OPINION OF MR ADVOCATE GENERAL DARMON

delivered on 6 November 1990 *

Mr President,
Members of the Court,

1. In this action for failure to fulfil obligations, the Commission asks the Court to declare that the Kingdom of the Netherlands has failed to fulfil its obligations by admitting to free circulation, at the reduced levy of 6% *ad valorem* laid down by the Cooperation Agreement between the EEC and the Kingdom of Thailand (hereinafter referred to as 'the EEC-Thailand Agreement'),[1] a quantity of manioc exported from Thailand without an export certificate and by refusing to establish and enter as own resources the amount corresponding to the agricultural levy at the full rate.

2. The Court is thus required to consider once more, after its judgment in the *Krohn* case,[2] the detailed rules laid down by Commission Regulations (EEC) No 2029/82 of 22 July 1982[3] and (EEC) No 3383/82 of 16 December 1982[4] for the system of fixing quotas for exports of Thai manioc to the Community. The observations made by the Court at the time of the previous judgment cast light on what is at stake in the present proceedings.

'Article 1 of the Cooperation Agreement restricts imports of manioc into the Community at the preferential rate of 6% *ad valorem*, for the duration of the agreement (January 1982 to December 1986), to the quotas specified therein. Compliance with those quotas is ensured by a system of double checks which, according to Article 5 of the Cooperation Agreement, requires the Thai authorities to issue export certificates only within the limits of the quotas specified in the agreement, and the Community authorities to issue import licences conferring entitlement to the preferential rate only subject to presentation of an export certificate'.[5]

'However, before the adoption of the Cooperation Agreement and of Regulation No 2029/82 in July 1982, manioc was imported from Thailand without reference to export certificates solely under the import licences issued by the authorities of the Member States in accordance with Commission Regulation (EEC) No 3183/80 of 3 December 1980 laying down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products (Official Journal 1980 L 338, p. 1)'.[6]

* Original language: Dutch.

1 — Agreement on manioc production, marketing and trade, approved on behalf of the Community by the Council in Decision 82/495/EEC of 19 July 1982 (Offical Journal 1982 L 219, p. 52).

2 — Judgment of 15 January 1987 in Case 175/84 *Krohn & Co Import-Export (GmbH & Co. KG)* v *Commission* [1987] ECR 97.

3 — Regulation EEC No 2029/82 laying down detailed rules for implementing the import arrangements applicable to products falling within subheading 07.06 A of the Common Customs Tariff, originating in Thailand and exported from that country in 1982 (Official Journal 1982 L 218, p. 8).

4 — Regulation (EEC) No 3382/82 laying down detailed rules for implementing the import arrangements applicable to products falling within subheading 07.06 A of the Common Customs Tariff, originating in Thailand and exported from that country in 1983 (Official Journal 1982 L 356, p. 8).

5 — Case 175/84, cited above, paragraph 5.

6 — *Ibidem*, paragraph 6.

'Although the import licences issued in the first half of 1982, before the adoption of the Cooperation Agreement, were not included in central Community accounting records, compliance with the quota fixed by the Cooperation Agreement for the whole of 1982 was none the less to be assured with the assistance of the Thai authorities. As from 1 January 1982 the Thai authorities had proceeded to issue export certificates systematically for any quantity of manioc shipped from Thai ports to the Community and had included the corresponding quantities in their accounting records. They were to discontinue the issue of export certificates once the quota fixed for 1982 was used up'.[7]

'In that regard it must be borne in mind that, when the Cooperation Agreement entered into force, a number of import licences issued previously were still valid and consequently enabled their holders to import the corresponding goods after the adoption of the Cooperation Agreement without having to present the export certificates issued by the Thai authorities. Accordingly, certain traders might have been tempted to keep those export certificates and re-utilize those that were still valid for the purpose of requesting new import licences under the system established by Regulation No 2029/82. Hence there was a risk that a single export certificate might serve to import the quantity of manioc specified therein into the Community twice'.[8]

3. The Commission, in order to defeat these manoeuvres, adopted Regulation (EEC) No 499/83 of 2 March 1983,[9] which amended Regulations Nos 2029/82 and 3383/82 by providing that, with effect from 21 March 1983, every import certificate should indicate the name of the vessel transporting the manioc which appeared on the Thai export certificate, as well as the serial number and date of issue of that certificate. Furthermore, the import licence 'may not be accepted in support of the declaration of entry into free circulation unless it is clear, in particular from a copy of the bill of lading presented by the party concerned, that:

the products for which entry into free circulation is requested were transported to the Community in the vessel mentioned on the import licence;

the date on which the products were loaded onto the vessel in Thailand precedes the date of the Thai export certificate'.

