binding on their members. Member States may make such rules binding on non-members but no longer have power to adopt the rules on the treatment and processing of fishery products by the fishermen established in their territory. Therefore, the regulation, in particular the second subparagraph of Article 5 (1) thereof, precludes rules adopted by a body belonging to a trade organization of a Member State and entrusted with duties governed by public law which provide that the herring caught must be either gutted and salted or deep-frozen on board the vessel.

OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 2 July 1985 *

Mr President,
Members of the Court,

1. In proceedings between Rederij L. de Boer en Zonen BV, a private limited liability company (hereinafter referred to as 'de Boer'), whose registered office is at Urk (Netherlands), and the Produktschap voor Vis en Visprodukten (hereinafter referred to as 'the Produktschap'), whose headquarters are at The Hague, the College van Beroep voor het Bedrijfsleven, The Hague, has asked the Court to interpret the rules on the common organization of the market in fishery products (Council Regulation (EEC) No 3796/81 of 29 December 1981, Official Journal 1981, L 379, p. 1) and the rules establishing a Community system for the conservation and management of fishery resources (Council Regulation (EEC) No 170/83 of 25 January 1983, Official Journal 1983, L 24, p. 1). The Court is basically asked to determine whether a national system of the kind provided for in the Netherlands for herring fishing is compatible with Community law.

Herring are caught either young or adult. Fishing for young herring ('maatjes') can take place only in the northern and central part of the North Sea and only during June and July. Since they are fatter and thus more tender than the adult herring, which are caught in the same areas but generally later in the year, 'maatjes' are considered to be of higher quality. They are offered for consumption raw, gutted and slightly salted. The other herrings are prepared in various ways; served raw and heavily seasoned they are called 'gesteurde haring'.

2. Let me summarize the facts of the main action. In June 1983 de Boer made a large catch of young and mature herrings off the coast of Scotland. The relevant Netherlands rules prohibited the landing of the latter: they were nevertheless made into 'gesteurde

* Translated from the Italian.

haring' and landed. The Produktschap learnt of it and withdrew the fishing licence granted to de Boer for 1983. De Boer brought the matter before the College van Beroep voor het Bedrijfsleven on 7 July 1983 and claimed that the rules on which the Produktschap relied were contrary to Community law; it also sought an interim suspension of the operation of the decision. That application was dismissed by the President of the College on 11 July 1983, but by judgment of 7 August 1984, the College stayed the proceedings and referred the following question to the Court for a preliminary ruling under Article 177 of the EEC Treaty:

'Does Community law as it stands at present prohibit national rules such as those laid down in the Netherlands Order (Besluit Regeling Maatjesharingvisserij Noordzee 1983) administering a limited quota like the quota involved in this case, when those rules have the effect of preventing herring caught in the sectors of the North Sea to which the quota relates from being marketed in a certain processed form, namely in the form of ungutted and heavily salted herring, even if such herring itself satisfies the national and Community provisions in force?'

3. For a proper understanding of the case it is necessary to consider the principles underlying the Netherlands provisions which in de Boer's opinion are incompatible with Community law and thus inapplicable to de Boer.

Before embarking on that study it is nevertheless necessary to mention that Article 1 of Council Regulation (EEC) No 1353/83 of 26 May 1983 (Official Journal 1983, L 139, p. 54) put an end to a long-standing prohibition and authorized fishing for herring in the northern and central North Sea (ICES Divisions IV (a) and (b)) from 1 June 1983 except in the case of Netherlands fishermen who, out of regard for an ancient custom, were authorized to begin fishing on 28 May 1983 ('Vlaggetjesdag'). Under Article 3 the catches were to count against the quota to be allocated to each Member State by the regulation which fixed the total allowable catch (TAC) in the fishing area. Applying a principle dating back to 1970, Article 5 (2) of Regulation No 170/83 allows the Member States to determine, in accordance with Community provisions, the detailed rules for the utilization of the quotas allocated to them.

The Netherlands exercised that power by adopting a quite complicated system. It is based on the Verordening Vangsstregeling Haring 1982 [Regulation governing fishing for herring: Vb. Bo. 1982, afl. 4, nr. VVp 3]. That regulation provides that the limitations on catches which count against the national quota (3 000 tonnes for 1983) are to be determined by the Ministry for Agriculture and Fishing and that the President of the Produktschap is to determine the detailed rules for the implementation of the relevant decisions. In the exercise of the powers conferred upon him the latter adopted the Besluit Regeling Maatjesharingvisserij Noordzee [Order governing fishing for young herring in the North Sea: Vb. Bo. 1983, 22-25, nr. VV, p. 17].

