OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 28 JUNE 1972[1]

Mr President,
Members of the Court,

The object of the limited liability company Haegeman whose registered office is in Brussels is trading in wines and liquors, by way of both import and export. In particular it imports wines from Greece.

These wines are admitted freely into Belgium, Luxembourg and the Netherlands without customs duties or quantitative restrictions. This system, antedating the Athens Agreement of 9 July 1971 and creating an association between the European Economic Community and Greece, was maintained and confirmed by Protocol No 14 annexed to that agreement relating to Greek exports of wines from fresh grapes.

Regulation No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine, however, introduced in respect of the import of wines from countries outside the Common Market a countervailing charge of an amount varying according to the free-at-frontier offer price. The levying of this charge is intended to prevent imports at prices lower than the reference prices laid down by the Commission.

As from 1970, Haegeman was subject to this system. In particular it paid a sum of BF 4 420 000, the amount of the charge on the import of 30 000 hl of red wine originating in and coming from Greece which had been the subject-matter of a contract entered into at the beginning of 1970.

Without contesting, at least at the time, whether the countervailing charge could be levied, the company merely expressed reservations to the Belgian customs authorities which it asked to make representations to the Community authorities. Then, on 15 July 1971, it made a complaint to the Commission claiming that it had suffered damage on account of the wrongful payment of the countervailing charge on goods imported as a result of contracts entered into before the charge was applied and asked the Commission to grant it exemption, insisting that the Commission should adopt a viewpoint as soon as possible on its complaint. Two weeks later, having received no answer, the company sent a letter of reminder to the Commission on 30 July.

By letter dated 9 August 1971 signed by the Director-General for Agriculture the Commission informed the applicant that the exemption sought was not justified since the implementation of a new organization of the market in wines as a result of Regulation No 816/70 of the Council and various implementing regulations could not give rise to exemptions even in respect of imports made under contracts entered into previously and that the system of the countervailing charge in question was subject to no exception in respect of countries associated with the Community such as Greece.

On 1 September Haegeman returned to the attack. It maintained this time, however, that exemption from the charge should be granted to all Belgian importers in respect of all imports of Greek wines; in consequence it claimed a refund of the charges wrongly paid and interest on those sums.

By letter dated 27 September the Director-General for Agriculture, taking the view that this last request contained no new factor, simply confirmed his negative reply of 9 August.

The next day, 28 September, Haegeman repeated its claim for exemption, stressing the new factors which its letter of 1 September, in its opinion, contained.

Finally, on 15 October 1971 the Director-General for Agriculture confirmed once again in principle the reply with which he had confronted the applicant, stating that the countervailing charge constituted

1 — Translated from the French.

not a protective measure but a normal factor in the common organization of the market in wine.

At the conclusion of this exchange of correspondence Haegeman brought an application before this Court in which two heads of claim should be distinguished.

— In the first place, claims based on Article 173 of the Treaty of Rome asking the Court to annul the 'decision' of the Commission contained in the letter of 15 October 1971 and likewise asking the Court to declare, under Article 184 of the Treaty, that the regulations, in particular Regulations Nos 1019/70 and 2320/70, by which the Commission has fixed the amount of the countervailing charge, are inapplicable to imports of Greek wines into the territory of the Belgo-Luxembourg Economic Union. The applicant also asks the Court to order the refund of the charges which it considers itself to have wrongly paid.

— In the second place, claims for compensation based on the alleged exceptional damage which the applicant has suffered by reason of the act and omission of the Commission. These claims seek acknowledgement of the non-contractual liability of the Community. They are therefore based on the second paragraph of Article 215 of the Treaty of Rome.

Section 1

Application for annulment and declaration of inapplicability

With regard to the first head of claim the Commission puts forward several objections on the ground of inadmissibility on which I shall give my opinion very briefly. First, the Commission claims that the letter of 15 October 1971 contains nothing in the way of a decision capable of being contested before the Court. In this letter as, moreover, in his previous replies, the Director-General for Agriculture merely confronted the applicant with the existence of Community rules adopted by the Council, that is, Regulation No 816/70, or by the Commission, that is, the various regulations implementing the common organization of the market in wine and in particular Regulation No 2770 fixing the countervailing charges to be levied on imports of wines from third countries. These do not provide for any exemption for Greek wines.

