OPINION OF ADVOCATE GENERAL MENGOZZI
delivered on 16 September 2010[1]

I — Introduction

1. The present reference for a preliminary ruling has been made by the Simvoulio tis Epikratias (Council of State, Greece) and concerns the compatibility with European Union law of national legislation which divides the land on which currants are cultivated into different areas, lays down a prohibition on the movement of dried grapes between certain of those areas and provides an exhaustive list of ports through which dried grapes must be exported.

II — Legislative framework

A — *European Union law*

1. Primary law

2. Article 29 EC provides that 'quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States'.

3. Under Article 30 EC, '[t]he provisions of Articles 28 and 29 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States'.

4. Article 32(1) EC provides that '[t]he common market shall extend to agriculture and trade in agricultural products. "Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products'.

5. Article 32(2) EC states that, '[s]ave as otherwise provided in Articles 33 to 38, the rules laid down for the establishment of the

1 — Original language: French.

common market shall apply to agricultural products.'

6. Article 32(3) EC states that agricultural products are listed in Annex I EC, which refers, under Chapter 8, to 'edible fruit and nuts; peel of melons or citrus fruit'.

7. Article 34(1) and (2) EC provide as follows:

'1. In order to attain the objectives set out in Article 33, a common organisation of agricultural markets shall be established.

This organisation shall take one of the following forms, depending on the product concerned:

(a) common rules on competition;

(b) compulsory coordination of the various national market organisations;

(c) a European market organisation.

2. The common organisation established in accordance with paragraph 1 may include all measures required to attain the objectives set out in Article 33, in particular regulation of prices, aids for the production and marketing of the various products, storage and carry-over arrangements and common machinery for stabilising imports or exports.

The common organisation shall be limited to pursuit of the objectives set out in Article 33 and shall exclude any discrimination between producers or consumers within the Community.

Any common price policy shall be based on common criteria and uniform methods of calculation.'

2. Secondary law applicable to the production of currants at the material time

8. Article 1 of Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products ('Regulation

No 2201/96')[2] provides that the common organisation which it establishes covers, inter alia, dried grapes (CN code 0806 20).

3. Secondary law relating to protected designations of origin

9. Commission Regulation (EC) No 1549/98 of 17 July 1998 supplementing the annex to Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92[3] permitted the registration of the designation 'Κορινθιακή σταφίδα Βοστίτσα (Korinthiaki Stafida Vostitsa)' as a protected designation of origin ('PDO').

10. Commission Regulation (EC) No 483/2008[4] of 30 May 2008 registering certain names in the Register of protected designations of origin and protected geographical indications (Σταφίδα Ζακύνθου (Stafida Zakynthou) (PDO), Miód wrzosowy z Borów Dolnośląskich (PGI), Chodské pivo (PGI)), entered in the Register 'Σταφίδα Ζακύνθου' ('Stafida Zakynthou' – Zante currant) as a PDO in accordance with Regulation (EC) No 510/2006.[5]

B — *National laws and regulations*

11. Law 553/1977 on measures to protect and support exports of currants and other related questions (FEK A'73) ('Law 553/1977') draws a distinction between the different areas in which currants are cultivated in Greece and lays down the conditions governing the movement and export of those currants.

12. In particular, Article 1 of Law 553/1977 provides as follows:

'1. The land on which currants are cultivated shall be divided as follows:

(a) area A, which includes the Sub-prefecture of Aigialeia and the former municipalities of Erineos, Krathida and Felloi in the Prefecture of Achaea and the Prefecture of Corinthia;

2 — OJ 1996 L 297, p. 29.
3 — OJ 1998 L 202, p. 25.
4 — OJ 2008 L 141, p. 11.
5 — Council regulation of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12).

(b) area B, which includes the Prefectures of Zante and Kefalonia, the island of Lefkada, the Prefecture of Ilia, the Prefecture of Achaea (except for the Sub-prefecture of Aigialeia and the former municipalities of Erineos, Krathida and Felloi) and the Prefecture of Messinia.

2. It is prohibited to bring currants from area B into area A for storage, packing, and export abroad.

3. It is permitted to bring currants from area A into area B and to export such currants once they have been mixed with currants from area B, subject to the conditions laid down in Article 2(3) and (4) of the present law.

4. It is prohibited to transport currants from the Sub-prefecture of Aigialeia and the former municipalities of Erineos, Krathida and Felloi in the Prefecture of Achaea to the Prefecture of Corinthia for packing and vice versa.'

13. Article 2 is worded as follows:

'1. All types of packaging containing currants cultivated in area A which are packed in that area and intended for export must be labelled with the letter "A" and the word:

(a) "ΒΟΣΤΙΤΣΑ"("VOSTIZZA"), where the currants are cultivated in the Sub-prefecture of Aigialeia and the former municipalities of Erineos, Krathida and Felloi in the Prefecture of Achaea, packed in that area and exported from the port of Aigio;

(b) "ΚΟΡΦΟΣ" ["KORFOS"] ("GULF"), where the currants are cultivated in the Prefecture of Corinthia, packed in that prefecture, and exported from the ports of Kiato or Corinth.

2. Leaflets or advertising material describing the quality and, more generally, the meaning of the words "Vostizza" or "Gulf" may be placed in the various forms of packaging for currants from the abovementioned areas.

3. All types of packaging containing currants consisting of a mixture of dried grapes from areas A and B packed in area B must be labelled with the word "PROVINCIAL" and, optionally, the name of the place in which they were packed.

4. All types of packaging containing currants cultivated in area B, packed in that area and intended for export must be labelled with

the word "PROVINCIAL" and the following words, to the exclusion of any other:

(a) "ZANTE", for currants cultivated and packed in Zante and currants packed in area B in general, originating in the island of Zante and exported abroad from any port in area B;

(b) "CEPHALLONIA", for currants cultivated and packed in Kefalonia or Lefkada and currants packed in area B in general, originating in the Prefecture of Kefalonia and the island of Lefkada... and exported abroad from any port in area B;

(c) "AMALIAS", for currants packed in the region of Amaliada and currants packed in area B in general originating in the region of Amaliada …, the Prefecture of Ilia … and exported abroad from any port in area B;

(d) "PYRGOS", for currants packed in the regions of Pyrgos and Katakolo in the Prefecture of Ilia and exported abroad from the port of Katakolo;

(e) "PATRAS", for currants packed in the region of Patras and exported abroad from the port of Patras;

(f) "KALAMATA", for currants packed in the region of Kalamata and exported abroad from the port of Kalamata.

