they should supply sufficient specific information to justify such amendments. This is particularly true where consistent evidence raises serious doubts about the correctness of the amended data.

2. Where the Commission disallows certain EAGGF expenditure on the ground that it was incurred as a result of breaches of Community rules imputable to a Member State, it is for that State to show that the conditions for obtaining the financing disallowed are satisfied. Such a burden of proof rests on the Member State which the Commission, on the basis of conclusive results of inspection by sampling, considers has not satisfied the obligation of checking the quality of tobacco properly before accepting it into intervention.

REPORT FOR THE HEARING
in Case C-385/89 *

I — Legal background

1. Regulation (EEC) No 729/70 of the Council of 21 October 1970 on the financing of the Common Agricultural Policy (OJ, English Special Edition 1970 (I), p. 218) provides that the Community, and more particularly the European Agricultural Guidance and Guarantee Fund (hereinafter 'the EAGGF'), is to finance directly refunds on exports to non-member countries and intervention intended to stabilize the agricultural markets.

Article 4 provides that the Commission is to make available to Member States the necessary credits so that the designated authorities may, in accordance with Community rules and national legislation, pay those refunds and carry out the interventions. Article 5(2)(b) provides that the Commission, after consulting the Fund Committee, shall, before the end of the following year, on the basis of the annual accounts, accompanied by the documents required for making up the balance sheets, make up the accounts of the authorities and bodies of the Member States competent for paying refunds on exports to non-member countries and intervention intended to stabilize the agricultural markets under the common organization of the agricultural markets. Article 9 provides that the Member States are to make available to the Commission all information required for the proper working of the Fund. Furthermore, officials of the Commission are entitled to carry out inspections on the spot during which they may have access to all documents relating to expenditure financed by the Fund.

* Language of the case: Greek.

2. Article 8(a) of Regulation (EEC) No 1723/72 of the Commission of 26 July 1972 on making up accounts for the European Agricultural Guidance and Guarantee Fund, Guarantee Section (OJ, English Special Edition, Second Series III, p. 109) provides that the decision to make up the accounts is to cover the determination of the amount of expenditure incurred in each Member State during the year in question, recognized as chargeable to the EAGGF, Guarantee Section.

II — Facts

3. By its Decision 89/627/EEC of 15 November 1989 the Commission cleared the accounts presented by the Member States in respect of expenditure for 1987 of the Guarantee Section of the EAGGF and fixed the amount of expenditure recognized as chargeable to the EAGGF.

4. In the light of checks carried out by its officials the Commission considered in particular that part of the expenditure declared by the Hellenic Republic did not satisfy the conditions of the Community rules and could not therefore be financed out of the Guarantee Section of the EAGGF. It is apparent from the Annex to Decision 89/627 that the amount of expenditure remaining chargeable to the Hellenic Republic was DR 4 015 480 761. The decision also recites that the Member States were fully informed of the corrections made to their accounts and had been able to give their views thereon.

5. By its Decision 90/213/EEC of 19 April 1990 (OJ 1990 L 113, p. 32), the Commission amended Decision 89/627, in particular in relation to the fixing of the amount of expenditure remaining chargeable to the Hellenic Republic: an accounting error was admitted and the amount reduced to DR 2 323 949 293.

6. It appears from the documents that, according to the Commission, the transactions which led to the expenditure which was disallowed were not in accordance with the relevant Community law. The Commission informed the Hellenic Republic of the specific grounds of the irregularity of each of those transactions during the bilateral contacts which preceded the decision on the clearance of accounts. Those reasons were summarized in the summary report on the results of the checks for the clearance of the accounts for 1987 expenditure (hereinafter 'the Summary Report') which was forwarded to the Hellenic Republic.

7. In its application the Hellenic Republic claims that the whole of Decision 89/627 should be declared void for disregard of essential procedural requirements and for infringement of the Treaty or the rules of law relating to its application, on account of the reservations made by the Commission in the recitals to the decision and the arbitrary and wrongful charging to Greece of the global amount of DR 4 015 480 761 instead of DR 2 323 949 293 (subject to specific objections in relation to the latter amount). Secondly, the applicant claims that the contested decision should be declared void in part on the ground that it refuses to recognize as chargeable to the EAGGF the following amounts:

DR 213 801 319 expended on export refunds in respect of 6 400 tonnes of wheatmeal (point 4.1.4.1 of the Summary Report);

DR 367 402 940 expended on management of animal fodder (point 4.1.4.2 of the Summary Report);

DR 258 108 000 expended on co-responsibility levy in the cereals sector (1986/87 marketing year, point 4.2.2.2.3(1) of the Summary Report);

DR 1 391 025 367 expended on storage of tobacco (point 4.9.1 of the Summary Report).

