2. Pursuant to Article 13 of Directive No 75/439 on the disposal of waste oils, when Member States implement a directive they are free either to grant indemnities directly to undertakings engaged in the recovery, disposal or regeneration of used oils or to allow regenerated oils to benefit from more favourable tax treatment, or even to combine the two systems. Nevertheless, if in the exercise of their discretion in this field they opt for a system of lower internal taxation, they must accept the consequences of that choice and ensure that the system chosen complies with the fundamental principle laid down in Article 95 of the EEC Treaty that there must be no tax discrimination against imported products.

In Case 21/79

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Antonino Abate, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by its Ambassador, Adolfo Maresca, acting as Agent, assisted by Arturo Marzano, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that, as far as concerns the tax rules applicable to regenerated petroleum products, the Italian Republic failed to fulfil its obligations under the first paragraph of Article 95 of the EEC Treaty,

THE COURT

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

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

gives the following

JUDGMENT

Facts and Issues

The facts of the case and the arguments developed by the parties during the written procedure may be summarized as follows:

I — Facts and procedure

1. In Italy the manufacture of mineral oils is regulated by a Decree-Law of 28 February 1939 — which has since then been amended on several occasions — and is in particular conditional upon a licence being granted by the Ufficio Tecnico delle Imposte di Fabbricazione [Technical office for production taxes]. An internal tax called "imposta interna di fabbricazione" [internal production tax] is imposed on these products. The same tax is levied on imported products at the frontier (Decree-Law of 28 February 1939, Articles 1 and 4).

2. In order to promote the recycling of waste petroleum products Article 12 of Italian Law No 1852 of 31 December 1962 (Gazzetta Ufficiale della Repubblica Italiana [Official Journal of the Italian Republic] No 26 of 29 January 1963) provides for granting reductions of or exemption, according to the circumstances, from the tax in question for the benefit of products which have thus been recycled.

3. The system introduced by Article 12 may be analyzed as follows:

(a) Any undertaking which intends to obtain petroleum products by any process whatsoever from products of the same kind which have already been used within the national territory must obtain a licence and abide by the conditions specified in the Decree-Law of 28 February 1939 (the first paragraph). If such an undertaking intends to "regenerate" petroleum products it must obtain the prior authorization of the Minister for Finance (fourth paragraph).

Products obtained *under those conditions* are liable to an "imposta di fabbricazione" at the reduced rate of 25% of the full rate applicable to these products.

(b) Products obtained within the meaning of the first paragraph and released to the market without the prior authorization of the Minister for Finance are chargeable at the full rate of the imposta di fabbricazione (sixth paragraph of Article 12).

(c) Subject to compliance with the detailed rules to be fixed by decree, mineral lubricating oils (oli minerali lubrificanti) recovered by one or more of the processes of elutriation, filtering or drying in industrial premises are exempt from the imposta di fabricazione, *if the recovery and recycling are carried out on the same premises* as those where the oils were first used (seventh paragraph of Article 12).

(d) 1. Benzine [benzina] recovered in dye works and laundries where it has been used;

2. Petroleum products [prodotti petroliferi] *other than lubricants* recovered on industrial premises for the purpose of direct re-use in the manufacturing process during which they have already been used (eighth paragraph of Article 12):

are also exempted and the rules referred to in the first paragraph of Article 12 do not even apply to them.

4. The Commission, by a letter of 24 June 1976, informed the Italian Republic that it regarded these rules as an infringement of the first paragraph of Article 95 of the EEC Treaty. Pursuant to the provisions of Article 169 of the EEC Treaty relating to the procedure when the Commission considers that a Member State has failed to fulfil an obligation under the Treaty the Commission requested the Italian Government to submit its observations within a period of one month. The Italian Government, in the observations which it submitted by a letter of 29 June 1976, made a distinction between "re-used and recovered" products which are exempted in full and "regenerated" products which are charged to tax at a reduced rate. As far as the former are concerned the purpose of the exemption is to prevent double taxation which would otherwise inevitably occur since they are products that have already been taxed and that are re-used in the same manufacturing process. In the case of "regenerated" products the application of a reduced rate is justified by the special nature of the regenerating process which meets a good many economic and ecological requirements and which involves compliance with strict conditions, which is monitored by subjecting the whole production cycle to constant fiscal supervision.

5. Since the Commission considered that the above-mentioned arguments were irrelevant, on 10 January 1978 it delivered a reasoned opinion pursuant to Article 169 of the EEC Treaty in which it recorded the findings that "the Italian Government has failed to fulfil its obligations under the EEC Treaty by imposing on regenerated petroleum products imported from other Member States the tax on consumption at the full rate whereas similar imported (sic) products are fully or partially exempted according to circumstances".