…'

14. Article 3(1) of Law 553/1977 lays down the following conditions governing the export of currants:

'Currants shall be exported abroad in accordance with the following conditions:

(a) those labelled with the word "Vostizza", from the port of Aigio;

(b) those labelled with the word "Gulf", from the ports of Corinth and Kiato;

(c) those labelled with the words "Zante", "Cephallonia" and "Amalias", from any of the ports of export in area B;

(d) those labelled with the word "Pyrgos", from the port of Katakolo;

(e) those labelled with the word "Patras", from the port of Patras;

(f) those labelled with the word "Kalamata", from the port of Kalamata.

…'

15. Article 3(2) of Law 553/1977 also provides that 'in the event that vessels are unable to approach or be loaded in the ports of Aigio or the Nome of Corinthia, provided that the identity of the cargo is guaranteed, transportation to the port of Patras shall be permitted'.

16. Article 4 of Law 553/1977 reads as follows:

'1. Article 54(1) and (2) of Law 2490/1955 codifying the provisions on the protection of currants and including provisions relating to the Autonomous Dried Grape Organisation [ASO], as amended by Article 5 of Law 3541/1956, shall be replaced by the following provisions:

"1. In order to improve the quality of packed and exported dried grapes, operators of dried grape packing factories, persons hiring the services of a dried grape processing operation or persons involved in that process shall be required to deliver to the ASO depots any waste resulting from the processing of dried grapes. Such waste represents a very low percentage of the net amount of dried grapes exported or distributed for domestic consumption. That percentage must be delivered to the relevant branch of the ASO, together with any other amount of waste resulting from the processing of dried grapes in accordance with the foregoing, exported or distributed and any additional quantities supplied for export or distribution for domestic consumption may be offset, in the course of a single export year".

17. Decree No 442597 of the Minister for Agriculture of 22 November 1993 accords national recognition to the designation 'Vostizza' as a PDO for currants produced from grapes of the 'Black Corinth' variety, which are cultivated in the region of the Subprefecture of Aigialeia.

18. Decree No 39946 of the Minister for Agriculture of 4 November 1999 lays downs the conditions under which grapes must be withdrawn from processing for reasons of quality and sets up a body responsible for the collection and management of the quantities to be withdrawn.

III — The dispute in the main proceedings and the questions referred for a preliminary ruling

19. K. Frangopoulos kai SIA O.E., which, in the course of the main proceedings, became Kakavetsos-Frangopoulos AE Epexergasias kai Emporias Stafidas ('Frangopoulos'), was, at the material time, a general partnership governed by Greek law whose main activity is the processing and marketing of currants. Frangopoulos is established in the region of Kiato in Corinthia.

20. Under Greek legislation, the land on which currants are cultivated is divided into two areas, area A and area B. The dried grapes produced in area B are deemed to be of inferior quality to those produced in area A. Consequently, producers in area B are permitted to bring into their area currants originating in area A in order to mix them with currants cultivated there. Currants cultivated in area B may be moved freely within that area and exported abroad, subject to compliance with the provisions of Law 553/1977 on product labelling. Where mixtures of dried grapes from area B and dried grapes from area A are packed and then sold, producers in area B must comply with national legislation which requires them to affix a label bearing the indication 'Provincial', followed by the name of the region of provenance, which informs the consumer that the package contains a mixture of currants. On the other hand, no movement of currants from area B to area A is permitted. In other words, a producer in area A is not permitted to bring currants from area B into his area. Within area B, the 'Stafida Zakynthou' (Zante currant) grape is the only PDO registered at European Union level since 2008.

21. Area A, which is deemed to produce superior-quality currants, is in turn divided into two sub-areas. The first sub-area of area A produces dried grapes known as 'Vostizza', which have had the status of PDO at national level since 1993 and at European Union level since 1998. Currants produced in the second sub-area, although of superior quality to those from area B, are nevertheless of inferior quality to those produced in the first sub-area of area A. Producers in the first sub-area of area A are not permitted to bring in dried grapes originating in the second sub-area of area A, and vice versa.

22. Each area also has corresponding specific ports designated by name in the national legislation through which dried grapes must alone be transported with a view to their export abroad. [6]

6 — See Article 3 of Law 553/1977.

23. Under the national legislation, Frangopoulos is therefore established in area A, and more specifically in the second sub-area of area A, which is not covered by a PDO and produces 'Gulf' grapes. Frangopoulos exports abroad all the dried grapes which it sells. At the hearing, it stated that 90% of its production is exported to European Union Member States, whilst the remaining 10% is exported to third States.

24. In June 2001, faced with a steady fall in production of dried grapes in its region, Frangopoulos applied to the Regional Directorate for Agriculture for the Autonomous Eparchy of the Nome of Corinthia for authorisation to transport and process, in its factory located in the region of Kiato and thus in the Nome of Corinthia, currants of any provenance, that is to say, cultivated either in area B or in the first sub-area of area A. Frangopoulos explains that its production capacity is much greater than that required for the processing and packing of 'Gulf' grapes alone, that it has made substantial investments to improve its installations and that, without sufficient raw material to support its activity, it will soon face insolvency.

25. By Decision No 10037 of 27 June 2001, Frangopoulos' request was rejected by the Director for Agriculture of the Autonomous Eparchy of the Nome of Corinthia on the ground that Law 553/1977 clearly provides that only dried grapes from the second sub-area of area A may be processed, stored and packed in the Nome of Corinthia and that there can be no movement of grapes originating in area B or grapes originating in the first sub-area of area A to the second sub-area of area A.

26. On 17 September 2001, Frangopoulos brought an action before the Simvoulio tis Epikratias for annulment of Decision No 10037 of 27 June 2001. It considers that Law 553/1977 constitutes an intolerable restriction of its economic freedom and its freedom of competition. Furthermore, it submits that that law undeniably places producers in area B in a much more favourable position than producers in area A. Since producers in area B are able to bring in grapes originating in area A, that reduces the amount of raw material available in area A, with the result that undertakings established in area A are under utilised. Since undertakings in area B have more raw material at their disposal, their production is greater and they are therefore more competitive. Frangopoulos claims that total production of dried grapes in the region of the Prefecture of Corinthia is 9 000 tonnes, which is processed by five undertakings, whereas in area B four active undertakings process a total of 20 000 tonnes. Frangopoulos

believes that, in those circumstances, there is a substantial risk of economic decline for undertakings located in area A. Furthermore, the objective pursued by the legislation, namely a prohibition on mixing dried grapes from area B with dried grapes from area A in area A, with a view to protecting the quality of dried grapes in area A in general, and 'Vostizza' dried grapes in particular, could be achieved by less restrictive measures. Frangopoulos also states that it is not seeking authorisation either to mix different varieties of currants in its factory or to affect quality consistency; it simply wishes to be permitted to bring in currants from other regions, process them and export them, whilst continuing to comply with the labelling requirements under Article 2 of Law 553/1977. In this regard, it does not matter to it that dried grapes from the first sub-area of area A should forfeit their PDO if they were to be brought into its area, as Frangopoulos is simply seeking to increase the volume of its production and not to market products with a PDO. For all these reasons, Frangopoulos considers that the national legislation is contrary to Articles 28 EC, 29 EC and 34(2) EC.

