is to say, on unequivocal, formal application by the government concerned, since the measures constitute exceptions to the rules of the Treaty, liable to disturb the functioning of the Common Market.

5. Member States may not rely on either the urgency or the seriousness of a situation to evade the procedure of Article 226. By the very fact that it was provided as an emergency procedure, this procedure excludes any unilateral action by Member States.

6. As distinct from Article 226 of the EEC Treaty, Article 36 of the Treaty is directed to eventualities of a non-economic kind which are not liable to prejudice the principles laid down by Articles 30 to 34. In particular, that article does not establish a generic protective clause additional to that provided by Article 226 and allowing Member States to derogate by unilateral action from the procedure and the guarantees laid down by that provision.

In Case 7/61

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by its Legal Adviser, Giancarlo Olmi, acting as Agent, with an address for service in Luxembourg at the offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

applicant,

v

GOVERNMENT OF THE ITALIAN REPUBLIC, represented by Professor Riccardo Monaco, Head of the Diplomatic Legal Department of the Ministry for Foreign Affairs (replaced at the oral procedure by Dr Paolo Massimo Antici, Counsellor at the Italian Embassy in Luxembourg), acting as Agent, assisted by Pietro Peronaci, Deputy State Advocate-General, acting as Adviser, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie-Adélaide,

defendant,

Application for a ruling that by suspending imports from Member States of the following products, without following the procedures laid down for putting the protective clauses into effect, after the liberalization of those products had been consolidated pursuant to the second paragraph of Article 31 of the Treaty establishing the EEC:

live swine, other than those intended for slaughter,
unrendered pig fat, fresh, chilled, frozen, salted, in brine,
dried or smoked,
lard or other rendered animal fat,
cooked hams,

the Italian Republic has failed to fulfil an obligation under the Treaty establishing the EEC,

THE COURT

composed of: A. M. Donner, President, O. Riese and J. Rueff, Presidents of Chambers, L. Delvaux (Rapporteur), Ch. L. Hammes, R. Rossi and N. Catalano, Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I – Conclusions of the parties

The *applicant* claims that the Court should:

'rule that by suspending imports from Member States of the following products without following the procedures laid down for putting the protective clauses into effect, after the liberalization of those products has been consolidated pursuant to the second paragraph of Article 31 of the Treaty establishing the EEC,

live swine, other than those intended for slaughter,

unrendered pig fat, fresh, chilled, frozen, salted, in brine, dried or smoked,

lard or other rendered animal fat,

cooked hams,

the Italian Republic has failed to fulfil an obligation under the Treaty;

order the Italian Republic to pay the costs'.

The *defendant* contends that the Court should:

'declare the Commission's action of 18 March 1961 inadmissible;

alternatively, dismiss it;

order the applicant to pay the costs of the action'.

By additional conclusions dated 18 November 1961 the *defendant* requested that the Court should by order:

'(a) Invite the Commission to provide details of the terms, the arguments and the outcome of the authorized contacts and discussions between the Commission and the Italian Government referred to in this case;

(b) invite the Commission to lodge with the Court originals or copies of all correspondence between the parties from 1 March 1961 to the present, relating to the provisions mentioned in this case and to the opinion of 21 December 1960 which gave rise to this action, including the communications of the Italian Government to the Commission as well as those of the Commission to the Italian Government;

(c) in the event of the Commission's refusing to carry out the order of the Court relating to points (a) and (b) above, order such other means of inquiry as it finds expedient in this case, including

the laying down of a period of time for the lodging of a written statement of defence dealing with the new situation thus created.'

II — Facts

The facts may be summarized as follows:

By an interministerial order dated 18 June 1960, the Italian Government suspended until 31 August 1960 imports from all countries of certain pigmeat products.

Most of these pigmeat products appeared on the list of products liberalized in pursuance of the OEEC decisions of 14 January 1955, and in pursuance of Article 31 of the EEC Treaty the Italian Government had in a letter of 17 December 1958 supplied the Commission of the EEC with a list of these products as being liberalized, this list thus being consolidated between Member States.

The suspension of imports of the products cited above was extended on successive occasions until 31 March 1961.