6. By a telex message of 14 May 1978 the Italian Government laid stress on the connexion between Council Directive No 75/439/EEC of 16 June 1975 on the disposal of waste oils (Official Journal 1975, L 194, p. 23) and the Italian tax system and on the consequences of the failure of Member States to apply that directive. The Italian Government gave notice in a telex message of 5 July 1978 that it had started to prepare special legislation abolishing the reduced rate of tax on regenerated oils, which at that time was provided for as means of encouraging the disposal of used oils, and replacing it by granting the indemnities provided for by Directive No 75/439. The Italian Government gave notice "of the decision of the Italian authorities to comply with the reasoned opinion of 10 January 1978" and asked the Commission to consider a stay of the contentious procedure.

7. Having found that, in spite of the assurances which had been given, the

alleged discrimination had not been eliminated, the Commission brought the matter before the Court by means of an application of 31 January 1979 which was registered on 2 February 1979.

After hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory enquiry.

II — Conclusions of the parties

The Commission claims that the Court should:

1. Declare that the Italian Republic, by taxing regenerated petroleum products imported from the other Member States at a discriminatory rate, pursuant to Law No 1852 of 31 December 1962, has failed to fulfil its obligations under Article 95 of the EEC Treaty.

2. Order the Italian Republic to pay the costs.

The Government of the Italian Republic contends that the Court should:

1. Dismiss the Commission's application.

2. Order the Commission to pay the costs.

III — Submissions and arguments of the parties developed during the written procedure

A — The subject-matter of the application

The *Italian Government*, relying on the wording of the reasoned opinion of 10 January 1978, points out that the Commission's original complaints related to the tax treatment of petroleum products which have been recovered and re-used and also of regenerated products but that the Commission has withdrawn the complaints in so far as recovered and re-used products are concerned.

The Commission's reply to this is that there has not been any partial retreat from the position which it adopted in its reasoned opinion because the operative part of that opinion defined the subject-matter of the action as relating to regenerated products only. The *Italian Government* in its rejoinder considers that that definition also shows that the action is not well-founded as far as regenerated products are concerned. Oils which have been "recovered", on the one hand, and "regenerated" oils imported from other Member States, on the other, are in fact accorded identical treatment for tax purposes on arrival at the Italian frontier, since both are oils derived from products on which, as distinct from domestic oils that have been recovered or regenerated, the full production tax at the normal rate has not been paid. If it is conceded that taxing imported recovered oils is not discrimination which is incompatible with the first paragraph of Article 95 of the Treaty, the same concession must be made as far as concerns regenerated oils. In both cases the reduction of and exemption from the domestic tax are in fact allowed only if the oils have already been used within the State concerned and the rules which have to be complied with in order to obtain exemption or the reduction have been observed.

B — The connexion between Council Directive No 75/439/EEC and the Italian measures in question

The Italian Government refers to the connexion between the Italian provisions at issue and Council Directive No 75/439/EEC on the disposal of waste oils.

By means of that directive principles and procedures similar to those underlying the Italian provisions have been accepted on a Community level. Concerning the implementation of that directive the Italian Government, before the matter became contentious, called attention to the possibility of abolishing the reduced rate of the *imposta di fabbricazione* allowed on products obtained by regeneration of oils already used on national territory by replacing it with the indemnity provided for by Council Directive No 75/439/EEC. That does not mean that before the Community directive was implemented the Italian rules and regulations could be regarded as an infringement of the first paragraph of Article 95 of the EEC Treaty. On the contrary unacceptable distortions of trade would occur if the reduced rate of tax — which is applied to regenerated oils obtained from products already taxed at the full standard rate of excise duty — was abolished before the implementation of the directive.

The *Commission* replies that the prohibition of discrimination in matters of tax stemming from Article 95 of the Treaty, which is directly applicable, and compliance with that prohibition cannot be subjected to any state intervention, even if such intervention involved the implementation of Community directives. Furthermore the tax relief allowed for Italian products cannot be compared to the optional indemnity provided by Article 13 of Directive No 75/439, since this indemnity is limited to the service rendered and must not exceed the actual costs.

The Italian Government in its rejoinder stresses that the directive, as a means of obliging Member States to attain a specific objective, while leaving "to the national authorities the choice of form and methods" sometimes appears to be an instrument whose nature has been distorted and changed by current Community practice, and in reality lacks its essential characteristic of a statement of principles, and has in fact the same effect as international treaties.