III — The contentious procedure

8. The Hellenic Republic's application was registered at the Court Registry on 29 December 1989.

9. By a separate document registered at the Court Registry on the same day the Hellenic Republic applied pursuant to Article 185 of the Treaty and Article 83 et seq. of the Rules of Procedure of the Court of Justice for suspension of operation of the contested decision. By order of 23 February 1990 ([1990 ECR I-561) the President of the Court of Justice decided that it was not necessary to give a ruling and reserved the costs.

10. 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. A number of questions were put to the parties who replied within the time-limits prescribed.

11. The *Hellenic Republic*, the applicant, claims in its application that the Court should:

(i) declare Commission Decision 89/627/EEC of 15 November 1989 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1987 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund void as regards the sectors described in detail in the application;

(ii) order the Commission to pay the costs.

12. The *Commission*, the defendant, contends that the Court should:

(i) dismiss as unfounded the application by the Hellenic Republic for a declaration that Commission Decision 82/627/EEC of 15 November 1989 is void;

(ii) order the applicant to pay the costs including the costs of the application for suspension of the operation in the present case.

13. In its reply the Hellenic Republic, in view of the amendment made by Decision 90/213 with respect to the accounting error admitted by the Commission, abandoned its claim that a global sum of DR 4 015 480 761 had been arbitrarily and wrongly charged to it.

In reply to one of the questions put by the Court the Hellenic Republic also withdrew the general objection relating to the reservations expressed by the Commission in the recitals to the contested decision since the Court had already rejected a similar plea in judgments of 10 July 1990 in Cases C-259/87, C-334/87 and C-335/87 *Greece* v *Commission* [1990] ECR I-2845, I-2849 and I-2875 concerning clearance of accounts for 1983, 1984 and 1985.

In the same reply the Hellenic Republic finally withdrew the complaint that an amount of DR 367 402 940 in respect of animal feedingstuff had not been charged to the EAGGF following the judgment of 19 March 1991 in Case C-32/89 *Greece* v *Commission* [1991] ECR I-1321 concerning the clearance of accounts for 1986 in which the Court rejected a similar plea.

The pleas which the Hellenic Republic stated it would not maintain in support of its application are therefore not referred to in this report.

IV — Pleas and arguments of the parties

A — *Expenditure on export refunds on 6 400 tonnes of durum-wheat meal (point 4.1.4.1 of the Summary Report)*

14. The *Hellenic Republic* claims that the contested decision should be declared void on this point for mistake of fact.

15. On clearing accounts for 1986 the Commission did not recognize as chargeable to the EAGGF the expenditure declared by the Hellenic Republic in respect of export refunds on 40 000 tonnes of wheatmeal.

That was due to the finding of active intervention by the Hellenic Republic on the cereals market through the Central Office for the Management of National Products (the 'KYDEP') which had to sell off, for the account of the State, the wheat stocks in its possession under four programme contracts. One of those contracts related to 40 000 tonnes of meal. The Hellenic Republic denied that there was any such contract but the Court of Justice in its judgment in the aforementioned Case C-32/89 *Greece* v *Commission*, held that the Commission was not wrong in finding that there was a programme contract and that the Greek authorities had intervened in breach of Community law, in the matter of the conditions for the purchase and sale of cereals by the KYDEP by supervising transactions which it effected and compensating its deficits by budgetary measures.

Of the 40 000 tonnes of meal in question only 33 600 tonnes had been taken into account for the purposes of the financial adjustment for 1986. The Commission therefore adjusted the balance of the 6 400 tonnes for the 1987 financial year; that adjustment amounted to DR 213 801 319.

16. The Hellenic Republic does not challenge those figures but maintains that the Commission's decision on this point is vitiated by error of fact since the programme contract for the meal was never actually performed.

Furthermore, in view of Case C-32/89 pending before the Court it would certainly at the very least be untimely and prejudicial to the Hellenic Republic to include the abovementioned amount in the contested decision.

In reply to the Commission's observation that a simple denial that the programme contract for the meal had not been performed is insufficient if there is no concrete evidence to contradict the Commission's position, the Hellenic Republic states that it is unable to produce evidence which does not exist; since the Commission does not accept the formal assurance given by the Hellenic Republic that the contract in question has not been performed, the burden of proof is on the Commission.

