JUDGMENT OF THE COURT
12 JULY 1977 [1]

# Commission of the European Communities v Kingdom of the Netherlands

'Phytosanitary inspections on exportation'

**Case 89/76**

*Free movement of goods — Customs duties on exportation — Charges having equivalent effect — Concept — Phytosanitary inspections — International Plant Protection Convention — Free importation into the country of destination — Multinational system of inspections — Absence of obstacles to trade — Fees — Actual cost of inspections — Admissibility — Procedure for financing inspections — Standardization — Powers of the Community institutions*

*(EEC Treaty, Articles 12, 16 and 36)*

(a) Phytosanitary inspections on exportation, provided for by an International Convention intended to encourage the free import of plants into the countries of destination by establishing a system of inspections in the exporting State, recognized and organized on a reciprocal basis, do not constitute unilateral measures hindering trade but help to overcome the obstacles which the inspections of imports envisaged by Article 36 of the Treaty may place in the way of the free movement of goods.

(b) The fees charged for such inspections are not charges having an effect equivalent to customs duties provided that their amount does not exceed the actual cost of the operations in respect of which they are charged.

(c) The institutions are free to adopt in the future any measures which may be necessary for the standardization of the procedure for the financing of such inspections.

In Case 89/76

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Robert Caspar Fischer, acting as Agent, with an address for service in Luxembourg at the office of Mario Cervino, Legal Adviser to the Commission, Bâtiment Jean Monnet, Kirchberg,

applicant,

v

KINGDOM OF THE NETHERLANDS, represented by W. Riphagen, Legal Adviser to the Ministry for Foreign Affairs, acting as Agent, assisted by Adriaan Bos,

1 — Language of the Case: Dutch.

assistant Legal Adviser, with an address for service in Luxembourg at the Netherlands Embassy,

defendant,

Application for a declaration that the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 12 and 16 of the EEC Treaty by charging fees for phytosanitary inspections of plants and certain products of plant origin when they are exported to the other Member States,

THE COURT

composed of: H. Kutscher, President, A. M. Donner and P. Pescatore, Presidents of Chambers, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

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

gives the following

## JUDGMENT

## Facts and issues

The facts, the course of the procedure, the conclusions and the submissions and arguments of the parties may be summarized as follows:

I — Facts

Article 3 (c) of the Netherlands Royal Decree of 24 September 1951 laying down new rules for the phytosanitary service (Nederlandse Staatscourant No 191) provides for the 'inspection of consignments of plants for export for the purpose of determining whether they contain any harmful organisms and for issuing, after it has been approved, a certificate that in the opinion of the official carrying out the inspection the consignment which has been examined fulfils the requirements of the State of destination'.

As provided for in Article 7 of this decree, in so far as the inspections are carried out on application by the persons or undertakings concerned, a fee is charged by way of compensation for the expenses incurred, in accordance with a tariff fixed by the Minister for Agriculture, Fisheries and Food.

The phytosanitary department's tariff was introduced by a decree of the Minister

for Agriculture and Fisheries of 23 June 1967, No J. 1287 (Staatscourant No 123) as last amended by a decree of 27 June 1975, No J. 1474 (Staatscourant No 122).

The first paragraph of Article 1 of this decree provides that:

The tariff for the phytosanitary service shall be fixed as follows:

1. — The undermentioned amounts shall be levied by way of reimbursement of the expenses incurred on inspection of consignments for export.

.....

By letter of 15 February 1971 the Commission of the European Communities informed the Government of the Kingdom of the Netherlands, without prejudice to the question of the compatibility of the phytosanitary inspection carried out on the export of plants and products of plant origin intended for other Member States with the provisions of the EEC Treaty relating to measures having an effect equivalent to quantitative restrictions, that the imposition of fees for this inspection is to be regarded as a charge having an effect equivalent to customs duties on exports. Relying on the case-law of the Court of Justice the Commission took the view that, since the fee was only charged on products intended for export and did not represent the consideration corresponding to a particular service which had in fact been provided, it contravened Articles 12 and 16 of the EEC Treaty as well as Article 13 of Regulation No 159/66 of the Council of 25 October 1966, laying down further provisions for the common organization of the market in fruit and vegetables (JO No 192 of 27. 10. 1966, p. 3286), Article 10 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 (OJ English Special Edition 1968 (I), p. 26) and Article 4 of Regulation (EEC) No 827/68 of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty (OJ English Special Edition 1968 (I), p. 209).