By a letter of 21 October 1960, the Commission of the EEC informed the Italian Government that the measures taken by the latter constituted an infringement of Article 31 of the EEC Treaty, which prohibits Member States from introducing between themselves any new quantitative restrictions or measures having equivalent effect; this letter was addressed to the Italian Government with the intention of giving it the opportunity to submit its observations, as provided for in the first paragraph of Article 169 of the EEC Treaty.

When no official reply came from the Italian Government within the stipulated period, the Commission addressed to it on 21 December 1960 a reasoned opinion (first paragraph of Article 169 of the EEC Treaty), pointing out the infringement of Article 31 and stipulating a period of one month to bring it to an end.

By a letter of 5 January 1961, the Italian Government informed the Commission of its decision to extend the suspension of the imports in question until 31 March 1961, and asked the Commission for its agreement 'pursuant to the power conferred on it by Article 226 of the EEC Treaty, to the measures taken to deal with the exceptional situation of the Italian market'.

By a letter of 10 March 1961, the Commission replied that it believed that it could interpret this communication as an application by the Italian Government for authorization of the suspension of the imports in question as a protective measure under Article 226 of the EEC Treaty, but that it considered that the examination of such an application could not suspend the procedure opened pursuant to Article 169 of the EEC Treaty.

Accordingly, on 20 March 1961, the Commission brought this action before the Court of Justice.

During the judicial stage of the dispute, the Commission decided by a letter of 25 March 1961 not to authorize the protective measures (Article 226 of the EEC Treaty) but suggested to the Italian Government that it institute a system of minimum prices (Article 44 of the EEC Treaty). After once again extending the suspension of the imports to 30 June 1961, the Italian Government decided to carry out the suggestions of the Commission and from 1 July 1961 instituted a scheme of minimum prices for some of the products concerned and, meanwhile, reestablished complete freedom of importation for the others. By conclusions received on 18 November 1961, the Italian Government requested the Court to invite the Commission, by order of the Court, to provide details of the contacts and discussions between the parties and to lodge with the Court all correspondence between the parties as from 1 March 1961. The main part of the correspondence was lodged with the Court on 21 November 1961, when the oral procedure was opened, and annexed to the file of the case.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

A — Admissibility

The *defendant* challenges the admissibility of the action. It considers that in the present case the conditions for bringing a matter before the Court of Justice under Article 169 of the EEC Treaty have not been fulfilled and that the Court should dismiss the action without proceeding to consider the substance of the case.

In particular, it raises three objections of inadmissibility.

(1) Article 169 of the EEC Treaty provides that when a State is considered to have failed to fulfil an obligation under the Treaty, the Commission is under an obligation to deliver a *reasoned opinion* on the matter. It is the defendant's contention that the Commission"s letter dated 21 December 1960 cannot be considered as a reasoned opinion. Indeed, this letter goes no further than to point out the provisional measures taken by the Italian Government, and the subsequent extensions of them, and to state that, since the measures concerned certain liberalized and consolidated products, Italy had failed to fulfil the obligation imposed by Article 31 of the EEC Treaty to refrain from introducing between Member States any new quantitative restrictions or measures having equivalent effect. In order to deliver a reasoned opinion, the Commission should have ascertained the existence of the crisis situation on the market in pigmeat which the Italian Government had put forward; it should have examined whether, under the terms of the Treaty, the crisis justified the provisional measures taken.

The *applicant* replies that the purpose of a reasoned opinion pursuant to Article 169 of the EEC Treaty is to inform the Italian Government of the Commission's opinion on the factual circumstances and on the interpretation of the Treaty, and to enable it to assess that opinion. In the present case, this purpose was fulfilled. The discussion of the factual circumstances and of the interpretation of the Treaty, should there be any disagreement over them, does not constitute an issue as to the admissibility of the action but an issue as to the substance of the case itself to be heard before the Court.

The *defendant* rejoins that under Article 169 of the EEC Treaty it is a condition precedent of the Commission's bringing an action that it produce an opinion in due legal form. The article prescribed a procedure in two stages, the first administrative and the second judicial. Only if the first stage has been duly accomplished is any purpose serviced by proceeding to the second. The provision of the Treaty rightly stipulates a reasoned opinion, therefore, since the subsequent court action does not arise out of an unlimited jurisdiction and since, therefore, the obligation to give concrete reasons constitutes in favour of the Member State, the inviolable guarantee that the Commission has scrupulously assessed the factual circumstances. In this instance, the Commission's letter-opinion does not contain any adequate reasoning as to the circumstances brought to its attention by the Italian Government and cannot constitute a fulfilment of the legal condition precedent to litigation. The action should therefore be declared inadmissible *in limine litis*.