This view appears to me justified. It is certain that the position in which the applicant found itself and on which it has based its complaint results from the application of these regulations and even assuming that by reformulating its claims the Court were to accept that they in fact seek the annulment of these regulations in so far as they do not provide for any exemption from the countervailing charge for importers of Greek wines the Court could only find that they are inadmissible on the basis of Article 173.

As you recently decided in your judgment of 8 March 1972 in Case 42/71, *Nordgetreide* v *Commission*, the rejection of a complaint can be the subject of an application only if the positive measure which the authority refuses to adopt could itself be contested. Since the attitude expressed on 15 October 1971 by the Director-General for Agriculture, acting in the name of the Commission, is in the nature of a refusal, that refusal must be considered in terms of Haegeman's request to which this view replied. This request was in fact for the amendment of a regulation, to be exact, Regulation No 816/70 of the Council, Article 9 of which established the system of countervailing charges; what the applicant claimed was either to have Greek wines expressly exempted from that system or to secure from the competent Community authority, in the present case the Council, the adoption of a new measure to regulate by means of an exemption the special case of Greek wines. In both cases, whether the amendment of an existing regulation or the adoption of a new regulation the measure intended to regulate this situation would itself be in the nature of a regulation and Haegeman would be affected by that measure only in so far as it belongs to the indeterminate group of importers of Greek wines that, is, a category of persons taken as a whole and

contemplated in the abstract and not as the addressee of a measure which is of direct and individual concern to it. Therefore the conditions required by the second paragraph of Article 173 for the admissibility of applications by individuals are not fulfilled and the claims for annulment can only be dismissed as inadmissible.

This finding moreover makes it unnecessary for the Court to consider the second ground put forward by the Commission for finding the application inadmissible because it is out of time.

The defendant maintains that the letter of 15 October 1971 simply confirms that of 27 September since the latter itself confirmed the original negative reply from the Director General for Agriculture dated 9 August 1971.

I myself would have some doubts on this subject for it appears from the actual wording of these successive complaints by Haegeman that although in its first request of 15 July 1971 it was merely seeking exemption from the countervailing charge for imports made under a contract prior to the entry into force of the contested rules, it only raised the question of the legality of the charge in respect of all imports of Greek wines into the Belgo-Luxembourg Economic Union and as a result the question of the incompatibility of Regulation No 816/70 with the provisions of the Athens Agreement in the letter of 1 September 1971. Indeed, the Director-General for Agriculture only gave a reply on 15 October which, on this point, was not simply a confirmation; but it is, I think, sufficient for the Court to uphold the first objection of inadmissibility.

Before coming to the question of liability it is likewise necessary to deal with the claims based on Article 184 of the Treaty which do not seek the annulment either of the alleged decision of 15 October 1971 or of the regulations in question but only a declaration by the Court that they are inapplicable to imports of Greek wines into the territory of the Belgo-Luxembourg Economic Union.

As you recalled in a judgment of 14 December 1962 in Joined Cases 31 and 33/62. *Milchwerke Heinz Wöhrman & Sohn KG* v *Alfons Lütticke GmbH* ([1962] ECR 501), the object of Article 184 is to protect an interested party against the application of an illegal regulation, that is to say, one which is incompatible with the Treaty, without thereby in any way calling in issue the regulation itself, which can no longer be challenged because of the expiry of the period laid down in Article 173. Article 184 cannot however provide a means of redress parallel to that available under Article 173.

It only permits a declaration of the inapplicability of a regulation by way of an incidental ruling in proceedings brought before the Court of Justice itself under some other provision of the Treaty.

It is true that in the present case the claims for a declaration of inapplicability have indeed been put forward in the context of proceedings brought before this Court. But as has been seen, the letter from the Director-General for Agriculture, the subject of the principal claim for annulment, is not in the nature of a decision. It merely recalls and confirms the state of the substantive Community law which flows from Regulation No 816/70 and the implementing regulations issued thereunder. Let me observe in passing that even if the Director-General acting in the name of the Commission had intended to make a genuine decision on the applicant's complaint he would have had absolutely no power to do so, for as we shall see the legal basis of the countervailing charge is the regulation of the Council and not the implementing regulations adopted by the Commission, which merely fixed the amount of that charge.

At all events, Haegemann cannot, in my opinion, allege the inapplicability of the regulations in question, whether they emanate from the Council or the Commission, except in support of claims for annulment against a genuine decision which is of individual concern to it, adversely affects it and is binding upon it.

