1. Articles 30 and 34 of the Treaty dealing with the abolition of quantitative restrictions on imports and exports and all measures having equivalent effect form an integral part of the common organizations of the markets in the agricultural sectors. As far as trade within the Community is concerned, the common organizations of the markets are therefore based on freedom of commercial transactions and are incompatible with any national legislation capable of hindering intra-Community trade.

2. It is contrary to the freedom of commercial transactions on which the common organization of the market in fruit and vegetables is based for national legislation to make the exportation of those products conditional on the exporter's being affiliated to a public body or a body approved by an official authority.

3. Considerations of an administrative nature cannot justify derogation by a Member State from the rules of Community law.

4. Article 34 of the EEC Treaty and the rules on the common organization of the market in fruit and vegetables do not allow national legislation to stipulate that an association incorporated under private law, designated as the sole checking authority within the meaning of Regulation No 1035/72 on the common organization of the market in fruit and vegetables, shall issue only to members of that association the acknowledgements of receipt and certificates of inspection referred to in Regulation No 2638/69 laying down additional provisions on quality control of fruit and vegetables marketed within the Community.

In Case 29/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry] for a preliminary ruling in the appeal in a matter of administrative law brought before that court by

F. VAN LUIPEN EN ZN BV, The Hague,

against a disciplinary measure adopted against it,

on the interpretation of Articles 30 to 34 of the EEC Treaty and Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables (Official Journal, English Special Edition 1972 (II), p. 437),

THE COURT (Second Chamber)

composed of: P. Pescatore, President of Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: S. Rozès
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community may be summarized as follows:

I — Facts and written procedure

1. By a decision of 25 September 1980 the Tuchtgerecht [Disciplinary Tribunal] set up by the Tuchtgerechtsbesluit Landbouwkwaliteitswet [Disciplinary Tribunal (Law on the Quality of Agricultural Produce) Order] fined F. van Luipen en Zn BV, (hereinafter referred to as "van Luipen") HFL 4 000 for an infringement of the Landbouwkwaliteitsbesluit Groenten en Fruit [Quality of Agricultural Produce (Fruit and Vegetables) Order] and related regulations.

By that decision van Luipen was charged with packing a consignment of tomatoes bearing the quality description "Grade I" but not meeting the Grade I quality requirements and with holding them for sale by way of trade or business.

Van Luipen appealed to the College van Beroep voor het Bedrijfsleven against that decision. One of its submissions before that court was that it had been fined for infringing a number of provisions all forming an essential part of rules which had no binding force because they were contrary to Article 30 and subsequent articles of the EEC Treaty.

2. Regulation No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables provides that the products listed in Annex I thereto, including tomatoes for delivery fresh to the consumer, are covered by quality

standards and may not be displayed or offered for sale, sold, delivered or marketed in any other manner unless they conform to those standards.

Regulation (EEC) No 2638/69 of the Commission of 24 December 1969 laying down additional provisions on quality control of fruit and vegetables marketed within the Community (Official Journal, English Special Edition 1969 (II), p. 611) provides for an inspection by sample to be carried out after notification of the consignment by the consignor prior to dispatch from forwarding areas and, where inspection is carried out on dispatch from the forwarding area, the issue of a certificate to accompany the goods.

The forwarding area is defined as the whole territory of the Kingdom of the Netherlands.

The Community rules leave it to Member States to designate the authorities responsible for carrying out the inspections provided for by the Community rules and as far as this case is concerned the authority designated by the Netherlands was the Kwaliteitscontrolebureau voor Groenten en Fruit [Quality Control Bureau for Fruit and Vegetables] (hereinafter referred to as "the Bureau").

3. The rules of the Bureau provide *inter alia* as follows:

"...

Article 3

(1) The object of the Bureau shall be to *assist in raising the standard of quality of fruit and vegetables produced in the Netherlands* and in particular to help to improve the quality of those products by carrying out inspections and supervising compliance with the relevant provisions of law.

(2) The Bureau shall have as its further objects:

(a) in the case of fruit and vegetables of foreign origin, to carry out inspections pursuant to the Landbouwkwaliteitsbesluit at the premises of members and to supervise compliance with the relevant provisions in force and

(b) to pursue activities in addition to those referred to in paragraph (1) and subparagraph (2) (a) hereof with a view to promoting trade in fruit and vegetables in accordance with guidelines laid down for members by the Board.