(2) The *defendant* next raises the point that the contents of the Commission's letter of 21 December 1960 are *contradictory*. Indeed, the defendant submits that the Commission in its letter of 10 March 1961 informed the Italian Government that its application to authorize the suspension of the imports in question as a protective measure under Article 226 of the EEC Treaty was under examination and that it was waiting until the necessary information was gathered. It is therefore contradictory, in the defendant's submission, for the Commission to consider itself, as of 21 December 1960, able to assess the situation and deliver a reasoned opinion, whilst on 10 March 1961 expressly stating that it had not yet managed to collect all the material essential to the making of a decision.

The *applicant* replies that the defendant is deliberately confusing the two quite different decisions that the Commission was called upon to make, the first being to pursue the procedure under Article 169 for infringement of Article 31, and the second

concerning the authorization on the basis of Article 226 of protective measures for the pigmeat sector, for which Italy applied in its letter of 5 January 1961. It pleads moreover that this objection, like the one before, goes not to the procedure but to the substance of the case.

The *defendant* rejoins that, both in the context of Article 169 and in that of Article 226, the same basic problem was at issue, that is, the gravity of the events in the economic sector in question and of the repercussions which it brought about in Italy. The defendant fails to understand how the Commission could examine and settle the same problem from two different angles and draw from it one consequence for the Article 169 procedure and another for that of Article 226.

(3) Thirdly, the *defendant* pleads that, even granting that the letter of 21 December 1960 constitutes the reasoned opinion required under Article 169, it is none the less still the case that the admissibility of an action before the Court of Justice is subject to the condition that the Member State to which the opinion was addressed should not have complied with it within the prescribed time. It is the defendant's contention that after the receipt of the abovementioned letter of 21 December 1960 and before the expiry of the prescribed period, the Italian Government submitted an application for protective measures on the basis of Article 226. It follows therefore that until such time as the Commission took a decision on that application, it could not maintain that the Italian Government had not complied with the opinion.

The *applicant* replies that Article 226 does not constitute an automatic protective clause under which any unilateral action by a Member State contrary to the Treaty can be legalized upon the fulfilment of certain conditions. On the contrary, Article 226 requires that the Commission, on the application of the State concerned, should give a decision establishing the existence of the required factual circumstances and authorizing the protective measures decided upon, and that the Commission should define the circumstances and the manner in which the measures are to be put into effect. It is to be inferred from this, first, that, even if a favourable decision could have been expected from the Commission, no derogation could have been allowed before the date of that decision. Even supposing that a favourable decision had been arrived at, it could have legalized the suspension of pigmeat imports only *ex nunc* and would have had no capacity to regularize *ex tunc* the suspension applied unilaterally by the defendant from 18 June 1960.

The *defendant* rejoins that Article 36 of the EEC Treaty allows Member States prohibitions or restrictions on imports in certain specified circumstances. Therefore it does not see why in a particular emergency situation the Commission could not validate a measure taken by a Member State and coming within the scope of Article 226, if the Commission considers the measure justified.

B — The substance of the case

1. *Failure to fulfil the obligations imposed by Article 31 of the EEC Treaty*

The *applicant* states that the measures taken by the Italian Government suspending imports apply to both consolidated and unconsolidated products. Expressly leaving aside the question of the unconsolidated products, the Commission applied the Article 169 procedure against the Italian Government solely in regard to the consolidated products. These products fall within the standstill obligation laid down in the first paragraph of Article 31 of the EEC Treaty, that is to say, the prohibition on creating any new obstacles to the free movement of goods and on making more restrictive any obstacles already existing on the entry into force of the Treaty. The standstill obligation is absolute; it does not comprise any exceptions, even partial or temporary ones, otherwise the way would be open to unilateral actions by Member States going directly against the aim pursued by the Treaty in regard to the free movement of goods.

(a) The *defendant* replies, first, that the

measures taken are absolutely provisional and that when they expire normal conditions will be re-established on the market concerned. Moreover, the Italian Government's intention to re-establish imports of the products in question as soon as possible is demonstrated by the fact that the term of validity of the measures taken was fixed on several occasions for short periods. These measures are not therefore contrary to the first paragraph of Article 31.