Section II

The claims for damages

It is very different with regard to the claims for compensation for the damage which

the applicant alleges it has suffered. As it says, this damage is distinct from the action for a refund of the countervailing charges paid. Although it gives no precise information the applicant says *expressis verbis* that it seeks compensation for damage suffered as a result of 'serious disturbances' to its activities: 'loss of profit, financial outlay and losses on existing contracts'. It assesses this damage at 10 000 u.a.

This is therefore an action for damages based on the non-contractual liability of the Community as defined in the second paragraph of Article 215 of the Treaty. The most recent case-law of this Court contained in its judgment of 2 December 1971 in Case 5/71, *Aktien-Zuckerfabrik Schöppenstedt* v *Council of the European Communities* ([1971] ECR) and in its judgment of 13 June 1972 in Joined Cases 9 and 11/71, *Compagnie d'approvisionnement, de transport et de crédit SA* and *Grand Moulins de Paris SA* v *Commission of the European Communities* is to the effect that the action for damages provided for by Articles 178 and 215 of the Treaty was introduced as an autonomous form of action with a particular purpose within the system of appeals and subject to conditions as to its use devised in view of its specific object. It differs from an application for annulment in that it seeks 'compensation for damage caused by an institution in the exercise of its functions and not abolition of a specific measure'.

This Court has thus accepted that such an action was admissible when the liability relied on arises from the alleged illegality of a regulation when the measure cannot or can no longer be the subject of an application for annulment either because the applicant, as in the present case, is not permitted to contest it or because the periods for lodging a direct application for annulment have expired.

The Court will not therefore be able to accept the objection of inadmissibility which the Commission seeks to put forward in opposition to the claims for compensation by Haegemann and it is now necessary to consider the substance of the action on the basis of the said claims.

For this purpose it is necessary on the one hand to set out the conditions for the importation of Greek wines into the Common Market before 1 June 1970, the date on which Regulation No 816/70 of the Council, which is the basic regulation on the common organization of the market in wine, took effect and on the other to recall the essential characteristics of the system established by this regulation with regard to imports of wine from third countries, in order then to enquire whether, as regards the countervailing charge which the regulation introduces, the system is compatible with the provisions of the Athens Agreement establishing an Association between the Community and Greece.

The Court will recall that in the period prior to 1 June 1970 the wine market was the subject only of Regulation No 24/62 of the Council which, even in the opinion of its authors, constituted only the 'beginning of a common policy of the Member States for the purpose of resolving problems in the wine sector'. It did not really achieve an organization of the market either at a domestic level or with regard to trade with third countries.

In fact, Regulation No 24 was a preparatory measure intended to make possible, by means of precise knowledge of the potential production of the Member States and by periodical assessment of the quantity of wine and must available, a subsequent organization for the purpose of stabilizing prices by adjusting supplies to requirements. Thus this regulation provided for the establishment of a viticultural land register, the duty to make periodical declarations of harvests and stocks and an annual preliminary account in order to determine the resources and assess the requirements of the Community.

This provisional system did not put an end to the partitioning of the various national economies in wine. Nor did it regulate the question of trade with third countries.

Further, the Council, by a decision of 4 April 1962, had begun to liberalize trade between Member States by requiring France, Italy and Germany to open quotas for the importation of wines from other Member countries.

In the Benelux countries imports of wine were already completely freed at the time. The special system which, with regard to wines from Greece, originates in the Athens Agreement or, more precisely, in Protocol No 14 annexed to that agreement, must be placed in this context which I scarcely dare call a 'Community' context.

In Belgium, Luxembourg and the Netherlands Greek wines remained free from any customs duty on import or quantitative restrictions.

On the other hand, Germany, Italy and France were, according to the Protocol, bound to open certain tariff quotas to Greece, either by exempting from duty or levying duties at a rate sometimes lower than and sometimes equal to that of the Common Customs Tariff with the exception of muscatel from Samos, deemed to be a quality wine, the entry of which into France was to be duty-free.

Subsequently, measures were taken in other respects within the context of this protocol to facilitate still further the importation of certain categories of Greek wines into these countries.

As regards the Benelux countries, Protocol No 14 merely confirmed the system of complete freedom which Greek wine exports previously enjoyed.