(3) The Bureau shall endeavour to attain the objects described in pargraphs (1) and (2) hereof without any view to making a profit.

(4) The Bureau shall pursue the objects described in paragraphs (1) and (2) hereof by establishing and maintaining an appropriate inspection service.

Article 4

(1) Supervision of compliance with the provisions adopted under or pursuant to the Landbouwkwaliteitsbesluit shall be undertaken at the premises of members only.

(2) (a) *Inspections* of fruit and vegetables as provided for in the Landbouwkwaliteitsbesluit *shall be undertaken on behalf of members only.*

(b) *Marks, symbols and certificates* of the kind referred to in Article 8 (2) of the Landbouwkwaliteitswet. [Law on the Quality of Agricultural Produce] *shall be issued to members only.*

(3) Without prejudice to paragraph (2) hereof the Bureau may pursue certain other activities, including the undertaking of expert examinations and the issue of reports, on behalf of non-members in accordance with guidelines laid down by the Board.

Article 5

The Bureau shall admit as a member any person who applies to it in writing for that purpose and who

(a) appears from an entry in a business register kept in the Netherlands to be established, whether exclusively or not, in the Netherlands and

(b) acknowledges in writing that he shall be subject to the supervision mentioned in Article 4 (1) in accordance with the provisions of these Rules.

. . .

Article 7

Each member shall:

(a) observe strictly the provisions referred to in Article 3, the provisions of these Rules, the Inspection Rules, the other rules of the Bureau and the decisions adopted by the Board to implement those rules, which have been brought to his notice or the notice of members in general and ensure that those provisions are complied with in his business;

(b) use his best endeavours to make the inspection of the quality of fruit and vegetables as provided for in the Inspection Rules as effective as possible;

(c) pay the subscriptions and other fees fixed each year in accordance with the relevant provisions of these Rules or any other rules;

(d) permit without reserve employees of the Bureau or persons charged with exercising the control referred to in Article 31 to have access to any place where fruit or vegetables or both are received, kept, packed, sorted, offered for sale, sold, delivered, loaded for transport or unloaded;

(e) provide any information which the Bureau considers necessary for carrying out its duties under these Rules.

Article 8

(1) A member wishing to terminate his membership shall so notify the Board by registered letter.

(2) A member terminating his membership shall lose all rights as a member.

Article 9

(1) Any infringement of the provisions referred to in Article 7 shall be the subject of disciplinary proceedings unless the Public Prosecutor decides to institute criminal proceedings.

(2) The disciplinary proceedings mentioned in paragraph (1) hereof shall be conducted before a disciplinary tribunal [Tuchtgerecht] composed of a presiding member and two other members assisted by a clerk.

(3) The Board shall appoint the members of the disciplinary tribunal and adopt rules of disciplinary procedure having regard to the general administrative measures referred to in Article 13 (3) of the Landbouwkwaliteitswet. The aforesaid rules and any amendments thereto shall be subject to the approval of the Minister and the Minister of Justice.

Article 10

(1) Where an infringement is found to have been committed the disciplinary tribunal may impose one or more of the following measures:

(a) a reprimand;

(b) a fine not exceeding HFL 10 000;

(c) the exercise of tighter control over the member at his expense for a period not exceeding two years;

(d) publication of the disciplinary decision at the member's expense.

(2) The Board shall put the proceeds from fines to a specific use which shall be approved by the Minister.

. . .".

It appears from the file on the case that the membership requirement contained in those rules of the Bureau is provided for in the relevant Netherlands legislation, namely the Landbouwkwaliteitswet, the Landbouwkwaliteitsbesluit Groenten en Fruit [Quality of Agricultural Produce (Fruit and Vegetables) Order] and the Landbouwkwaliteitsbeschikking Keuring Groenten en Fruit [Quality of Agricultural Produce (Inspection of Fruit and Vegetables) Order]. It also appears from the file that van Luipen is a member of the Bureau.