I would point out, for the sake of completeness, that by its judgment in the *Krohn* case the Court recognized that the Commission, before the entry into force of Regulation No 499/83, was entitled,

'pursuant to Article 7 of Regulation No 2029/82, to ascertain in case of doubt that the manioc for which an import licence was sought was the same as that for which the export certificate produced had been issued'.

In that respect, the Court pointed out that

7 — *Ibidem*, paragraph 7.

8 — *Ibidem*, paragraph 16.

9 — Regulation (EEC) No 499/83 amending Regulations (EEC) No 2029/82 and (EEC) No 3383/82 laying down detailed rules for implementing the import arrangements applicable to products falling within subheading 07.06 A of the Common Customs Tariff, originating in Thailand and exported from that country in 1982 and 1983 (Official Journal 1983 L 56, p. 12).

'the export certificate annexed to the regulation contains a box for the name of the vessel carrying the manioc covered by the certificate, which enables the Commission to check that information'. [10]

4. Thus the Commission may order the competent national authorities to refuse to issue import licences, notwithstanding that export certificates have been submitted, when it suspects that the latter correspond to an importation which has already been carried out.

5. The present action for failure to fulfil obligations is based on the following facts. On 31 January the Commission informed the competent authorities of all the Member States, by telex, that, according to information supplied by the Thai authorities, the vessel *Equinox* had left Thailand towards the middle of January, heading for the Community with a cargo of manioc for which no export certificate had been issued. The telex stated that that cargo was not to be admitted into free circulation, even under the cover of import licences, since these could not have been issued against presentation of Thai export certificates. A second telex from the Commission, on 6 May 1983, sent this time only to the Dutch authorities, informed them that, according to information received, the vessel *Equinox* had unloaded, for the account of the company Krohn, 50 000 tonnes of manioc for which there were no export certificates. That telex was unanswered.

6. A formal letter from the Commission, sent on 6 June 1983, did, however, receive a reply from the Dutch authorities, which specified that 62 523 tonnes of manioc had been admitted into free circulation upon presentation of import licences issued in the Federal Republic of Germany by the Bundesanstalt für landwirtschaftliche Marktordnung (hereinafter referred to as 'BALM') before 21 March 1983. These import licences did not indicate the name of the vessel which had transported the manioc.

7. After carrying out certain inquiries, the Commission became aware that the import licences in question had been issued by BALM on presentation of export certificates indicating the names of vessels other than the *Equinox*. After asking the Dutch authorities, by letters of 2 August 1983 and 1 February 1984, to explain those facts, the Commission requested them, by letter of 9 February 1984, to proceed to recover the agricultural levies not collected on the manioc in question. Faced with the refusal to do so by the Dutch authorities, the Commission sent a formal letter on 25 July 1985 and a reasoned opinion on 29 January 1988.

8. The submissions put forward in support of the application [11] are based on the infringement, on the one hand, of Council Regulation (EEC) No 2744/75, [12] which establishes the agricultural levy at the full rate, of the EEC-Thailand Agreement and of Regulations (EEC) Nos 604/83, [13] 2029/82 and 3383/82, and, on the other hand, of Council Regulation (EEC,

10 — Case 175/84, above, paragraph 17.

11 — Pp. 8 and 13 of the application, in the French translation.

12 — Council Regulation (EEC) No 2744/75 of 29 October 1975 on the import and export system for products processed from cereals and from rice (Official Journal 1975 L 281, p. 65).

13 — Council Regulation (EEC) No 604/83 of 14 March 1983 on the import system applicable in 1983 to 1986 to products falling within subheading 07.06 A of the Common Customs Tariff and amending Regulation (EEC) No 950/68 on the Common Customs Tariff (Official Journal 1983 L 72, p. 3).

Euratom, ECSC) No 2891/77 [14] on the Communities' own resources.