Regulation No 816/70 which, under the title 'additional provisions for the common organization of the market in wine', is in fact the actual charter of this organization was to bring about an appreciable change in that system.

Although this regulation implies, without needing to say so, the application of the duties laid down in the Common Customs Tariff to imports of wines from third countries, as follows *ipso jure* from Article 23(3) of the Treaty of Rome, Article 9(1) of the regulation also contains in respect of trade with third countries the principle of the annual fixing of a reference price for red wine and a reference price for white wine; these prices are expressed in units of account per hectolitre or per degree/hectolitre and fixed on the basis of the quide prices for the types of red and white table wines most representative of Community production.

Further, Article 9(3) provides that 'where the free-at-frontier offer price for a wine, plus customs duties, is lower than the reference price for that wine, a countervailing charge equal to the difference between the reference price and the free-at-frontier offer price plus customs duties shall be levied on imports of that wine and of wines in the same category'.

Thus although, as regards the tariff system, the new regulation did not make any alteration to the conditions for the importation of Greek wines into the countries of the Common Market and in particular for their entry free of duty into the Benelux countries, the application of the countervailing charge, from which Regulation No 816/70 has not exempted Greek wines, constitutes a new factor. The Commission has explained in its pleadings and its representative stated during the oral proceedings how that charge is calculated. Let me remind the Court of it: in respect of every wine subject to the reference price system, the Commission regularly fixes a free-at-frontier offer price which takes account of offers actually made by all exporting countries including Greece. This offer price is increased by the amount of the customs duties provided for by the Common Customs Tariff. If the sum of these two factors is at least equal to the reference price, that is to say, if the price of the imported wine is sufficiently high for the import not to affect Community production adversely, no charge is payable; on the other hand, if the offer price plus the customs duties is lower than the reference price, a countervailing charge equal to the difference between these two values is then levied.

It follows from this method of calculation that in the case of imports of wine from any third country with which the Community has not concluded an agreement allowing the wines into the territory of the Common Market at a preferential tariff, the product will be subject on entry to the duties laid down under the Common Customs Tariff at the full rate and, where applicable, to the countervailing charge, so that in any event the wine cannot be sold at a price lower than the reference price.

On the other hand, wines imported from

Greece, according to the Member States and in accordance with the provisions of Protocol No 14, will either be completely exempt from customs duties, as is the case with regard to the Benelux States, or will pay duties lower than those of the Common Customs Tariff to the extent of the tariff quotas opened, as is the case with regard to France, Italy and Germany. However, these wines will be subject to the countervailing charge if their offer price is lower than the reference price after adding, even notionally, the customs duties laid down in the Common Customs Tariff.

There is no need to set out here the example with figures given by the representative of the Commission but these somewhat technical explanations in themselves enable light to be thrown on the two major questions raised in the case which may be put in the following terms:

1. Did the terms of the Athens Agreement whether, as we shall see, contained in Article 43 or in the provisions of Protocols Nos 12 and 14, prohibit the Community authorities from applying to wines imported from Greece the countervailing charge intended to prevent these wines, which come into the countries of the Community under the preferential tariff system, from being sold at a price lower than the reference price and from thus giving rise to competition which would certainly prove damaging to the sale of Community wine production?

2. Is the countervailing charge established by Regulation No 816/70 in the nature of a 'levy' within the meaning of Protocol No 12 or must it be regarded as a charge having an effect equivalent to a customs duty?
   What are the applicant's submissions in this respect?

Although the argument is limited to the claim for damages, it is necessary, I think, to consider all the submissions on which the applicant relies including supporting its claims that the Community regulations are inapplicable, for the basis of the Community's liability in the present case lies, according to the applicant, in the fact that by adopting the regulations in question, introducing the countervailing charge and fixing the amount and method of calculation thereof, without exempting imports of Greek wines, the Community institutions have exceeded their powers and infringed the rules which follow from the Athens Agreement and the protocols annexed thereto.

The applicant maintains in the first place that since that agreement established a customs union between the Community and Greece, the object of which was to abolish all obstacles to the free movement of goods, the introduction of a countervailing charge was lawful only in certain circumstances under Article 43 of the agreement; but assuming that the special conditions required by this article were fulfilled, such a charge could, according to the actual wording of the second paragraph of Article 43, only be created by the Council of Association, a body composed of representatives of the Governments of the Member States, the Council and the Commission of the Community on the one hand and representatives of the Greek Government on the other, which has certain powers to take decisions and acts unanimously.