B — *Collection of the co-responsibility levy in the cereals sector (1986/87 marketing year; point 4.2.2.2.3(1) of the Summary Report*

17. Article 4 of Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals, as amended by Council Regulation (EEC) No 1579/86 of 23 May 1986 (OJ 1986 L 139, p. 29), introduced, as from 1 July 1986, a co-responsibility levy (5.38 ECU/t, equivalent to 628 DR/t for the 1986/87 marketing year) payable on cereals produced in the Community which undergo one of the following operations: first-stage processing, intervention buying, export in the form of grain.

The co-responsibility levy, the objective of which is to discourage surplus production, is revenue payable to the EAGGF. The difficulty lies in checking the declaration of the Member States in relation to the due collection of the levy.

18. In the Commission's view, methods which are based solely on the annual accounts of the Member States and which are used in calculating the expenditure of Member States financed by the EAGGF (where it is possible to determine the identity of beneficiaries and consequently to check the corresponding conditions for charging expenditure) are not applicable where it is a matter of calculating the revenue of the EAGGF. That is due to the fact that, for example, in the case of income from co-responsibility levy, the accounts of the intervention agencies of the Member States show only the operators who have in fact paid the levy and do not show the quantities of cereals exempt from the levy or the lawfulness of such exemption. For that reason it is necessary to work out a method of calculation, based also on a number of statistical data which, after being cross-checked, enable a full and reliable assessment to be made of the actual extent of the collection of the levy in each of the Member States. That method, which is worked out by the EAGGF officials and notified to the Member States, is based on statistical data notified by the Member States and published by Eurostat and relies on two basic data: the 'quantity liable' (which is basically derived from the statistics notified by the Member States in connection with the management of the cereal market) and the 'quantity exempt'. Since by definition the quantity in respect of which the levy was

imposed is known, a simple mathematical calculation enables the total quantity in respect of which the levy was not collected to be established and that gives rise to the financial adjustment.

19. The *Hellenic Republic* does not challenge the method as such but considers itself adversely affected by the specific results arrived at in applying it in the present case.

One of the statistical items taken into account in fixing the 'quantity liable' is the figure relating to total domestic use. After notifying Eurostat a year after the end of the 1986/87 marketing year of the figure of 5 141 000 tonnes the Greek authorities, by a telex message of 17 April 1989, stated that following more thorough additional checks the figure for total domestic use was 4 489 000 tonnes (that is 652 000 tonnes less than the figure taken into account by the Commission); applying the method of calculation to those two different figures and taking into account the addition agreed between the parties of 299 000 tonnes to the quantity exempt, two different results for the levy not collected is arrived at: 411 000 tonnes (for a financial adjustment of DR 258 108 000) according to the Commission and 0 tonnes according to the Hellenic Republic respectively. Furthermore, the amended figure was published by Eurostat on 6 December 1989 after the contested decision was adopted (15 November 1989).

20. The *Commission* refused to take account of the new figure, alleging the figure notified to Eurostat in 1988 must be regarded as definitive for a number of reasons.

First, it is difficult to imagine that the original figure could have needed substantial amendment of some 13% two years after the end of the corresponding marketing years; secondly, there have never been any similar amendments for previous marketing years; thirdly, the first Eurostat figure is almost identical to that notified by the Greek authorities to the Commission's Cereals Directorate in connection with the provisional balance (5 263 000 tonnes); fourthly, the Greek authorities have never supplied any specific proof that that the first Eurostat statistics contained errors; finally, as regards the fact that Eurostat published the amended figure after the adoption of the contested decision, the Commission cites established case-law of the Court of Justice according to which the lawfulness of a contested measure must be assessed in relation to the actual facts and data which existed when the measure was adopted. The Commission cites in that respect the judgment in Joined Cases 15/76 and 16/76 *France* v *Commission* [1979] ECR 321.

21. The *Hellenic Republic* replies that, since the Commission itself admits that the system of collecting statistical data on cereals is unreliable and since it is based in the present case on provisional results of the relevant data, the Commission is not entitled to challenge the subsequent data produced by the Greek authorities after thorough checks and reflecting the precise figure of total domestic consumption.

Furthermore, the case-law cited by the Commission does not support its argument since the Hellenic Republic made the amended

data available to the Commission on 17 April 1989, that is before the contested decision was adopted.

On that point the *Commission* contends that the communication of 17 April 1989 contained no concrete and reliable item of proof to justify the amendment made.