The *applicant* rejoins that the interpretation put on Article 31 by the defendant permitting a Member State to re-establish a restriction on trade, provided that it declares that it is doing so for a fixed period of time, would lead to a dangerous weakening of this fundamental provision of the treaty.

(b) The *defendant* replies, secondly, that there were hardly any other means than those used to remedy the artificially low prices prevailing in the sector in question. In particular, it was not possible to adopt 'minimum prices', since the European Economic Community has not yet established the general conditions which must prevail in order to implement this system.

The *applicant* rejoins that, if the market in pigmeat was encountering serious and persistent difficulties in June 1960, the Italian Government had only to apply to the Commission under the emergency procedure laid down in Article 226 to obtain authorization to take protective measures, which might, if necessary, consist of a temporary restriction on imports of liberalized and consolidated products. But since such an authorization to derogate from the provisions of Article 31 was neither applied for nor obtained, the Italian Government's suspension of the imports constituted an obvious infringement of that article.

2. *Failure to observe the provisions of the EEC Treaty concerning protective clauses*

The *applicant* states that the Italian Government's letter of 5 January 1961 could be considered by the Commission as an application to take protective measures under Article 226 of the EEC Treaty. But this article does not enable the Member State which invokes it to take protective measures spontaneously. They must be authorized by the Commission, which is bound to determine the measures which it considers necessary and is bound to specify the circumstances and the manner in which they are to be put into effect. In this instance, no application was formulated by virtue of Article 226 previous to the degrees passed by the Italian Government. The letter of 5 January 1961 can be considered as an application to take protective measures only as to the future.

(a) The *defendant* replies, first, that it is incorrect that its application to take protective measures under Article 226 of the EEC Treaty was not introduced until 5 January 1961. It avers that, in stressing the critical situation in the sector concerned on 20 June 1976, the Italian Government applied on that date to the Commission to examine the provisional measures which had been adopted. In the defendant's contention, it was not necessary to refer expressly to Article 226 since that article does not require any particular formality and goes no further than to provide that in such a case the Commission cannot act on its own authority, but only on the application of the State concerned.

The *applicant* rejoins that, even if Article 226 does not require any special formalities, in any case it does require an application by the State concerned which cannot be aimed at the *ratification* of measures already carried out, but only the preliminary *authorization* of measures that it is for the Commission to define. In this case, the letter of 20 June 1960 was intended only to *inform* the Commission of a measure already put into effect by the Italian Government. Furthermore, in its letter of 5 January 1961, in which the implementation of Article 226 is alluded to for the first time, the Italian Government does not seek in any way to point out that a similar application had already been submitted before, as it would have been logical to do if the Italian Government had been sure that it had already submitted it.

The *defendant* maintains its position and states that solemn formal language is not required in order to designate a step in an administrative procedure, particularly when appraisal of the facts set forth beings about legal effects. It does not follow from the text of the letter of 20 June 1960 and of the subsequent communications of the Italian Government that it did not mean to discuss the measure adopted with the Commission; these letters cannot therefore be interpreted as mere courtesy communications, but should be appraised on their contents seen in relation to both Article 36 and Article 226 of the EEC Treaty.

(b) The *defendant* replies, secondly, that according to the general principles of public law in force in every State, the State may adopt such emergency measures as it deems necessary when events arise which demand an immediate decision and cannot be dealt with otherwise. The Treaty of Rome did not exclude the possibility of interventions of this kind by Member States, but it did require that they should be followed as soon as possible by a communication to the Commission and an application to it to decide definitive long-term measures within the framework of Article 226. The Italian Government complied with these principles when confronted with the crisis concerning a sector of its economy. It cannot therefore be claimed that it conducted itself in a manner conflicting with the EEC Treaty.

The *applicant* rejoins that it is most doubtful whether such a theory is identifiable with any principle of public law recognized by the six Member States. In any case, if it were invoked, it would be to deal with a situation of exceptional seriousness for the nation. The difficulties resulting from a drop in prices on the market in pigmeat are obviously not of such an order. Furthermore, in the present case there would be grounds for inquiring into which general principles of public law apply in the Member States, only if it were a question of filling a lacuna in the EEC Treaty. In fact, the matter is clearly regulated by express provisions of the EEC Treaty.

