it can be necessary to take account of the purpose to which the fiscal proceeds are put. In his Opinion in *Lornoy and Others* Advocate General Tesauro [19] stated inter alia that consideration of this question 'is essential, inasmuch as, leaving aside the purely formal aspects, it makes it possible to determine whether such contributions, though affecting both national products and imported products under the same conditions, may, specifically owing to their purpose, have an essentially different effect on the two products so as to constitute, depending on the circumstances, either charges having equivalent effect or internal taxation incompatible with Article [90 EC].' [20]

37. Thus, if the revenue from such a charge is intended to finance activities for the special advantage of the taxed national products processed or marketed on the national market, it may follow that a charge imposed on the basis of the same criteria nevertheless constitutes discriminatory taxation in so far as the fiscal burden on products processed or marketed on the national market is neutralised by the advantages which the charge is used to finance whilst the charge on the products exported in an unprocessed state constitutes a net burden [21]

38. According to case-law, if the advantages stemming from the use of the revenue from a charge such as that in issue fully offset the burden borne by the national product processed or marketed on the national market when it is placed on the market, that charge constitutes a charge having an effect equivalent to a customs duty, contrary to Articles 23 EC and 25 EC. [22] [23]

18 — *Nygård* (cited in footnote 9), paragraph 20. This judgment refers by analogy to *Sanders* (cited in footnote 12), paragraph 17, and *Outokumpu* (cited in footnote 15), paragraph 24, which, however, concerned charges levied both on national products and *imported* products.

19 — Opinion of Advocate General Tesauro in *Lornoy and others* (cited in footnote 7), Case C-114/91 *Claeys* [1992] ECR I-6559 and Joined Cases C-144/91 and C-145/91 *Demoor and others* [1992] ECR I-6615.

20 — In view of the analogy, which the Court permitted in particular in *Nygård* (cited in footnote 9), between classification as a charge having an effect equivalent to customs import duties and classification as a charge having an effect equivalent to customs export duties, it would appear possible to apply this idea to the charge in question since this case relates to its classification as a charge having an effect equivalent to customs export duties or as discriminatory internal taxation.

21 — *Nygård* (cited in footnote 9), paragraph 22. As already stated in footnote 18, this judgment refers by way of analogy to Case 73/79 *Commission* v *Italy* [1980] ECR 1533, paragraph 15; *Compagnie commerciale de l'Ouest and Others* (cited in footnote 10), paragraph 26; and *UCAL* (cited in footnote 13), paragraph 21.

22 — *Nygård* (cited in footnote 9), paragraph 23, with further reference to *Compagnie commerciale de l'Ouest and Others* (cited in footnote 10), paragraph 27, *Lornoy and Others* (cited in footnote 10), paragraph 21, and *Scharbatke* (cited in footnote 8), paragraph 10.

23 — The Court had previously followed the same line of reasoning in regard to the comparison between the treatment of national products and that of imported products — see, for example, Case 94/74 *IGAV* [1975] ECR 699; *Compagnie commerciale de l'Ouest* (cited in footnote 10); Case 77/72 *Capolongo* [1973] ECR 61; Case 78/76 *Steinike* [1977] ECR 595; Case 77/76 Cucchi [1977] ECR 987; Case 105/76 *Interzuccheri* [1977] ECR 1029; *Commission* v *Italy* (cited in footnote 21); and Case 32/80 *Kortmann* [1981] ECR 251.

39. On the other hand, if the advantages accruing to the taxed national products processed and marketed on the national market from the use of the revenue generated by the charge offset only partially the burden borne by those products, such a charge will constitute a breach of the prohibition of discrimination laid down by Article 90 EC. [24]

40. Finally, the Court has recognised that a charge which represents payment for a service actually rendered to a taxable trader, of an amount in proportion to that service, does not constitute a charge having an effect equivalent to a customs duty. [25]

C — *Appraisal*

41. First, it should again be noted that the charge levied on Koornstra for the tax year 2000 is disputed only to the extent that it also concerns the shrimp landed in Denmark and sold for human consumption. As regards the event giving rise to the charge in question, it should be noted that this charge was levied on shrimp where they were landed with Netherlands fishing vessels, the place of such landing being irrelevant.

42. Therefore, it must first be considered whether a charge, such as that in dispute, constitutes a charge having an effect equivalent to a customs duty within the meaning of Article 23 et seq. EC.