C — *Expenditure on storage of raw tobacco (point 4.9.1 of the Summary Report)*

22. The *Hellenic Republic* claims that the contested decision should be declared void on this issue on this point on the ground that it took into account matters which should not have been taken into account or, alternatively, wrongly represented the facts.

23. Regulation (EEC) No 1467/70 of the Council of 20 July 1970 (OJ, English Special Edition 1970 (II), p. 497) laid down certain general rules governing intervention in the raw tobacco sector. Article 5 provides that only tobacco corresponding to the minimum quality characteristics to be defined on the basis of classification by variety and quality is to be bought in by the intervention agencies.

Article 6 of Regulation (EEC) No 1727/70 of the Commission of 25 August 1970 (OJ, English Special Edition 1970 (II) p. 593) provides that tobacco is to be considered as corresponding to the minimum quality characteristics mentioned in Article 5 of Regulation No 1467/70 if it does not have one or more of the characteristics listed in Annex III thereto.

Article 4 of Council Regulation (EEC) No 1883/78 of 2 August 1978 laying down general rules for the financing of interventions by the European Agricultural Guidance and Guarantee Fund, Guarantee Section (OJ 1978 L 216, p. 1) provides that where an intervention measure involves the buying-in and storage of products, the amount financed is to be determined by the annual accounts drawn up by the payment services or agencies, in which the various items of expenditure and revenue have been respectively debited and credited.

24. Since they had misgivings about the quality of the tobacco in intervention storage in Greece the EAGGF officials proceeded in December 1987 to carry out spot checks in the storage depots of Salonika, Kavala and Sérrai.

The result of the analyses carried out show that a considerable proportion of the intervention tobacco inspected did not meet the requisite minimum qualitative characteristics. Those defects in quality led the EAGGF to exclude from Community financing expenditure in relation to the storage of the whole of the Burley tobacco as well as that relating to the storage of consignments of tobacco of an oriental kind which was inspected.

25. The *Hellenic Republic* challenges both the method of taking the samples and the representativity of the consignments from which they came.

On the first point the applicant maintains that in the absence of rules relating to the

taking of samples the EAGGF ought to have followed those governing international practice, namely the taking of horizontal layers of some five centimetres thickness: in the present case, leaves were taken. Furthermore no representative of the Greek bodies was invited to assist at the laboratory examination of the samples.

As regards the representativity of the sampling, the applicant maintains that it was arbitrary to extend to the whole of Greece the results of sampling carried out in only three towns.

In addition, if the quality had been inadequate purchasers would certainly have reacted, which did not happen.

26. The *Hellenic Republic* also contends that the Commission's decision is vitiated by error of law in that it treated the tobacco in question as in fact lost for the purposes of the provisions of Article 4 of Council Regulation (EEC) No 1883/78 of 2 August 1978 laying down general rules for the financing of interventions by the EAGGF, Guarantee Section (OJ 1978 L 216, p. 1).

The Commission also infringed the general principle of unjustified enrichment by including in its calculations for the purposes of the financial adjustment not only the expenditure but also the value of the product.

27. As regards the method of taking the samples, the *Commission* replies that they were taken in accordance with the scientific data and methods adopted at the international level, as is its customary practice.

The inspections were carried out at premises belonging to the National Tobacco Board (EOK) responsible for management and by joint agreement with the competent officers of the EOK who always accompanied the Community's inspection team and never raised the least objection.

As regards the fact that no representatives of Greek bodies were present when the samples were examined by SEITA's laboratories at Bergerac (France), the Commission observes that no Community provision provides for participation by representatives of national authorities in examinations by independent laboratories; on the contrary, such participation would risk compromising the objectivity of such examinations.

28. As regards the representativity of the sampling, the *Commission* observes that it is precisely the three towns of Salonika, Kavala and Sérrai which are, *par excellence*, the country's tobacco production centres.

As regards the lack of reaction on the part of purchasers, the Commission states that it is inconceivable for them not to buy the stocks in question since the price at which they were offered represented only 3% of the market price. Moreover, the exceptionally low price had been one of the reasons for

sending a Community inspection team to Greece.

29. The *Commission* considers that there is no legal foundation in the applicant's claim that excessive amounts were taken into account since the tobacco was regarded as in fact lost. The deduction was carried out in accordance with the provisions of Regulation No 1883/78.

30. Similarly, the Commission considers that there is no foundation in the applicant's argument that in applying Article 4 of Regulation No 1883/78 it took into account not only the expenditure already incurred but also the value of the product.