9. Before beginning to examine those two submissions, it is appropriate, however, to examine the objection raised by the Dutch Government, which calls into question the tardiness of the application without making it clear whether it is thereby formally raising an objection of inadmissibility. In fact, more than five years separate the Commission's letter of 1 February 1984 and the commencement, on 16 August 1989, of this action. The Commission replies that it was awaiting the outcome of the proceedings which led to the Court's judgment in the *Krohn* case before pursuing the present infringement. According to the Netherlands Government, even supposing that the judgment in the *Krohn* could affect these proceedings, the reasoned opinion was not sent until more than one year after that judgment was delivered and, likewise, the action was brought more than one year after the reply was given to that opinion. [15]

10. It does not appear that the objection thus raised should be upheld. The Court has already dismissed such an argument. In a judgment in a case between the Commission and Belgium, in which that State, with reference to what the Court had decided with regard to Article 93, [16] argued that proceedings under Article 169 of the Treaty had to be brought within a reasonable period, the Court pointed out that Article 93 derogates expressly from Article 169, adding that

'the rules contained in Article 169 of the Treaty must be applied *and the Commission is not obliged to act within a specific period.* The Commission has explained that in the present case, exercising the discretion accorded to it by Article 169 of the Treaty, it decided that it should postpone examining the compatibility of the Belgian measures in question until the directive was in force in all the Member States. In so doing it did not exercise its discretion in a manner contrary to the Treaty'. [17]

11. If the Commission were obliged to take action within a specific period for failure by a Member State to fulfil its obligations, this would represent a serious restriction of the discretion which, according to the Court's case-law, the Commission has in regard to the question whether the Article 169 procedure should be initiated. The desirability of proceedings and the period for bringing them are here closely connected.

12. At the hearing, the Netherlands Government argued that the Court could take into consideration the long period of time which had elapsed and its effect on the financial consequences of any judgment for failure to fulfil obligations. In that regard, I must point out that the Court is not hearing an action to establish liability, in which case it could determine the amounts due, if any, by the Netherlands, but an action for failure to fulfil obligations. The Court is thus required only to specify the subject-matter of the infringement, but it cannot exercise the powers which it would have in an action in respect of which it had unlimited jurisdiction.

13. I now turn to the examination of the first submission. This is based on Article 5 of the Treaty and Article 7(1) of Regulations Nos 2029/82 and 3383/82. [18] The

14 — Council Regulation No 2891/77 of 19 December 1977 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (Official Journal 1977 L 336, p. 1).

15 — P. 8 of the defence, in the French translation.

16 — Judgment of 11 December 1973 in Case 120/73 *Lorenz* v *Germany* [1973] ECR 1471.

17 — Judgment of 10 April 1984 in Case 324/82 *Commission* v *Belgium* [1984] ECR 1861, paragraph 12 (emphasis added).

18 — See the application, paragraphs 6.2 and 6.3, p. 11 of the French translation.

latter provisions provide, in particular, that, 'in the event of non-observance of the conditions governing the issue of the (import) licence, the Commission may, where necessary, and following consultation with the Thai authorities, adopt appropriate measures'.

14. In that respect, the Commission submits that the 'appropriate measures' may include the sending of a telex to the competent authorities of the Member States requiring them not to allow the cargo of the vessel *Equinox* to be placed in free circulation despite the presentation of import licences. [19] Admittedly, it recognizes that before 21 March 1983, the date on which Regulation No 499/83 came into force, import licences did not include references to the corresponding export certificates. However, it was the responsibility of the national authorities, according to the Commission, to ascertain the identity of the manioc presented by asking the authority which had issued the import licences for a copy of the bill of lading or of the Thai export certificates.

15. According to the Netherlands Government, the provisions of Article 7(1) of Regulations Nos 2029/82 and 3383/82 relate to the issuing of import licences and not to the placing in free circulation. It was the Commission's responsibility to oppose the issue of import licences by BALM; having failed to do so, the Commission may not rely on a third control of the application of the EEC-Thailand Agreement which would have to be effected by the national authorities at the time when the goods came to be released into free circulation. [20]

19 — P. 12 of the application, in the French translation.

20 — P. 12 of the defence, in the French translation, p. 7 of the rejoinder.

16. How must Article 7(1) of both Regulations Nos 2029/82 and 3383/82 be interpreted? The Netherlands Government takes the view that the power thus conferred on the Commission must be exercised *before* the import licence is issued. To my mind, the very words of the provision in question rule out such a view. In fact, the second subparagraph of the two matching provisions begins with the phrase: 'In the event of non-observance of the conditions governing the issue of the licence . . .', which, to my mind, refers to a situation where the import licence has been issued and the Commission has been informed that the conditions governing its issue have not been observed.