The Treaty follows the principle of conferring the task of administering the protective clauses on the Commission. This principle not only is not contradicted, but is confirmed by the exceptions made to it in Articles 73 (2) and 109 and the second paragraph of Article 115, whereby in certain closely defined cases the State concerned may take unilateral measures provided that it notifies them to the Commission, which may decide (or propose to the Council) that they should be amended or abolished. The right to take unilateral measures is granted only in these expressly defined cases; in all other cases a Community procedure is the only one provided.

The protective clauses, constituting exceptions to the general rules of the Treaty, must be strictly construed. Hence the right to take an emergency measure unilaterally, allowed in the cases referred to in Articles 73 (2) and 109 and the second paragraph of Article 115, cannot be extended to Article 226, which provides exclusively for the *authorization* of the measure by the Commission.

Not only does Article 226 not provide for the unilateral taking of protective measures by the Member State, but expressly provides that, on the application of the Member State, the Commission's decision shall be taken 'by emergency procedure'. The authors of the Treaty did anticipate the possibility of a Member State invoking the necessity for acting quickly, and deliberately chose to meet it, not with a right of unilateral action, but by accelerating the Community procedure.

The *defendant* expands upon the arguments set out in its statement of defence. Furthermore, it avers that the arguments drawn by the applicant from Articles 73 (2) and 109 and the second paragraph of Article 115 relate to particular instances which do not cover the matter in its entirety. It examines Articles 224 and 36, which both provide for unilateral measures to be taken by Member States in the case of specific events of an extremely serious nature (Article 224) and in the case of less serious reasons generally pertaining to public policy (Article 36). The defendant contends finally that the EEC

Treaty, anticipating an even less serious form of injurious phenomenon, provided the protective measures of Article 226 as a means of dealing with it. A Member State, over-estimating the seriousness of the injurious event, might have recourse to the measures under Article 36, and the Commission might then invite the State to consider less rigorous remedies. In such a case, the State may either revoke the emergency measure adopted or fall back on the protective measures under Article 226. The Commission surely would not refuse to grant the protective measure applied for, without even going on to examine the problem, whilst the conditions for such a grant had been fulfilled, solely on the grounds that the State had first over-estimated the seriousness of the problem and applied Article 36 instead of Article 226.

Even accepting the Commission's argument that the Italian Government's letter of 5 January 1961 was the only one which constituted an application within the meaning of Article 226, it could not be said that on the date when the action before the Court of Justice was lodged the Italian Government was not observing the rules of the Treaty.

3. *The conclusions in the application no longer have any purpose*

During the oral state of the proceedings, the defendant Italian Government states that the purpose of the Commission's action is to obtain a ruling by the Court that the Italian Government did not follow the reasoned opinion delivered pursuant to Article 169, and in so doing, failed to fulfil its obligations under the Treaty. In this instance, the Commission admits that in the end the Italian Government did fulfil its obligations. If it be the case that the period laid down in the reasoned opinion was not observed, that delay constitutes a fresh infringement which must, if necessary, form the subject-matter of fresh proceedings. As to the failure which gave rise to the present proceedings it ceased to exist owing to the fact that the opinion was eventually followed.

The *applicant* Commission replies that the purpose of the action is to obtain a ruling by the Court that a Member State has failed to fulfil an obligation under the Treaty (Article 171 of the EEC Treaty). When a matter has been brought before the Court, it is for it to decide *ex tunc* whether the failure was committed, without being bound to examine whether, subsequent to the submission of the application, the State in question took the measures necessary to bring the infringement to an end. As to the reasoned opinion referred to in the first paragraph of Article 169, it is one of the stages of the administrative procedure which precedes recourse to the Court.

In cases where the infringment has come to an end, the Commission retains an interest in obtaining the Court's decision on the issue whether a failure was indeed committed. The argument to the contrary would enable a State to denude the action of its purpose by means of terminating its illegal conduct just before judgment, and to reapply the disputed measures thereafter, no judgment having been given to sanction its failure.

IV – Procedure

The procedure followed the normal course.

The additional conclusions lodged by the defendant on 18 November 1961 were contested during the oral procedure.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided on 26 September 1961 not to make any preparatory inquiry.

