Community is concerned the common organization of the market in the products in question is based on freedom of commercial transactions and is opposed to any national rule which could hinder directly or indirectly, actually or potentially, intra-Community trade.

For this reason any national provisions or practices which could modify the patterns of imports and exports by not allowing producers to market the products concerned freely are incompatible with the common organization of the market established by Regulation No 234/68.

3. National rules whereby a Member State, directly or through the intermediary of bodies established or approved by an official authority, reserves exclusively to persons affiliated to such bodies the right to market, resell, import, export and offer for export material for plant propagation such as chrysanthemum plants which are covered by the common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage established by Regulation No 234/68 and forbids persons who are not so affiliated to market, resell, import, export and offer for export such products, whatever their quality may be, is incompatible with the said regulation and in particular with Article 10 thereof and also with Articles 30 and 34 of the EEC Treaty.

In Case 94/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Gerechtshof [Regional Court of Appeal], Amsterdam, Economische Kamer [Economic Chamber], for a preliminary ruling in the criminal proceedings pending before that Court against

PIETER VRIEND, Andrijk (Netherlands),

on the interpretation of Articles 30 to 47 of the EEC Treaty and of Regulation (EEC) No 234/68 of the Council of 27 February 1968 (Official Journal, English Special Edition 1968 (I), p. 26) on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage,

THE COURT

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, G. Bosco and O. Due, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

1. On 14 April 1978 the Economische Politierechter [Magistrate in Economic Matters] of the Arrondissementsrechtbank [District Court], Alkmaar, in the Netherlands, gave judgment against Pieter Vriend, merchant of Andijk, under, *inter alia*, Article 1 (1) (a) of the Aansluitingsbesluit N.A.K.S., hereinafter referred to as "the A.N.A.K.S." (Decree on affiliation to the Netherlands General Inspection Service for Ornamental Plants) and Article 87 (1) of the Zaaizaad- en Plantgoedwet, hereinafter referred to as "the Z.P.W." (Law on seed for sowing and stock for plant propagation). That judgment pronounced the accused guilty of having sold between May and June 1975 in the commune of Andijk, or at least in the Netherlands, several lots of chrysanthemums, being material for propagation within the meaning of the Z.P.W., without being affiliated to the abovementioned N.A.K.S. Institute.

Article 87 (1) of the last-mentioned law provides that:

"It may be decided by a regulation of the public administration, in relation to any cultivated plant, that the production, keeping and cultivation for purposes other than utilization in a person's own undertaking, as well as the marketing, resale, importation, exportation and offering for export of material for propagation, or engaging in such activities by way of trade shall be confined exclusively to persons affiliated to a supervisory body designated for that plant in the regulation of the public administration".

Article 88 of the same law contains the following provision:

"In order to be approved as a supervisory body under the provisions of the preceding article the following conditions must be fulfilled:

1. According to its rules the supervisory body:

   (a) must have as its objective the promotion, by means of a system of control, of the marketing, resale and exportation of viable propagation material;

(b) ...

(c) must have a management committee which is sufficiently representative of the parties or groups of parties affected;

2. The rules of the supervisory body must provide that:

(a) ...

(b) ...

(c) affiliation is open to all on request;

(d) where an affiliated member fails to fulfil the obligations imposed on him by virtue of the rules or the general instructions in force under (a), one or more of the following measures may be taken with regard to him: censure, a fine not exceeding 10 000 florins, strict supervision of the affiliated member at his own expense for a period not exceeding two years and publication of the disciplinary measure; if, within the five years immediately preceding the failure to observe an obligation, referred to above, the affiliated member has been placed under strict supervision at his own expense, or has been ordered on two occasions to pay a fine, he may be suspended for a period not exceeding three years;

(e) with regard to decisions taken by one of the organs of the supervisory body, other than those listed under (g), the affiliated member may, within one month from the date of notification of such decisions, submit a complaint to an 'Appeals Board', the composition of which and the procedure to be followed are defined in rules of procedure; such decisions shall not include the general instructions;

(f) the Chairman and the other members of the Appeals Board, together with the secretary, shall be appointed by the minister concerned;

(g) ...

