accordance with objective criteria irrespective of the origin of the products.

A charge which is imposed on products imported from another Member State, even when there is no identical or similar national product, does not, by that fact alone, constitute a charge having an effect equivalent to a customs duty and may constitute internal taxation within the meaning of Article 95 of the Treaty if it fulfils the above conditions and if the class of products affected comprises a large number of products determined by general and objective criteria.

3. The distinction made by national legislation between a general health inspection, the cost of which is borne by the taxpayer, and so-called special health inspections, in which the costs of analysis for certain food products are borne by the undertakings concerned, does not in itself constitute a sufficiently precise and, above all, objective criterion to form the basis for a general system of internal dues within the meaning of Article 95 of the Treaty.

In Case 158/82

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Johannes Buhl, Legal Adviser in the Legal Department of the Commission, acting as Agent, assisted by Thomas van Rijn, likewise a member of the Legal Department of the Commission, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

applicant,

v

KINGDOM OF DENMARK, represented by Laurids Mikaelsen, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at the office of the interim Chargé d'Affaires, Ib Bodenhagen, Ministerial Adviser at the Danish Embassy, 11b Boulevard Joseph-II,

defendant,

APPLICATION for a declaration that by levying a charge for health inspection on the importation from other Member States of groundnuts and groundnut products the Kingdom of Denmark has failed to fulfil its obligations under Articles 9 and 13 of the EEC Treaty,

THE COURT

composed of: J. Mertens de Wilmars, President, T. Koopmans and K. Bahlmann (Presidents of Chambers), P. Pescatore, A. O'Keeffe, G. Bosco and O. Due, Judges,

Advocate General: G. F. Mancini
Registrar: J. A. Pompe, Deputy Registrar

gives the following:

JUDGMENT

Facts and Issues

The facts of the case and the submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

By Bekendtgørelse [Order] No 7 of 7 January 1971 of the Minister for the Interior, the Kingdom of Denmark prohibited the sale or assignment of groundnuts and groundnut products in which aflatoxin is detected in significant quantities. The importation into Denmark of such products from other Member States (as well as from non-member countries) is subject to a systematic health inspection including the taking of samples and laboratory analysis. However, the Director of the Statens Levnedsmiddelinstitut [State Foodstuffs Institute] may approve a certificate of analysis drawn up by a foreign laboratory made on the basis of a sample taken and analysed in that country.

The above-mentioned health inspection is carried out by a private Danish laboratory designated by the Director of the Statens Levnedsmiddelinstitut. According to the aforementioned Order, the importer must pay the laboratory a charge for carrying out the inspection, the purpose of which is to establish that the consignment of groundnuts concerned does not contain aflatoxin, a substance dangerous to human health and produced by certain kinds of fungus.

The fungi produce a considerable quantity of a toxic substance called aflatoxin when the necessary conditions of temperature and humidity occur together. They therefore present a potential risk of contamination in food products and in particular, for climatic reasons, in those coming from tropical and subtropical regions. According to the Danish Government, groundnuts and groundnut products in particular constitute the group of products with the

highest risk of contamination by aflatoxin and for which the risk materializes the most often. Since aflatoxin is one of the most virulent of carcinogenic substances, even in very small quantities, the Danish Government is of the view that not even the slightest contamination of foodstuffs by aflatoxin may be tolerated. It considers that the inspections, to which the Commission has not objected until now, are justified by Article 36 of the EEC Treaty. Since Denmark itself does not grow groundnuts they are imported principally from Germany, the United Kingdom and the Netherlands, apart from direct imports from the United States, the Indies and China. The Danish Government states that there is no compulsory inspection of the same nature in other Member States. In Denmark groundnuts are used chiefly for making up "snacks" (shelled groundnuts), candied peanuts and grilled and salted peanuts. Such consumption accounts for more than 90% of all imports. The balance of the imports is used partly for making groundnut oil and partly for domestic use (as peanut butter).

According to a table provided by the Danish Government showing all imports, 260 000 kg of the products concerned out of imports totalling 8.5 million kg were refused entry between 1975 and 1981. The amounts refused entry vary greatly from year to year; in some years aflatoxin has been detected in 10 % of all imports.

The charges for sampling and analysis to be paid to Danish laboratories for carrying out the inspections, which are payable by the importer, are not fixed by the State but by the laboratories themselves without its being necessary for them to obtain the approval of the authorities, and they must be paid directly to the laboratory. The amount may vary according to the consignments, depending on the time needed for effecting the necessary analysis. In the event of recovery proceedings the debt is regarded as an ordinary private law debt.