27. Clearly faced with a problem of interpretation of European Union law, the Simvoulio tis Epikratias decided to stay the proceedings and, by order for reference lodged on 8 May 2009, to refer to the Court of Justice, pursuant to Article 234 EC, for a preliminary ruling on the following three questions:

'(1) Can a company operating under the conditions under which the applicant operates, that is to say, as a dried grape processing and packing company established in a specific area of the country to which it is prohibited by law to bring different varieties of drying grapes from other areas of the country for the purpose of processing and packing, thereby preventing it from exporting dried grapes which it would have processed from such drying grapes, plead in court that the legislative measures in question conflict with Article 29 EC?

(2) If the answer to the first question is in the affirmative, do provisions such as those in internal Greek law governing the dispute at issue which, on the one hand, prohibit drying grapes from being brought from different areas of the country, for the purpose of storage, processing and onward export, to a specific area in which it is permitted to process only locally grown drying grapes and, on the other hand, reserve the possibility of recognising protected designation of origin solely for drying grapes which have been processed and packed in the specific area in which they were grown conflict with Article 29 EC, which prohibits quantitative

restrictions on exports or measures having equivalent effect?

(3) If the answer to the second question is in the affirmative, does protection of the quality of a product which is defined geographically by the national law of a Member State and which has not been granted the possibility of bearing a particular distinguishing name which would mark its generally acknowledged superior quality and uniqueness due to its originating in a certain geographical area constitute, for the purpose of Article 30 EC, a legitimate objective of overriding public interest which justifies a derogation from Article 29 EC prohibiting quantitative restrictions on exports of the said product and measures having equivalent effect?'

IV — The procedure before the Court

28. The applicant in the main proceedings, the Greek Government, the Netherlands Government and the European Commission submitted written observations to the Court.

29. At the hearing, which was held on 8 July 2010, the applicant in the main proceedings, the Greek Government and the Commission presented oral argument.

V — Legal analysis

A — *Introductory remarks*

30. In formulating the questions, the referring court focused on Article 29 EC. However, before going on to assess the compatibility of the national legislation with European Union primary law, I must ascertain whether there are rules of secondary law which could be of assistance in the context of this reference for a preliminary ruling. Furthermore, the applicant has also pleaded the existence of a measure prohibited under Article 28 EC. At the outset, I must therefore examine these two points in succession, in order to provide to the referring court all those elements for the interpretation of European Union law which may be of assistance in adjudicating on the case pending before it, whether or not that court has specifically referred to them in its questions. [7]

31. First of all, currants are subject to the common organisation of the markets in

7 — Case 83/78 *Redmond* [1978] ECR 2347, paragraph 26; Case 20/87 *Gauchard* [1987] ECR 4879, paragraph 5; Case C-230/98 *Schiavon* [2000] ECR I-3547, paragraph 37 and the case-law cited; Case C-469/00 *Ravil* [2003] ECR I-5053, paragraph 27; and Case C-205/07 *Gysbrechts and Santurel Inter* [2008] ECR I-9947, paragraph 31 and the case-law cited.

processed fruit and vegetable products, which has been governed since 1 January 2008 by Regulation (EC) No 1234/2007, known as the Single CMO Regulation. [8] At the material time, currants were governed by the common organisation of the markets established by Regulation No 2201/96 and by various implementing regulations which related more specifically to currants. [9]

32. However, in my view, those regulations do not contain any express provision on the basis of which the compatibility of the national law may be assessed. The common organisation of the markets does not, as such, provide for the conditions governing the domestic movement of dried grapes or the conditions under which they may be exported. The common organisation of the markets establishes, for example, the principle of aid for cultivation [10] and the conditions under which storage agencies may buy in the products in question, [11] and makes it possible to determine the minimum import price for dried grapes and any countervailing charges. [12] The implementing regulations for the common organisation of the markets in the specific sector of dried grapes lay down precise rules for the implementation of the aid scheme for specialised areas for growing certain varieties of grapes for drying (Regulation No 1621/1999), storage rules (Regulation No 1622/1999, in the version applicable to the facts of the case), and the minimum marketing characteristics for certain varieties (Regulation No 1666/1999).

33. The common organisation of the markets and its implementing regulations are therefore essentially of a technical nature, whose link with the facts in the main proceedings is not immediately apparent. Article 21 of Regulation No 2201/96 alone expressly refers, in paragraph 2, to a general prohibition on any quantitative restriction or measure having

8 — Council regulation of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2007 L 299, p. 1).

9 — See point 8 of this Opinion. Regulation No 2201/96 was amended, successively, between 1996 and 2001 (the period during which the main proceedings were brought) by Council Regulation (EC) No 2199/97 of 30 October 1997 (OJ 1997 L 303, p. 1), Council Regulation (EC) No 2701/1999 of 14 December 1999 (OJ 1999 L 327, p. 5), Council Regulation (EC) No 2699/2000 of 4 December 2000 (OJ 2000 L 311, p. 9) and Council Regulation (EC) No 1239/2001 of 19 June 2001 (OJ 2001 L 171, p. 1). The implementing regulations adopted during this period were Commission Regulation (EC) No 1621/1999 of 22 July 1999 (OJ 1999 L 192, p. 21) concerning aid for the cultivation of grapes to produce certain varieties of dried grapes, Commission Regulation (EC) No 1622/1999 of 23 July 1999 (OJ 1999 L 192, p. 33) concerning the scheme for the storage of unprocessed dried grapes and unprocessed dried figs, and Commission Regulation (EC) No 1666/1999 of 28 July 1999 (OJ 1999 L 197, p. 32 to 35) concerning the minimum marketing characteristics for certain varieties of dried grapes.

10 — See Article 7 of Regulation No 2201/96.

11 — Ibid., Article 9.

12 — Ibid., Article 13(2), (4) and (6).

equivalent effect, but only as regards trade with third countries.