As far as the system of refunds provided for by Article 13 of the directive is concerned the Italian Government points out that the actual result of the Community directive has, in substance, been absolutely the same as that already achieved by the Italian rules and regulations now in force. If the aim is to ensure that used oils are recycled for ecological and energy considerations the high cost of the process of regenerating used petroleum products in fact necessitates a reduction of the production costs borne by the commercial operator.

The question whether the reduction or exemption accords with the refund allowed by the Community directive is arguable but, apart from the determination shown by the Italian authorities to implement the Community directive, it is clear that such an argument has

absolutely nothing to do with the subject-matter of this case.

C — *The similarity between regenerated mineral oils produced in Italy and those imported from other Member States*

The *Commission* takes the view that there is tax discrimination, contrary to the first paragraph of Article 95 of the EEC Treaty, against imports into Italy of regenerated mineral oils from the other Member States.

The *Italian Government* considers, on the other hand, that there is no risk of the tax rules at issue leading to discrimination against imported Community products and relies on two arguments in support of its view:

— Account must be taken of the fact that the taxation of regenerated oils at a reduced rate is in addition to the standard tax already paid on the products when used on national territory. In the other Member States no separate tax on consumption is chargeable on regenerated oils and this is specifically on the basis of the principle that the same product may not be subjected to double taxation if it is intended for the same use.

— Furthermore, in order to avoid discrimination by according the same treatment to different situations it is necessary to take account of the fact that the taxation at a reduced rate can apply only to the extent to which the regenerated oils are obtained in the manner prescribed by law and are subjected to constant supervision. The comparison with imported products can therefore be material only in relation to corresponding domestic products obtained without complying with the conditions laid down.

The *Commission*, relying on the judgment of the Court of 10 October 1978 in Case 148/77 *(H. Hansen jun. & O. C. Balle GmbH & Co* v *Hauptzollamt Flensburg* [1978] ECR 1787), replies that the similarity of the products must be determined in the light of the way they are used and of the needs which they meet, the raw materials used and the manufacturing process being irrelevant.

Furthermore the reasoning based on Italian provisions which provide for constant supervision of the production cycle of regenerated mineral oils cannot be upheld since, if that were correct, all production taxes would escape Article 95 of the Treaty, because products subject to those taxes are always placed under the supervision of the tax authorities. The application of Article 95 of the Treaty cannot be limited by the requirements of national laws and consequently does not admit of any derogation for reasons of tax supervision.

In its rejoinder the *Italian Government* expresses the view that Article 95 does not apply to the matter in question, on the one hand, because the national measures at issue do not seek to protect intra-Community trade but are guided

by ecological and energy considerations and, on the other, because the specific consequences of the result which the Commission wants do not accord with the objectives of Article 95 of the Treaty.

If in fact it were possible to prove in this case that unjustified discrimination does take place and if such hypothetical discrimination could be held to be incompatible with Article 95 of the Treaty it would be necessary either (a) to apply the reduced rate to imported regenerated oils as well, or (b) to make all domestically regenerated oils liable to the tax at the standard rate.

(a) If the reduced rate of tax was extended to imported regenerated oils there would to begin with be an abnormal inflow of regenerated products. Furthermore once the application of a reduced rate of tax to the imported products was accepted there would be unjustified discrimination against domestic products which have been obtained without an authorization and without being subject to the supervision provided for by the statutory provisions and which are chargeable to tax at the full rate.

(b) The application of the full rate to regenerated oils produced under supervision has similar effects, because there is no real possibility of checking that used oils have in fact been recycled and of preventing payment of the tax chargeable on unused oils being avoided. In this way the objectives based on ecological and energy considerations which both the national laws and the Community directive seek to attain would be irremediably compromised.

The parties presented oral argument at the sitting on 24 October 1979.

The Advocate General delivered his opinion at the sitting on 15 November 1979.

Decision

1 By an application of 31 January 1979 the Commission brought before the Court an action pursuant to Article 169 of the EEC Treaty for a declaration that the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty "by taxing regenerated petroleum products imported from the other Member States, pursuant to Law No 1852 of 31 December 1962, at a discriminatory rate".

General considerations

2 Under Italian law — in particular under Decree-Law No 334 of 28 February 1939 in the version in force in 1978 — an "imposta interna di fabbricazione"

[internal production tax], fixed at a certain amount of Lire per quintal, which varies according to the products, is chargeable on mineral oils and processed products derived from them. A similar tax called "sovraimposta di confine" [frontier surcharge] is chargeable on similar foreign products when they cross the frontier.