As provided for in the first paragraph of Article 169 of the EEC Treaty, the Netherlands Government was invited to submit its observations to the Commission on its failure to fulfil its obligations under the Treaty of which it was accused.

The Netherlands Government's reply to the Commission in a letter of 10 May 1971 from its permanent representative with the Communities was that by arranging on application by the exporter for an inspection to be carried out in accordance with its obligations under the International Plant Protection Convention concluded in Rome on 6 December 1951, the Netherlands public authorities provided exporters with a service enabling them to export to other Member States plants and products of plant origin which comply with the public health requirements prescribed by the importing country.

On 28 July 1975 the Commission, relying on the judgment of the Court of Justice of 11 October 1973 in Case 39/73, (*Rewe;* application for a preliminary ruling requested by the Oberverwaltungsgericht Nordrhein-Westfalen (Higher Administrative Court of North Rhine-Westphalia) [1973] II ECR 1039) asked the Netherlands Government to bring to an end the charging of fees for phytosanitary inspections on the export of plants and products of plant origin from the Netherlands to other Member States.

On 21 October 1975 the Netherlands Government informed the Commission that very serious doubts were being entertained in business circles in the

Netherlands as to the legality, under European law, of the obligatory charging of fees for the inspections which are at issue in this case and that, having regard to the large amounts which were involved, it was a matter of urgency to put an end to this legal uncertainty by referring the issue to the Court of Justice for its ruling. Consequently the Netherlands Government requested the Commission to initiate without any further delay the procedure laid down in Article 169 of the Treaty.

The Commission issued on 10 June 1976 a reasoned opinion in which, relying on the decided cases of the Court of Justice, it found that the Netherlands Government by charging fees on phytosanitary inspections, which it carries out in accordance with the provisions of Article 1 of the Decree of the Minister for Agriculture and Fisheries of 23 June 1967 when plants and products of plant origin are exported, has failed to fulfil its obligations under the Treaty, in particular under Articles 12 and 16; the Kingdom of the Netherlands was therefore called on to adopt the measures necessary to comply with this opinion within a period of two weeks.

The Government of the Kingdom of the Netherlands in its reply of 28 June 1976 stated that it adhered to its point of view and asked the Commission, for the purpose of putting an end quickly to the existing legal uncertainty, to bring the matter before the Court of Justice without delay.

The Commission, by an application lodged on 17 September 1976 pursuant to the second paragraph of Article 169 of the Treaty, brought before the Court of Justice the alleged failure by the Kingdom of the Netherlands to fulfil its obligations under the Treaty by charging fees for phytosanitary inspections of plants and certain products of plant origin exported to the other Member States of the Community.

## II — Written procedure

The written procedure followed its normal course.

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.

## III — Conclusions of the parties

The *Commission* claims that the Court should:

- Declare that the Kingdom of the Netherlands by charging fees for the phytosanitary inspection of plants and certain products of plant origin for export is failing to fulfil its obligations under the EEC Treaty, and in particular to comply with the prohibition of charges having an effect equivalent to customs duties on exports in Articles 12 and 16;
- Order the Kingdom of the Netherlands to bear the costs.

The *Government of the Kingdom of the Netherlands* contends that the Court should:

- Dismiss the application;
- Order the Commission to bear the costs and other expenses of these proceedings.

## IV — Submissions and arguments of the parties during the written procedure

The *Commission* stresses that the only problem raised in the present proceedings is whether the fee itself, and not the inspection upon the basis of which it is charged, is lawful. The fee should be regarded as a charge having an effect equivalent to a customs duty on exports which is prohibited under Articles 9, 12, 13 and 16 of the Treaty: it is charged on exported products only; it is not part of a general system of

domestic charges; it is not consideration for a service provided for the exporter.

(a) The case-law of the Court shows that 'any pecuniary charge ... imposed on domestic or foreign goods by reason of the fact that they cross a frontier' is a charge having an effect equivalent to a customs duty; in this connexion its designation, the way in which it is collected, the amount and the objective are irrelevant. The determining factor in this case is that the fee, which is in dispute, is only charged on products which are exported or intended for export and not on products for the domestic market; the fee does not necessarily have to be levied at the time when, and the place where, the frontier is in fact crossed in order to constitute a charge having an effect equivalent to a customs duty.