That order, which entered into force on 28 May 1983, provided in Article 2 that only vessels whose owners or operators were in possession of a licence were allowed to fish. The licence was subject to various conditions including the obligation to gut

and salt the fish on board (which, it will be recalled, is the treatment for 'maatjes') and could be revoked by the President if the basic rules or implementing rules were not observed (Articles 5 and 6). It also followed from the combined provisions of Articles 7 and 10 that no herring (a) caught during the period from 28 May to 17 July 1983 and (b) not gutted and salted could be landed and marketed.

The underlying purpose of those rules is clear: they seek to prevent the national quota from being used for catching mature herring, which bring in a lesser return, and to keep it for 'maatjes' which are more profitable and which, before the abovementioned Community prohibition, were landed in great quantities during June and July for sale to local consumers.

4. That is the Netherlands system. The main Community provisions are those on the conservation and management of fishery resources (Regulation No 170/83) and those on the common organization of the market in fishery products (Regulation No 3796/81). Regulation No 170/83 provides, in order to conserve the biological resources of the sea, for a restriction on fishing and, in particular, catches (Article 2 (2) (d)). When the legislature decides to protect one species or certain groups of species, it lays down each year the total allowable catch. On the basis thereof, the quota available to the Community is calculated and that in turn is divided between the Member States so as to ensure 'relative stability' of fishing activities for each of the protected stock. As I have already said, Article 5 (2) empowers the Member States to determine 'in accordance with the applicable Community provisions, the detailed rules for the utilization of the quotas allocated to them'.

The organization of the market provided for by Regulation No 3796/81 comprises on the one hand a price and trading system and on the other common marketing standards. For that purpose important tasks are entrusted to producers' organizations especially in relation to the application of intervention measures, the promotion and implementation of catch plans, the concentration of supply of various products and the adjustment of the volume to market requirements. The producers' organizations are largely governed by Council Regulation (EEC) No 105/76 of 19 January 1976 (Official Journal 1976, L 20, p. 39 and Commission Regulation (EEC) No 2062/80 of 31 July 1980 (Official Journal 1980, L 200, p. 82). The provision that most concerns us is Article 7 of Regulation No 3796/81. It states that where a producers' organization 'is considered to be representative of production and marketing on a part of the coast or in one or more landing places on such part of the coast, the Member State concerned may oblige producers who are not members of that organization' to comply with the rules adopted by that organization.

5. I come now to the College's question. As has been seen, it seeks to determine whether rules such as those applying in the Netherlands, which on the one hand confine the national quota to fishermen equipped to treat 'maatjes' and on the other prohibits on pain of revocation of the licence the landing of other kinds of herrings, is compatible with the abovementioned Community provisions. Of those provisions, Article 5 (2) of Regulation No 170/83 is undoubtedly of prime importance. Is it therefore possible to say

that the Netherlands measures constitute 'detailed rules for the utilization of the quotas'? And if so, can they be regarded as being in accordance with the 'applicable Community provisions'?

The Netherlands Government, like the French Government which intervened in the oral procedure, clearly considers that the answer to both questions is 'Yes'. According to the Netherlands Government, in particular, it is necessary to bear in mind that fishing for herring had been prohibited for six years and when the prohibition was lifted it was necessary to restore the ancient custom, to which the fourth recital to Regulation No 1353/80 refers, of fishing for and consumption of 'maatjes'. The contested rules which have that aim are thus 'rules for the utilization' of the quotas. Further the conditions which they impose for access to the quota cannot, in the Netherlands Government's view, be regarded as contrary to Community law. Indeed, Council Regulation (EEC) No 171/83 of 25 January 1983 (Official Journal 1983, L 24, p. 14) enables Member States to adopt even stricter measures than the Community ones to ensure optimal use of the quota. Furthermore, it is submitted, in 1983 the Netherlands imposed no conditions on fishing for herring in certain maritime zones; it cannot therefore be said that the measures in question were unnecessarily restrictive or discriminatory.