17. Furthermore, the second subparagraph of Article 7(1) can only refer to situations where the import licences have *already* been issued, in so far as the Commission has the power, under the first subparagraph, to oppose, by telex, the issue of those licences if the conditions laid down by the Cooperation Agreement have not been fulfilled. It would thus be impossible to understand the purpose of the second subparagraph if one were to take the view expressed by the Netherlands Government.

18. Moreover, if the provision at issue allows the Commission, by way of 'appropriate measures', to forbid the competent authorities from allowing cargoes covered by import licences to be released into free circulation, that may only happen, according to the provision itself, in the event of non-observance of the conditions governing the issue of the licence.

19. What are those conditions? In my view, these are, in particular, the obligations laid down by Article 6(1) and 6(3) of both the aforesaid regulations, namely, that of

importing from the Kingdom of Thailand and that of not placing in free circulation a quantity which exceeds that indicated on the import licence.

20. However, is it not necessary to include among the conditions governing the issue of the licence, taking account of the very words of the first subparagraph of Article 7(1) of the aforesaid regulations, those which are laid down by the Cooperation Agreement, and in particular

'the rule laid down in Articles 1 and 5 of the Cooperation Agreement to the effect that manioc exports from Thailand to the Community may not exceed the agreed quantities'? [21]

In fact, in its judgment in the *Krohn* case, the Court acknowledged that the power conferred on the Commission by the *first subparagraph* of Article 7(1) to prevent the issue of import licences could be exercised in order to obtain additional information and to ascertain that the licences applied for were not of such a kind as to lead to the quota being exceeded. It is difficult to see how, *with the same objectives in view*, the Commission could not exercise the powers conferred by the *second subparagraph* of those same articles and take all appropriate measures after the import licences had been issued.

21. Those measures must include the recommendation to national authorities not to accept entry into free circulation at the reduced rate unless they ensure that the corresponding export certificates are submitted so that they can check whether the imported manioc is the same as that for which the certificates were issued. Since the power conferred on the Commission by the second subparagraph of Article 7(1) is exercised in situations where the import licences *have already been issued*, the Commission is obliged, by the nature of the matter, to carry out the check at the time when the goods are placed into free circulation. If it could not intervene at that stage, this would render the provision a dead letter and thus deprive it of all useful effect.

22. It is by no means a question, as the Dutch Government claims, of redressing the errors of the Commission or of BALM. In fact, while the first telex in question is dated 31 January 1983, it mentions that the Thai authorities have informed the Commission of the departure of the vessel *Equinox* towards mid-January with a cargo of manioc for which there were no export certificates. Consequently, it can only have been during the second half of the month that the Commission received that information. Some of the import licences issued by BALM bear the dates of 6, 11, 19 and 27 January. It is not certain, therefore, that the Commission was yet in a position to intervene with BALM to ask it not to issue the import licences. Furthermore, the Commission's telex of 6 May 1983, sent to the Dutch authorities, specifies that no application for an import licence concerning those quantities had been communicated to it in accordance with Article 9 of Regulations Nos 2029/82 and 3383/82. It is probable, therefore, that the import licences issued by BALM were for other cargoes of manioc, and it is difficult to see how the Commission could prevent their issue since it did not know that they would subsequently be utilized for a new cargo. Its only remaining course of action was to

21 — Case 175/84, cited above, paragraph 15.

make use of the powers conferred on it by the second subparagraph of Article 7(1).

23. Nor is it a question of establishing a third systematic control. The 'appropriate measures' can only be limited, ad hoc measures, directed at a specific cargo as in the case in point, as is apparent from the text of the provision which uses the singular when it refers to the 'issue of the licence'. In the majority of cases, those measures will be intended to prevent the consequences of irregularities detected on the occasion of the controls carried out either by the Thai authorities or by the national or Community authorities.