(h) ...

(i) ...".

The A.N.A.K.S., mentioned above, which was adopted under Article 87 (1) of the above-mentioned Z.P.W., provides in Article 1 (1) (a) that only persons affiliated to the N.A.K.S. are authorized to:

"(a) Undertake by way of trade the production for purposes other than utilization in their own undertaking, marketing, resale, importation, exportation and offering for export of material for the propagation of the plants listed in the present decree, including the chrysanthemum (Chrysanthemum morifolium Ram.), referred to in the second paragraph of Article 1)".

2. Pieter Vriend lodged an appeal against that judgment in the Gerechtshof [Regional Court of Appeal], Amsterdam, Economic Chamber. In the course of the deliberations in that court the question arose as to whether the Netherlands rules in question, namely those introduced by Article 87 of the Z.P.W., in conjunction with Article 1 of the A.N.A.K.S., because it involves "compulsory affiliation" to the N.A.K.S. for the purposes of marketing cultivated plants, is compatible with Articles 30 to 47 of the EEC Treaty, and with Regulation No 234/68 of the Council of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage (Official Journal, English Special Edition 1968 (I), p. 26), Article 10 (1) of which prohibits, at the second indent, "in the internal trade of the Community ... any quantitative restriction or measure having equivalent effect".

Considering that a decision in the case rests on the question of interpretation of Community law, the Gerechtshof, Amsterdam, decided by judgment of 10 May 1979, to stay the proceedings and to refer to the Court for a preliminary ruling under Article 177 of the EEC Treaty the following questions:

"1. Must Articles 30 to 47 inclusive of the EEC Treaty and Regulation (EEC) No 234/68 of the Council of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage [Official Journal, English Special Edition 1968 (I), p.26] as subsequently amended, in particular Article 10 (1) thereof, be interpreted as meaning that the following are wholly incompatible therewith: rules such as those contained in Article 87 of the Zaaizaad- en Plantgoedwet in conjunction with the Aaansluitingsbesluit N.A.K.S., which rules, in the light of the history of the Law, are primarily intended to guarantee the high quality of the material for propagation put on the market and pursuant to which rules anyone who is not affiliated to the Stichting Nederlandse Algemene Keuringsdienst voor Siergewassen is prohibited from putting on the market, reselling, importing, exporting and offering for export by way of trade in the Netherlands, material for the propagation of chrysanthemums (Chrysanthemum morifolium Ram.) such as chrysanthemum cuttings irrespective of whether the material for propagation satisfies the quality requirements laid down by the said Stichting?

2. If Articles 30 to 47 inclusive referred to above and the aforesaid Council regulation are to be interpreted as meaning that the rules referred to in Question 1 are not — or not wholly — incompatible therewith, do those provisions of Community law allow of rules such as those described in Question (1), whereby for, in particular, dealers in chrysanthemum cuttings, affiliation to the said Stichting is, pursuant to its statute and in conjunction with the provisions of Articles 87 and 90 of the Zaaizaad- en Plantgoedwet, confined to those who accept that decisions of the Appeals Board of the Stichting on rulings affecting them made by an organ of the Stichting, which do not relate to the approval of material for propagation, have the character of a binding decision which, under Netherlands law, precludes the right of appeal to the civil courts in proceedings in which the courts have unlimited jurisdiction?"

3. A copy of the judgment making the reference was received at the Court on 14 June 1979.

Under Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities written observations were submitted by the Government of the Netherlands, represented by F. Italianer, Secretary General at the Ministry for Foreign Affairs, acting as Agent, and by the Commission of the European Communities, represented by H. J. Bronkhorst, a member of the Commission's Legal Department, acting as Agent.

After 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.

II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice

In the view of the *Netherlands Government* it is appropriate before examining the questions on which the Court has been asked to give a ruling by the court making the reference to summarize the historical process which led to the delegation in the Netherlands of certain public duties to professional or trade bodies in the sector of agriculture and horticulture.

