entitled to adopt protective measures only within the framework outlined by the harmonizing directive. That type of directive is intended to promote the free movement of goods by eliminating or at least reducing obstacles to free movement which may be created by national health inspection measures adopted pursuant to Article 36 of the Treaty. 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.

2. The power granted to the Member States by Article 4(2)(a) of Directive 77/93 to bar, on grounds of health protection, the introduction into their territory of plants, plant products and other objects listed in Annex III, Part B, to that directive cannot, having regard to Article 36 of the Treaty be construed as authorizing the Member States to adopt measures restrictive of trade which go beyond what is necessary in order to achieve the desired objective of protection.

3. The Member States may not derogate from Article 30 of the 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 of expenditure clearly would exceed the limits of what can reasonably be required.

REPORT FOR THE HEARING
in Case C-128/89 *

I — The relevant legislation and the course of the pre-litigation stage

1. As a result of Article 4(2)(a) of 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 L 26, 31.1.1977, p. 20) in conjunction with Annex III. B.1 thereto, citrus-producing Member States (France, Greece, Italy, Portugal and Spain) may ban the introduction into their territory of citrus fruit and grapefruit in particular.

2. In Italy, the Ministerial Decree of 11 July 1980 on the plant-health rules relating to the importation, exportation and transit of plants and plant products (*Gazzetta ufficiale della Repubblica italiana* (GURI)

* Language of the case: Italian.

No 203, 25.7.1980, p. 6317) authorizes the importation of grapefruit from any country, provided that they are accompanied by a phytosanitary certificate from the country of origin and undergo, in common with all plants, 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.

3. The Ministerial Decree of 11 July 1980, and 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 post mentioned above to five, 22, 10 and 12 respectively, the Ministerial Decree of 8 March 1984 (GURI No 83, 23.3.1984, p. 2505) 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 customs posts at five coastal ports.

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 to import grapefruit only through customs posts at coastal ports, but increased the number of such posts first to six and later to seven.

4. The Commission considered that the closure of all inland border posts to imports of grapefruit from other Member States was incompatible with Community law. Consequently, pursuant to Article 169 of the EEC Treaty, it requested the Government of the Italian Republic by letter of 13 July 1987 to submit its observations, within a period of two months, on the alleged failure to fulfil its obligations.

5. Since there was no reply to that letter, on 8 February 1988 the Commission delivered a reasoned opinion pursuant to the first paragraph of Article 169 of the EEC Treaty to the effect that, by closing all its inland frontier posts to imports of grapefruit from other Member States, the Italian Republic has failed to fulfil its obligations under the Treaty.

Pursuant to the second paragraph of Article 169 of the EEC Treaty, the Commission requested the Italian Republic to adopt the measures necessary to comply with the opinion within one month.

6. On 18 July 1988, the Government of the Italian Republic informed the Commission that, in its view, the national rules at issue were consistent with the requirements of Community law.

II — Written procedure and conclusions of the parties

1. The Commission's application was lodged at the Court Registry on 14 April 1989.

2. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. The Commission and the Government of the Italian Republic were requested to answer a number of questions in writing; they complied with that request within the time allowed.

3. The *Commission*, the applicant, claims that the Court should:

(a) declare 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/EEC;

(b) order the Italian Republic to pay the costs.

4. The *Government of the Italian Republic*, the defendant, contends that the Court should:

(a) dismiss the application;

(b) order the Commission to pay the costs.

III — Submissions and arguments of the parties

1. The *Commission* maintains that the Italian rules at issue, under which direct imports of grapefruit from non-member countries — which are transported mainly by sea — are still perfectly possible, whilst imports from other Member States (of locally produced grapefruit or of grapefruit in free circulation in those States) — which are transported mainly by road or rail — are practically blocked, infringe both Directive 77/93 and Article 30 of the EEC Treaty.

(a) In the Commission's opinion, it is evident from the spirit of Directive 77/93, which does not ignore the fundamental principle of the free movement of goods laid down in Article 30 of the Treaty, that the possibility given to producer Member States by Article 4(2)(a) of the directive of banning the introduction into their territory of citrus — which is a practical reflection of Article 36 in the Treaty — may not be interpreted as giving the Member States an absolute and unfettered freedom requiring no justification.