3 With a view to encouraging, on both economic and ecological grounds, the recovery and re-use of used oils Article 12 of Italian Law No 1852 of 31 December 1962 (Gazzetta Ufficiale della Repubblica Italiana [Official Journal of the Italian Republic] No 26 of 29 January 1963, p. 458) introduces a series of measures regulating the collection, recovery and re-use of petroleum products and granting the undertakings which engage therein on Italian territory tax advantages as far as the imposta di fabbricazione is concerned.

4 The provisions in question distinguish between the recovery and the regeneration of used petroleum products and accord different treatment in a different way, including treatment for tax purposes, to the two operations.

5 The recovery of used oils consists in recycling certain petroleum products which have already been used once, either by re-using them as they are for the same purposes as before or for other purposes or by first of all cleaning or purifying them *inter alia* by elutriation, filtering or drying. The lubricating oils recovered in this way are exempt from the imposta di fabbricazione provided that the recovery and re-use are carried out on the same premises as those where the oils were first used (seventh paragraph of Article 12 of Law No 1852).

6 Regeneration on the other hand is a complete chemical process which requires industrial installations and in fact restores to used mineral oils all the properties they had before they were used. The Commission and the Italian Government are at one in accepting that it is impossible to distinguish between oil which has undergone a regenerating process and oil of primary distillation in its original condition.

7 Pursuant to the second paragraph of Article 12 of the above-mentioned Italian Law an imposta di fabbricazione at 25% of the full rate is imposed on regenerated oils. This reduced tax is chargeable on regenerated products not only if they are offered for sale but also if they are re-used by the undertaking which had used them first.

8 The Italian Law does not allow this reduced rate to be applied to imported oils whether they be recovered or regenerated oils and the latter pay the sovraimposta di confine which is the tax corresponding to the imposta di fabbricazione chargeable at the full rate, although it must be pointed out that the importation from the other Member States of recovered oils seems to be a theoretical assumption and that even intra-Community trade in regenerated oils is, if not non-existent, at the very least very restricted, even though it is likely to expand having regard to the trend of the market conditions for petroleum products.

9 When the Commission by a letter of 24 June 1976 informed the Italian Republic that it regarded the rules at issue as an infringement of the first paragraph of Article 95 of the Treaty, the latter pointed out that, as far as recovered oils are concerned, the exemption, which is conditional on the recovery and re-use being carried out within the same undertaking, represents the application of the tax rule *non bis in idem*. The fact that, by definition, imported products cannot fulfil that condition does not however in any way prevent this exemption from being in accordance with the Treaty. As far as regenerated oils are concerned the main argument of the Italian Republic was that there was no discriminatory treatment of foreign regenerated oils, because the advantage of the reduced rate, which is justified by the extremely high cost of production of regenerated oil compared with that of the product when first processed, is linked to strict supervision of the regeneration process which includes ascertaining the quantities of regenerated oils to be produced. Since it is not possible to supervise imports in the same way the differential treatment does not contravene Article 95 of the Treaty. The Italian Government also drew the Commission's attention to the fact that the tax advantages at issue were in fact in keeping with the objectives of Council Directive No 75/439/EEC of 16 June 1975 on the disposal of waste oils which provides for the introduction by the Member States of a harmonized system of collection, disposal or recycling of used oils

and Articles 13 and 14 of which allow an indemnity to be given to undertakings engaged in those operations. The tax reductions at issue were in actual fact a form of subsidy which was authorized, especially as the directive had still not been implemented by most of the Member States. The Italian Government added that it was considering the possibility of replacing the tax advantages by direct subsidies, the grant of which is authorized by the directive.

10 In its reasoned opinion of 10 January 1978, the Commission stated that "the Italian Government does not deny that the provisions complained of are incompatible with the first paragraph of Article 95" — this is an incorrect assessment of the Italian position — and expressed the opinion that "the Italian Republic has failed to fulfil its obligations under the Treaty by imposing on regenerated petroleum products imported from other Member States the tax on consumption at the full rate whereas similar imported (domestic is meant) products are fully or partially exempted according to circumstances". By expressly mentioning the domestic products which are accorded complete exemption the Commission was referring to — or in any case gave the impression that it was referring to — the tax rules applicable to oils which have been recovered and re-used in the same undertaking as well as those which apply to regenerated oils. The Italian Government gave notice on 5 July 1978 of its decision to comply with the reasoned opinion by drawing up for regenerated products a law which replaces the tax exemptions at issue with the indemnities provided for by Directive No 75/439.

11 The Commision, in the action which it brought on 31 January 1979, refers only to regenerated products and in its reply as well as in its answers to the questions put to it by the Court, it stated and expressly confirmed that its complaints related only to the tax rules laid down for regenerated petroleum products mentioned in the second paragraph of Article 12 of Italian Law No 1852.