As regards the production and marketing of material for propagation in particular, products have been officially approved and certificates issued by those active in the trade themselves since 1900. As time went on the various bodies governed by private law which fulfilled these functions showed a growing tendency to amalgamate, so that by 1941 the above-mentioned activities were being performed by a single body for each particular variety of plant.

The historical evolution explained above, the fairly limited number of persons concerned and the need to establish a direct link between the highly specialized knowledge of those concerned and the methods of application which had to be drawn up were taken into consideration in adopting the Z.P.W., section 6 of which deals with trade in material for propagation and with supervisory bodies.

In view of these factors and the advisability of a rapid means of adopting the measures for implementing the Z.P.W., the Netherlands legislature entrusted the task of drawing up those measures and ensuring that they were observed to supervisory bodies governed by private law. Prior to their entry into force, the implementing measures have moreover to be approved by the Minister of Agriculture and Fisheries. The supervisory bodies have power to adopt rules covering the health, purity and quality of material for propagation, as well as other matters connected therewith. The central authority is empowered however to suspend the application of such provisions or to annul them if they are contrary to the general interest. Should the supervisory bodies fail to act, that authority is empowered to make the provisions in question itself.

In addition, the Z.P.W. lays down the procedure to be followed in disputes which may arise between a supervisory body and its members. Two types of action are provided for: action against decisions concerning the approval of a product and action against other decisions. The latter is reserved to a Raad van Beroep (Appeals Board), which guarantees lack of bias in settling disputes.

In order to compensate for the fact that the rules laid down by a body governed by private law are binding only on its affiliated members, and the fact that only affiliated members are subject to supervision by the body and to its disciplinary powers, it was provided that affiliation to the supervisory bodies is compulsory. Thus, compulsory affiliation must be considered as a part of the system whereby certain regulatory and supervisory powers are delegated to bodies governed by private law.

In the opinion of the Netherlands Government the question of which national bodies or institutions are empowered in the Member States to perform public duties is not a question of Community law, whilst the manner in which such duties are delegated is a matter for the national law of the Member States.

It has in fact been established by the case-law of the Court of Justice (cf. judgment of 15 December 1971 in Joined Cases 51 to 54/71 [1971] ECR 1107) that it is for the Member States to determine which institutions within the national system shall be empowered to adopt the appropriate measures to ensure fulfilment of the obligations arising out of the Treaty, and that the question of how the implementation of such obligations may be entrusted to specific national authorities is solely a matter for the constitutional system of each State. The inescapable conclusion to be drawn from this is that the rule concerning compulsory affiliation to a supervisory body governed by private law is not contrary to Community law, nor to Article 30 *et seq.* of the EEC Treaty.

The rule may, however, when taken in conjunction with other provisions, amount to a restriction on trade prohibited by Article 30 of the Treaty. That would be the case, in particular, if affiliation could be refused or if it was compulsory only in relation to the marketing of imported material for propagation. But the Netherlands regulations contain no such provision.

As to the second question, the procedure of the Raad van Beroep, as provided for by the rules of the supervisory body in conjunction with Articles 87 and 90 of the Z.P.W., is also compatible with Community law.

According to the judgment given on 16 December 1976 by the Court of Justice in Case 45/76 ([1976] ECR 2043): "in the absence of any relevant Community rules, it is for the national legal order of each Member State to designate the competent courts and to lay down the procedural rules for proceedings designed to ensure the protection of the rights which individuals acquire through the direct effect of Community law, provided that such rules are not less favourable than those governing the same right of action on an internal matter".

For the sake of completeness, however, it should be pointed out that when public duties are delegated in a Member State to bodies governed by private law such bodies must be considered, for the purposes of applying the provisions of the EEC Treaty, as organs of that Member State. The provisions adopted by them and the manner in which they supervise the application thereof are therefore subject to judicial scrutiny in relation to Community law.