(b) Pecuniary charges imposed on certain goods crossing the frontier are not caught by the prohibition of charges having an effect equivalent to customs duties unless they fall under 'a general system of domestic dues systematically covering domestic products and imported products according to the same criteria and at the same stage of production' or if they can be regarded as consideration for a service provided for the exporter.

The first condition has plainly not been satisfied in this case.

(c) The argument of the Netherlands Government that the fee which the exporter is charged only represents the consideration corresponding to a specific benefit which has in fact been provided for a specific individual cannot be maintained.

The Court of Justice certainly does not rule out the possibility that in certain circumstances a particular service which has in fact been provided may give rise to some consideration corresponding to the said service; it did, however, emphasize that this can only occur in specific cases and, moreover, stated that the activities of the State administration aimed at maintaining a phytosanitary system imposed in the general interest cannot be regarded as such a service justifying the imposition of a pecuniary charge. Phytosanitary inspections of exports cannot therefore in any circumstances justify the levying of taxes to cover the cost of such inspections.

That phytosanitary inspections of exports in the Netherlands constitute a system adopted in the public interest is established first and foremost by the fact that, as things stand at the moment within the Community in the sphere of phytosanitary regulations, those Member States which are anxious to maintain the level of their exports find that in practice such inspections cannot be dispensed with: importing Member States normally require production of phytosanitary certificates issued by the public authorities of the exporting Member State.

Furthermore, all the Member States and a large number of non-member countries are parties to the International Plant Protection Convention of 6 December 1951. Now this Convention makes it clear that phytosanitary certificates on exports are an indispensable instrument of commerce which is recognized internationally and that such certificates are issued in the public interest and do not represent a service which is individual in character and in respect of which a tax to cover its cost may be levied.

The system in the Netherlands of phytosanitary inspections of exports is not designed to confer upon any particular exporter a specific benefit by means of a service provided voluntarily upon application and in consideration of a payment. The fact that individual undertakings in the sector concerned may derive benefit from State intervention in the public interest is not

sufficient to justify the levying of taxes on exports in consideration of the 'benefits' which they offer. In fact, even a measure intended not merely to maintain the level of exports but to encourage them, such as a quality inspection of exports, which is without any doubt likely to offer advantages to exporters, is regarded by the Court of Justice as a measure taken in the general interest of all exporters, so that a fee charged for such an inspection cannot be regarded as the consideration for a specific benefit which has in fact been provided for a particular individual.

(d) Under Netherlands law and in fulfilment also of the obligations laid down by the 1951 Convention the Netherlands in fact operates a system of compulsory phytosanitary inspection of exports. But even if it were apparent that it is, at any rate in theory, lawful to export without any inspection, the disputed fees would still be charges having an effect equivalent to customs duties on exports, which are prohibited, at least to the extent to which they are levied on exports to Member States which require such export certificates in respect of the products in question and in the absence of such certificates do not accept commercially any other equivalent mode of importation.

(e) The answers to the questions whether Netherlands law provides for a compulsory phytosanitary inspection on exports or whether such an inspection is only carried out on the application of the exporter has no relevance.

Although in the last resort the compulsory phytosanitary inspection of exports is not carried out pursuant to Netherlands legislative provisions but in order to comply with the requirements of the importing Member States, the levying of the fee which is at issue in these proceedings nevertheless contravenes the Treaty. It does not matter whether the requirements of the importing Member States are solely in the national interests of those States or possibly further a joint interest of those States and the exporting Member State; it does not matter either whether the requirements of the importing Member States are compatible with the Treaty or not.

(f) The fact that the fees at issue in this action are only charged for inspections carried out on the application of the persons and undertakings concerned does not mean that the inspection is voluntary. It is true that neither the inspection nor the phytosanitary certificate issued afterwards are in law conditions precedent to the exportation; the fees at issue are not therefore based on any inspection on exportation prescribed by Netherlands law. However, to describe the inspection as 'voluntary' is simply a legalistic way of interpreting the situation; in fact it would be economically, indeed at times legally, impossible to import the product concerned into the country of destination, which would make exporting in fact also impossible. The determinative factor is therefore the guarantees required in the country of destination.