Grounds of judgment

A – The purpose of the action

The correspondence between the parties from 1 March 1961, lodged at the Court Registry on 18 November 1961, shows that the Italian Government finally complied

with the Commission's point of view and, as from 1 July 1961, instituted a scheme of minimum prices for some of the products concerned, whilst re-establishing complete freedom of importation for the others.

It is incumbent on the Court to examine whether the conclusions in the application no longer have any purpose, so that there is no point in proceeding to judgment.

It follows from the terms of Article 171 of the Treaty that the purpose of the action is to obtain the judgment of the Court, to the effect that a Member State has failed to fulfil an obligation under the Treaty.

It is for the Court to say whether the failure has occurred, without having to examine whether, subsequent to the bringing of the action, the State in question took the measures necessary to bring the infringement to an end.

It is true that the second paragraph of Article 169 gives the Commission the right to bring the matter before the Court only if the State concerned does not comply with the Commission's opinion within the period laid down by the Commission, the period being such as to allow the State in question to regularize its position in accordance with the provisions of the Treaty.

However, if the Member State does not comply with the opinion within the prescribed period, there is no question that the Commission has the right to obtain the Court's judgment on that Member State's failure to fulfil the obligations flowing from the Treaty.

In the present case, although it recognizes that the Italian Government finally respected its obligations, albeit after the expiry of the period referred to above, the Commission retains an interest in obtaining a decision on the issue whether the failure occurred.

The action cannot be declared lacking in purpose.

B — Admissibility

Three objections of inadmissibility are raised against the action.

(a) The first consists in maintaining that the Commission's letter of 21 December 1960 did not constitute a 'reasoned opinion' within the meaning of Article 169 of the Treaty, owing to the fact that it did not examine the pertinence of the arguments advanced by the Italian Government as to the existence and seriousness of the crisis affecting the market in pigmeat and the necessity for the provisional measures decided upon to bring it to an end.

The opinion referred to in Article 169 of the Treaty must be considered to contain a sufficient statement of reasons to satisfy the law when it contains—as it does in this case—a coherent statement of the reasons which led the Commission to believe that the State in question has failed to fulfil an obligation under the Treaty.

The letter of 21 December 1960 cited above, although not drawn up in due form, fulfils this requirement.

(b) The defendant maintains, secondly, that there is a contradiction between the attitude of the Commission at the date of the reasoned opinion, 21 December 1960, when it considered itself able to appraise the situation and deliver a reasoned opinion, and its attitude at the date of its reply to the application for putting protective measures into effect, 10 March 1961, when it stated that it was waiting for the information necessary to decide on the application.

An application based on Article 226 of the Treaty demands at one and the same time an investigation and an appraisal of the facts, followed by a decision, that is to say, that a certain sequence of procedural steps be carried out.

The first paragraph of Article 169, on the other hand, applies whenever the Commission considers—whether rightly or wrongly—that a Member State has failed to fulfil an obligation under the Treaty.

No contradiction is to be found between the Commission's attitude at the date when it delivered the reasoned opinion, and its attitude at the date of its reply to the application for putting protective measures into effect.

(c) The defendant maintains, thirdly, that an action under the second paragraph of Article 169 is admissible only if the State concerned has not complied with the reasoned opinion, and that the defendant did so comply by submitting to the Commission on 5 January 1961, before the expiry of the period stipulated, an application for putting protective measures into effect based on Article 226.

In order to comply with the reasoned opinion, the Italian Government should within the prescribed period have instituted the procedures necessary to bring to an end the suspension measures judged contrary to Article 31. The presentation of an application for putting protective measures into effect has a completely different purport.

For the reasons set out above, the objections of inadmissibility raised by the defendant must be rejected.

C – The substance of the case

The defendant does not formally dispute that the re-establishment by a Member State of measures restricting imports of products, the liberalization of which has been consolidated between Member States, conflicts with the provisions of Article

31 of the Treaty. The defendant does however raise several arguments to the effect that, none the less, in the particular circumstances of this action, the failure to observe Article 31 does not constitute a failure by the Italian Government to fulfil its obligations under the Treaty.

(a) The defendant raises, first, the provisional nature of the measures adopted. It asserts that its intention to re-establish freedom for imports of the products concerned as quickly as possible is demonstrated by the fact that the term of validity of the suspension measures was renewed on several occasions, each time for a short period only.