34. However, it is settled case-law that Articles 28 EC and 29 EC on the abolition of quantitative restrictions and all measures having equivalent effect on imports and exports are regarded as an integral part of the common organisation of the markets [13] in general, which may explain the silence of Regulation No 2201/96 in that regard. The principles established by the common organisation of the markets, traditionally based on freedom of commercial transactions [14] and the concept of an open market to which every producer has free access, [15] are therefore infringed by any national provision or measure which might alter the pattern of imports or exports, [16] in other words, which are capable of hindering intra-Community trade. [17] Even if the provisions implementing the common organisation of the markets do not reproduce the relevant provisions of the EC Treaty, that cannot relieve the Member States of the obligation to examine their legislation in the light of those provisions, as the Court has taken the view that, since the expiry of the transitional period, and in the light of the wording of Article 32(2) EC, it is no longer necessary to reproduce in regulations establishing common organisations of the markets the prohibitions enacted by the Treaty. [18] However, I will obviously have to return to this point, as the existence of a common organisation of the markets in a given sector requires the Court to adopt a test which is slightly different from the test normally employed to ascertain the existence of a national measure prohibited under Article 29 EC. [19]

35. Secondly, and since it is now clear that, notwithstanding the existence of a common organisation of the markets, the review conducted by the Court may assess the compatibility of Law 553/1977 with the primary law provisions of the European Union, the question may be asked whether it is appropriate for the Court to found its review on a possible breach of Article 28 EC in the present case.

36. Frangopoulos claims that Article 1 of Law 553/1977 also constitutes a quantitative

13 — Case 29/82 *van Luipen* [1983] ECR 151, paragraph 8, and Case C-44/94 *Fishermen's Organisations and Others* [1995] ECR I-3115, paragraph 52.

14 — Case 94/79 *Vriend* [1980] ECR 327, paragraph 8, and *van Luipen*, paragraph 8.

15 — *Redmond*, paragraph 57.

16 — Ibid., paragraph 58.

17 — *van Luipen*, paragraph 8.

18 — Case 251/78 *Denkavit Futtermitel* [1979] ECR 3369, paragraph 3. I consider that this approach, whilst valid in this instance as regards Article 30 of the EEC Treaty (which became Article 30 of the EC Treaty, which in turn became, after amendment, Article 28 EC), can be applied perfectly well to the prohibition on quantitative restrictions and measures having equivalent effect to quantitative restrictions on exports. The Court also held that, in spite of the fact that no express reference was made to the provisions of the Treaty, as a result of the practice adopted by the Commission, Articles 30 and 34 of the EEC Treaty were to be regarded as an integral part of the common organisation of the markets, to which the case before the Court related (see *Redmond*, paragraphs 54 and 55).

19 — See point 49 et seq. of this Opinion.

restriction on imports in that it lays down an absolute prohibition on 'importing' currants from area B or from the first sub-area of area A into the second sub-area of area A. It is true that that prohibition on imports does not have a cross-border dimension, since it concerns only borders between regions within a single State, but the Court does not draw a distinction, in the applicant's view, according to whether borders are inter-State or intra-State. In support of its contention, Frangopoulos relies on the judgments in *Simitzi* [20] and *Carbonati Apuani*. [21]

37. In those two judgments, the Court was required to assess – unlike in the present case – the existence of charges having an effect equivalent to customs duties, and in that specific context it found that such charges could also consist in the collection of duties when an internal border of a Member State is crossed. *Simitzi* concerned specifically a charge on imports and exports levied when goods imported from or exported to another Member State crossed the border of the Dodecanese; the Court did not therefore apply Article 28 EC but, in any event, the applicant in the main proceedings, a Greek national, undoubtedly imported goods from other Member States. In the judgment in *Carbonati Apuani*, the Court classified as a charge having equivalent effect to a customs duty a charge which was levied in that case, when excavated marble left the territory of the municipality, without there being any question, at any point, of the existence of a measure having equivalent effect to a quantitative restriction on imports.

38. I find it difficult to see how the Court could take the view that Article 1 of the national law in question falls within the scope of Article 28 EC. The movement of currants cultivated in Greece on land in the different areas of its territory, as defined by Law 553/1977, cannot be construed as any kind of importation, as that concept is defined in European Union law. Furthermore, the referring court stated in its reference for a preliminary ruling that, even though the Greek legislature used the term 'importation' in Law 553/1977, it should not be understood in its literal meaning, but rather in the sense of 'introduction', [22] which I consider to be more appropriate for the purpose of describing the movement of goods between different areas of a single Member State. Furthermore, as the Greek Government acknowledged at the hearing, Law 553/1977 does not affect imports into Greece of currants from other Member States – it would seem – any more than any other national provision governing

20 — Joined Cases C-485/93 and C-486/93 [1995] ECR I-2655.

21 — Case C-72/03 [2004] ECR I-8027. The applicant in the main proceedings refers in particular to paragraph 23 of that judgment.

22 — See paragraph 6 of the order for reference.

the currant sector. In any event, this is not the subject of the national legislation that must be assessed here. The referring court was therefore correct in focusing its reference on Article 29 EC. [23]

B — *The first and second questions*

39. The first question can be answered without any great difficulty, especially since none of the interested parties which submitted written observations contested the fact that Frangopoulos is entitled to rely on Article 29 EC.

40. First, Article 29 EC has long been recognised as being directly applicable and, as such, confers on individuals rights which the national courts must safeguard. [24] Second, volumes of export trade are affected, at least potentially, as a result of the initial prohibition on movement of currants between the different areas. Since they are prevented from being moved between the regions of the Member State concerned, it is logical that the grapes cannot be exported either. In those circumstances, it is natural to draw a parallel with *Jersey Produce Marketing Organisation*. In addition, Article 1(2) and (4) of Law 553/1977 contain two express prohibitions on exporting currants which are applicable if they do not comply with the requirements laid down by that law concerning local processing, storage and packing.

41. I therefore propose that the first question be answered in the affirmative, to the effect that a company operating under the conditions under which the applicant operates, that is to say, as a dried grape processing and packing company established in a specific area of the Member State to which it is prohibited by a national law to bring different varieties of drying grapes from other areas of the Member State for the purpose of processing and packing, thereby preventing it from exporting dried grapes which it would have processed from such drying grapes, can plead in court that the legislative measures in question conflict with Article 29 EC.

42. It remains to be considered whether the national measure in question actually constitutes a quantitative restriction or a measure having equivalent effect to a quantitative

23 — In this regard, the Court has already held that while a national measure governing the movement of certain products between areas within a single Member State may affect export movements, it cannot be regarded as any kind of restriction on imports (see Case C-293/02 *Jersey Produce Marketing Organisation* [2005] ECR I-9543, paragraph 72).

24 — *Redmond*, paragraphs 66 and 67, and Case C-47/90 *Delhaize and Le Lion* [1992] ECR I-3669, paragraph 28.

restriction on exports, both of which are prohibited by Article 29 EC. In so far as the Greek legislation does not introduce direct quantitative restrictions on exports but, prima facie, simply channels them, it does not, as such, constitute a quantitative restriction. It must therefore be determined whether the national legislation constitutes a measure having equivalent effect to a quantitative restriction on exports. To that end, it is necessary to ascertain the requirements which must be met for the existence of such a measure having equivalent effect.

