EUROPEAN UNION
THE COUNCIL

Brussels, 18 September 1996 (23.09)
(OR. f)

10009/96

LIMITE

JUR 273
WTO 149

CASES BEFORE THE COURT OF JUSTICE

Subject: – Council Decision to intervene in Case C-147/96 (Kingdom of the Netherlands v. Commission
– Council Decision to submit observations in the oral procedure in Case C-53/96 (Hermès International v. FHT MARKETING Choice)

I. Introduction and legal question

1. Case C-147/96 is an action brought by the Netherlands under Article 173 of the EC Treaty contesting the legality of a Commission Decision taken pursuant to Article 23 of Council Directive 92/46/EC of 16 June 1992 ([1]).

Case C-53/96 is an application for a preliminary ruling relating to the interpretation of Article 50(6) of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs).

([1]) Laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products, OJ No L 268, 14.9.1992, p. 1.

2. In these two Cases the problem of the direct effect of the WTO Agreement and its Annexes arises. In the first Case, the Government of the Netherlands puts forward the argument of the direct effect of Article 2(2) of the Agreement on the Application of Sanitary and Phytosanitary measures ([2]). In the second case, the referring judge (Netherlands) refers to Article 50(6) of the TRIPs Agreement as having a direct effect.

([2]) This Agreement is an integral part of the WTO Agreement.

3. The argument put forward by the Government of the Netherlands in the first Case and the interpretation of the referring judge in the second Case are contrary to the Council's constant argument, as reflected in the last recital of the Decision of 22 December 1994 ([3]) on the conclusion of the Uruguay Round Agreements, that

"by its nature, the Agreement establishing the World Trade Organization, including the Annexes thereto, is not susceptible to being directly invoked in Community or Member State courts".

4. This constant argument of the Council has been defended by the Legal Service – for example – in Case T-228/95 (Lehrfreund v. Council ([4]) where it pointed out that *"neither the GATT nor the WTO rules are unconditional and an obligation to recognize them as rules of international law which are directly applicable in the Community legal system cannot be based on the spirit, general scheme or terms of the GATT nor of the WTO".*

II. Suggested procedure

1. The Legal Service suggests, in order to defend the Council's constant argument that the WTO Agreement is not susceptible to being directly invoked in Community or Member States' courts, that the Council decide to

– intervene to support the Commission's arguments in Case C-147/96 and

– appear at the oral procedure (date to be fixed) in Case C-53/96 in order to defend the abovementioned argument in support of the Commission.

As regards Case C-147/96, the application to intervene should be deposited,

([3]) OJ No L 336, 23.12.1994, p. 1.
([4]) Leghold traps; at the applicant's request, the President of the court ordered the Case to be deleted on 26 June 1996.

in accordance with Article 93(1) of the Rules of Procedure of the Court of Justice, no later than 8 October 1996.

If COREPER agrees with these suggestions, it is suggested that the Council adopt this decision as an "A" item.

2. The Director-General of the Legal Service proposes to appoint Mr Ramon TORRENT, Director of the Legal Service, and Mr Jürgen HUBER and Mr Guus HOUTTUIN, members of that Service, as the Council's agents.