Whilst the questions which have been referred to the Court do not concern the compatibility of the provisions adopted by the supervisory bodies with Community law, it should be recalled that those provisions brought into effect in the Netherlands the Community directives concerning the quality of material for the propagation of agricultural, horticultural and forest varieties. Those directives expressly mention, among the measures whereby the Member States may bring them into effect, measures adopted in the name of the State by persons subject to public or private law. In the preambles to those directives the need to adopt provisions designed to guarantee the quality of material for propagation is acknowledged. Article 3 of Regulation No 234/68 of the Council on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage, provides in fact that the Council, acting on a proposal from the Commission, shall lay down quality standards, but no such standards have been adopted yet with regard to material for propagating

ornamental shrubs. Consequently, pending the adoption of Community rules, the Netherlands are quite entitled in law to adopt national rules designed to guarantee the quality of material for propagating ornamental shrubs.

The *Commission of the European Communities* observes that the essential point at issue in the first question is whether or not a Member State, in this case the Netherlands, has the power to fix quality standards in relation to material for propagating ornamental plants. This is one part of the more general problem of defining the discretion which is still left to Member States in the adoption of measures once Community rules have been established for markets.

The Commission recalls the cases in which the Court has already had occasion to tackle this problem, also in relation to Regulation No 234/68 (Case 190/73 *Van Haaster;* Case 51/74 *Van der Hulst's Zonen;* Case 50/76 *Amsterdam Bulb),* and points out that according to the case-law of the Court national measures are to be considered incompatible with the existence of a common organization of the market only if they are of such a nature as to prejudice the aims and objectives of the Community rules.

In the present case the national measures designed to encourage standards of quality in respect of the product in question have precisely the same aim as Regulation No 234/68, which provides likewise for the determining of quality standards and for the adoption of measures capable of improving the quality of the products. For so long as the Community has not adopted different quality standards in respect of the same product the national measures are therefore to be considered compatible with Regulation No 234/68.

At this point it should be asked whether the method of compulsory membership is lawful under Community law. There are many forms of compulsory affiliation or registration which are not incompatible with that law on the ground that they cannot be considered to fall within the sphere of application of the provisions of Articles 30 and 34 of the Treaty. One need only recall, in this respect, the compulsory registration with Chambers of Commerce which is required in a number of Member States as a condition precedent to the carrying on of commercial, industrial or craft activities. Such is also the case with affiliation to the supervisory bodies in the Netherlands. Although in Case 83/78 *Pigs Marketing Board,* the Court condemned compulsory registration with a national authority, its view was due to the fact that that measure formed a single entity with other measures preventing the free circulation of products subject to the organization of the markets.

As to the second question, the Commission observes that the N.A.K.S. and its Raad van Beroep are not applying rules of Community law and therefore the Community need not concern itself with whether rights are being safeguarded in the application of those rules.

The situation could be quite different in the case of bodies empowered to apply Community law, which would be quite conceivable had the Community fixed quality standards in this sector for seeds, as it has done in other sectors.

According to the case-law of the Court it is for each Member State to designate the competent courts and to lay down the procedural rules for proceedings designed to ensure the protection of the rights which individuals acquire through the direct effect of Community law, provided that such rules are not less favourable than those governing the same right of action on an internal

matter. By virtue of Article 88 (1) (f) of the Z.P.W., the Chairman and the other members of the Raad van Beroep of the N.A.K.S. are appointed by the Minister of Agriculture and Fisheries. That Board cannot therefore be considered as a court which, by reason *inter alia* of its independence from the administration, is such as to offer individuals the same guarantees as those to which they would be entitled through the direct effect of Community law.

For those reasons the Commission proposes the following replies to the questions which have been referred to the Court by the Gerechtshof, Amsterdam, for a preliminary ruling:

"1. The existence of national rules prohibiting the marketing, resale, importation, exportation and offering for export, by way of trade, of material for the propagation of chrysanthemums, such as chrysanthemum cuttings, irrespective of whether the material for propagation satisfies the quality requirements laid down by the Stichting in question, is not incompatible with Articles 30 to 47 of the EEC Treaty and Regulation (EEC) No 234/68 of the Council of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage.