43. In this regard, the Court's case-law is very varied. [25]

44. At first, the Court aligned the 'test' under Article 29 EC with the test under Article 28 EC; in other words, the *Dassonville* ruling [26] applied without distinction to measures having equivalent effect to a quantitative restriction on imports and to measures having equivalent effect to a quantitative restriction on exports.

45. Probably fearing that it had thus opened up Pandora's box, in its judgment in *Groenveld*, the Court drew a distinction between the measures referred to in Article 28 EC and those referred to in Article 29 EC, thereby restricting the scope of Article 29 EC to 'national measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for the domestic market of the State in question at the expense of the production or of the trade of other Member States'. [27] Under the '*Groenveld*' test, therefore, for a measure to be classified as a measure having an equivalent effect to a quantitative restriction on exports, three particularly strict conditions must be met and, most importantly, Article 29 EC applies only where there exists a discriminatory measure.

46. Subsequently, the Court has confirmed the '*Groenveld*' test, at least in principle. Even recently, when invited by the Advocate General to modify the test in *Gysbrechts and Santurel Inter*, the Court reiterated the criteria established in the ruling in *Groenveld*. [28] However, in its rulings, the Court has not always established with the same rigour that

25 — For a precise analysis of the development of this case-law, I would refer to the very enlightening Opinion delivered by Advocate General Trstenjak in *Gysbrechts and Santurel Inter* and, in particular, point 28 et seq. of that Opinion.

26 — According to which 'all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade' constitute measures having equivalent effect to quantitative restrictions (Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5).

27 — Case 15/79 *Groenveld* [1979] ECR I-3409, paragraph 7.

28 — See *Gysbrechts and Santurel Inter*, paragraph 40.

the three conditions laid down in the '*Groenveld*' test were actually satisfied. I will give three examples in support of my contention.

47. First, in a number of judgments, [29] the Court seems to have abandoned the last part of the third condition, namely that the particular advantage conferred on national production by the measure in question must be at the expense of the production or of the trade of other Member States.

48. Second, in *Gysbrechts and Santurel Inter*, even though the Court referred to the *Groenveld* case-law, it did not go on to ascertain whether the three conditions under the '*Groenveld*' test had been met in that case. The Advocate General had, nevertheless, drawn the Court's attention to the fact that it was not possible, on the basis of a strict application of the conditions in that test, for it to conclude that the measure at issue constituted a measure having equivalent effect to a quantitative restriction on exports. [30] In view of the circumstances of the case, the Court acknowledged that, while the prohibition at issue applied without distinction, 'the consequences of such a prohibition are generally more significant in cross-border sales', [31] and that the actual effect of the measure in question is 'none the less greater on goods leaving the market of the exporting Member State than on the marketing of goods in the domestic market of that Member State'. [32] The Court inferred from this examination alone that there existed a measure having equivalent effect to a quantitative restriction on exports.

49. Lastly, where the case relates to a common organisation of the markets, the Court adopts a more flexible view of the conditions which must be satisfied for the existence of a measure having equivalent effect to a quantitative restriction on exports. In that case, there is no longer any requirement that the measure be discriminatory. In the judgment in *Vriend*, delivered subsequent to *Groenveld*, the Court thus ruled that, in view of the fact that Articles 30 and 34 of the EEC Treaty form an integral part of the common organisation of the markets, 'as far as trade within the Community is concerned, the common organisation of the market in the products in question is based on commercial transactions and is opposed to any national rule which could hinder directly or indirectly, actually

29 — With no claim to exhaustiveness, see Case 172/82 *Syndicat national des fabricants raffineurs d'huile de graissage and Others* [1983] ECR 555, paragraph 12; Case 237/82 *Jongeneel Kaas and Others* [1984] ECR 483, paragraph 22; *Delhaize and Le Lion*, paragraph 12; Case C-388/95 *Belgium* v *Spain* [2000] ECR I-3123, paragraph 41; Case C-209/98 *Sydhavnens Sten & Grus* [2000] ECR I-3743, paragraph 24; Case C-108/01 *Consorzio del Prosciutto di Parma and Salumificio S. Rita* [2003] ECR I-5121, paragraph 54; and *Ravil*, paragraph 40. In *Belgium* v *Spain*, the third condition seems to have been removed from the test in its entirety.

30 — See points 34 to 40 of the Opinion in *Gysbrechts and Santurel Inter*.

31 — Case *Gysbrechts and Santurel Inter*, paragraph 42.

32 — Ibid., paragraph 43.

or potentially, intra-Community trade'.[33] It therefore follows that, where there is a common organisation of the markets, the Court aligns the test under Article 29 EC with the test under Article 28 EC, as it did previously and as it has continued to do, in those specific circumstances, after *Groenveld*.[34]

50. Whilst the Court has therefore stated that, 'under Articles [28 EC and 29 EC], quantitative restrictions on imports and exports and all measures having equivalent effect are prohibited as between the Member States', adding that the Court has consistently held[35] that 'those prohibitions extend to cover all trading rules of the Member States which are likely to impede, directly or indirectly, actually or potentially, intra-Community trade',[36] that applies only where the situation before the Court relates to a common organisation of the markets. The Court thus made express reference to the *Dassonville* case-law.[37] The Court justified this difference in treatment on the ground that, as Articles 28 EC and 29 EC form an integral part of the common organisation of the markets, once the Community has adopted such legislation in a given sector, the Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it.[38]

51. In the present case, there can be little doubt that, applying the '*Groenveld*' test, the Greek legislation would not be covered by the prohibition laid down in Article 29 EC. It is difficult to argue that the effect of the Greek legislation is that the domestic trade of the Hellenic Republic and its export trade are treated differently, since the prohibition on internal movement – prior to the prohibition on exports – applies to all currants, whether they are intended for export or for the domestic market. The advantage thereby conferred on Greek production or the domestic market at the expense of the production or trade of another Member State is no easier to demonstrate, since the interested parties which submitted written observations have not provided any information on this point.

52. Accordingly, it is only because the Court has developed specific, less stringent case-law relating to measures having equivalent effect to a quantitative restriction on exports in a sector covered by a common organisation of

33 — *Vriend*, paragraph 8.

34 — For the period prior to *Groenveld*, see *Redmond*, paragraph 58; for subsequent case-law, in addition to *Vriend*, see also *van Luipen*, paragraph 8.

35 — This observation is somewhat surprising in so far as it has already been shown that consistency has not been the primary characteristic of the Court's case-law in this regard.

