JUDGMENT OF THE COURT
12 July 1990 *

In Case C-128/89,

Commission of the European Communities, represented by Guido Berardis, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, also a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs of the Ministry of Foreign Affairs, acting as Agent, assisted by Oscar Fiumara, avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that, by prohibiting the importation of grapefruit from other Member States through inland border posts, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty and under Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products (Official Journal 1977 L 26, p. 20),

THE COURT

composed of: Sir Gordon Slynn, President of Chamber, acting for the President, C. N. Kakouris and F. A. Schockweiler (Presidents of Chambers), G. F. Mancini, T. F. O'Higgins, G. C. Rodríguez Iglesias and M. Diéz de Velasco, Judges,

Advocate General: F. G. Jacobs
Registrar: H. A. Rühl, Principal Administrator,

* Language of the case: Italian.

having regard to the Report for the Hearing,

after hearing the oral arguments of the parties presented at the hearing on 15 May 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 12 June 1990,

gives the following

Judgment

1 By application lodged at the Court Registry on 14 April 1989, the Commission of the European Communities brought an action before the Court under Article 169 of the EEC Treaty for a declaration that by prohibiting the importation of grapefruit from other Member States through inland border posts, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty and under Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products (Official Journal 1977 L 26, p. 20).

2 Article 4(2) of Directive 77/93, cited above, states that:

'Member States may:

(a) ban the introduction into their territory of the plants, plant products and other objects listed in Annex III, Part B, against their names;

...'.

3 Against the name of Italy in Annex III. B, of the directive appear the words 'citrus fruit plants'. It is common ground that that expression covers grapefruit.

4 In Italy, the Ministerial Decree of 11 June 1980 on the plant- health rules relating to the importation, exportation and transit of plants and plant products (*Gazzetta ufficiale della Repubblica italiana* (GURI) No 203, 25.7.1980, p. 6317) authorized the importation of grapefruit from any country, provided that they were accompanied by a phytosanitary certificate from the country of origin and underwent, in common with all plants, a plant-health inspection at one of the points of entry listed in Annex VI to the decree. Annex VI mentions customs posts at three airports, 19 coastal ports, nine rail points of entry and 11 road points of entry.

5 The Ministerial Decree of 11 July 1980, in particular Annex VI thereto, has been amended on a number of occasions. After the Ministerial Decree of 24 April 1981 (GURI No 129, 13.5.1981, p. 3041) increased the number of points of entry of the various categories of customs posts mentioned above to five, 22, 10 and 12 respectively, the Ministerial Decree of 8 March 1984 (GURI No 83, 23.3.1984, p. 2505) initially reduced the number of authorized points of entry for grapefruit to customs posts at three airports, 10 coastal ports, two rail points of entry and four road points of entry. The Ministerial Decree of 18 January 1985 (GURI No 17, 21.1.1985, p. 425) subsequently restricted the number of points of entry for grapefruit to five coastal ports. Lastly, Ministerial Decrees of 27 February 1986 (GURI No 66, 30.3.1986, p. 13) and 30 March 1988 (GURI No 107, 9.5.1988, p. 11) maintained the requirement for grapefruit to be imported exclusively through customs posts at coastal ports, but increased the number of such posts first to six and later to seven.

6 According to statistics produced by the Commission, the quantities of grapefruit imported per annum into Italy from other Member States rose from 85 tonnes in 1980 to 6 184 tonnes in 1983. However, that figure fell significantly between 1984, when it was 3 633 tonnes, and 1987, when it was 855 tonnes; in 1988 imports of grapefruit from other Member States fell to 167 tonnes and in 1989 they ceased completely.

7 Reference is made to the Report for the Hearing for a fuller account of the facts, the course of the procedure and the submissions and arguments of the parties, which are mentioned hereinafter only in so far as is necessary for the reasoning of the Court.