2. The existence of national rules which provide that those affiliated to a Stichting responsible for ensuring the maintenance of quality standards in respect of chrysanthemum cuttings are bound to accept the decisions of an Appeals Board is not incompatible with the afore-mentioned provisions of Community law, even in view of the fact that that Appeals Board cannot be considered as an independent tribunal and the decisions of the Appeals Board with respect to them have the character of binding opinions, which fetters the right of appeal to the civil courts against the decisions of the Appeals Board."

III — Oral procedure

The Commission of the European Communities, represented by H. J. Bronkhorst, a member of its Legal Department, presented oral argument at the hearing on 27 November 1979.

The Advocate General delivered his opinion at the sitting on 10 January 1980.

Decision

1 By an order of 10 May 1979, which was received at the Court on 14 June 1979, the Gerechtshof [Regional Court of Appeal], Amsterdam, Economische Kamer [Economic Chamber], referred to the Court of Justice for a preliminary ruling, pursuant to Article 177 of the EEC Treaty, two questions on the interpretation of Articles 30 to 47 inclusive of the EEC Treaty and of Regulation (EEC) No 234/68 of the Council of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage (Official Journal, English Special Edition 1968 (I), p. 26).

2 The questions were raised during the hearing of an appeal by a merchant, having his place of business at Andijk, against his conviction by the Economische Politierechter (Magistrate in Economic Matters) of the Arrondissementsrechtbank [District Court], Alkmaar, for having sold between May and June 1975 in the commune of Andijk, or at least in the Netherlands, several lots of chrysanthemum cuttings, without being affiliated to the Nederlandse Algemene Keuringsdienst voor Siergewassen [The Netherlands General Inspection Service for Ornamental Plants], hereinafter referred to as "the N.A.K.S." and having therefore been in breach of the provisions of the Zaaizaad- en Plantgoedwet [Law on seed for sowing and stock for plant propagation] and also of the Decree of 6 October 1966, the Aansluitingsbesluit N.A.K.S. [Decree on affiliation to the Netherlands General Inspection Service for Ornamental Plants], adopted in implementation of that Law. The file shows that the trader in question had bought the products which are the subject-matter of the criminal proceedings from producers who are affiliated to the N.A.K.S.

3 Article 87 (1) of the Law on seed for sowing and stock for plant propagation provides that "it may be decided in relation to any cultivated plant ... that the production, keeping, cultivation for purposes other than its utilization in a person's own undertaking, as well as the marketing, resale, importation and offering for export of material for propagation, or engaging in such activities by way of trade shall be confined exclusively to persons affiliated to a supervisory body designated for that plant ...". Article 88 of the said Law relating to supervisory bodies provides, in the case of a member's failing to fulfil the obligation imposed on him by virtue of the rules or general instructions in force, for the application of penal sanctions including placing him under supervision or temporarily suspending his membership. As far as chrysanthemum plants are more particularly concerned Article 1 (1) (a) of the above-mentioned Decree of 5 April 1967 repeats the prohibition laid down by the provisions of the said Law by reserving the marketing, sale, importation, exportation and offering for export of material for the propagation of these plants to persons who are affiliated to a supervisory body. This body, in this case the above-mentioned N.A.K.S., was approved by the Minister of Agriculture and Fisheries on 22 December 1967. Article 26 of its rules provides that one of the organs of the supervisory body, called the Raad van Beroep [Appeals Board], the composition and functioning of which are governed by special rules of procedure and the judgments whereof are in the nature of an opinion binding on the members to whom they are addressed, shall have jurisdiction to hear appeals by a member against decisions other than those relating to the approval of material for propagation by one of the supervisory body's own organs.