36 — Case C-272/95 *Deutsches Milch-Kontor* [1997] ECR I-1905, paragraphs 23 and 24.

37 — Idem.

38 — *Fishermen's Organisations and Others*, paragraph 52 and the case-law cited.

the markets that the Greek legislation could be found to be contrary to Article 29 EC. [39]

53. By prohibiting Frangopoulos from obtaining supplies of currants originating in area B or in the first sub-area of area A, the national legislation has a clear impact on the volume of exports of the applicant in the main proceedings. The channelling of exports also represents an additional restriction to which exporters are subject. In those circumstances, I therefore consider that the Greek legislation in question is a trading rule which, within the meaning of *Vriend*, is likely to impede directly and, in any event, potentially intra-Community trade.

54. Law 553/1977 must therefore be regarded as a measure having equivalent effect to a quantitative restriction on exports, which is in principle prohibited by Article 29 EC.

55. The referring court also asks the Court whether the Greek legislation which reserves the PDO solely for grapes processed and packed in the specific area in which they were grown is contrary to Article 29 EC. It should be noted, however, that the purpose of Law 553/1977 is not to regulate directly the conditions governing the use of the PDO 'Vostizza'. Only by means of an *a contrario* interpretation of Article 2(1)(a) of that law, and because the PDO in question was registered at European Union level in 1998, can it be deduced that if currants normally cultivated in the first sub-area of area A were lawfully brought into area B, or unlawfully brought into the second sub-area of area A, they would forfeit their PDO.

56. That being said, the answer to this question is made easier because it is settled case-law that the particular restrictions on products laying claim to a PDO registered at European Union level, by means of a specification, actually constitute measures having equivalent effect to quantitative restrictions on exports. [40]

57. I therefore propose that the second question be answered to the effect that both the provisions of a national law, such as Law 553/1977, which prohibit drying grapes from being brought from different areas of the country, for the purpose of storage, processing and onward export, to a specific area in which it is permitted to process only locally grown drying grapes and provisions which reserve the possibility of recognising the PDO registered at European Union level solely for drying grapes which have been processed and

39 — I cannot therefore help thinking that the outcome would have been different if the currants had not been covered by a common organisation of the markets or questioning the relevance of this difference in treatment and stricter view of measures having equivalent effect to a quantitative restriction on exports in other cases, even though such remarks naturally go beyond the strict context of the present case.

40 — *Ravil*, paragraphs 84 to 88, and *Consorzio del Prosciutto di Parma and Salumificio S. Rita*, paragraphs 51 to 59.

packed in the specific area in which they were grown constitute measures having equivalent effect to quantitative restrictions, prohibited by Article 29 EC.

C — *The third question*

58. In the event that the Court should regard the national legislation at issue as a measure having equivalent effect to quantitative restrictions on exports, prohibited by Article 29 EC, the Simvoulio tis Epikratias asks the Court whether such legislation is none the less justified. More specifically, the referring court asks whether protection of the superior quality of a product, which is not, however, acknowledged by a PDO registered at European Union level, may constitute a legitimate objective of overriding public interest for the purpose of Article 30 EC.

1. The prohibition on importation, storage, packing and onward export between the sub-areas of area A

59. The third question asked by the referring court relates only to the possible justification for Article 1(2) of Law 553/1977, that is, the national provision prohibiting the importation,[41] storage and packing of currants from area B, and their onward exportation abroad, from area A, and not to the prohibition affecting grapes cultivated in area A. Even though the question has not been asked, I nevertheless consider that some observations should be made in this regard.

60. In the order for reference, the Simvoulio tis Epikratias considers that Article 1(4) of Law 553/1977, which prohibits any movement of currants between the sub-areas of area A, was introduced for the purpose of protecting the quality and the reputation of the product for which a PDO was registered at European Union level (in this case, for 'Vostizza' currants). However, under Article 30 EC, Article 29 EC does not preclude prohibitions or restrictions on exports justified on grounds, inter alia, of the protection of industrial and commercial property.

61. The Court has taken the view on several occasions that 'designations of origin fall within the scope of industrial and commercial property rights'.[42] Furthermore, 'the

41 — It should be noted that, in this context, 'importation' is to be understood to mean 'introduction': see point 38 of this Opinion.

42 — *Belgium* v *Spain*, paragraph 54; *Consorzio del Prosciutto di Parma and Salumificio S. Rita*, paragraph 64; and *Ravil*, paragraph 49.

applicable rules protect those entitled to use them against improper use of those designations by third parties seeking to profit from the reputation which they have acquired. They are intended to guarantee that the product bearing them comes from a specified geographical area and displays certain particular characteristics. They may enjoy a high reputation amongst consumers and constitute for producers who fulfil the conditions for using them an essential means of attracting custom. The reputation of designations of origin depends on their image in the minds of consumers. That image in turn depends essentially on particular characteristics and more generally on the quality of the product. It is on the latter, ultimately, that the product's reputation is based. For [a consumer], the link between the reputation of the producers and the quality of the products also depends on his being assured that products sold under the designation of origin are authentic.' [43] Article 1(4) of Law 553/1977 may therefore, as the referring court rightly considered, be justified on grounds of the protection of industrial and commercial property under Article 30 EC.

62. However, it is not enough to say that the measure is justified on the basis of one of the objectives set out in Article 30 EC, since any justification is still subject to the provision in question being necessary and proportionate. While the absence of a PDO in the area where Frangopoulos is located means that paragraphs 2 and 4 of Article 1 of Law 553/1977 must be analysed separately in order to determine the objective pursued or any overriding requirement of public interest, the question whether those provisions are proportionate may be examined jointly. I will therefore return to this point in due course. [44]

2. The prohibition on importation, storage, packing and onward exportation between area A and area B

63. The Court recognised in *Gysbrechts and Santurel Inter* that 'a national measure contrary to Article 29 EC may be justified on one of the grounds set out in Article 30 EC, and by overriding requirements of public interest, provided that the measure is proportionate to the legitimate objective pursued.' [45] The question which therefore arises is whether, in a situation in which no PDO has been registered at European Union level for currants

43 — *Consorzio del Prosciutto di Parma and Salumificio S. Rita*, paragraph 64, and *Ravil*, paragraph 49.

44 — See point 70 et seq. of this Opinion.

45 — *Gysbrechts and Santurel Inter*, paragraph 45.

cultivated in the second sub-area of area A, namely 'Gulf' currants, it is possible to rely on one of the grounds of justification set out in Article 30 EC or an overriding requirement of public interest.