By letter of 28 February 1980 the Commission initiated against Denmark the procedure laid down in Article 169 of the EEC Treaty. It informed the Danish Government that the charges at issue were to be regarded as a charge having an effect equivalent to a customs duty prohibited by Article 9 *et seq.* of the Treaty. In accordance with Article 169 of the Treaty, the Commission invited the Danish Government to submit its observations within two months of receipt of the letter.

By letter of 8 July 1980 from Denmark's Permanent Representative to the European Communities, the Danish Government replied that the charge in question was to be regarded as an internal tax, and that it was imposed on all the products concerned regardless of their place of origin. It was not, therefore, a pecuniary charge imposed on products upon their crossing the frontier.

The Commission came to the conclusion that the sole purpose of the charge was to make importers pay for a specific inspection applicable solely to imports of the products concerned, and therefore sent a reasoned opinion on the subject dated 3 September 1981 to the Kingdom of Denmark by letter of 14 September 1981. The letter expressed the opinion

that by levying a charge for health inspection on the importation from other Member States of groundnut and groundnut products the Kingdom of Denmark had failed to fulfil its obligations under Articles 9 and 13 of the EEC Treaty.

In accordance with the second paragraph of Article 169 of the Treaty the Commission invited the Danish Government to take the necessary measures to comply with the reasoned opinion within two months.

In its reply, contained in a letter of 8 December 1981 from its Permanent Representative, the Danish Government reiterated the view that the charge in question should be regarded as an internal tax within the meaning of Article 95 of the Treaty. Moreover, it pointed out that in its opinion it was not a charge fixed by the State and on its own behalf but a payment to the laboratory carrying out the required analysis.

The Commission brought this action, which was registered at the Court Registry on 26 May 1982.

II — Conclusion of the parties

The *Commission* claims that the Court should:

1. Declare that by levying a charge for health inspection on the importation from other Member States of groundnuts and groundnut products the Kingdom of Denmark has failed to fulfil its obligations under Articles 9 and 13 of the Treaty establishing the European Economic Community;

2. Order the Kingdom of Denmark to pay the costs.

The *Kingdom of Denmark* contends that the Court should:

1. Dismiss the application as unfounded;

2. Order the Commission to pay the costs.

III — Submissions and main arguments of the parties

In the application the *Commission* maintains that the charge for health inspection of groundnuts and groundnut products introduced by Denmark by the Order of 7 January 1971 constitutes a charge having an effect equivalent to a customs duty within the meaning of Articles 9 and 13 of the EEC Treaty. According to past decisions of the Court, the prohibition contained in those articles is applicable to any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier and which is not a customs duty in the strict sense, even if it is not imposed on behalf of the State. Those criteria are met in the present case.

The charge at issue can only be justified on two grounds, first that it constitutes payment for a service rendered to the importer and is of an amount in proportion to that service, or secondly, that it constitutes part of a general system of internal taxation systematically applicable to categories of products according to objective criteria applied regardless of the origin of the products. However, those conditions are not fulfilled in the present case.

On the one hand, the charge does not constitute the payment for a service rendered to the importer because it is not the consideration for an individual advantage conferred upon the importer. The health inspection was established to

safeguard the public interest and for the protection of health, which are duties incumbent on the public authorities. Such an inspection cannot, therefore, be considered to be an individual advantage for the importer because the importation and distribution of the products on the market of another Member State is a right conferred by the Treaty and does not depend on any discretion on the part of national authorities. Therefore, the authorization granted to the importer to distribute his products in Denmark on the basis of the health inspection does not amount to a service rendered to the importer justifying the levying of a fee as appropriate consideration therefor.

As for the fact that the importer may avoid the Danish health inspection by producting a certificate of analysis drawn up by a foreign laboratory, the Commission is of the view that that is a somewhat theoretical option since consignments of groundnuts are not subject to health inspection in all the Member States and such an inspection could only be carried out therefore at the express request of the exporter or the importer concerned, who, however, would have no interest in asking for such an inspection the costs of which he would have to bear in any event.

The Commission states, moreover, that the Danish administration's discretionary power to grant an exemption in certain individual cases does not relieve the charge of its compulsory nature in all other cases. The implementation of the principle of the free circulation of goods must not depend on the discretion or tolerance of a national administration.