The Commission states that the calculation tables include also reductions in quantity and in value both of purchases and of sales of the tobacco in question, that is to say account is taken also of tobacco entering as well as leaving stock. Consequently, the value of the quantities of tobacco regarded as not meeting the conditions of Regulation No 1727/70 was not in fact taken into account.

V — Answers to questions put by the Court

A — *Questions put to the Hellenic Republic*

1. *First question*

'Having regard to the judgments of the Court of 10 July 1990 in Joined Cases C-259/87, C-334/87 and C-335/87 *Greece* v *Commission;* of 12 July 1990 in Case C-35/88 *Commission* v *Greece;* of 19 March 1991 in Case C-32/89 *Greece* v *Commission,* the Hellenic Republic is requested to indicate to the Court the pleas in law and arguments which it intends to maintain.'

Reply

The Hellenic Republic stated that it maintained the pleas relating to

— expenditure in respect of export refunds on 6 400 tonnes of durum-wheat meal;

— collection of co-responsibility levy in the cereals sector;

— expenditure in respect of storage of raw tobacco.

2. *Second question*

'The Hellenic Republic is requested to specify the factors which led it to alter in 1989 the figure relating to total domestic consumption of cereals (1986/87 marketing year) in relation to the figure notified to Eurostat in 1988.'

Answer

The Hellenic authorities have maintained both in their application and reply that the

statistical data on which the Commission relied in calculating the quantities of cereals covered by the co-responsibility levy were provisional and based on estimates of the future harvest. That estimate is based on planned or expected production and obviously is an average of gross production by reason of the possible influence of natural factors. The time when the estimate is made also affects the possibility of knowing the true situation. Where the estimate is made nearer to harvest time it may be regarded as more reliable. In addition, the Hellenic authorities were confronted with a difficulty in presenting accurate data owing to the Chernobyl nuclear accident. As is known, because of that accident the Commission prohibited the marketing of cereals contaminated by radioactivity. Those products were shut away for more than two years in the depots of producers and traders. So for that reason, too, it was not easy to determine with precision the quantities for which the levy had to be paid.

B — *Questions put to the Hellenic Republic and the Commission*

3. *Third question*

'The parties are requested to check their respective calculations in relation to the co-responsibility levy for cereals. In particular they are requested:

to state which document shows that the Commission actually accepted the Greek observations in relation to the 299 000 tonnes consumed on farms (see point 4.2.2.2.4(1)(b), second indent of Annex 10 to the application);

to state the quantity for which the levy has not been collected if

(a) the abovementioned 299 000 tonnes is taken into account;

(b) the difference between the quantity consumed and that put forward by the Hellenic Republic is taken into account;

(c) if (a) and (b) are taken into account at the same time;

to specify the quantities and corresponding sums at issue.'

Answer

3.1. First subquestion

The two parties provided the same answer: Addendum 2 Rev. 1 of the 1987 Summary Report of 5 October 1989 at points 4.2.2.2.3 and 4.2.2.2.4 [1] shows that the Commission in fact accepted the Greek observations in relation to the 299 000 tonnes representing human consumption on the farms.

1 — A copy of this document on behalf of the party concerned was lodged for the first time as an annex to the answer to the question.

3.2. Second subquestion

According to the *Commission*, if 299 000 tonnes is accepted as representing human consumption on farms, the total quantity in respect of which the levy was not collected is 411 000 tonnes.

According to the *Hellenic Republic*, on the same assumption, nothing remains on which the levy should be paid.

3.3. Third subquestion

According to the *Commission*, if a figure of 5 141 000 tonnes for total domestic consumption is taken as a basis, the quantity for which the levy was not collected is 710 000 tonnes. If, on the other hand, the figure put forward by the Hellenic Republic (4 489 000 tonnes) is used, the quantity would be 58 000 tonnes.

According to the *Hellenic Republic*, the answer to this subquestion cannot be given according to the wording of the questions. It confines itself to reproducing in a single table the calculations made by the Commission (on the basis of the figure of 5 141 000 tonnes) and by the Hellenic Republic (on the basis of the figure of 4 489 000 tonnes). Those calculations lead respectively to the results of 710 000 and 299 000 tonnes in respect of which the levy was not collected.