(g) There is neither under the Treaty nor derived Community law a general legal principle to the effect that costs incurred by public authorities for the sale of certain products are borne by those products themselves and are a factor in the determination of the cost price. On the contrary the prohibition of charges having an effect equivalent to customs duties (on imports or exports) is one of the fundamental principles of the Common Market; Community law moreover expressly rejects the principle invoked in relation to phytosanitary inspections in intra-Community trade.

The *Government of the Kingdom of the Netherlands* takes the view that the present case raises a question of principle, namely whether Community law provisions imposing the prohibition in question run contrary to the levying of

a charge designed to make good the cost of inspections which are optional, and offer the exporter a guarantee that the exported product will be accepted in the country of destination in accordance with the rules for public health protection in force in that country.

(a) In the light of the case-law of the Court of Justice relating to charges having an effect equivalent to customs duties, two features of the said fees must be stressed: they are bound up with the inspections carried out, not on import but on export; these inspections are connected with obstacles to trade originating in the country of destination and justified by the phytosanitary requirements of that country.

(b) The Commission takes the view, which is the reverse of its previous attitude, that the difference between imports and exports is irrelevant and that a phytosanitary inspection on exports is so much a matter of public interest that it cannot be accepted that a service is provided for any individual. In doing so it overlooks the fact that, owing to the nature of the provisions making a phytosanitary inspection necessary, the exporting country is not responsible for them and exerts no influence on them; they constitute a basic exogenous fact. Phytosanitary inspection in exporting countries is only applied because of the obstacles to imports which the country of destination decided to raise and with a view to restricting the unfavourable effects thereof as much as possible. The purpose of the inspection of the goods for export is their admission into the country of destination in accordance with the conditions in force in that country.

(c) The purpose of phytosanitary inspections of exports is not solely the interest of the public in the protection of health: they are designed to create conditions for much freer international trade by means of protection against disease organized on an international level.

Phytosanitary inspections on exports cannot either be regarded as a measure aimed at promoting exports: they are a reaction against another Member State's conditions for importing and are not designed to increase sales outlets.

The fact that phytosanitary regulations concerning exports can be made either under international conventions or by Community provisions is irrelevant: these conventions or directives also aim at reducing the serious effects of certain obstacles to trade or eliminating them by the harmonization of national regulations; they are not applied solely in the public interest. In particular, upon a proper construction, Article V of the International Plant Protection Convention of 1951 simply states that provision is to be made for the possible issue of certificates, to the extent to which the importing States, which are parties to the Convention, require them; it does not in any way adversely affect the individual benefit which exporters concerned derive as individuals from the operation of the particular system in question.

(d) The fact that the system of phytosanitary inspections on exports is also designed to serve the public interest by no means prevents undertakings in their individual capacity from taking advantage of the specific benefits resulting from their application. The fact that the system of inspections is absolutely necessary in many cases applies in particular to those persons who are most directly concerned, namely exporters.

Article 16 of the EEC Treaty shows to what extent the interest of the public and of the individual can coincide: it was adopted first and foremost for the general benefit of free intra-Community trade but it constitutes at the same time a provision in the application of which exporters have a direct, real and individual interest.

Phytosanitary inspection of exports offers the exporter who arranges for such an inspection of his products a double advantage, both tangible and real: he can, on importing the goods, comply with the formal requirements to produce a certificate of inspection and he is reasonably confident beforehand that when his products are inspected on being imported no defects will be found.

(e) It must be stressed that the fees at issue are only charged for inspections of consignments for export in so far as such inspections are carried out at the request of the persons and undertakings concerned; neither the phytosanitary inspection nor the phytosanitary certificate issued subsequently is a legal condition precedent to exportation.

There is nothing in Community law to support the view that the fee charged for a voluntary inspection must be regarded as a charge having an effect equivalent to customs duties and is therefore prohibited. The first and essential condition precedent to the application of this prohibition is that a charge is in fact levied on the crossing of the frontier; now, in this case, it is the application for an inspection, and not the crossing of the frontier, which gives rise to the charging of the fee.

The fee for inspection does not have to be paid either formally or in practice on all exports: certain consignments for export do not have to be inspected under provisions existing in the country of destination; on the other hand the fee is payable in the case of a consignment which was inspected on application, but which owing to unforeseen circumstances was not exported.