8 In support of its application, the Commission claimed that the Italian legislation at issue was adopted in breach of the principle of proportionality, since it was not essential to close inland border posts to imports of grapefruit from other Member States in order to achieve the objective pursued, namely to protect the health of the Italian citrus crop, and since plant-health checks on imported grapefruit could have been carried out using means which were less detrimental to intra-Community trade. According to the Commission, the Italian legislation at issue is also discriminatory because it bears more heavily on imports from other Member States, which are effected mainly by land, than on imports from non-member countries, which are generally transported by sea.

9 From the foregoing the Commission concluded that the closure of all inland border posts to imports of grapefruit from other Member States, whether originating in those States or in free circulation there, infringed Directive 77/93 and constituted a measure having equivalent effect to a quantitative restriction, prohibited under Article 30 of the EEC Treaty, which could not be justified under Article 36 of the Treaty.

10 The Government of the Italian Republic contended that the legislation at issue, which was intended to protect plant health against the dangers posed by the introduction into its territory of organisms harmful to Italian citrus fruit, was justified under Article 36 of the EEC Treaty and Article 4(2)(a) of Directive 77/93. With regard to the latter provision, the Italian Government contended that, in so far as Article 4(2)(a) empowered it to impose a total ban on imports of citrus fruit, *a fortiori* that provision must authorize it to adopt rules less restrictive of trade, applicable not only to citrus fruit from Member States in which such fruit was from but also to citrus fruit originating in non-member countries which was in free circulation in the Member States.

11 It is observed at the outset that the effect of the Italian legislation at issue is to make it more difficult, and perhaps even impossible, to import grapefruit originating or in free circulation in other Member States.

12 Consequently, in accordance with that which the Court has consistently held (see the judgment in Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837, paragraph 5), that legislation is caught by prohibition contained in Article 30 of the EEC Treaty, which is applicable without distinction to products originating in the Community and to those which were put into free circulation in any one of the Member States, irrespective of the actual origin of these products (see the judgment in Case 41/76 *Donckerwolcke* v *Procureur de la République* [1976] ECR 1921, paragraph 18).

13 Since the Government of the Italian Republic has sought to justify its legislation relating to the importation of grapefruit by considerations relating to protecting the health of Italian citrus fruit, it must be considered whether the rules at issue fall within the scope of the powers of the Member States in the field of plant health.

14 It is observed in the first place that, in harmonizing the national rules for preventing the introduction into the Member States of organisms harmful to plants or plant products, Directive 77/93 made, in the general interest of the Community, common protection arrangements against that danger which consisted in a system of supervision based essentially on the issuing, in the consignor country, of a phytosanitary certificate intended to make it possible to dispense with the corresponding systematic checks in the Member State of destination.

15 Secondly, the Court has consistently held that where, in application of Article 100 of the Treaty, Community directives provide for the harmonization of health protection measures and establish Community procedures to check that they are observed, Member States are entitled to adopt protective measures only within the framework outlined by the harmonizing directive.

16 That type of directive is intended to promote the free movement of goods by eliminating or at least reducing obstacles to free movement which might be created by national health inspection measures adopted pursuant to Article 36 of the EEC Treaty (see, for example, the judgment in Case 46/76 *Bauhuis* v *Netherlands* [1977] ECR 5, paragraph 30).

17 It follows that the Member States' power to adopt health protection measures under the harmonizing directive may not under any circumstances exceed the limits laid down by Article 36 of the EEC Treaty.

18 National rules or practices adopted in order to achieve one of the objectives referred to in Article 36 of the EEC Treaty are compatible with that Treaty only in so far as they do not exceed the limits of what is appropriate and necessary in order to achieve the desired objective (see, for example, the judgment in Case 104/75 *De Peijper* [1976] ECR 613, paragraphs 16 and 17).