Classification of the charge as a charge having equivalent effect

43. The national court takes the view that in the present case there can be no question of a charge having equivalent effect since the charge in question is not levied *at the time of, or by reason of,* importation from another Member State. This is also the view taken by the Greek Government. The Netherlands Government and the Productschap Vis also contend that the charge in question is applicable without distinction to shrimp which are exported to other Member States and shrimp which are landed in the Netherlands. Since the charge is not payable solely on goods intended for export, it does not fall within the scope of Article 25 EC. At most it constitutes internal taxation within the

24 — *Nygård* (cited in footnote 9), paragraph 23, with further reference to *UCAL* (cited in footnote 13), paragraph 22.

25 — Case 63/74 *Cadsky* [1975] ECR 281, paragraph 8; *Commission* v *Denmark* (cited in footnote 13), paragraph 19; Case C-109/98 *CRT France International* [1999] ECR I-2237, paragraph 17; and *Carbonati Apuani* (cited in footnote 13), paragraph 31.

meaning of Article 90 EC which is compatible with the EC Treaty since it affects shrimp processed and marketed on the national market and shrimp exported to other Member States in the same way and at the same marketing stage.

44. According to the information provided by the national court, the charge in question is levied solely on undertakings with a Netherlands fishing vessel in respect of the shrimp they land and sell for human consumption, irrespective of the country of landing and sale and irrespective of the use which the buyer makes of the shrimp.

45. The doubts as to the compatibility of the charge system at issue with Articles 25 EC or Article 90 EC arise indisputably from the fact that those chargeable — namely undertakings which land shrimp with a Netherlands fishing vessel, regardless of where they do so — and those benefiting from the charge as a result of the way in which the proceeds are used — namely undertakings which land shrimp in the Netherlands — are not identical. Whilst undertakings which land shrimp in the Netherlands with a fishing vessel from another Member State may avail themselves free of charge of the facilities financed by the proceeds of the charge (in so far as they are not subject to the charge), undertakings which land shrimp with a Netherlands fishing vessel in another Member State are subject to the charge but cannot avail themselves of the facilities financed by the proceeds of the charge.

46. The national court wrongly concludes that the charge in question cannot be classified as a charge having effect equivalent to a customs duty since it is not levied at the time of, or by reason of, importation from another Member State. The crucial point is, rather, whether or not the charge concerned constitutes an obstacle to trade in the internal market. [26] According to the above-mentioned case-law, [27] such an obstacle can arise from the fact that a national measure results in a pecuniary charge being imposed on goods 'by reason of the fact that they cross a frontier'. [28] However, according to the case-law cited above, the question whether the charge in issue in the main action gives rise to such a pecuniary charge must be examined not only on the basis of the provisions concerning the levying of the charge but also on the basis of provisions on the use of the proceeds of the charge in question.

47. Therefore, what must be examined in the present case is whether the charge in question gives rise to a specific pecuniary charge on those undertakings which export

26 — *Carbonati Apuani* (cited in footnote 13), paragraph 28.

27 — See paragraph 35 et seq. above.

28 — *Carbonati Apuani* (cited in footnote 13), paragraph 22.

their shrimp on a Netherlands fishing vessel. [29]

48. In this regard the Commission notes that the charge in question places a particular burden on the exportation of shrimp on a Netherlands fishing vessel, in that landing as the chargeable event results in the levying of a charge, but the undertakings concerned are unable to avail themselves of the facility financed by the proceeds. By contrast, the Greek Government takes the view that the actual use of the sieving and peeling facilities is irrelevant since the provision of these facilities constitutes a service in itself.

49. In the main proceedings and in its written observations Koornstra contended that this liability to pay a charge with no benefit in return also results in double charging since use of an equivalent facility in Denmark itself is subject to a charge. However, the nature of the Danish charge system is not clear from the documents in the case.

50. However, the question of any double taxation would appear to be irrelevant. In this connection the Commission correctly referred to the Court's case-law [30] according to which '[a]s it stands at present, Community law does not contain any provision designed to prohibit the effects of double taxation occurring in the case of charges, such as that in issue in the main proceedings, which are governed by independent national legislation, and, while the elimination of such effects is desirable in the interests of the free movement of goods, it may none the less result only from the harmonisation of national systems ...'.

51. As regards the effects of the charge in question, the national court also raised the question of the origin of the products covered by the national system. For the purpose of levying the charge in question, the charge system draws a distinction depending on the flag flown by the fishing vessel concerned, but not on the origin of the shrimp.

52. In the present case determining the origin of the shrimp is not in fact without its difficulties. In the order for reference the

29 — As regards shrimp which are landed in the Netherlands, the charge in question results at most in discrimination against national undertakings in so far as the shrimp facilities financed by the proceeds of the charge are also used for inspections of shrimp which are landed in the Netherlands with a non-Netherlands fishing vessel without there being any liability to pay a charge in this respect. However, this aspect need not be examined further since the main action concerns only shrimp which are landed in another Member State — in this case Denmark — with a Netherlands fishing vessel.