If it is not to infringe Article 36 of the Treaty, Article 4(2)(a) could justify the complete prohibition of imports of grapefruit only if that prohibition were absolutely indispensable for the protection of citrus crops and provided that it did not give rise to discrimination based on the provenance of the fruit in question.

The Commission goes on to argue that where, as in the present case, a Member State does not consider it indispensable to impose a total ban on imports, but regards systematic checks as sufficient, *a fortiori* the way in which those checks are carried out must not be disproportionate or discriminatory.

In the Commission's view, the Italian rules, under which all inland border posts are closed to imports of grapefruit, are both disproportionate and discriminatory; they are disproportionate in so far as they

prevent the importation of such fruit from other Member States or at least make it more onerous, even though those restrictions are not indispensable in order to achieve the desired aim, and discriminatory inasmuch as, with protection in view, they put imports from other Member States, which could be carried out by land, in a less favourable position than imports from non-member countries, which are usually transported by sea.

(b) The Commission also contends that, in accordance with the established case-law of the Court (for example the judgment in Case 41/76 *Donckerwolcke* v *Procureur de la République* [1976] ECR 1921) to the effect that Article 30 of the EEC Treaty precludes all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade, the closing of all inland border posts to imports of grapefruit constitutes a measure having equivalent effect to a quantitative restriction, prohibited by Article 30.

The Commission emphasizes that, under Article 9 of the Treaty, Article 30 is applicable without distinction to products originating in the Community and to products which are in free circulation in Member States.

The Commission takes the view that the Italian legislation at issue prevents imports of grapefruit from other Member States and, in any event, if traders decide to import grapefruit by sea unjustifiably makes that operation more onerous.

The Commission adds that, in order to be justified under Article 36 of the Treaty, phytosanitary inspections must not constitute a means of arbitrary discrimination in trade between Member States.

Moreover, it follows from the case-law of the Court (judgment in Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837) that to obstruct in any way the importation of a product which has been put into free circulation in a regular manner in another Member State as compared with imports of the same product coming directly from the country of origin constitutes a measure having equivalent effect contrary to the Treaty; this applies in particular to the choice of border posts.

(c) Lastly, the Commission rejects the arguments put forward by the Italian Republic in its defence.

Turning first of all to the Italian Government's argument that it is surprising that the Commission should have brought this action against Italy when Italy has not banned completely imports of grapefruit but only imposed restrictive measures, but no objection has been raised against Greece, Portugal or Spain, which have banned imports of grapefruit outright, the Commission points out that there is a political argument and therefore has no place in judicial proceedings. Moreover, the Commission is not aware of any outright ban on imports, as alleged by the Italian Republic, in Greece, Portugal and Spain. On the contrary, according to Nimexe stat-

istics, those three Member States import grapefruit, albeit in small quantities.

The Commission also states that it cannot agree with the Italian Republic's view that it is possible to carry out thorough systematic inspection of grapefruit only at the ports listed in the national legislation in view of the fact that fruit can be examined in physical isolation there, which is impossible at other points of entry, and that the Italian import rules can prevent the smuggling of citrus fruit which occurs when importation takes place by land.

In that regard, the Commission points out, first, that it was not until 1985 that the decision was taken to make a drastic reduction in the number of points of entry for grapefruit to a few customs posts in coastal ports: for years, the Italian authorities authorized imports through numerous railway, road and airport customs posts.

Moreover, the smuggling which allegedly takes place when citrus fruit are imported must be combated by more and more thorough checks; it cannot in any way justify simply closing inland frontiers to imports of grapefruit. Furthermore, the fact that grapefruit may be imported only through certain customs posts at coastal ports provides no guarantee at all that grapefruit cannot still be smuggled in amongst other fruit, precisely in order to avoid having to pay the higher cost of sea transport.

Thus, in the Commission's opinion, the argument of the Government of the Italian Republic to the effect that it is not possible to carry out specialized inspections at inland frontiers cannot be accepted. In the Commission's view, what is involved here is problems of internal organization which are not sufficient in themselves to justify obstacles to the free movement of goods. Furthermore, that argument is belied by the Italian legislation itself, since it can be inferred from Article 33 of the Ministerial Decree of 30 March 1988 that specialized plant-health checks are perfectly feasible at numerous railway customs posts and at least two road customs posts. The Commission adds that, under the second subparagraph of Article 11(3) of Directive 77/93, as amended by Council Directive 88/572/EEC of 14 November 1988 (Official Journal 1988 L 313, p. 39), which had to be transposed into national law by 1 January 1989 at the latest, checks at the frontier are to be progressively reduced and must be carried out at the place of destination of the plant products or at another designated place, provided that the routing of the products in question is interfered with as little as possible.