Account must be taken of the overriding principle of political economy that expenses incurred by public authorities in relation to certain products must be borne by the latter and are therefore an element in their cost price. In this connexion it is appropriate to point out that inspections of exports are justified by the phytosanitary conditions to which imports into other countries are made subject and that, having regard to the tangible gain which they offer exporters, they cannot be treated in the same way as pecuniary charges on the legality of which the Court of Justice has already ruled.

V — Oral procedure

The parties presented oral argument at the hearing on 12 May 1977. In particular they gave their views then on the question whether the inspections at issue are compulsory or optional, on the interpretation of the judgment of the Court of Justice of 25 January 1977 in Case 46/76 *(Bauhuis)* and on the scope of Council Directive No 77/93 of 21 December 1976, on protective measures against the introduction into Member States of harmful organisms of plants or plant products (OJ L 26, 1977, p. 20).

The Advocate General delivered his opinion at the hearing on 8 June 1977.

## Decision

1 The Commission lodged an application on 17 September 1976 under Article 169 of the EEC Treaty for a declaration that the Kingdom of the Netherlands by charging fees for the phytosanitary inspection of plants and certain products of plant origin has failed to fulfil its obligations under the Treaty

and, in particular, to comply with the prohibition of charges having an effect equivalent to customs duties on exports in Articles 9, 12 and 16 of the Treaty.

2 The Kingdom of the Netherlands charges a fee for phytosanitary inspections on the export to the other Member States and to third countries of plants and certain products of plant origin on the basis of Articles 3 (c) and 7 of the Royal Decree of 24 September 1951 laying down new rules for the phytosanitary service (Nederlandse Staatscourant No 191).

3 The Commission takes the view that the levying of these fees charged only on products intended for export from the Member State in question when they cross the frontier and not on domestic products marketed in that State would amount to levying a charge having an effect equivalent to a customs duty on exports which is prohibited under the provisions of Articles 9, 12 and 16 of the Treaty as interpreted by the case-law of the Court and in particular in its judgment of 14 December 1972 in Case 29/72, *S.p.A. Marimex* v *Italian Finance Administration* [1972] II ECR 1309 and in its judgment of 11 October 1973 in Case 39/73, *Rewe-Zentralfinanz eGmbH* v *Direktor der Landwirtschaftskammer Westfalen-Lippe* [1973] II ECR 1039.

4 The Netherlands Government submits in its defence that the fees are intended to cover the costs of the inspections carried out at the time of issue of the phytosanitary certificates provided for by the International Plant Protection Convention, concluded in Rome on 6 December 1951 (United Nations, Treaty Series, 1952, Vol. 150, No 1963).

5 The issue of these certificates far from being an obstacle to trade, makes intra-Community trade easier by providing the exporter with a guarantee that there will be no obstacle to his imports into the country of destination.

6 Since the inspections are not carried out and the corresponding certificates are not issued unless the exporter makes the necessary application, there is no legal obligation to pay the charges in question so that in this case the rule laid down by the Court that the levying of pecuniary charges must be unilateral and obligatory would not be complied with.

7 In this connexion the Commission however submits that, since in international trade it is absolutely necessary for exporters to have

phytosanitary certificates, the requirements of the importing country in fact compel them to protect their exports by a certificate issued in the exporting country, so that they could not avoid paying the fee charged by the Netherlands State.

8 The certificates with the issue of which the fee in this case is connected comply with the International Plant Protection Convention of 6 December 1951 to which all Member States are parties.

9 The purpose of this Convention as stated in Article I thereof is to secure common and effective action to prevent the introduction and spread of pests and diseases of plants and plant products and to adopt appropriate legislative, technical and administrative measures for this purpose, *inter alia,* by setting up in each State an official plant protection organization.

10 As provided for in Article V of this Convention each contracting government shall make arrangements for the issue of phytosanitary certificates to accord with the plant protection regulations of other contracting governments and in conformity with the provisions of the Convention.

11 The purpose of these certificates in international trade is to encourage the free import of plants into the country of destination by carrying out inspections in the country of origin of the products in question.