24. Article 5 of the Treaty sheds light on the provisions of the second indent of Article 7(1). The duty to cooperate which binds the national authorities ought to have led the Dutch authorities to contact BALM, if only by telephone, in order to ascertain the names of the vessels indicated on the export certificates. Such an approach would seem all the more normal because the Dutch authorities could not have failed to be aware, at that time, of the particular difficulties with which the Community was faced. In fact, Regulation No 499/83, which, in particular, requires the the name of the vessel to be indicated on the import licence, is dated 2 March 1983. The placing in free circulation can only have taken place after 18 March 1983, the date of the last import licence [22] submitted by the economic operator. Even though Regulation No 499/83 did not come into force until 21 March 1983, the competent Dutch authorities were most certainly aware of the reasons for its adoption as well as of its provisions.

25. Finally, for the sake of completeness, it does not appear to me that the issue of the import licence can give rise, in the circumstances at issue, to any legitimate expectation on the part of the economic operator concerned, given that, according to the Court's case law, the principle of legitimate expectations

'may not be relied upon by an undertaking which has committed a manifest infringement of the rules in force'. [23]

26. Consequently, the Commission could, to my mind, require the competent authorities of the Member States, on the basis of 'appropriate measures', to refuse to place the cargo of the vessel *Equinox* in free circulation upon the presentation of import licences, unless they ascertained the identity of the manioc in question by demanding the communication of the corresponding export certificates.

27. The Kingdom of the Netherlands has thus failed to fulfil its obligations to the Community by failing to check with BALM that export licences relating to the contested cargo actually existed, and by allowing, in spite of the Commission's telex, some 60 000 tonnes of manioc for which no export certificate had been issued to be placed in free circulation.

28. The Netherlands Government submits that it carried out an inquiry concerning the ports of call and the movements of the vessel *Equinox*. According to the results of that inquiry, the *Equinox* remained in dock in a Thai port waiting to receive export certificates.

22 — See, with regard thereto, the statement in defence, p. 6 of the French translation.

23 — Judgment of 12 December 1985 in Case 67/84 *Sideradria* [1985] ECR 3983, paragraph 21.

29. A check of this kind, however, does not appear to be adequate. It is apparent that, in fact, while the *Equinox* did receive export certificates for *part of its cargo*, the 60 000 tonnes of manioc in question did not benefit from the issue of such certificates since, it will be recalled, it was upon the presentation of export certificates indicating the names of other vessels that the import licences were issued by BALM for that quantity. The inquiry carried out by the Netherlands Government was thus not a correct implementation of the 'appropriate measures' taken by the Commission on the basis of the second paragraph of Article 7(1) of Regulations Nos 2029/82 and 3383/82. That, to my mind, is sufficient for the Court to declare that there has been an infringement in that respect. It is not necessary, therefore, to examine the alternative submission put forward by the Commission,[24] based on the Netherlands authorities' refusal to proceed to the post-clearance recovery of the levies not collected.

30. I now turn to the second submission. This refers to the failure on the part of the Netherlands Government to establish as own resources the amount corresponding to the difference between the levy at the full rate and that at the reduced rate and to make that amount available to the Commission by 29 June 1984 at the latest as the Commission had demanded by letter of 18 April of that year.

31. The written observations reveal an initial difference of opinion, perhaps more apparent than real, between the parties. The Netherlands Government, in fact, puts forward a first argument according to which it is not for the Commission to establish own resources, that power being exclusively exercised by the Member States. The Commission replies, rightly in my opinion, that whilst the responsibility for establishing own resources actually belongs only to the Member States, in accordance with Article 1 of Regulation No 2891/77, it follows from the provisions of that regulation that the Member States are under an obligation to establish as own resources the amounts of credits as soon as they become due. That the Commission has itself no power to establish own resources is indisputable; the essential difficulty lies in knowing whether a Member State is required to declare debts which it disputes.

32. To my mind, the only answer can be that it is. A Member State may not be allowed, for the sole reason that it disputes that it is owed a certain sum, to hinder the making available of own resources to the Community authorities. The Court has acknowledged, with regard to Council Regulation (EEC, Euratom, ECSC) No 2/71 of 2 January 1971,[25] that the existence of a system of monthly entries in the Community accounts as revenue to be collected as well as the payment of interest for any default in making an entry requires that from then onwards the Commission shall have a right to ask for additional measures of control and, where necessary, to be associated with them 'as from the time when the resources ought to have been established'.[26] The acknowledgement of the possession of such a power by the

24 — Paragraph 7 of the application, in the French translation.

25 — Regulation implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (Official Journal, English Special Edition 1971 (I), p. 3).