2. The *Government of the Italian Republic* claims that its rules on the importation of grapefruit are justified under Article 36 of the EEC Treaty and Article 4(2)(a) of Directive 77/93. Those provisions authorize Member States which produce citrus fruits to ban the introduction into their territory of citrus, such as grapefruit, because of the danger to plant health inherent in imports of such produce. The ban may be applied not only to citrus from producer Member States but also to citrus originating in

non-member countries and in non-producer Member States in which the citrus is in free circulation.

According to the Italian Republic, Greece, Portugal and Spain have made use of the authorization given by Article 4(2)(a) of Directive 77/93, yet the Commission has not brought infringement proceedings against them. However, in its reply, the Italian Republic concedes that Portugal is not one of the Member States which has imposed a complete ban on imports of citrus fruit.

The Italian Republic claims that, in order to encourage trade, it, unlike those Member States, authorized the importation of grapefruit into its territory, subject, however, to certain restrictions which are indispensable in order to avoid the risk of introducing harmful organisms present in citrus-producing countries and thereby endangering plant health.

The first restriction is that grapefruit must be imported directly from the producer countries. As a result, the country of origin can know the final destination of the grapefruit and inspect with particular thoroughness those grapefruit that are intended for countries which produce citrus fruit, thereby avoiding the risk of crops being contaminated.

The second restriction, namely confining imports to customs posts at the ports of Savona, Genoa, Naples, Trieste, Ravenna, Livorno and Salerno, is the only way of ensuring that grapefruit are systematically inspected because at the ports in question it is possible to keep goods in physical isolation before they enter the national territory. That is not the case at other points of entry. Such systematic inspections, which are intended to prevent the introduction of pests and diseases posing a danger to citrus crops in Italy, can be carried out without inconvenience to traders in the only ports where it is possible for special phytosanitary inspectors to examine all the consignments and to take samples during unloading.

Moreover, the entry restriction in question enables the many frauds which occur at inland frontiers to be obviated. Before the introduction of the restrictive measures in Italy, fraudulent importations of oranges and lemons mixed with grapefruit went undetected owing to the absence of systematic phytosanitary inspection at inland customs posts, which constituted a serious risk to Italian citrus crops. Now, by contrast, since the possibility of mixing fruit of the same genus, in this case citrus fruit, has been eliminated, the incidence of fraud has been considerably reduced. If packages of oranges and lemons were hidden at the bottom of loads, mixed with other fruits, such as apples or pears, they would be discovered because of the characteristic odour of citrus fruit.

The Italian Republic rejects the Commission's argument that it would be possible to carry out equally effective inspections at inland border posts. It argues that such inspections would not be appropriate because they would be excessively complicated and difficult to organize and

would involve increased costs both for traders and for the relevant inspectorate, because road and rail transporters would have to be diverted to port precincts. Moreover, the Commission itself, when authorizing certain Member States to provide for derogations from Directive 77/93, limited the points of entry for certain plants and, as regards oak logs originating in the United States of America, it specified particular ports in the Member States (see Commission Decision 80/809/EEC of 30 July 1980, Official Journal 1980 L 236, p. 35).

Nor does the Italian Republic share the Commission's view that the rules in question discriminate arbitrarily and are disproportionate. In that regard it emphasizes that the only purpose of the Italian measures is to achieve plant-health objectives and that they are in no way discriminatory, neither with regard to the origin of the products nor with regard to traders. Grapefruit produced in the Member States, including those which impose a total ban on imports of all citrus fruits, and grapefruit originating in non-member countries, may be imported into Italy, provided that they are imported through the authorized customs posts at coastal ports. Similarly, as far as traders are concerned, those in the Member States, like their Italian counterparts, may ship grapefruit from the producing State direct to Italy through customs posts at coastal ports and the costs will be exactly the same. Thus, the Italian rules on the importation of grapefruit are absolutely necessary for achieving the desired aims, which are consistent with the Community plant-health legislation. Moreover, transport by sea to Italy from Member States which produce citrus fruit is easy and in no way more onerous than transport overland, and imports of grapefruit into Italy have recently increased considerably, notwithstanding the closure of inland border posts.

