REPORT FOR THE HEARING
delivered in Case 255/86 *

1. Facts

The Belgian Royal Decree on the marketing of fruit and vegetables, which was adopted on 26 November 1982 and entered into force on 1 April 1983, contained provisions in addition to the relevant Community rules laid down by Regulation (EEC) No 1035/72 on the common organization of the market in fruit and vegetables and in particular the common quality standards defined in Council Regulation No 23/62 and Commission Regulations Nos 58/62, 183/64, 1641/71 and 778/83. The requirements additional to those laid down at the Community level were as follows:

(i) The requirement that traders should register with the Office National des Débouchés Agricoles et Horticoles [National Board for Agricultural and Horticultural Sales Outlets] (Article 4 of the Royal Decree);

(ii) The requirement that the registration number issued by that body should be included on the bulk packaging on first marketing (Articles 5 and 6 (1) of the Royal Decree);

(iii) Mention of the net minimum weight, the number of items or bundles on bulk packaging of products being imported (Article 7 E (1) of the Royal Decree) and of domestic products (Article 7 E (4) of the Royal Decree);

(iv) The requirement that specific kinds of bulk packaging should be used for products grown in Belgium (Article 7 A of the Royal Decree);

(v) The requirement that the country of origin should be marked on small packages (Articles 7 A (4) and 7 E (1) of the Royal Decree).

By letter dated 10 January 1984 the Commission requested the Belgian Government pursuant to Article 169 of the EEC Treaty to let it have its observations with regard to certain provisions of the Royal Decree of 26 November 1982 which might contravene the Community rules governing fruit and vegetables and in particular the provisions on quality standards contained in the aforementioned regulation and Article 30 of the EEC Treaty.

In a letter dated 20 March 1984 the Belgian Government put forward various observations and information in its defence.

On 26 July 1984 the Commission delivered a reasoned opinion, as provided for in the first paragraph of Article 169 of the EEC Treaty, in which it repeated its observations with regard to the Kingdom of Belgium's failure to fulfil its obligations under the rules governing fruit and vegetables and under Article 30 of the EEC Treaty and requested the Kingdom of Belgium to comply with the opinion within a period of two months.

* Language of the Case: French.

In a letter from the Permanent Representation of 10 October 1984 the Belgian Government sent the Commission additional observations in which it stated its intention of altering the rules in issue on certain matters in order to make them comply with Community law.

The Belgian Royal Decree of 12 January 1987 amending the Royal Decree of 26 November 1982 removed all the requirements at issue save those relating to the indication on bulk packaging of domestic products of the net minimum weight and the number of items or bundles (Article 7 (3) of the Royal Decree).

Consequently, the case now related only to that single complaint, as the Commission recognized in answer to a question from the Court.

2. Written procedure and conclusions of the parties

The application was registered at the Court Registry on 8 October 1986.

The written procedure followed the normal course.

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. It nevertheless requested the Commission to reply in writing before 11 May 1987 to two questions. The Commission did so within the period allowed.

The Commission claims that the Court should:

(i) Declare, pursuant to Article 169 of the EEC Treaty, that by adopting and maintaining in force national rules on the marketing of fruit and vegetables which contain provisions contrary to the rules concerning the common organization of the market in that sector laid down in Regulation (EEC) No 1035/72, and in particular to the common quality standards laid down in Regulations Nos 23/62, 58/62, 183/64, 1641/71 and 778/83, as well as to Article 30 of the EEC Treaty, the Kingdom of Belgium has failed to fulfil its obligations under the said provisions;

(ii) Order the Kingdom of Belgium to pay the costs.

The Kingdom of Belgium claims that the Court should:

Declare the Commission's application unfounded.

3. Submissions and arguments of the parties

The Belgian Government explained the reasons for the amendments made by the Royal Decree of 26 November 1982 and stated that it considered that the disputes now concern only a single complaint by the Commission, namely the requirement that the minimum net weight and the number of items or bundles should be marked on the bulk packaging of domestic products.

The Commission stated in answer to questions put by the Court that it was pursuing only that complaint and confined itself to stating that the measure at issue was contrary both to the rules of the common organization of the market in fruit and vegetables, in so far as it added requirements additional to those provided

for at a Community level, and to Article 30 of the EEC Treaty when it applied to imported products since it constituted an obstacle to trade and had no justification on the basis of Article 36 of the EEC Treaty or on the basis of mandatory requirements. Since they related to a matter which was governed by the common organization of the market in the relevant sector and was thus by its nature outside the competence of the Member States, the aforesaid national provisions were incompatible with Community law.