On the other hand, the Commission points out that the charge does not form part of a general system of internal dues either, because the rules in question provide only for the health inspection of groundnuts and groundnut products and the charge relating thereto. Furthermore, Danish legislation contains no analogous rules for other categories of foodstuffs. In those circumstances, the Commission is of the view that the charge cannot constitute internal taxation within the meaning of Article 95 because it does not form a part of a general system of internal dues as defined by the Court, but has the sole purpose of making importers bear the costs of a specific inspection exclusively applicable to imports of groundnuts and groundnut products.

In its defence the *Danish Government* contends that the charge in question does not amount to a charge having an effect equivalent to a customs duty, as the Commission maintains, but forms part of a general system of internal taxation systematically applicable to categories of products according to objective criteria regardless of their origin. The Danish Government adds that the essential characteristic of a charge having an effect equivalent to a customs duty is that it specifically affects imported products as such, to the exclusion of similar national products, whereas internal taxation affects both imported products and national products. That is confirmed by several judgments of the Court.

The Court has held that charges levied for health inspections may lawfully be imposed on producers or importers if the payment is required without distinction from importers and national producers

alike, that is to say, if the charge forms part of a general system of internal taxation whose effects are not discriminatory either in form or in substance. It is therefore in principle the responsibility of the national authorities to decide whether the fees for health inspections should be paid by the importers or producers (that is to say ultimately by the consumer) or by the general community. Even if the protection of human health is a matter for the public authorities it does not follow that the costs connected with the required inspections should necessarily be met by the public purse.

The Danish Government maintains further that what is concerned here is not a charge in the strict sense of the term, but costs incurred in analysing the products, the payment and the means of recovery of which do not involve the State but only the private parties concerned.

It is of the view that the Commission has not sufficiently demonstrated in its application that the disputed charges are to be classified as charges having an effect equivalent to a customs duty. Certainly, where there exists an identical or comparable national product the criteria for the application of Article 9 of the Treaty are simple, but they become more difficult to apply when there is no identical or comparable national product. Since the Court has not yet given a definitive ruling on that question the present case cannot be judged with any degree of certainty on the basis of previous decisions but calls for the determination by the Court of new criteria allowing for the presumption of an "internal tax in good faith" in certain circumstances.

The Danish Government submits that the Court has yet to define what is to be understood by a "general" system of internal taxation. In particular it has not laid down the criteria for defining "categories" of products to which the charge is to be uniformly applied. It might therefore be necessary to ask hypothetically whether the national authorities would have imposed the charge in question in the same manner had the product been made in Denmark, a question which in the present case would have to be answered in the affirmative.

Finally, the Danish Government states that groundnuts and groundnut products are not foodstuffs, being primarily consumed as "snacks". That is a well-defined category of product, separate from foodstuffs, in respect of which it is perfectly legitimate for the costs connected with the establishment of any deleterious effect which they might have upon the health of consumers to be met by private traders. That, moreover, is the general rule with regard to the inspection of industrial products.

In its reply, the *Commission* stresses the fact that the essential characteristic of a charge having an effect equivalent to a customs duty, according to the Court, is that it is unilaterally imposed and affects goods solely by virtue of their having crossed a frontier. Neither its designation, nor the method by which it is collected, nor the existence of a discriminatory effect, nor its payment to the State is a decisive criterion. The Commission has already shown in its application that the two necessary conditions are fulfilled since the importer's obligation to discharge the

costs relating to the system of health inspection on groundnuts derives expressly from the Order of 7 January 1971 and the costs are directly connected with the health inspection.

In the Commission's view, the decisive question in the present case is in what circumstances a charge for health inspection carried out solely on imported products in the absence of any similar national product (for climatic reasons) may be regarded as part of a general system of internal taxation systematically applicable to categories of products according to objective criteria applied regardless of the origin of those products. Although the existing case-law cannot resolve the problem, it may provide useful indications as to whether such a charge does or does not form part of a general system of internal taxation. Moreover, the charge in question must be viewed in the context of the system of which it logically forms part, that is to say health inspection of foodstuffs in general. Whilst admitting that the case concerns a charge which is entirely specific in character, the Commission disputes the contention that any charge levied for health inspection of imported products and based on the law relating to foodstuffs may constitute a general system of internal taxation on its own, and rejects the Danish Government's argument that the disputed charge may be considered to have been imposed "in good faith".

In its rejoinder the *Danish Government* stresses the fact that Member States may choose whether the public purse or consumers should bear the costs incurred in connection with health inspections, and that that is the case at least as long as Community law does not provide otherwise. The Commission has deliberately avoided that issue in its reply, just as it has avoided answering the argument that the case is concerned with the payment of costs and not a true charge.