Haegemann then maintains that if the conditions for the application of Article 43 did not exist in the present case and if as a result this provision could not properly be relied upon, the Community could not by using its general powers subject imports of Greek wines to a countervailing charge affecting the preferential system guaranteed by paragraph (2) of Protocol No 14. This provides that: 'The Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands shall apply to imports from Greece the treatment accorded to imports from Germany, France and Italy'.

Thus according to the applicant, the 'treatment' accorded to the importation of Greek wines into the Benelux countries could not include any customs duty or countervailing charge since imports of wines into the Benelux countries from other Member States were not subject to any such charge.

These are the two grounds on which the applicant relies to maintain that the Community institutions have failed to fulfil their obligations under the Agreement of Association.

Before giving an opinion on the merits of this argument it is necessary to recall the general structure of the Athens Agreement, in particular as regards agricultural products. This agreement establishes an association between the European Economic Community and Greece. It thus comes within the terms of Article 238 of the Treaty of Rome which authorizes the Community to conclude, for example with a third State, agreements establishing an association involving reciprocal rights and obligations, common action and special procedures.

But Article 238 does not define the association and does not particularize in any way the possible contents of an association agreement. It follows that such a type of agreement may lead to the establishment of very close institutional cooperation between the Community and the associated country without however going so far as the unconditional accession of that country. Conversely an agreement of this nature may be limited either to the grant of non-discriminatory advantages, the establishment of a free trade area, a customs union or even the establishment of a true preferential system.

In the case of Greece, the customs union type prevailed because at the time this solution appeared the most appropriate in view on the one hand of the position of the Greek economy and its prospect of development and on the other of the objectives which the Community and the Member States intended to pursue within the framework of this association.

With regard to industrial products the Community accords Greece the tariff and quota system which the Six accord each other at least from the time when the customs union is completely achieved between the Member States themselves (Protocol No 6, paragraphs (1) and (3)), since Greece has at its disposal for its part lengthy transitional periods (12 and 22 years) for the protection of its own industry.

On the other hand, with regard to agricultural products Article 33 of the agreement reflected the impossibility of opening the frontiers without at the same time sufficiently harmonizing the agricultural policies of the Community and Greece so as to ensure equality of treatment for agricultural products of each party on the other's market.

But this harmonization was subject on the one hand to the progress made by the Community in the implementation of its own common agricultural policy which, it must be remembered, did not yet exist in 1961 when the Athens Agreement was entered into and on the other to negotiations between Greece and the Community on the conditions for that harmonization. In the meantime, the parties merely consolidated the tariff quota position existing when the agreement came into force (Article 34(2)). Nevertheless, with regard to certain agricultural products such as tobacco, raisins, fruit, vegetables and wine, which represent a very large part of the traditional exports from Greece, the Community basically accorded the tariff quota system which the Six accorded each other, apart from the adoption of Community agricultural regulations which could be anticipated; finally, whereas with regard to tobacco (Protocol No 15) and raisins (Protocol No 17) acceleration of the customs union was prescribed, exports of Greek wines were the subject of special tariff quota measures; this is the actual subject of Protocol No 14.

Two propositions in my opinion must be elicited from these provisions:

The first is that the Athens Agreement has only a limited institutional content; the type of association which it creates is not only different in nature from accession, but is very far from it in practice even if the negotiators, as shown by certain provisions of the agreement, have in mind that the accession of Greece is a future objective, assuming always that the political and economic situation justifies such an outcome.

As it is, there is no doubt that Greece has remained, as regards the common agricultural policy, a third country and must be treated as such, save in so far as

particular and mandatory provisions of the agreement or its annexes authorize it to claim privileged treatment on certain points.

The second proposition derives from the fact that the basic objective of the Athens Agreement is to achieve a *customs union* between the Community and Greece, subject to two conditions, namely the periods laid down in the agreement for this objective to be attained and the special privileges guaranteed, albeit solely with regard to tariffs and quotas, to Greek exports of certain agricultural products even before the agricultural policies of the two parties are harmonized.

However there is no doubt that pending this harmonization, which can result only from negotiations undertaken within the framework of the Council of Association (Articles 33 and 35 of the agreement), the Community has retained unfettered power to determine its own agricultural policy which was not yet defined when the agreement was entered into. It has given up none of its powers in this sphere; it has been bound itself.