The 'standstill' obligation laid down by Article 31 is absolute. It comprises no exceptions, not even partial or temporary ones. The interpretation pleaded by the defendant would open the way to unilateral actions by Member States going directly against the aim pursued by the Treaty in regard to free movement of goods.

The defendant's argument must be rejected.

(b) The defendant maintains, secondly, that Article 226 relating to protective measures applies in the present case and that the Commission should have decided on the matter, although it had not been formally invited to do so before 5 January 1961.

The protective measures referred to in Article 226 may only be authorized within the framework of the special procedure prescribed by that article, that is to say, on unequivocal, formal application by the government concerned, since the measures constitute exceptions to the rules of the Treaty, liable to disturb the functioning of the Common Market.

In this case the Italian Government's letter dated 20 June 1960 had in view only the measures taken by that Government, and did not even allude to protective measures subject to the Commission's authorization.

Consequently the Commission was not bound to decide on the application for protective measures before 5 January 1961, the date on which it was expressly invited by the defendant to do so.

(c) The defendant maintains, thirdly, that it had no other means than the provisional suspension of imports at its disposal to remedy the aritificially low prices prevailing in the pigmeat sector. Moreover, the general principles of public law authorize every State, in an emergency, to take such provisional measures as are necessary to remedy serious occurrences.

Article 226 contains a formal provision laying down an emergency procedure which allows a remedy to be brought to the most serious situations in the shortest time.

The very fact that an emergency procedure has been provided excludes any unilateral action by Member States, which may not therefore rely on either the urgency or the seriousness of the situation to evade the procedure of Article 226.

In the present case such a procedure was not begun until several months after the start of the administrative stage of the dispute.

The arguments based on necessity and urgency must be rejected.

(d) Finally, the defendant relies on Article 36 of the Treaty, which authorizes in particular prohibitions on imports justified on grounds of public policy. In the defendant's submission, when the problem was brought before the Commission, it should have inquired spontaneously whether Article 36 was applicable in this case.

Article 36, as distinct from Article 226, is directed to eventualities of a non-economic kind which are not liable to prejudice the principles laid down by Articles 30 to 34, as the last sentence of the article confirms.

In particular, it does not establish a generic protective clause additional to that provided by Article 226 and allowing Member States to derogate by unilateral action from the procedure and the guarantees laid down by that article.

In conclusion, nothing indicated to the Commission *a priori* that the temporary restrictions on imports, abruptly decided on by the Italian Government, could be justified on the basis of Article 36, as no mention was made of this argument during the discussions which preceded the judicial stage.

This argument must be rejected.

For the reasons stated above, the action must be declared well founded.

D – Costs

Under the terms of Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

The defendant has failed in all its submissions and must therefore be ordered to pay the costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 30 to 34, 36, 169, 171 and 226 of the Treaty establishing the European Economic Community;

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby declares this case admissible and

1. **Rules that the Italian Government, by provisionally suspending imports of the products concerned from Member States, failed to fulfil the obligation laid down in the first paragraph of Article 31 of the Treaty;**

2. **Orders the defendant to pay the costs.**

Donner Riese Rueff

Delvaux Hammes Rossi Catalano

Delivered in open court in Luxembourg on 19 December 1961

A. Van Houtte
Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 29 NOVEMBER 1961[1]

Mr President,
Members of the Court,

This dispute between the Commission of the European Economic Community and the Government of the Italian Republic does not appear to me to raise very difficult questions; none the less, it deserves to be examined with special attention, owing to the fact that it is the first dispute which the Court of Justice has had to hear and determine concerning the Treaty of Rome and to the fact that it puts at issue a procedure which is particularly important for the application of the Treaty, the one which refers to the investigation of the failures of Member States to fulfil their obligations. You know that, whereas the ECSC Treaty assigns the power of investigating the failures of Member States to the executive, that is to say, the High Authority, subject to ultimate recourse to the Court, in the Treaty of Rome the Court alone has responsibility for deciding upon the matter, which decision it pronounces itself on the application either of the Commission or of another Member State. To add that the implementation of the Treaty of Rome, that is to say, the progressive implementation of all the measures necessary to attain the objectives of the Community, depends predominantly on the conduct of the Member States is to acknowledge the outstanding rôle conferred upon the Court as

1 – Translated from the French.