The Danish Government denies that a charge is being imposed on the products in question solely because they have crossed a frontier, and is of the view that in any case the required fees are not so great as to inhibit the free circulation of the goods. Moreover, the decisions of the Court indicate clearly that a charge may constitute internal taxation even in the absence of a comparable national product. There is no reason to favour imported products for the sole reason that there is no comparable national product capable of being protected. The criterion put forward is not exclusive and the charge might also be in conformity with the Treaty for other reasons.

With regard to the relevant group of products, the Danish Government submits that the group must be defined bearing in mind the risks attaching to the various products. There is not the slightest reason to include other food products in the group in question, because in general food products do not bear the same risk of contamination by aflatoxin as do groundnut products.

Questions put by the Court

The Government of the Kingdom of Denmark gave its answers to the questions put by the Court in a letter of 7 April 1983. In answer to the first question, namely how are the costs fixed for health inspections carried out on other food products in Denmark, the Danish Government refers primarily to Law No 310 of 6 June 1973 relating *(inter alia)* to foodstuffs, a law which is complemented by a series of other legal provisions governing the health inspection carried out on special categories of food products. The general health inspection which is provided for therein is carried out by the local authorities by means of inspections in undertakings and businesses and by means of examinations of samples. The costs of those inspections are met by local taxation. By contrast, the costs of the individual inspections provided for by Articles 18 and 41 of that Law for special food products or food products particularly at risk are borne by the undertakings in a manner determined by the competent ministries, in such a way that the costs are not borne by the company but, on the contrary, only affect the price of the product. The Orders adopted pursuant to the above-mentioned provisions relate to products which contain certain additives as well as to groundnuts and Brazil nuts. Moreover, a special law makes certain products subject to a state health and quality inspection at the production and wholesale distribution stages. Those products include margarine, poultry, fish and fish products, eggs and egg products, milk and dairy products. The relevant laws enable producers or importers to be required to defray the costs of special inspections, a course which is adopted for most of the products.

The Danish Government also refers to Law No 340 relating to animal foodstuffs which allows for State control of the maximum level of aflatoxin in food and food mixes for animals and provides that the cost of inspections is to be covered by a charge.

With regard to the second question, namely in what circumstances does Denmark recognize analyses carried out by laboratories in other Member States on products of the same type, the Danish Government answers that such analyses are recognized "under certain conditions". It is, however, impossible to give a general definition of those conditions, and only a few points of principle may be noted, such as that the analyses must be carried out by an independent laboratory so as to give all possible assurances that significant changes in circumstances relating to the value of the sample do not supervene after the analysis.

In answer to the third question, namely what other products are subject to the same system, the Danish Government states that the system of inspection of groundnuts is an example of a general principle observed in Denmark and applied in an identical manner to a number of both imported and Danish products.

IV — Oral procedure

At the sitting of 5 May 1983 the Commission, represented by Johannes Føns Buhl, and the Kingdom of

Denmark, represented by Laurids Mikaelsen, presented oral argument.

At the same sitting the Danish Government submitted a memorandum of 22 January 1980 on the "levying of charges for inspection of foodstuffs in Denmark".

At the request of the Court the representative of the Danish Government clarified several points of the Danish argument, with particular regard to the distinction between ordinary inspections carried out by local authorities and the special inspections carried out by the State in compliance with Article 41 of the Law on foodstuffs. He stated that the distinction did not relate solely to the degree of risk present, but also to whether or not special circumstances made a special inspection necessary. Whilst the costs of ordinary inspection were borne by the local authorities, those of the special inspection were borne by the Danish producer and the importer. Where the costs of the inspection were borne by the importer, an invoice was sent to him showing the costs of the actual inspection, to which VAT was added. All groundnut-based products were subject to a systematic special inspection, except for groundnut oil which did not contain aflatoxin. Animal foodstuffs were inspected in the same way and the costs of the inspections were borne by the Danish producers or the importers.

The Advocate General delivered his opinion at the sitting on 5 July 1983.

Decision

1 By an application lodged at the Court Registry on 26 May 1982 the Commission of the European Communities brought an action pursuant to Article 169 of the EEC Treaty for a declaration that by levying a charge for health inspection on the importation from other Member States of groundnuts and groundnut products the Kingdom of Denmark had failed to fulfil its obligations under Articles 9 and 13 of the EEC Treaty.