Even if, in working out this agricultural policy, the Community institutions are led to take decisions capable of affecting certain Greek exports, it must be said that the Community has not agreed in the Athens Agreement to give more than a general undertaking which—let it be clearly said—is not enforceable by sanctions, 'to have regard to the interests of Greece'.

These propositions are in my opinion a determining factor in judging the merits of the applicant's submission that paragraph (2) of Protocol No 14 was infringed.

As has been seen, an important presumption arises from the general context of the agreement that this protocol relates only to the tariff quota system applicable to the import of Greek wines into the countries of the Common Market. While Haegemann maintains that the word 'treatment', used in paragraph (2) of the Protocol, referring to imports into the Benelux countries, has the widest meaning and likewise covers the concept of a countervailing charge, or indeed of a levy, the representative of the Commission counters this proposition with an argument based on the wording which supports a more limited interpretation.

The protocol defines the conditions for the import of Greek wines into *each* of the six Member States of the Community and not into the Common Market considered as a whole. The reason for this is obvious: at that time the national markets in wine of the Member States were still partitioned; there was neither a common policy nor a common organization of the market. I referred to this in explaining the system prior to the entry into force of Regulation No 816/70.

The context of paragraph (2) of the protocol relating to imports of Greek wines into the Benelux countries is an agreement which regulates, as regards imports of these wines into Germany, France and Italy, solely questions of tariffs and quotas. Is it conceivable that, with regard to the Benelux countries, the draftsmen of the Protocol intended to give the word 'treatment', without giving it the necessary precision and clarity, a wider meaning than that of customs treatment and to include therein the possible effects of a common organization of the market in wine which was at the time still in limbo?

Let me add that although in the case of Germany, France and Italy it was necessary for the purpose of encouraging Greek exports of wines to provide in the protocol for the opening of tariff quotas involving in certain circumstances the application of duties lower than those laid down in the Common Customs Tariff, the question in no way arose with regard to the Benelux countries which before the Agreement of Association was entered into already admitted Greek wines free of duty and without quantitative restrictions in the same way as French, German or Italian wines. It was therefore simply a question of maintaining this situation and it is natural that the draftsmen of the Protocol should have expressed this concept by prescribing that Greek wines should be treated on entry into Belgium, Luxembourg and the Netherlands in the same way as wines from other Member States.

But there is more than this: *Protocol No 12,*

which expresses in a concrete way the principle that the Community has reserved to itself the power to organize its own common agricultural policy, provides that 'the levy system envisaged within the framework of the common agricultural policy constitutes a measure specific to that policy which in the case of its application by either party is not to be considered as a charge having equivalent effect to customs duties within the meaning of Articles 12 and 37 of the Agreement of Association if applied by either party'.

The question which of the two protocols, No 12 or No 14, should prevail over the other does not arise; it is not necessary to ask whether Protocol No 14 on the import of wines frustrates the more general provisions of Protocol No 12 relating to the common agricultural policy as a whole.

Each of these two protocols relates to a completely different field:

— the first relates to 'levies' within the meaning of the organization of the agricultural markets; it refers to the pricing policy capable of being applied by the Community and which moreover was applied several years after the Athens Agreement was entered into. Depending on the markets and the types of organization it covers threshold prices, entry prices and reference prices with their necessary corollary in trade with third countries, namely levies or even, as we shall see, countervailing charges, when this expression refers to an instrument for stabilizing prices in the Common Market which must be equated with levies.

— The second protocol is quite alien to these concepts: it establishes a certain customs system which involves no duties or quantitative restrictions on Greek wines imported into the Benelux countries.

Thus I invite you without hesitation to reject the applicant's argument as to the interpretation of Protocols Nos 12 and 14. Nevertheless it is still necessary to enquire whether, having regard to its nature and its objective, the countervailing charge introduced by Article 9(3) of Regulation No 816/70 may be equated with a 'levy' within the meaning of Protocol No 12.