12 This Convention therefore performs within its sphere of application a function similar to that of the public health and phytosanitary measures adopted within the Community such as Council Directive No 64/432/EEC of 26 June 1964 (OJ English Special Edition, 1963-1964, p. 164) – which was the subject-matter of the judgment of the Court in Case 46/76, *W. J. G. Bauhuis* v *The Netherlands State* [1977] ECR 5 – and Council Directive No 77/93 of 21 December 1976 on protective measures against the introduction into Member States of harmful organisms of plants or plant products (OJ L 26, 1977, p. 20) issued after the Commission lodged its application at the Court.

13 Thus the simultaneous application of the Convention of 6 December 1951 by all the Member States allowed phytosanitary inspections by the importing

country to be switched to the exporting country and in this way encouraged the replacement of protective measures at the frontier by a system of inspections which is recognized on a reciprocal basis by the States and is founded on the issue of phytosanitary certificates, so as to reduce duplication of inspections at the frontier.

14 It is therefore apparent that in this case the issue is not one of measures adopted unilaterally by the Kingdom of the Netherlands solely in its national interest but of inspection organized on a similar basis in all the Member States as parties to the Convention of 6 December 1951.

15 Consequently these inspections do not seem to be unilateral measures hindering trade but rather operations designed to encourage the free movement of goods for the purpose of overcoming the obstacles which the inspections of imports envisaged by Article 36 of the Treaty may place in the way of this free movement.

16 In these circumstances the fees charged for such inspections cannot be regarded as charges having an effect equivalent to customs duties, provided that their amount does not exceed the actual cost of the operations in respect of which they are charged.

17 However as it is only the question of principle whether the fees at issue are compatible with Community law and not the question of their amount which has been referred to the Court for a ruling the condition set out in the previous paragraph need not be considered in this case.

18 Although it thus appears that under the rules relating to the free movement of goods within the Community no objection can in principle be raised against charging the fees at issue, the practices adopted in this connexion by the various Member States show that there can be different ways of dealing with the financing of phytosanitary inspections; either the whole or part of the cost thereof is defrayed out of public funds or it is passed on to the trade by charging fees corresponding to the cost of the inspections carried out.

19 It is therefore necessary to stress that the present judgment cannot restrict the freedom of the Community institutions to adopt in future any measures

which may be necessary for the standardization of the procedure for the financing of the inspections in question and that from the point of view of any such standardization this judgment cannot confer on the Kingdom of the Netherlands the right to maintain its present system.

20 It follows from the foregoing that, subject to this reservation, the application lodged by the Commission against the Kingdom of the Netherlands must be dismissed.

## Costs

21 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

22 However, under paragraph (3) of this Article the Court may, where the circumstances are exceptional, order that the parties bear their own costs in whole or in part.

23 It is apparent from the pleadings and the surrounding circumstances of this case that in the absence of any specific provisions of the Treaty or secondary legislation the question whether the fees at issue are compatible with Community law gave rise to justifiable doubts.

24 In these circumstances it appears to be reasonable that each party bears its own costs.

On those grounds

THE COURT

hereby:

**1. Dismisses the application;**

**2. Orders each party to bear its own costs.**

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 12 July 1977.

A. Van Houtte
Registrar

H. Kutscher
President

## OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 8 JUNE 1977 [1]

*Mr President,*
*Members of the Court,*

The origin of the present application brought by the Commission against the Government of the Netherlands for failure to fulfil obligations under the Treaty is the 'serious doubt' expressed in Netherlands trade circles as to the obligatory nature, within the meaning of Community law, of the fees charged on the phytosanitary inspection of plants and certain plant products, intended in particular for planting or propagation, which have been exported from the Netherlands to other Member States and, in addition, to third countries.

In a large number of cases a claim has been made for repayment of the amounts collected in this way during the last few years; sometimes there have even been refusals to make any further payment.

Having regard to the large sums involved and in order to bring to an end the present legal uncertainty, the Netherlands Government requested the Commission, as a matter of urgency, to press on without delay with a procedure which it initiated on 15 February 1971 against that government under Article 169. If it was to turn out that charging these fees is in fact incompatible with Articles 12 and 16 of the Treaty then they have been wrongly paid from 1 January 1962 or, at the latest, from the entry into force of the regulations on the common organization of the markets in such of those products as are covered by these regulations.

The fees at issue are levied on the occasion of inspections carried out pursuant to the International Plant Protection Convention concluded in Rome under the aegis of the United Nations on 6 December 1951.

The preamble to this Convention refers to 'the usefulness of international cooperation in controlling pests and

1 — Translated from the French.