2 By Order No 7 of the Minister for the Interior of 7 January 1971 the Danish Government prohibited the sale or assignment in Denmark of foodstuffs containing groundnut and groundnut products containing detectable quantities of aflatoxin. At the same time, the Order made the importation of groundnuts and certain groundnut products subject to an administrative authorization if they were intended to be sold as foodstuffs or to be used in the manufacture of foodstuffs. Such authorization is granted only on

production of a certificate of analysis issued by a Danish laboratory on the basis of a systematic health inspection intended to establish that the goods do not contain aflatoxin in discernible quantities, based on samples and a laboratory analysis.

3 Since aflatoxin is one of the most virulent carcinogenic substances, even in very small quantities, the Commission has accepted that such inspections are permitted by Article 36 of the Treaty.

4 The Danish laboratory which is required to carry out the analysis is designated by the Director of the Statens Levnedsmiddelinstitut [State Foodstuffs Institute] of Denmark. However, in certain circumstances he may approve a certificate of analysis drawn up by a foreign laboratory on the basis of a sample taken and analysed in that country.

5 Article 5 (3) of the aforementioned Order provides that the costs of analysis and sampling are to be borne by the importer.

6 It is agreed that groundnuts are not produced in Denmark.

7 The Danish law upon which the Order was based establishes a two-tier system for the inspection of foodstuffs. Article 44 thereof provides for a general health inspection carried out by the local authorities, the costs of which are covered by local taxes; on the other hand, Article 41 authorizes the appropriate minister to make orders requiring special health inspections for particular food products; in that case, the costs of laboratory analysis are to be borne by the undertakings concerned. In addition, there exist a number of special laws which make certain other foodstuffs subject to health and quality inspection by the State; the relevant costs are borne by the producers and importers, at least for most of those products, namely margarine, poultry, fish, eggs, milk and products derived from them.

8 Pursuant to Article 41 of the Law on foodstuffs the Danish Government has issued a number of orders concerning on the one hand additives to food products and on the other hand products which, by their nature, are considered to present a special risk, namely Brazil nuts and groundnuts.

9 The Commission maintains that in the light of previous decisions of the Court the charge in question must be regarded as a charge having an effect equivalent to a customs duty prohibited by Articles 9 and 13 of the EEC Treaty, since it is a pecuniary charge, unilaterally imposed, affecting imported goods solely by reason of the fact that they cross a frontier.

10 Although it is not a customs duty in the strict sense and although it was not levied on behalf of the State, it contends, the charge cannot be justified on the ground that it represents payment for a service effectively rendered to the importer, for the health inspection was not instituted in the interest of the individual but to safeguard the public interest and for the protection of human health.

11 The Commission also maintains that the charge in question cannot escape the prohibition in Articles 9 and 13 of the Treaty on the ground that it forms part of a general system of internal taxation within the meaning of Article 95 of the Treaty. In the absence of identical or similar national products a charge on imported products may be regarded as an internal tax only if it forms part of "a general system of internal dues applied systematically to categories of products in accordance with objective criteria irrespective of the origin of the products" (judgment of 3 February 1981 in Case 90/79, *Commission* v *France* [1981] ECR 283, at paragraph 14 of the decision). In the present case the disputed charge is applicable exclusively to imports of groundnuts and groundnut products.

12 *Per contra,* the Danish Government denies that the charge in question is in fact a charge fixed by the State. On the contrary it represents payment of the cost of the laboratory analysis, which is determined by the laboratory itself on the basis of the cost making the analysis. Even if it must be regarded as a charge, it does not constitute a charge having an effect equivalent to a customs duty because it is not required by reason of the product's crossing a frontier but corresponds to an internal tax which forms part of a general system of taxation applied systematically to categories of products according to objective criteria irrespective of their origin.

13 It maintains that the charge is not discriminatory either in form or in substance because there is no identical or similar national product. The burden on imports represented by the disputed charge is minimal.

14 Moreover, groundnuts (and Brazil nuts) constitute a specific group of products which has been systematically defined on the basis of an objective criterion, namely that they alone present a particularly grave risk.

15 The Danish Government is of the opinion that in the light of the judgments of the Court, and in particular the aforementioned judgment of 3 February 1981, Article 95 does not prohibit Member States from subjecting imported products to an internal tax when there are no identical or similar national products or other products which require protection. In such a case, the duty is imposed "in good faith" because the chosen method of payment would have been the same had Denmark produced groundnuts.