Let me say straightaway that in my opinion the first half of that argument is correct. As the Commission says, there is no doubt that the Netherlands was entitled to reserve the quota for fishermen fishing for 'maatjes'. After all it is the Community rules in relation to the conservation of fishery resources which provide for restrictions on catches and give the Member States power to specify their terms. Furthermore, according to Netherlands custom, 'maatjes' are fished, landed and consumed on the spot during June and July; Community law recognizes that custom and thus the lawfulness of the rules intended to revive it.

The prohibition on landing and marketing other kinds of herring is another matter. It is true that that measure could also be regarded as being in accordance with the rules on conservation and in particular with that which provides for the establishment of zones where 'fishing is prohibited or restricted to certain periods, types of vessel . . . or certain end-uses' (Article 2 (2) (a) of Regulation No 170/83). Nevertheless measures of that kind have to be notified to the Commission according to the procedure referred to in Articles 19 and 20 of Regulation No 171/83 and in the case of the provision at issue no such notification appears to have been given. How is it therefore to be regarded? I agree with the Commission and de Boer that since its basic aim is to regulate the sale of herring, the provision affects the organization of the markets in fishery products. Let us therefore look at it in relation to the relevant rules.

I have already referred to the substance of those rules. It is pertinent here to bear in mind the importance of the provisions concerned with adjusting supply to the requirements of the market (applying 'common marketing standards') and in particular those governing associations created on the initiative of producers for the purpose of rationalizing fishing and improving selling conditions. The associations, as has been seen, have

considerable powers. Article 13 (1) (d) of Regulation No 3796/81 even authorizes them to ban the sale of certain categories of products and Article 7 allows the Member States to extend the ban to persons who are not members of the association.

The contested measure excludes from the market herring other than 'maatjes'. Is it to be regarded as lawful on the basis of the last two provisions I have cited? The answer, as I have already indicated, cannot be in the affirmative. The measure would have been lawful if it had been adopted by an association representative of producers as for example the Coöperatieve Producentenorganisatie van de Visserij (Official Journal 1979, C 109). But the Produktschap is not an association; in fact it is an organization set up by State initiative as is shown by its recognized public-law status (see the Netherlands Government's answer to the question put to it by the Court on that issue).

6. On the basis of that conclusion the only possible ground for considering the provision in question lawful would be to classify it as a 'quality standard'. The Netherlands Government seeks to do so by reference to the judgment of 7 February 1984 in Case 237/82 *Jongeneel Kaas* v *Netherlands* [1984] ECR 483 and the judgment of 28 March 1984 in Joined Cases 47 and 48/83 *Pluimveeslachterij* [1984] ECR 1721. Nevertheless it does not seem to me that the argument is very convincing.

In the judgment in the *Jongeneel Kaas* case the Court held that 'in the absence of Community rules, a Member State may unilaterally adopt, with the purpose of promoting sales of cheese . . . , rules concerning the quality of cheeses produced within its territory and including a ban on the production of cheeses other than those exhaustively listed'. That judgment, as may be recalled, did not follow my Opinion; but the prohibition which was regarded as lawful was admittedly part of a very detailed scheme of rules to protect quality whereas nothing of that sort is involved in the present case. It is perfectly lawful to market herring other than 'maatjes' provided it is caught in zones other than the northern and central part of the North Sea. Furthermore, the organization of the market in the dairy products sector lays down powers that are much less extensive than those for fishery products, in particular it does not incorporate rules giving producer organizations the tasks which I have mentioned above.

The *Pluimveeslachterij* case is even less comparable to the present. The quality standards which were held to be lawful in that case were 'open', that is to say that, in contrast to the present case, they did not exclude from the market products which were in themselves sound.

7. On the basis of all the above considerations I propose that the following answer should be given to the question put by the College van Beroep voor het Bedrijfsleven, by order of 7 August 1984, in the proceedings between the limited liability company Rederij L. de Boer en Zonen and the Produktschap voor Vis en Visprodukten:

National rules on the administration of a fishing quota which have the effect of preventing the marketing of herring (caught in the zones of the North Sea to which the quota relates) in an unprocessed state or processed in particular ways, where the processing is permissible under Community law, cannot be regarded as 'detailed rules for the utilization of the quota' for the purposes of Article 5 (2) of Regulation No 170/83 and are incompatible with the organization of the market in fishery products provided for by Regulation No 3796/81.