3.4. Fourth subquestion

According to the *Commission*, if in calculating the quantity on which the levy was not collected both the 299 000 tonnes exempted as human consumption on farms and 5 141 000 tonnes as total domestic consumption are taken into account, the result is a figure of *411 000 tonnes*. If, on the other hand, while accepting the 299 000 tonnes, the figure for internal consumption put forward by the Hellenic Republic (4 489 000 tonnes) is taken into account, a negative result *-241 000 tonnes*, is produced, which represents excess collection. Translated into monetary terms, the first calculation leads to a financial adjustment of DR 258 108 000; the second, on the other hand, to an amount of DR 151 348 000 which the Commission should refund to the applicant. In that respect, the Commission states that in practice and from a technical point of view the levy cannot relate to a quantity greater than the normal, for its collection presupposes that a commercial transaction has been carried out (processing, exportation ...). Consequently, since the levy is collected by the Member State, it is inconceivable that the State would have collected it without the commercial transaction having taken place and without the conditions laid down by the Community regulations being fulfilled. The Commission also points out that the applicant itself stated (Annex 12 to the defence) that the balance in respect of which the levy had not been collected was only 299 000 tonnes (amount exempt as representing human consumption on farms).

According to the *Hellenic Republic*, on the same basis of calculation, and if its calculations are accepted, there is no quantity left on which to collect the levy.

4. *Fourth question*

'The parties are requested to specify the exact amounts at issue in relation to the storage of raw tobacco.'

Answer

The *Commission* states that the total amount of tobacco which it has accepted for the purposes of its calculations is *6 736 096 tonnes* of which 6 295 290 tonnes consist of the Burley type and 440 806 tonnes of the oriental type. The total amount of the corresponding adjustment is DR 1 391 025 367.

The *Hellenic Republic* does not give a precise reply to this question. In its view, the exact calculation of the financial consequences arising from the analyses which the Commission's expert carried out cannot be made because he did not determine the percentages of quality classification in the categories A, B and C and did not notify the corresponding results.

5. *Fifth question*

'The parties are requested to clarify the matters at issue and their arguments in relation to the application of Article 4 of Regulation No 1883/78.'

Answer

According to the *Commission* the Greek position may be summarized as follows: when the Commission makes adjustments to the expenditure charged by the Member States to the EAGGF, Guarantee Section, it cannot exempt amounts larger than those which it has already paid as expenditure. The Hellenic Republic seems to be arguing that application of Article 4 of Regulation No 1883/78 leads to the non-recognition not only of the expenditure paid by the EAGGF but also of the purchase price of the tobacco not allowed.

The Commission explains that the calculation tables which it uses when making financial adjustments contain both the quantities of tobacco which do not meet the minimum requisite quality and the *purchase and sales* value of such quantities (the income arising from the sale of intervention tobacco is credited to the EAGGF). In consequence, it is impossible to take the value of the quantity of tobacco not having the required characteristics into account a second time, as the applicant seems to suggest.

The *Hellenic Republic* confines itself to observing that non-recognition of expenditure on the ground that it is described by the Commission 'as net losses' on the basis of Article 4 of Regulation No 1883/78 is unlawful.

6. *Sixth question*

'The parties are requested to be more specific in relation to the methods of sampling tobacco used at an international level.'

Answer

The *Commission* states that it is difficult to describe precisely a method of checking consistently applied at the international level.

To carry out the checks, the Commission employed an expert of German origin who was assisted by the Commission's officials. After carrying out the check the expert submitted a report to the Commission in which he described in detail the method of checking adopted and the results which he reached. The Commission considers that the method adopted by the expert is the international method referred to.

Furthermore, while recognizing that it would have been possible to check a larger number of samples of Burley tobacco before extrapolating the results to the whole quantity inspected, the Commission considers that the accuracy of the results cannot be questioned. First, the quantity of Burley type not meeting the requisite standards represented on average 47%, which is sufficiently high to justify the extrapolation; secondly, the results of the physical inspection carried out by the expert were subsequently confirmed by analysis of the samples carried out by the SEITA laboratory at Bergerac, France. The adjustment made by the Commission is based on the results obtained by that laboratory.

The *Hellenic Republic* observes that in accordance with international practice and the Commission's official directives, samples should have been taken according to the system of three 'sections', one for the purposes of direct analysis, a second to be preserved for confirmation of the analysis and a third for the use of the competent department of the Member State. The Commission's expert however took sample leaves and made a sample of them. That method of sampling is described scientifically as a 'sampling error' and the results cannot fail to lead to enormous discrepancies. In the Hellenic Republic's view, whereas in international practice the sample taken represents 5% of the quantity stored, in the specific case the percentage varied between 0.033 and 0.013%.

G. F. Mancini

Judge-Rapporteur