4. In those circumstances the College van Beroep voor het Bedrijfsleven decided to reserve its judgment on van Luipen's appeal and to refer the following question to the Court of Justice:

"Must Regulation (EEC) No 1035/72 and the provisions of the Treaty abolishing tariff and trade restrictions, in particular Articles 30 and 34 abolishing measures having an effect equivalent to quantitative restrictions on imports and exports, which must be regarded as forming an integral part of that regulation, be construed as meaning that national rules of the kind described in paragraphs 3 and 4 hereof stipulating that the acknowledgements of receipt and the certificates referred to in Regulation (EEC) No 2638/69 are to be issued by the Quality Control Bureau designated as the checking authority within the meaning of Regulation (EEC) No 1035/72 only to members of that association incorporated under private law, are incompatible with Regulation No 1035/72 and Articles 30 and 34 of the Treaty, bearing in mind that:

The national rules provide that the Quality Control Bureau is under a duty to accept as a member any person notifying it in writing of his wish to become subject to its supervision in accordance with its rules;

The national rules provide that the supervision to which members of the Quality Control Bureau are subject under its rules consists exclusively in checking that the provisions of Regulation (EEC) No 1035/72 and No 2638/69 are complied with and that the Community quality standards adopted pursuant to those regulations are observed?"

5. In pursuance of Article 20 of the Statute of the Court of Justice of the European Economic Community written observations were submitted by the appellant in the main action, F. van Luipen en Zn BV, represented by H. J. Bronkhorst, of the Bar of The Hague, by the Government of the Kingdom of the Netherlands, represented by F. Italianer, Secretary General at the Ministry for Foreign Affairs, acting as Agent, and by the Commission, represented by J.-F. Verstrynge, a member of its Legal Department, acting as Agent.

By order of 29 June 1982 the Court decided, pursuant to Article 95 (1) and (2) of its Rules of Procedure, to assign the case to the Second Chamber.

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.

II — Written observations

1. *Van Luipen* observes first of all that in order to be eligible for the certificates prescribed by the Community rules and thus to be able to export to other Member States as well as to non-member countries a Netherlands exporter must be a member of the Bureau.

Citing the judgment of the Court of 26 February 1980 in Case 94/79 *Vriend* [1980] ECR 327 van Luipen reminds the Court that it has held that any national rules "which makes the freedom of traders to market, resell, import and export or offer for export . . . conditional on their being affiliated to a public body or a body approved by an official authority" are not compatible with Community law.

The reason why Regulation No 1035/72 does not contain any express prohibition of measures having an effect equivalent to quantitative restrictions on intra-Community trade is that the regulation was adopted at the end of the transitional period when Article 30 *et seq* became directly applicable and the previous regulation governing this sector had already abolished them. Moreover it appears from the judgment of the Court of 10 December 1974 in Case 48/74 *Charmasson* [1974] ECR 1383 that the rules on the free movement of goods have been expressly held to apply unconditionally to agricultural products at the end of the transitional period.

In intra-Community trade the obligation to affiliate is therefore contrary to the EEC Treaty itself — in this case to Article 34. As for trade with non-member countries, Article 22 (2) of Regulation No 1035/72 expressly prohibits measures having equivalent effect.

Even though the Bureau is under the duty to accept as a member any person applying for membership it appears from the judgment of the Court of 15 December 1971 in Joined Cases 51 to 54/71 *International Fruit Company* [1971] ECR 1107 that any licensing system of a Member State which is a mere formality, inasmuch as any application is granted as a matter of course, is incompatible with Community law and, as far as non-member countries are concerned, permissible only if authorized by the Community.

Even if only a formality, compulsory membership should be treated in the same way and because Regulation No 1035/72 gives no power to Member States to apply measures of that kind in trade with non-member countries the obligation to affiliate is therefore contrary to Article 34 of the Treaty and Article 22 of that regulation.

Although the purpose of the national rules is simply to ensure that Community quality standards are complied with the crucial fact is that without authority from the Community rules the obligation to affiliate constitutes an obstacle to trade.

Consequently van Luipen concludes that the rules in question are not compatible with Community law.

2. The *Netherlands Government* explains that the reason for the obligation to affiliate resides in the fact that rules adopted by a body constituted under private law are binding only on its members; only they are subject to its supervision and disciplinary control. Since the designation of the institutions

competent to carry out public responsibilities is a matter left to the Member States, a fact which in the absence of rules of Community law is also confirmed by the case-law of the Court, the obligation to affiliate must be considered an essential part of a system whereby certain supervisory powers are delegated to bodies constituted under private law.

The Netherlands Government recognizes the similarities with the *Vriend* case cited previously but stresses nevertheless that important differences exist.