30 — *Nygård* (cited in footnote 9), paragraph 38.

national court considers applying Article 23 of the CCC. In its written observations the Netherlands Government rejects this proposition, pointing out that the Customs Code cannot be applied to intra-Community trade.

53. If the definition of origin contained in the Customs Code is taken as the fundamental authority, the following picture emerges in the present case. Under Article 23(2) of the CCC, shrimp landed with a Netherlands fishing vessel are to be regarded as goods originating in the Netherlands in so far as they were caught outside a country's territorial sea (subparagraph (f)) or in Netherlands waters (subparagraph (e)). If, on the other hand, the shrimp were caught in the waters of another Member State, they must be regarded as goods originating in that Member State.

54. If these principles are applied to the present case, it must be observed that, where shrimp are landed in the Netherlands, foreign shrimp are afforded preferential treatment in so far as they are subject to the charge only where they are on board a Netherlands fishing vessel, whereas Netherlands shrimp are not subject to the charge only where they are landed with a foreign fishing vessel.

55. However, it would appear uncertain as to whether Article 23 of the CCC should be applied. The objection raised by the Netherlands Government would appear to be justified in so far as the status of originating product is in principle not decisive in intra-Community trade. The distinction drawn by Article 23(2) of the CCC is not consistent with the principles of the Common Fisheries Policy whereby products landed with a fishing vessel from a particular Member State are ultimately attributed to that Member State. Accordingly, in the light of the present case it seems appropriate not to draw a distinction depending on the place where the shrimp is actually caught and therefore essentially to regard shrimp on a Netherlands fishing vessel as Netherlands shrimp.

56. If this assumption is made, it should be noted that the charge in question is levied on Netherlands shrimp which are landed in the Netherlands and Netherlands shrimp which are landed elsewhere. However, only — Netherlands or foreign — shrimp landed in the Netherlands benefit from the proceeds of the charge in question. [31]

31 — See also, to this effect, the order for reference: '... the revenue from the charge is used exclusively for shrimp landed in the Netherlands by undertakings with a Netherlands fishing vessel and indeed regardless of the origin of the shrimp' and '... the revenue from the charge also benefits foreign shrimp landed in the Netherlands, but not Netherlands shrimp landed abroad'.

57. Therefore, taking account of the use to which the proceeds from levying the charge are put, as required by case-law, leads to the conclusion that in relation to shrimp exported on Netherlands fishing vessels the system in question results in a financial burden on the undertaking concerned in so far as it is subject to the charge but does not benefit from the proceeds thereof and consequently offsetting the burden by the advantages arising from the funding is not possible. Contrary to the view of the Greek Government, in this respect it is irrelevant whether the facilities financed by the proceeds of the charge in question are available since these facilities are used to fulfil the obligation on the relevant Member State to carry out inspections. Accordingly, the fulfilment of such an obligation can hardly be described as a 'service'.

58. Therefore, the charge in question has a restrictive effect on trade in so far as it is also levied where shrimp are landed with a Netherlands fishing vessel in another Member State. Whether or not payment for sieving and peeling is made in that other Member State would appear to be irrelevant in this context. [32]

59. Accordingly, it must be held that a charge, such as that in dispute, levied on an undertaking in a Member State for landing shrimp with a fishing vessel registered in that Member State and used to finance shrimp sieves and peelers in that Member State is not consistent with Community law and, in particular, with Article 25 EC, if the charge is also payable on shrimp not landed in that Member State.

This finding holds goods regardless of where the shrimp are caught, whether, after being landed elsewhere in the Community, the shrimp are transported to that Member State, or whether, after the shrimp have been landed elsewhere in the Community, payment for sieving and peeling is made in that place also.

60. Accordingly, there is no need to examine whether or not the charge in question should be classified as discriminatory internal taxation.

32 — This was probably so in the present case. According to the information provided by the national court, the relevant costs were included in the price which Koornstra received from the sale of the shrimp in Denmark to the company Dansk Heiploeg.

V — Conclusion

61. In the light of those considerations I propose that the Court should answer the College's questions as follows:

A charge, such as that in dispute, levied on an operator in a Member State for landing shrimp with a fishing vessel registered in that Member State and used to finance shrimp sieves and peelers in that Member State is not consistent with Community law and, in particular, with Article 25 EC, if the charge is also payable on shrimp landed by such an operator elsewhere in the Community.

This finding holds good regardless of where the shrimp are caught, whether, after being landed elsewhere in the Community, the shrimp are transported to that Member State, or whether, after the shrimp have been landed elsewhere in the Community, payment for sieving and peeling is made in that place also.