26 — Judgment of 10 January 1980 in Case 267/78 *Commission* v *Italy* [1980] ECR 31, paragraph 15.

Commission can only be understood if the Member State is required, in spite of its reluctance, to establish the Communities' own resources. If it should fail to do so, this is, as it were, 'at its own risk', in so far as it will have to pay the interest laid down by Article 11 of Regulation No 2891/77.

33. On this last point, too, the parties differ. According to the Dutch Government, Article 11 imposes default interest only where a Member State, after establishing own resources in accordance with Articles 1 and 2 of the same regulation, has failed to credit them to the account opened in the name of the Commission with its Treasury by the 20th day of the second month following the month during which the entitlement was established.[27] It does not apply, on the other hand, where a Member State has refused to establish own resources, which clearly gives rise to a failure to make an entry.

34. The Court's case-law has already rejected such a point of view. In its judgment in a case between the Commission and Germany, that Member State considered that

'Article 11 of Regulation No 2891/77 imposes an obligation to pay interest only where a Member State exceeds the period provided for by Article 10(1) of the regulation, within which, after the amounts payable have been determined, the Member State must credit those amounts to the Commission's account, and not in a case where there is a delay in the preliminary step of determining the amounts in question',[28]

to which the Court replied that

'the wording of Article 11 of Regulation No 2891/77 shows that interest is payable in respect of "any delay' in crediting the amounts to the Commission's account. It follows that, *regardless of the reason for the delay in making the entry in the Commission's account*, interest is payable without any distinction being called for according to whether the delay was caused by failure to determine the relevant amounts by the due date or by failure to comply with the time-limit laid down in Article 10(1) of Regulation No 2891/77'.[29]

35. Admittedly, in the case which gave rise to that judgment, a Commission regulation required the Member States to establish the entitlements due before a certain date. It does not seem to me that that fact should alter the reasoning which the Court followed there. In the present case, even though, strictly speaking, there is no time-limit for establishing the entitlements, it follows from Article 2 of Regulation No 2891/77 that the entitlement must be established 'as soon as the corresponding claim has been duly determined by the appropriate department or agency of the Member State'. Furthermore, the Court adopted the same point of view in a recent judgment in a case between the Commission and Italy.[30] Mr Advocate General Mancini had, moreover, pointed out in his Opinion in Case 303/84 that

'the determination . . . is not *the event which gives rise to the right* to the resources but only *the event which gives rise to the Member States' obligation to place those resources at the Commission's disposal.* If it were

27 — Article 10(1) of Regulation No 2891/77.

28 — Judgment of 20 March 1986 in Case 303/84 *Commission* v *Germany* [1986] ECR 1171, paragraph 16.

29 — Ibidem, paragraph 17, emphasis added.

30 — Judgment of 22 February 1989 in Case 54/87 *Commission* v *Italy* [1989] ECR 385, paragraph 12.

otherwise, and the creation of the right depended on the determination of the resources by the Member States, the States would in practice recover a power to impose taxes which they have surrendered.' [31]

36. The argument put forward by the Dutch Government seems, accordingly, devoid of relevance. The second submission must therefore be upheld as well.

37. There is, however, one further point. The entitlements in question should have been established in April 1983 and the corresponding amounts entered in the Commission's account by 20 June 1983 at the latest, in accordance with Article 10(1) of Regulation No 2891/77. However, the Commission is asking the Court to declare that there has been an infringement in so far as the Kingdom of the Netherlands refused to establish as own resources the amount in question, together with interest from 29 June 1984, the date on which it demanded that that amount be made available to it. The Court is thus being asked to declare the infringement only within the limits defined by the application.

38. Accordingly, I suggest that the Court declare that the Kingdom of the Netherlands has failed to fulfil its obligations under the Treaty:

— by placing in free circulation, in April 1983, at the reduced levy of 6% *ad valorem*, a cargo of approximately 60 000 tonnes of manioc exported from Thailand without an export certificate;

— by refusing to establish as the Communities' own resources the amount which it unduly omitted to levy on that cargo, namely HFL 19 765 281.39, and to make that amount, together with the interest provided for in Article 11 of Regulation No 2891/77 calculated as from 29 June 1984, available to the Commission.

I also propose that the defendant Member State be ordered to pay the costs.

31 — Opinion in Case 303/84, cited above, [1986] ECR 1176.