In the first place the Community rules governing fruit and vegetables are much more detailed than was the case in *Vriend,* both with regard to the rules relating to quality and with regard to those relating to inspection. The sole purpose of the Netherlands rules is to implement a comprehensive system of supervising trade introduced by the Community legislature so that the concept of freedom of commercial transactions, which the Court emphasized in the *Vriend* case, must be construed differently. Community law provides that in certain commercial transactions an acknowledgement of receipt or a certificate of inspection must be issued. For anyone wishing to dispatch a consignment of fruit or vegetables outside the forwarding area discharge of the obligation of membership is a mere formality which cannot be regarded as a measure which is disproportionate to or not justified by the objectives of general interest pursued by the Community (judgment of 13 December 1979 in Case 44/79 *Hauer* [1979] ECR 3727) and does not therefore constitute a clear obstacle to the freedom of commercial transactions.

Secondly the Netherlands Government draws the Court's attention to the fact that the system of compulsory membership of the Bureau is an eminently effective method of applying Community rules on quality control. It not only affords effective control of fruit and vegetables dispatched from the Netherlands but also enables compliance with the law to be enforced by means of disciplinary rules. According to the judgment of the Court of 16 December 1976 in Case 45/76 *Comet* [1976] ECR 2043, in the absence of any Community rules it is for the national legal order of each Member State to designate the competent court. Moreover the disciplinary rules of the Bureau do not affect the right to appeal to the court ordinarily having jurisdiction, which was not the case in *Vriend.*

The Netherlands Government therefore concludes that the question submitted to the Court should be answered in the negative.

3. The *Commission* stresses first of all that van Luipen is a member of the Bureau and the fine was imposed for an infringement of the quality standards. Whichever answer is given to the question submitted that penalty cannot be affected.

The Commission concurs however with the decisions of the Court in which it has been held that it is for the national court to assess, having regard to the facts of the case, the need to obtain a preliminary ruling to enable it to give its own judgment.

As to the substance of the case, the Commission considers that the case-law arising out of the *Vriend* case must be applied. In both cases the products concerned belong to a common organization of the market which is based on the freedom of commercial transactions and opposed to any national rules capable of impeding, directly or indirectly, actually or potentially, intra-Community trade and in applying Community rules Member States may not unilaterally adopt additional measures which are likely to compromise the equal treatment of traders.

The fact that the regulation in question does not re-enact the prohibition of quantitative restrictions or measures having equivalent effect does not detract from the validity of the foregoing argument because Articles 30 to 34 are an integral part of the common organization of the market (judgment of the Court of 29 November 1978 in Case 83/78 *Pigs Marketing Board* [1978] ECR 2347).

The Commission also considers it immaterial that the rules of the Bureau do not, as in the *Vriend* case, make provision for the suspension of a member and that exemptions may be granted under the Netherlands rules because once a measure having equivalent effect is prohibited it does not escape that prohibition even if the competent national authority has the power to grant exemptions (judgments of 24 January 1978 in Case 82/77 *Van Tiggele* [1978] ECR 25, of 16 December 1980, in Case 27/80 *Fietje* [1980] ECR 3839 and of 19 February 1981 in Case 130/80 *Kelderman* [1981] ECR 527).

As to the fact that the Bureau is under a duty to accept as a member any person applying for membership, that was also the case in *Vriend.*

The Commission also observes that the rules of the Bureau permit the membership only of those who, according to an entry in a commercial register kept in the Netherlands, are established, whether exclusively or not, in the Netherlands, which might also hinder the importation of the products in question.

As to the fact that the supervision exercised by the Bureau consists exclusively in checking that the provisions of Community law are complied with, the Commission does not discern any substantial difference from the *Vriend* case and stresses that the Bureau also has as its object to assist in raising the standard of quality of fruit and vegetables produced in the Netherlands and in particular to help to improve the quality of those products by carrying out inspections and supervising compliance with the relevant provisions in force. As a further object the rules provide that the Bureau is "to pursue activities in addition to those referred to [above] ... with a view to promoting trade in fruit and vegetables in accordance with guidelines laid down for members by the Board".

III — Oral procedure

At the hearing on 23 September 1982 oral argument was presented by the following: J. W. de Zwaan, acting as Agent, assisted by B. Verwaijen as expert, for the Netherlands Government and J.-F. Verstrynge, a member of the Commission's Legal Department, acting as Agent, for the Commission.

The Advocate General delivered her opinion at the sitting on 28 October 1982.

At the sitting on 23 September the Court (Second Chamber) was composed of O. Due, President, Lord Mackenzie Stuart and A. Chloros, Judges.