64. The aim pursued by Article 1(2) of Law 553/1977 is to prevent currants from area A being mixed with currants originating in area B. Currants produced in area A are deemed to be of superior quality to those produced in area B. They are therefore also more expensive. As a result of the registration of a PDO at European Union level, the superior quality of 'Vostizza' grapes cannot be called into question. On the other hand, the superior quality of 'Gulf' grapes is to be inferred only from the statement of reasons for Law 553/1977 and the statements made by the referring court and the Greek Government regarding the particular reputation enjoyed by 'Gulf' grapes, which do not, however, benefit from a PDO. The superior quality of 'Gulf' grapes compared with currants produced in area B is based on essentially subjective factors, such as the particular reputation or esteem they enjoy among consumers of the product in Greece, which is a matter to be assessed by the referring court.

65. However, it is, to my mind, surprising that the Hellenic Republic has not introduced a PDO at European Union level for 'Gulf' grapes if their quality and characteristics are so important to consumers that it was considered necessary to impose an absolute prohibition on the movement of any other kind of grapes within the second sub-area of area A.[46] The argument put forward by the Greek Government, to the effect that the objective pursued is to protect the quality and raise the profile of the products, is weakened by the fact that Law 553/1977 does not contain any stipulation relating directly to the quality of 'Gulf' grapes. Nor does it introduce measures which could be regarded, to a greater or lesser extent, as a specification.

66. However, the objective of protecting the quality of a product which enjoys a particular reputation within a Member State but does not have a PDO cannot, in itself, be sufficient to constitute an overriding requirement of public interest. The Court has already made such a finding in *Alfa Vita Vassilopoulos and Carrefour-Marinopoulos*.[47] To decide otherwise would run the risk – too great a risk in my view – that Member States could justify questionable measures which restricted the free movement of goods on the grounds of protecting quality and reputation which the

46 — This absence of a PDO, at national and at European Union level, is all the more surprising since such a designation has been registered for a variety of dried grapes produced in area B (see point 10 of this Opinion).

47 — See Joined Cases C-158/04 and C-159/04 [2006] ECR I-8135, in which the Court held that 'regarding the justification of an objective as to quality..., the Court finds that a national measure which restricts the free movement of goods may not be justified solely on the ground that it aims to promote quality foodstuffs. In order to justify a restriction on the free movement of goods, such an objective may be taken into account only in relation to other requirements which have been recognised as being imperative, such as consumer or health protection' (paragraph 23).

judicature of the European Union would not be able to review or verify. In the present case, as the applicant in the main proceedings stated in its written observations, to accept that protecting the quality of 'Gulf' grapes constitutes an overriding requirement of public interest, even though they are not covered by a PDO, would amount to recognising the Hellenic Republic's right to set up insuperable internal borders in order to guarantee the purported purity of certain products. Such an approach would then also have to apply to the other Member States. Such a division of national territories according to production of local interest is entirely contrary to the spirit of the Treaty provisions on the free movement of goods, especially since European Union law provides the mechanisms necessary for the recognition and controlled development of products which, by virtue of their particular quality, their regional characteristics or the know-how required for their production can be protected.

67. The counterpart to registration of a PDO is a commitment by producers to comply with a number of obligations which are laid down, inter alia, in the specification. In the case of the Greek legislation, the situation appears to me to be more asymmetrical: 'Gulf' grapes are said to be of superior quality, without any particularly conclusive evidence having been provided. Under Law 553/1977, that superior quality can be guaranteed only by prohibiting all transportation, storage and packing in another area. However, the legislation does not impose on producers any other obligations with a view to quality protection. The movement of their products is restricted and the products do not have the advantage of bearing a PDO.

68. The Greek Government essentially argues in favour of extending the Court's case-law on the justification of a measure having equivalent effect to a quantitative restriction on exports in cases involving a PDO registered at European Union level to any corresponding right concerning quality and national reputation which national law deems to be deserving of protection. The purported objective is to protect the quality, authenticity and reputation of the products. I nevertheless remain convinced that, in the absence of a PDO registered for 'Gulf' dried grapes, and for the reasons set out above, such an extension is not desirable and that that objective cannot constitute an overriding requirement of public interest capable of justifying a national measure that is contrary to Article 29 EC.

69. It remains to be determined whether any other overriding requirement of public interest, such as consumer protection, [48] may effectively be relied upon in the present case, as

48 — The Court has recognised that consumer protection may constitute a legitimate objective in the public interest capable of justifying a restriction on the free movement of goods: see *Gysbrechts and Santurel Inter*, paragraph 47 and the case-law cited.

the Court accepted in *Alfa Vita Vassilopoulos and Carrefour-Marinopoulos*.[49] The Greek Government has not put forward any factual arguments relating to fraudulent practice which might adversely affect the market in currants in particular and could justify special protection for consumers of dried grapes. In the absence of sufficient evidence, it is for the referring court to ascertain, on the basis of a detailed analysis, that the national legislation is actually aimed at consumer protection.

70. However, even if consumer protection constituted such an overriding requirement of public interest capable of justifying Article 1(2) of Law 553/1977, it remains to be ascertained whether such a measure is proportionate to the objective pursued.

3. Whether the prohibition on importation, storage, packing and onward exportation as between the sub-areas of area A and the prohibition on importation, storage, packing and onward exportation as between area A and area B are proportionate

71. At the outset, I would observe that the referring court has itself assessed the proportionality of Article 1(2) of Law 553/1977 and that none of the questions which it has referred relates directly to this point. Nevertheless, in order to answer the third question, consideration must necessarily be given to the proportionality test. This is also reinforced by the fact that all the interested parties which took part in the written procedure before the Court, with the exception of the Greek Government, submitted observations on this point.

72. In the light of the examination carried out by the referring court, as set out in the order for reference, a question arises, in my view, as to whether the proportionality test carried out was sufficiently thorough.

73. I would therefore point out that, according to settled case-law, 'in order for national rules to comply with the principle of proportionality, it must be ascertained not only whether the means which they employ are suitable for the purpose of ensuring the attainment of the objectives pursued but also whether those means do not go beyond what is necessary to attain those objectives.'[50] In other words, it must be ascertained whether measures which were sufficiently effective[51]

49 — See point 66 of this Opinion.

50 — *Alfa Vita Vassilopoulos and Carrefour-Marinopoulos*, paragraph 22 and the case-law cited, and *Gysbrechts and Santurel Inter*, paragraph 51.

51 — And not all as effective: see point 78 of this Opinion.

in terms of consumer protection (as regards Article 1(2) of Law 553/1977) or the protection of industrial and commercial property (as regards Article 1(4) of that law), but which had a less restrictive effect on intra-Community trade were conceivable.