The terminology appears to me in this respect to be of no great importance. At the time when the protocol was drafted the Community did not yet have a common agricultural policy and although drafts were already under preparation and obviously the system of levies had already been conceived as one of the basic factors in the common organization of the agricultural markets—to paraphrase the wording of the judgment of the Court of 13 December 1967 in Case 17/67, *Firma Max Neumann* v *Hauptzollamt Hof/Saale*, [1967] ECR 441—there is nothing to prevent the expression 'countervailing charge' from being used in an organization of the market to denote a 'charge regulating [external trade] connected with the common price policy'. For the Court used this other wording to define the nature of levy in the same judgment adding this comment which is of particular interest in the present case: 'whatever similarities it [the levy] may have to a tax or customs duty'. In the same judgment of 13 December 1967 the Court moreover clearly specified the objective of the levy by saying that the levy 'acts as a regulatory device for markets not in a national context but in a common organization, is defined with reference to a price level fixed in the light of the objectives of the Common Market and ... its rate is flexible and may vary in terms of the hazards of the market'.

It is true on the other hand that there is no case-law on the legal nature of the countervailing charge provided for by Article 9(3) of Regulation No 816/70 nor on other countervailing charges. In Case 5/67, *W. Beus GmbH & Co.* v *Hauptzollamt München*, [1968] ECR 83, in answer to a question referred for a preliminary ruling on the validity of Regulation No 144/65 of the Commission introducing a countervailing charge on imports of grapes from Bulgaria and Romania the Court did not rule on the nature of the charge in question. But if a definition of the objective of the countervailing charge provided for by Regulation No 816/70 is sought, are we not led to regard it as completely comparable to a 'levy'?

— It is undoubtedly linked with the common pricing policy in the wine sector since it is intended to compensate for the difference between the free-at-frontier offer price of wines imported into the territory of the Community and the reference price fixed by the Commission for the whole of the Common Market on the basis of the guide prices for the types of wine most representative of Community production;

— It is thus defined with reference to a price level fixed in the light of the objectives of the Common Market, that is to say, a level intended to guarantee an equilibrium between Community production and consumption while ensuring an adequate income for producers;

— It is a specific factor adapted to stabilize the Community wine market and intended to prevent disturbances caused by offers made on the world market at abnormally low prices;

— Its rate is flexible and may vary in terms of the hazards of the market, since, may I remind the Court, its method of calculation takes into account the free-at-frontier offer prices periodically fixed by the Commission according to the offers actually made by exporting countries;

— Finally, the fact that in calculating this charge the customs duties are added to the free-at-frontier offer price constitutes in my opinion an additional factor distinguishing it from the duties laid down in the Common Customs Tariff. These are related to the hectolitre having regard to the alcoholic strength of the wines; they are methods of price protection and not of price regulation. The countervailing charge, on the other hand, is in the nature of a regulatory charge in so far as its aim is to make the selling price on the territory of the Common Market coincide with the reference price or at least to prevent sales at a lower price.

Moreover, since neither Regulation No 816/70 nor the implementing regulations issued thereunder has prejudiced the duty-free system of importation of Greek wines into the Benelux countries, the Court has certainly accepted the explanations given during the oral proceedings that the addition—notional in the present case—of the duties laid down in the Common Customs Tariff in the calculation of the charge in no way harms importers of Greek wines, the actual price of which remains as a rule lower than that of wines of the same quality from any other third country, apart, however, from the power to grant exemption from the countervailing charge given by Article 9(4) of Regulation No 816/70 to which I shall return.

Thus I think that the countervailing charge within the meaning of Protocol No 12 annexed to the Athens Agreement must be regarded as equivalent to a levy with the result that the Community authorities have not disregarded the provisions of this agreement by making Greek wines subject to this charge.

If the Court shares my view it will also reject the submission based on Article 43 of the Athens Agreement. This article provided for the power to apply a countervailing charge on imports 'where a product is subject to a market organization or to internal rules having equivalent effect, or where a product is directly or indirectly affected by such a market organization for other products, and where the resulting disparity in the price of the raw materials has a damaging effect on the market of one or more Member States or of the Community, on the one hand, or of Greece on the other'.

In the present case, it does not appear to me, first of all, that the conditions required by this article for the application of a countervailing charge are fulfilled, at least in the sense which the applicant claims. It might perhaps be asked whether the fact that the Community has organized the market in wine on its territory could justify the Greek authorities asking the Council of Association to establish such a charge *on imports into Greece* of wines from the Member States of the Common Market; conversely, in the absence of any

evidence of or even any allegation of the existence of 'internal Greek rules having equivalent effect' to an organization of the market in wine, it is difficult to imagine how the Community authorities could have availed themselves of Article 43.