16 The Danish Government maintains further that the system adopted as regards the products at issue reflects a general legislative approach in Denmark which has been in effect there since 1950 and which has been applied to a series of foodstuffs, whether imported or national, as well as to animal feed.

17 In principle, moreover, it is for the national authorities to decide as a matter of policy whether the costs of health inspections must be borne by the community or by consumers. The fact that health protection is a matter for the public authorities does not imply that the costs connected with inspections are necessarily to be met out of the public purse.

18 The Court has consistently held that any pecuniary charge, whatever its designation or mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having an effect equivalent to a customs duty within the meaning of Articles 9, 12, 13 and 16 of the Treaty, even if it is not imposed on behalf of the State.

19 The only exception is where the charge in question represents payment for a service rendered to the importer, of a sum in proportion to the service, or if it forms part of a general system of internal dues applied systematically in accordance with the same criteria to both national products and imported or exported products.

20 The Danish Government conceded in the course of the proceedings that the charge at issue was not in the nature of payment for a service rendered to the importer. It maintained, however, that it was a charge forming part of a general system of internal taxation.

21 In that regard it may be observed that there is a well-established line of authority to the effect that a charge on importation does not constitute internal taxation under Article 95 unless it forms part of a general system applicable systematically to categories of products in accordance with objective criteria irrespective of the origin of the products.

22 As the Danish Government rightly emphasizes, the Court has indeed recognized that a charge which is imposed on products imported from another Member State, even when there is no identical or similar national product, does not, by that fact alone, constitute a charge having an effect equivalent to a customs duty and may constitute internal taxation within the meaning of Article 95 of the Treaty if it fulfils the above conditions.

23 However, examination of the facts relied on before the Court by the Danish Government in support of its argument that Article 95 applies does not permit the conclusion that the charge at issue forms part of a general system of internal taxation.

24 The Danish Government concedes that the group of products which is affected by the disputed charge and which is defined by the risk of the products' being contaminated by aflatoxin comprises solely groundnuts, groundnut products and Brazil nuts. Such a limited number of products cannot fall within the concept of "whole classes of . . . products" (judgment of 22 March 1977 in Case 78/76 *Steinike und Weinlig* v *Germany* [1977] ECR 595), a concept which implies a much larger number of products determined by general and objective criteria.

25 With regard to the Danish Government's argument that the general approach followed in the legislation applicable in Denmark is that the taxpayer is responsible for general health inspection costs whilst the costs of laboratory analyses necessitated by special health inspections for certain foodstuffs are borne by the undertakings concerned, it should be emphasized that a distinction between general inspection and so-called "special" inspections does not in itself constitute a sufficiently precise and, above all, objective criterion to form the basis for a general system of internal dues within the meaning of the decisions of the Court of Justice cited above. The Danish Government has not shown that the two types of inspection are objectively distinguishable, for example on the basis of their technical approach. Moreover, in a number of cases even general inspection requires laboratory analyses similar to those carried out in the context of special inspections.

26 With regard to the products covered by the Orders based on Article 41 of the Law on foodstuffs, it appears from the file that they comprise on the one hand food products subject to inspection to determine whether certain nutrients have in fact been added and on the other products considered to be potentially harmful because of certain risks they present, namely groundnuts and Brazil nuts. The difference regarding the nature, the character and the purpose of the inspections envisaged for each of those two groups prevent the fees levied on groundnuts and Brazil nuts from being regarded as forming part of the same system as those levied for the checking of additives.

27 The Danish Government has thus failed to show that the charge in dispute meets the conditions for it to be regarded as part of a general system of internal taxation.

28 By levying a charge for health inspection on the importation of groundnuts and groundnut products therefore, the Kingdom of Denmark has failed to fulfil its obligations under Articles 9 and 13 of the EEC Treaty.

Costs

29 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party shall be ordered to pay the costs. Since the defendant has been unsuccessful it must be ordered to pay the costs.

On those grounds

THE COURT

hereby declares:

1. **By levying a charge for health inspection on the importation of groundnuts and groundnut products the Kingdom of Denmark has failed to fulfil its obligations under Articles 9 and 13 of the EEC Treaty.**

2. **The defendant is ordered to pay the costs.**

Mertens de Wilmars Koopmans Bahlmann

Pescatore O'Keeffe Bosco Due

Delivered in open court in Luxembourg on 9 November 1983.

For the Registrar

H. A. Rühl

Principal Administrator

J. Mertens de Wilmars

President