Article 27 (2) of the Rules of Procedure states that only Judges who were present at the oral proceedings may take part in the deliberations. Owing to the death of Judge Chloros the Second Chamber decided, by an order dated 22 November 1982, to re-open the oral proceedings before the Chamber as newly constituted and fixed a date, 13 January 1983, for a second hearing at which the parties were not present.

At the same sitting the Advocate General confirmed her opinion delivered at the sitting on 28 October 1982.

Decision

1 By judgment dated 29 December 1981 which was received at the Court on 14 January 1982 the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 30 and 34 of the EEC Treaty and of Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables (Official Journal, English Special Edition 1972 (II), p. 437) to enable it to decide whether the obligation upon Netherlands fruit and vegetable exporters to become members of an inspecting authority incorporated under private law is compatible with those provisions.

2 The question was raised in an appeal brought by a Netherlands company before the College van Beroep voor het Bedrijfsleven against a decision by which a disciplinary tribunal (Tuchtgerecht) fined that company, as a member of the Kwaliteitscontrolebureau voor Groenten en Fruit [Quality Control Bureau for Fruit and Vegetables, hereinafter referred to as "the Bureau"], HFL 4 000 for packing a consignment of tomatoes in packaging bearing the quality description "Grade I" when the tomatoes did not meet the Community quality requirements for that grade and for holding them for sale by way of trade or business.

3 The appellant contended before the national court that the national legislation under which the disciplinary tribunal had imposed the fine had no binding force because it was contrary to Article 34 of the EEC Treaty and to Regulation No 1035/72 of the Council inasmuch as it made it necessary for any exporter of fruit and vegetables established in the Netherlands to be a member of the Bureau.

4 In those circumstances the College van Beroep voor het Bedsrijfsleven referred the matter to the Court of Justice and asked it the following question:

"Must Regulation (EEC) No 1035/72 and the provisions of the Treaty abolishing tariff and trade restrictions, in particular Articles 30 and 34 abolishing measures having an effect equivalent to quantitative restrictions on imports and exports, which must be regarded as forming an integral part of that regulation, be construed as meaning that national rules of the kind described above stipulating that the acknowledgements of receipt and certificates referred to in Regulation (EEC) No 2638/69 are to be issued by the Quality Control Bureau designated as the checking authority within the meaning of Regulation (EEC) No 1035/72 only to members of that association incorporated under private law, are imcompatible with Regulation No 1035/72 and Articles 30 and 34 of the Treaty, bearing in mind that:

The national rules provide that the Quality Control Bureau is under a duty to accept as a member any person notifying it in writing of his wish to become subject to its supervision in accordance with its rules;

The national rules provide that the supervision to which members of the Quality Control Bureau are subject under its rules consists exclusively in checking that the provisions of Regulation (EEC) No 1035/72 and No 2638/69 are complied with and that the Community quality standards adopted pursuant to those regulations are observed?"

5 The common organization of the market in fruit and vegetables involves the adoption of common quality standards the application of which should have the effect, according to the fourth recital in the preamble to Regulation No 1035/72, of *inter alia* facilitating trade relations based on fair competition. According to Article 8 of the regulation, the task of ensuring that those standards are complied with is to be carried out by authorities appointed by each Member State.

6 Article 1 of Regulation (EEC) No 2638/69 of the Commission of 24 December 1969 laying down additional provisions on quality control of fruit and vegetables marketed within the Community (Official Journal, English Special Edition 1969 (II), p. 611) provides that all consignments for dispatch outside a forwarding area (for this purpose the whole territory of the Kingdom of the Netherlands constitutes a single forwarding area) must be notified by the consignor to the competent authority responsible for inspection which, depending on the case, must issue either a certificate of inspection or an acknowledgement of receipt to accompany the goods.

7 As the national court itself states in the question submitted, the national legislation by which the system of inspection is implemented in the Netherlands designates the Bureau as the sole checking authority for that purpose and in addition stipulates that the documents to be used as proof, such as the certificates of inspection and acknowledgements of receipt, are to be issued by the Bureau only to its members. Consequently any person wishing to export fruit and vegetables to other Member States must become a member of the Bureau.

8 In order to answer the question submitted it must be recalled, as the Court has stated on several occasions and as the national court also mentions in its question, that Articles 30 and 34 of the Treaty dealing with the abolition of quantitative restrictions on imports and exports and all measures having equivalent effect form an integral part of the common organizations of the markets in the agricultural sectors. As far as trade within the Community is concerned, the common organizations of the markets are therefore based on freedom of commercial transactions and are incompatible with any national legislation capable of hindering intra-Community trade.