4 It is in the light of these national rules that the national court has referred to the Court for a preliminary ruling the following questions:

"1. Must Articles 30 to 47 inclusive of the EEC Treaty and Regulation (EEC) No 234/68 of the Council of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage (Official Journal, English Special Edition 1968 (I), p. 26), as subsequently amended, in particular Article 10 (1) thereof, be interpreted as meaning that the following are wholly incompatible therewith: rules such as those contained in Article 87 of the Zaaizaad- en Plantgoedwet in conjunction with the Aansluitingsbesluit N.A.K.S., which rules, in the light of the history of the Law, are primarily intended to guarantee the high quality of the material for cultivation put on the market and pursuant to which rules anyone who is not affiliated to the Stichting Nederlandse Algemene Keuringsdienst voor Siergewassen is prohibited from putting on the market, reselling, importing, exporting and offering for export by way of trade in the Netherlands, material for cultivation of chrysanthemums (Chrysanthemum morifolium Ram.) such as chrysanthemum cuttings irrespective of whether the material for cultivation satisfies the quality requirements laid down by the said Stichting?

2. If Articles 30 to 47 inclusive referred to above and the aforesaid Council Regulation are to be interpreted as meaning that the rules referred to in Question 1 are not — or not wholly — incompatible therewith, do those provisions of Community law allow of rules such as those described in Question 1, whereby for, in particular, dealers in chrysanthemum cuttings, affiliation to the said Stichting is, pursuant to its rules and in conjunction with the provisions of Articles 87 and 90 of the Zaaizaad- en Plantgoedwet, confined to those who accept that decisions of the Appeals Board of the Stichting on rulings affecting them made by a body of the Stichting, which do not relate to the approval of material for propagation, have the character of a binding decision which, under Netherlands law, precludes the right of appeal to the civil courts in proceedings in which the courts have unlimited jurisdiction?"

5 Although the Court is not competent in the context of a reference to it for a preliminary ruling under Article 177 of the EEC Treaty to rule whether national legal rules are compatible with provisions of Community Law, it does on the other hand have jurisdiction to provide the national court with all the factors relating to interpretation under Community law which enable that court to decide whether those national rules are compatible with the

Community rules mentioned. Therefore the questions referred to the Court should be regarded as designed primarily to ascertain whether Articles 30 to 47 inclusive of the Treaty and Regulation (EEC) No 234/68 of the Council of 27 February 1968 preclude a Member State from adopting, in the sector of seed for sowing and plants and more particularly of material for propagation, a series of rules of the kind described by the national court, reserving the marketing, sale, importation, exportation or offering for export of the said material solely to persons who are affiliated to a specific supervisory body.

6 It is an established fact that the products at issue are "plants" within the meaning of subheading 06.02 D of the Common Customs Tariff. Since they are therefore products falling within Chapter 6 of the Common Customs Tariff they are governed, as provided for in Article 1 of Regulation (EEC) No 234/68 of the Council of 27 February 1968, by the common organization of the market established by that regulation. As the Court has held in its case-law — judgment of 30 October 1974 in Case 190/73 *Officier van Justitie* v *J.W.J. van Haaster* [1974] ECR 1123 and judgment of 23 January 1975 in Case 51/74 *P. J. van der Hulst's Zonen* v *Produktschap voor Siergewassen* [1975] ECR 79 — Regulation No 234/68 has established a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage falling within Chapter 6 of the Common Customs Tariff which, according to Article 1 of the said regulation, shall comprise "common quality standards and a trading system". The third recital in the preamble to that regulation indicates that the system of quality standards for products or product groups governed by the common organization of the market introduced in accordance with the procedure laid down in Article 43 (2) of the Treaty should *inter alia* "have the effect of . . . promoting commercial relations on the basis of genuine competition" and the second paragraph of Article 3 of the regulation forbids dealings in these products or product groups only if they are not in accordance with the above-mentioned quality standards.

7 As far as the "trading system" is concerned the eighth recital in the preamble to the regulation states that "the common organization of the market involves the removal at the internal frontiers of the Community of all obstacles to the free movement of the goods in question" and for this reason regards the provisions of the Treaty removing tariff and trade barriers to intra-Community trade and, in particular, Articles 30 and 34 relating to the elimination of quantitative restrictions on imports and exports and all measures having equivalent effect as forming an integral part of the common

organization of the markets in question. In order to attain these objectives Article 10 prohibits "in the internal trade of the Community" among obstacles to the free movement of goods, "any quantitative restriction or measure having equivalent effect" and only allows, under certain conditions, a temporary derogation from this prohibition in the case of products falling within tariff headings Nos 06.02 A I, 06.02 B and 06.02 C II, to the exclusion therefore of those products, such as the ones in this case, which fall within tariff heading 06.02 D.