19 Consequently, the power granted to Member States in the present case by Article 4(2)(a) of Directive 77/93 to ban the introduction into their territory of plants, plant products and other objects listed in Annex III. B, to that directive cannot be construed as authorizing the Member States to adopt measures restrictive of trade which go beyond what is necessary in order to protect the health of citrus fruit. Moreover, it is plain from the 10th recital in the preamble to Directive 77/93 that, although the directive grants Member States the power to ban the introduction of certain plants and plant products where it is impossible to carry out effective checks, it nevertheless intended to limit such bans to the minimum.

20 The Commission argued that the health of the Italian citrus crop could have been protected just as effectively against the introduction of harmful organisms from other Member States by means of measures which were less restrictive of intra-Community trade. It would be perfectly possible to organize specialized plant-health inspections at places other than customs posts at coastal ports. The goods might even be sealed when they crossed the frontier and subsequently inspected inside the territory of the Italian Republic, even at their place of destination. Italy might also, at reasonable cost and subject possibly to advance notice being given

by transport undertakings, ensure that plant-health inspectors were present at the place where the consignments were unloaded.

21 In reply to that argument, the Italian Government merely stated that the Commission's argument would result in customs operations becoming excessively complex, difficulties in the organization of checks and additional expense both for importers and for the authorities responsible for carrying out the checks.

22 It is pointed out that, according to the case-law of the Court (see the judgment in *De Peijper*, cited above, paragraph 18), the Member States may not derogate from Article 30 of the EEC Treaty by introducing or maintaining rules or practices which, even though they are beneficial, contain restrictions which are explained primarily by a concern to lighten the administration's burden or reduce public expenditure, unless, in the absence of the said rules or practices, this burden or expenditure clearly would exceed the limits of what can reasonably be required.

23 It is also pointed out that it is in each case the duty of the Member States to prove that the conditions for derogating from Article 30 of the EEC Treaty are met (see, for example, the judgment in Case 251/78 *Denkavit Futtermittel* v *Minister für Ernährung, Landwirtschaft und Forsten* [1979] ECR 3369, paragraph 24).

24 However, in the present case the Italian Government has not proved that it was impossible to carry out plant-health checks on grapefruit at inland borders. Although it may be necessary to unload the consignment in order to be able to carry out a plant-health inspection of the grapefruit under satisfactory conditions and it is true that it is easier to carry out such a check in ports, where the consignment must be unloaded in any event, that does not mean that it would be impossible to carry out an effective check on the fruit in question anywhere else in the national territory or that such a check could not be carried out on goods entering by land.

25 Moreover, it was not until 1985 that the Italian Government decided to reduce radically the number of points of entry for grapefruit by restricting them to customs posts at a few named ports, whereas, before, grapefruit could enter Italy through numerous customs posts situated on railways, on roads and at airports; indeed, a ministerial decree of 1981 even increased the number of points of entry for grapefruit.

26 Thus, until 1985 it was possible to carry out plant-health checks on grapefruit at places other than customs posts at coastal ports and the Italian Government has not been able to prove the existence of a specific factor, such as a significant increase in the quantity of contaminated or smuggled foreign fruit entering Italy which might possibly have justified the decision taken in 1985 to prohibit the importation of grapefruit from other Member States through inland border posts.

27 Moreover, the Italian Government has failed to establish that authorization to import grapefruit into Italy by land from 1985 onwards would have entailed for it an unreasonable administrative burden or excessive public expenditure.

28 In those circumstances, it must be held that, by prohibiting the importation of grapefruit from other Member States through inland border posts, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty and under Directive 77/93, cited above.

Costs

29 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Italian Republic has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that, by prohibiting the importation of grapefruit from other Member States through inland border posts, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty and under Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products;

(2) Orders the Italian Republic to pay the costs.

Slynn Kakouris Schockweiler

Mancini O'Higgins Rodríguez Iglesias Díez de Velasco

Delivered in open court in Luxembourg on 12 July 1990.

J.-G. Giraud
Registrar

Gordon Slynn
President of Chamber
acting for the President