Thus if the Court accepts that, within the terms of its general powers and having regard to the freedom of action which it reserved to itself with regard to the organization of the agricultural markets, in particular by means of Protocol No 12, the Community could, without infringing the Athens Agreement, create a countervailing charge intended to prevent the import of wines at a level less than the reference price, it will logically infer that recourse to the procedure laid down in Article 43 was meaningless, that in any event there was no such obligation on the Council and, consequently, that the submission relied upon is ineffective.

It remains for me to deal with the last two complaints made by Haegeman. The latter maintains that it was misled because the Commission did not act in accordance with the Resolution of 6 February 1970 in which the Council had manifested the intention of providing for a special system applicable to wines from States associated with the Community in the basic regulation on the organization of the market in wine. Neither Regulation No 816/70 nor subsequent regulations have laid down such a system. I have already stated my opinion on that complaint and concluded that the Council, and not the Commission, was able to introduce the countervailing charge legitimately without exempting therefrom wines from Greece. But the applicant adds that, in the belief that it could count on special treatment for associated countries and therefore applicable to Greece, which would obviously have had to involve exemption from the charge, it was surprised by the implementation of Regulation No 816/70 and forced to bear the countervailing charge on existing contracts without being able to include the charge in the prices already agreed.

This argument raises the question whether the applicant can claim a personal right to the maintenance of a particular treatment of imports in respect of contracts entered into before different treatment was applied. That is not so; we here concerned with regulations and although the Council had no doubt the power, in order to take account of the situation of importers, to decide that the charge would be levied only on imports made under contracts entered into after the implementation of the new regulation, it was not under any obligation in that respect. This is a simple consequence of the principle that in respect of regulations of a general scope individuals cannot rely on vested rights to the maintenance of a previous legal situation.

Further, the applicant complains that the Commission has destroyed the equilibrium between the countries enjoying a preferential system by exempting imports of wines from Turkey, Algeria, Morocco and Tunisia *from the countervailing charge* while on the other hand it authorized Germany, France and Italy to adopt protective measures against imports into their territory of Greek wines transported through a Benelux country.

Although it is true that wines imported from North African countries and Turkey were exempted from the countervailing charge this is under a specific provision of Regulation No 816/70, namely Article 9(3), according to which: 'However, the countervailing charge shall not be levied as regards third countries which are prepared and in a position to guarantee that the price for imports of products originating in and coming from their territory will not be lower than the reference price less customs duties and that any deflection of trade will be avoided'.

The Governments of the States in question for their part said that they were prepared to give this guarantee in respect of exports of certain wines to the Community; for its part, the Commission satisfied itself that this guarantee had a solid basis:

— the goods in question may be exported only on the basis of written contracts by or under the control of official marketing organizations for wines which are under the auspices of the governments concerned;

— these exports are authorized only when the free-at-frontier offer price of the Community is not lower than the reference price less customs duties;

— finally, the governments undertook to see that any deflection of trade was prevented.

No doubt Greek wines could have enjoyed this exemption and still could do so on the same terms; but it would still be necessary for the Greek Government to be prepared to give the Community the guarantees required, which does not appear to have been the case. Therefore the equilibrium has not been upset and there has been no disparity in treatment.

Moreover, for the same reasons the Commission had to authorize Germany, France and Italy to take certain protective measures against imports into their territory of Greek wines previously imported into the Benelux countries. In view of the provisions of Protocol No 14, which as we have seen established different imports systems on the one hand, for the Benelux countries—no customs duties and no quantitative restrictions—and on the other with regard to the three other Member States which were required only to concede certain tariff quotas, it was both necessary and in accordance with the provisions of this protocol that Germany, France and Italy could defend themselves against deflections of trade in Greek wines by making them subject to protective measures when they were sent to their territory from Belgium, Luxembourg or the Netherlands where they had been admitted duty-free.

Finally, since none of the submissions relied upon appears to me to be well-founded and since the applicant has not shown that the levying of the countervailing charge on Greek wines was unlawful, its application for damages must be dismissed without its being necessary to consider whether the alleged damage in fact exists or whether it was direct and certain.

My opinion is that Application No 96/71 should be dismissed and that Haegeman should be ordered to bear the costs.