9 In its judgment of 26 February 1980 in Case 94/79 *(Vriend* [1980] ECR 327) the Court has already held, in the case of the common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage, that it is contrary to the freedom of commercial transactions for national legislation to make the exportation of the products in question conditional on the exporter's being affiliated to a public body or a body approved by an official authority.

10 In the present case that finding applies with all the more force because the purpose of the quality standards which the Bureau has the task of controlling is, as stated above, to facilitate trade relations based on fair competition. It would be contrary to that aim to prohibit the exportation of products which meet those standards and have been subjected to the checks provided for by the Community rules for the simple reason that the exporter is not a member of the checking authority designated by the Member State from which the products are to be exported.

11 In the written observations which it submitted to the Court the Netherlands Government pointed out that, unlike the case in *Vriend* cited above, the common quality standards for fruit and vegetables constitute an exhaustive and complicated set of rules. To implement them effectively at the national level it is better to assign the task of checking that they are complied with to bodies already in existence, such as the Bureau and its disciplinary tribunal. As, under Netherlands law, the rules adopted by a body incorporated under private law as well as its disciplinary powers are binding only on its members, membership must be made compulsory. Since the Bureau is obliged to accept as a member any person notifying it in writing of his wish to become subject to its supervision and since, even under the Community rules, anyone wishing to dispatch fruit and vegetables outside the forwarding area must apply to the Bureau in any case, the obligation to affiliate is nothing more than a mere formality which is justified in relation to the objective pursued in the public interest.

12 However, that argument cannot be accepted. As the Netherlands Government has itself acknowledged, effective control can be established without an obligation of that kind and the Court has consistently held that considerations of an administrative nature cannot justify derogation by a Member State from the rules of Community law.

13 The answer to the question submitted should therefore be that Article 34 to the EEC Treaty and the rules on the common organization of the market in fruit and vegetables do not allow national legislation to stipulate that an association incorporated under private law, designated as the sole checking

authority within the meaning of Regulation No 1035/72, shall issue only to members of that association the acknowledgements of receipt and certificates of inspection referred to in Regulation No 2638/69.

14 It must be added that it is a matter for the national court alone, applying its national law, to decide whether that finding is of such a nature as to affect the validity of a decision by which a disciplinary tribunal of such an association imposed a fine on a member company for failing to observe the common quality standards.

Costs

15 The costs incurred by the Government 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 appellant in the main proceedings is concerned, in the nature of a step in the appeal pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question submitted to it by the College van Beroep voor het Bedrijfsleven by judgment of 29 December 1981, hereby rules:

Article 34 of the EEC Treaty and the rules on the common organization of the market in fruit and vegetables do not allow national legislation to stipulate that an association incorporated under private law, designated as the sole checking authority within the meaning of Regulation No 1035/72 of the Council of 18 May 1972, shall issue only to members of that association the acknowledgements of receipt and certificates of

inspection referred to in Regulation No 2638/69 of the Commission of 24 December 1969 laying down additional provisions on quality control of fruit and vegetables marketed within the Community.

Pescatore Due Bahlmann

Delivered in open court in Luxembourg on 3 February 1983.

For the Registrar

H. A. Rühl

Principal Administrator

P. Pescatore

President of the Second Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 28 OCTOBER 1982 [1]

Mr President,
Members of the Court,

The College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry], The Hague, has requested from the Court a preliminary ruling on the interpretation of Articles 30 to 34 of the EEC Treaty and the regulation of 18 May 1972 on the common organization of the market in fruit and vegetables.

The facts

The facts are as follows:

On 25 September 1980 the company F. van Luipen en Zn BV, which is established at The Hague, was fined HFL 4 000 by the Tuchtgerecht [Disciplinary Tribunal] of the Kwaliteitscontrolebureau voor Groenten en Fruit [Quality Control Bureau for Fruit and Vegetables, to which I shall refer as "the Bureau"] for packing and holding for sale a consignment of tomatoes labelled "Grade I" on the ground that the consignment, bound for the Federal Republic of Germany, did not meet the quality requirements for that grade of product.

Van Luipen duly appealed to the College van Beroep against that decision and whilst not contesting the facts or its membership of the Bureau, contended that the national rules, which it

1 — Translated from the French.