With regard to the allegedly incomplete nature of the Community rules in the fruit and vegetables sector, the Commission considers that the Belgian Government is confusing two completely different situations.

(i) The first situation is that in which there are no Community rules necessary for the proper functioning of a common organization of the market in so far as all or part of the matter is not regulated. In that case the Court has recognized that Member States may, on an interim and provisional basis, apply such measures provided that they are compatible with the principles of the common organization of the market.

(ii) The present case must be regarded as quite different since it is accepted that the common organization of the market in fruit and vegetables contains detailed rules on quality and marketing standards. In that respect the Commission points out that the requirement whose scope was made general by the national rules at issue — namely to state the net minimum weight, the number of items and the number of bundles — already exists for certain vegetables (onions, artichokes, ribbed celery and headed cabbage).

In the Commission's view, any other interpretation would mean that each Member State had the power to introduce, in addition to the Community rules in force, any national requirement which it considered fit subject only to the condition that it should not be manifestly contrary to an express Community provision or to the objectives of the common organization of the market in the relevant sector.

The Belgian Government does not deny that the Member States no longer have competence in a matter which is in fact completely governed by Community law. However, it is also necessary that all the Community rules should have been adopted so that the objective pursued by the common rules of the market should be completely achieved. The mere fact that a sector such as the marketing of fruit and vegetables is subject to a common organization of the market does not necessarily mean that all the detailed rules have been adopted; certain detailed measures may be missing. That situation allows the Member States to adopt supplementary rules so long as the Community has not completely fulfilled its tasks and obligations.

That residual power of the Member States was expressly recognized by the Court in its judgment of 7 February 1984 in Case 237/83 *Jongeneel Kaas BV* v *Netherlands* [1984] ECR 483 and its judgment of 28 March 1984 in Joined Cases 47 and 48/83 *Pluimveeslachterij Midden-Nederland BV and Another* [1984] ECR 1721.

The Belgian Government considers that the measure at issue fully meets the requirements of Community law and the objective pursued by the common organization of the market in fruit and vegetables since it has two aims: to ensure fair trading by creating equal conditions for competition and to protect the consumer by providing a degree of transparency in the presentation of a product so that the consumer is forewarned against any dishonest or potentially misleading practice such as stating 'poids bruit pour net' which is common in some Member States and which consists of selling the packaging at the price of the product which the packaging contains.

The Belgian Government also maintains that, as is apparent from the Royal Decree of 26 November 1982, bulk packaging may, contrary to what the Commission says, pass through the whole distribution network and thus reach the ultimate consumer.

The Belgian Government observes that the abovementioned Royal Decree applies to all fruit and vegetables and therefore fruit and vegetables which are not subject to Community quality standards fall within its scope. It states that the Court has held in various judgments that the existence of a common organization of the market does not automatically prevent Member States from adopting national measures likely to influence trade in products subject to that organization if the measures do not contravene a specific rule or objective of the relevant regulation.

The Belgian Government considers that it is not clear from the common quality standards why it is necessary to state the net minimum weight and the number of items or bundles on the bulk packaging of one product rather than another and that the extension of that obligation to all fruit and vegetables, which does not derogate from the Community system and serves an identical purpose in protecting the consumer and ensuring fair trading, cannot therefore be incompatible with Community law.

4. The Commission's answers to questions put by the Court

In a letter dated 8 April 1987 the Court requested the Commission to define the subject-matter of the dispute in view of the information supplied by the Belgian Government, to state whether it was maintaining all the complaints or only some of them and to inform the Court the reason for which the common quality standards for fruit and vegetables concerning marking require the minimum net weight and the number of items or bundles to be stated on the bulk packaging of certain products and not on the packaging of others.

On 11 May 1987 the Commission answered the first question put by the Court to the effect that it was maintaining one of the complaints raised in its application. With regard to the second question, the Commission stated that the Community quality standards contain provisions relating to the marking of packaging only in respect of onions, artichokes, ribbed celery and headed cabbage. It explained that this was because of the difficulties which several

delegations of the Member States encountered as regards the attempts envisaged by the Commission to extend the obligations on marking, in particular because of the extra packaging work which they would involve and, as regards the statement of weight, the risk of disputes on arrival as a result of natural loss of weight in the course of marketing, so that the Community has been able to impose such compulsory standardization only in respect of certain fruit and vegetables and in so doing has adopted the standards which were fixed by the Economic Commission for Europe created at Geneva at the beginning of the 1950s.

G. C. Rodríguez Iglesias
Judge-Rapporteur