8 So it follows from the general scheme of Regulation No 234/68 that as far as trade within the Community is concerned the common organization 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 or potentially, intra-Community trade.

9 For this reason any national provisions or practices which could modify the patterns of imports and exports by not allowing producers to market the products concerned freely are incompatible with the common organization of the market established by Regulation No 234/68. Any national rules and regulations such as those at issue in this case which make the freedom of traders to market, resell, import and export or offer for export the material for plant propagation in question conditional on their being affiliated to a public body or a body approved by an official authority such as the N.A.K.S. which was referred to by the national court, would definitely be incompatible with that common organization. Such a restriction on freedom of commercial transactions contravenes Article 10 of Regulation No 234/68 which lays down the principle of an open market, upon which the common organization of the market in question is based, and moreover does not satisfy the requirement of genuine and effective competition, since by reason of its general application to products offered for sale by persons who are not affiliated it in fact even eliminates from the market those products which are of satisfactory quality.

10 For these reasons the answer to the first question must be that national rules of the kind referred to by the national court whereby a Member State, directly or through the intermediary of bodies established or approved by an official authority, reserves exclusively to persons affiliated to such bodies the

right to market, resell, import, export and offer for export material for plant propagation such as chrysamthemum plants which are covered by the common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage established by Regulation (EEC) No 234/68 of the Council of 27 February 1968 (Official Journal, English Special Edition 1968 (I), p. 26) and forbids persons who are not so affiliated to market, resell, import, export and offer for export such products, whatever their quality may be, is incompatible with the said regulation and also with Articles 30 and 34 of the EEC Treaty.

11 Having regard to the answer given to the first question there is no need to consider the second question.

Costs

12 The Costs incurred by the Government of the Kingdom of the Netherlands and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Gerechtshof, Amsterdam, by an order of 10 May 1979, hereby rules:

National rules of the kind referred to by the national court whereby a Member State, directly or through the intermediary of bodies established or approved by an official authority, reserves exclusively to persons affiliated to such bodies the right to market, resell, import, export and offer for export material for plant propagation such as chrysanthemum plants which are covered by the common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and

ornamental foliage established by Regulation (EEC) No 234/68 of the Council of 27 February 1968 (Official Journal English Special Edition 1968 (I), p. 26) and forbids persons who are not so affiliated to market, resell, import, export and offer for export, such products whatever their quality may be, is incompatible with the said regulation and also with Articles 30 and 34 of the EEC Treaty.

Kutscher O'Keeffe Touffait

Mertens de Wilmars Pescatore Bosco Due

Delivered in open court in Luxembourg on 26 February 1980.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 10 JANUARY 1980 [1]

Mr President,
Members of the Court,

I — On 14 April 1978 the Economische Politierichter [Magistrate in Economic Matters] of the Arrondissementsrechtbank [District Court], Alkmaar found a merchant having his place of business in the commune of Andijk guilty of having sold, between May and June 1975, in that commune or at least in the Netherlands, several lots of chrysanthemum cuttings ("stekken") (Chrysanthemum morifolium Ram.) without being affiliated to the body known as the Nederlandse Algemene Keuringsdienst voor Siergewassen [The Netherlands General Inspection Service for Ornamental Plants] (N.A.K.S. in abbreviated form) whose seat is at The Hague and imposed a fine on him, with imprisonment in default of payment.

According to Article 87 of the Zaaizaaden Plantgoedwet [Law on seed for sowing and stock for plant propagation] of 6 October 1966 the sale of cuttings is reserved to members of an inspection body subject to the conditions laid down by a general measure adopted by the public administration (Algemene Maatregel van Bestuur) for the cultivated plant ("gewas") concerned. The setting up of this body was approved on 22 December 1967 by the Minister of Agriculture. It has about 400 members. Five

1 — Translated from the French.