74. Before considering the technical aspect of the question, I would like to begin with a logical aspect. Since area B produces dried grapes whose quality is apparently recognised to be inferior to those produced in area A, the producers located there are permitted to process, store, pack and export grapes from the *whole of* area A; the only consequence is that those producers are required to indicate, by means of specific labelling, that the dried grapes sold are mixed dried grapes. Therefore, under the national legislation, the region which produces dried grapes of inferior quality is permitted to process grapes of superior quality. Because of the additional cost this generates for producers (who, for the purpose of mixing, may buy currants which are of superior quality but are therefore more expensive), the risk of fraud is limited and deception avoided by imposing a specific labelling requirement on producers.

75. However, it is perfectly possible to apply this logic *mutatis mutandis* within area A. Since dried grapes produced in the sub-area of area A in which Frangopoulos is established are deemed to be of inferior quality to those produced in the first sub-area of area A with the 'Vostizza' PDO, I cannot see any valid reason which could still justify a prohibition on producers in the second sub-area of area A processing dried grapes cultivated in the first sub-area of area A (which might, possibly, forfeit their PDO), if they are subject to labelling conditions similar to those imposed on producers in area B who mix dried grapes. In those circumstances, it is necessary to examine whether the purported objective of the national legislation is pursued in a consistent and systematic manner. [52]

76. As regards the technical means of distinguishing the different varieties of currants, the referring court concluded that the various types of control available were insufficient in the light of the scientific arguments and evidence put before it by the different parties. The referring court is best placed to assess the relevance of the arguments put forward by the parties. However, I consider that in the assessment which it must make, that court should bear in mind two factors.

52 — Within the meaning of the Court's case-law: see Case C-243/01 *Gambelli and Others* [2003] ECR I-13031, paragraph 67, and the Opinion of Advocate General Bot in Case C-203/08 *Sporting Exchange* [2010] ECR I-4695, point 69 et seq.

77. First, at the hearing, Frangopoulos reaffirmed that it did not intend to mix currants which it managed to obtain from other areas with those from its own area of production. In this regard, the argument raised by the Kingdom of the Netherlands in its written observations must be mentioned: the referring court should consider whether, instead of an absolute prohibition on movement between areas, the consequences of which for export are well known, it would be possible to envisage a solution by which producers of currants are required to have separate production lines, or even separate warehouses, in which only currants of the same origin can be stored, processed and packed.

78. The referring court also points out that a visual check (observation by a quality controller) may be regarded as a less restrictive measure, allowing the origin of the grapes to be identified. On the other hand, it considers that 'whilst that method may constitute a milder measure than the prohibitions [laid down by Law 553/1977], it is not … as effective a measure, having equivalent effect to the prohibitions.' [53] However, I believe that, since prohibition measures are in issue, the referring court must abandon the idea of identifying measures which are 'as effective', since, as a matter of fact, nothing is comparable to the effectiveness of an absolute prohibition. It is perhaps therefore the very spirit of the Greek legislation that could be reappraised and the referring court could, in the light of these factors, consider whether, instead of an excessively restrictive prevention mechanism, it would be possible to set up an enforcement mechanism based on visual spot checks conducted *in situ*, which seems to me to be less restrictive of the free movement of goods (especially since any exception to a prohibition laid down by the Treaty must be narrowly interpreted) [54] and relatively easy to introduce, not least in view of the small number of dry grape producers present in area A. [55] Having said that, I would reiterate that only the referring court is in a position to assess the minimum effectiveness of this kind of check.

79. In those circumstances, I propose that the third question be answered to the effect that protection of a product, which is defined geographically by the national law of a Member State and which has not been granted the possibility of bearing a particular distinguishing name which would

53 — See paragraph 22 of the order for reference.

54 — Case 29/72 *Marimex* [1972] ECR 1309, paragraph 4; Case 46/76 *Bauhuis* [1977] ECR 5, paragraph 12; Case C-95/01 *Greenham and Abel* [2004] ECR I-1333, paragraph 40; and Case C-333/08 *Commission* v *France* [2010] ECR I-757, paragraph 87.

55 — At the hearing, Frangopoulos stated that only four or five producers were present in the second sub-area of area A, whilst just two producers share the production of 'Vostizza' currants within the first sub-area of area A. In so far as grape-mixing is permitted in area B, there would be need for spot checks only in area A.

mark its generally acknowledged superior quality and uniqueness due to its originating in a certain geographical area, does not constitute a justification for the purpose of Article 30 EC on grounds of the protection of industrial and commercial property or an overriding requirement of public interest capable of justifying a measure normally prohibited under Article 29 EC. The Court recognises, however, that consumer protection may constitute such an overriding requirement, but it is for the referring court to satisfy itself that the national legislation actually pursues that objective. Furthermore, bearing in mind that exceptions to the rules of the Treaty must be narrowly interpreted, the referring court must determine whether the national measure at issue is proportionate, by examining alternatives which would be less restrictive of the free movement of currants produced within the Member State concerned.

VI — Conclusion

80. In the light of the foregoing considerations, I propose that the Court give the following answers to the questions referred by the Simvoulio tis Epikratias:

(1) A company operating under the conditions under which the applicant in the main proceedings operates, that is to say, as a dried grape processing and packing company established in a specific area of a Member State to which it is prohibited by a national law to bring different varieties of drying grapes from other areas of the Member State for the purpose of processing and packing, thereby preventing it from exporting dried grapes which it would have processed from such drying grapes, can plead in court that the legislative measures in question conflict with Article 29 EC.

(2) Both the provisions of a national law, such as Law 553/1977 on measures to protect and support exports of currants, which prohibit drying grapes from being brought from different areas of the country, for the purpose of storage, processing and onward export, to a specific area in which it is permitted to process only locally grown drying grapes and provisions which reserve the possibility of recognising the protected designation of origin registered at European Union level solely for drying grapes which have been processed and packed in the specific area in which they were grown constitute measures having equivalent effect to quantitative restrictions, prohibited by Article 29 EC.

(3) Protection of a product, which is defined geographically by the national law of a Member State and which has not been granted the possibility of bearing a particular distinguishing name which would mark its generally acknowledged superior quality and uniqueness due to its originating in a certain geographical area, does not constitute a justification for the purpose of Article 30 EC on grounds of the protection of industrial and commercial property or an overriding requirement of public interest capable of justifying a measure normally prohibited under Article 29 EC. The Court recognises, however, that consumer protection may constitute such an overriding requirement, but it is for the referring court to satisfy itself that the national legislation actually pursues that objective. Furthermore, bearing in mind that exceptions to the rules of the Treaty must be narrowly interpreted, the referring court must determine whether the national measure at issue is proportionate, by examining alternatives which would be less restrictive of the free movement of currants produced within the Member State concerned.