Lastly, the Italian Government states that there is no contradiction in its rules, as the Commission claims, since Annex VI to the Ministerial Decree of 30 March 1988 confirms that grapefruit may be imported only through certain frontier posts at coastal ports.

IV — Replies to the Court's questions

1. Asked to provide the Court with a breakdown of the quantities of grapefruit imported into Italy since 1980 by year and according to whether the grapefruit were imported by land, sea or air, the *Commission* provided Eurostat statistics on imports of grapefruit into Italy from 1980 to 1989 from other Member States and from the principal non-EEC exporting countries. The Commission stated that it did not have statistics available for the means of transport used.

2. (a) Asked to state why imported grapefruit could not be effectively checked somewhere other than at a port using appropriate methods, the *Government of the Italian Republic* stated that since ports were physically isolated, unlike other points of entry, they were the only places where checks could be carried out while avoiding the introduction of new pests and diseases harmful to citrus crops. Only in ports was it

possible to establish, by laboratory analysis in addition to 'routine' analysis, the presence of any pests or diseases by processing the grapefruit on board vessels until the results of the analyses were known, without disrupting commercial traffic and without needing to unload the goods, whereas such procedures could not be implemented at road frontier points, since transport vehicles could not park in the customs area, particularly in unfavourable weather. Moreover, when grapefruit were unloaded at ports, the phytosanitary conditions of a representative number of packages could be assessed systematically, which was not possible at road points of entry because of the adverse effects on traffic and for practical reasons. Finally, in the single European market Italian ports would still constitute external customs entry points of the Community and hence plant products cleared there would be subjected to phytosanitary checks, whereas road customs posts would disappear and goods which crossed at those points would be exempt from plant-health checks.

(b) Asked to describe the risks created by fraudulent imports of lemons and oranges and why those frauds can be discovered more easily at a port, the Government of the Italian Republic stated that at ports it was possible to carry out a systematic visual inspection of goods when vessels were unloaded; it was therefore scarcely conceivable that large quantities of oranges or lemons could remain hidden under a layer of other fruit. However, when goods were imported by land it was impossible to carry out a systematic visual inspection and the fraud in question could be discovered only by chance, thanks to the characteristic odour emanating from the hidden citrus fruit.

(c) Asked to explain why, since 8 March 1984, the number of points of entry for grapefruit has been reduced considerably, the Government of the Italian Republic claimed that, having regard to inspection requirements and the needs of traders, the stated number of entry points at ports was considered adequate and sufficient.

(d) Asked to list the main diseases to which citrus in general and grapefruit in particular are subject, with a brief description of the means by which they spread, their effects, their prevalence outside the Italian Republic and the checks necessary to detect them, the Government of the Italian Republic replied that the very fact that Directive 77/93 provided for the prohibition of imports of all citrus fruit into Member States which produce such fruit showed the great importance of the citrus-fruit diseases affecting crops in numerous countries. The only sure method of preventing the introduction of diseases affecting citruses was to prohibit imports; however, in order to reduce the risk of introducing pests and diseases, the Italian Republic had introduced systematic, thorough inspections at authorized ports.

The Government of the Italian Republic went on to state that tristeza, which was not yet present in Italy, but which had spread rapidly in Spain, California and Israel, was the most destructive disease. It was trans-

mitted by aphid vectors under the rosette of the fruit, and systematic inspection of the fruit would reduce the risk of infection.

Infectious chlorosis (stubborn) was another disease to which grapefruit was very prone. Fruit affected by this disease had a coarser surface and was narrow around its centre; checks would remove the risk of introducing infected grapefruit.

Outside Europe, there were also certain insects of the genus *Anastrepha* (family Trypetidae). In order to eliminate the risk of introducing such insects, the national legislation provided that the plant-health authorities of the country of origin of the fruit must state in the phytosanitary certificate that the grapefruit were from areas which were free of the pest in question.

Finally, there were other viruses, bacteria, cryptogams and insects which represent a potential danger for the Italian citrus crop.

The Government of the Italian Republic ends by stating that the technical considerations underlying the plant-health risks created by the importation of citruses had been discussed at length at Community level during the drafting of Directive 77/93 in which the Commission itself had played a major role.

F. A. Schockweiler
Judge-Rapporteur