12 The Court takes formal note of this statement which puts an end to the ambiguity both in the observations sent to the Italian Government on 24 June 1976 and in the reasoned opinion so that examination can be limited to the tax rules applicable to regeneraged oils.

The tax rules applicable to regenerated oils

13 During the oral procedure the Commission stressed the fact that regenerated oils and oils of primary distillation "are not only similar products within the meaning of Article 95 but are also indentical". The identical nature of the products is not disputed by the Italian Republic. Nevertheless the Commision's observation seems to suggest that the tax rules applicable to imported oils, whether they be oils of primary distillation or regenerated oils, should be the same as the rules applicable to Italian regenerated oils. This appears to explain the position taken up and developed by the Commission during the oral procedure, namely that the Italian Government, in order to comply with Article 95, should abolish the tax advantage accruing to Italian regenerated oils rather than extend that advantage to regenerated oils imported from the other Member States.

14 Apart from the fact that that point of view was not expressed either in the reasoned opinion or in the action, both of which are based on a comparison of the taxation of domestic regenerated oils and those which have been imported from the other Member States it cannot be shared by the Court. It is in fact clear from the judgment of the Court of 10 October 1978 in Case 148/77 *(H. Hansen jun. & O. C. Balle GmbH & Co* v *Hauptzollamt Flensburg* [1978] ECR 1806) that at the present stage of the development of Community law and in the absence of any unification or harmonization of the relevant provisions, Community law does not prohibit Member States from granting tax advantages, in the form of exemption from or reduction of duties, to certain products or to certain classes of producers. The Treaty does not therefore forbid, as far as domestic tax laws are concerned, the taxation at differential rates of products which may serve the same economic ends, especially if, as in the case of regenerated mineral oils, it appears that the cost of production, objectively speaking, differs considerably from that of oils of primary distillation.

15 On the other hand pursuant to the first paragraph of Article 95 the tax advantages in question must also be granted without any discrimination to products from the other Member States which satisfy the same conditions as the domestic products which qualify for the exemptions or reductions allowed by national law. The first paragraph of Article 95 — the purpose of which is to ensure that the Treaty provisions relating to the abolition of customs duties and charges having equivalent effect cannot be evaded or

rendered nugatory by the introduction of internal taxation discriminating against imported products in comparison with domestic products — implements a fundamental principle of the Common Market. Consequently the disparities prohibited by it must be eliminated in spite of the difficult problems of comparison which may arise when assimilating the imported product to the various domestic products (which are subject to different taxes) and to which it may have some similarity.

16 Although the first paragraph of Article 95 therefore places Member States under an obligation to extend the tax advantages accruing to domestic products to similar products imported from the other Member States as well provided that the latter products satisfy the conditions to which a reduced rate or an exemption have been made subject, it does not however impose upon the Member States the duty to abolish as regards internal taxes on domestic products differences which are objectively justified and which may be introduced by domestic legislation unless such abolition is the only way of avoiding direct or indirect discrimination against the imported products.

17 It is also necessary to reject the Commission's argument that the abolition of the tax advantages at issue is the only way of applying the first paragraph of Article 95 of the Treaty correctly, having regard to the fact that the above-mentioned Council Directive No 75/439/EEC provides that undertakings which collect, dispose of or regenerate waste oils must have a licence and may be granted indemnities by the authorities of the Member States for the service rendered, provided that these indemnities are not such as to cause "any significant distortion of competition or to give rise to artificial patterns of trade in the products".

18 The purpose of this directive, prompted by ecological considerations and also considerations relating to a supply policy for fuel, is not to harmonize the Member States' rules concerning excise duties and other forms of indirect taxation mentioned in Article 99 of the Treaty. Consequently the directive in no way affects the Member States' powers in relation to internal taxation provided that the obligations contained in Articles 95 to 98 of the Treaty have been complied with.

19 It is an established fact, which the Italian Republic does not dispute, that imported and home-produced regenerated oils are not only like products but are even identical so that the relationship between them is undeniably covered by the first paragraph of Article 95 of the Treaty.

20 The Government of the Italian Republic, in order to justify the retention of the rules disqualifying imported regenerated oils from the benefit of the lower rates of tax allowed on home-produced regenerated oils, relies in substance on the following three arguments: (1) it is impossible to distinguish, by means of the experimental testing methods, regenerated oils from oils of primary distillation, and this would be likely to lead to tax evasion when the products in question are imported; (2) the tax exemption is justified by the very high production cost of regenerated oils with the result that without the tax reduction at issue these oils could not compete with oils of primary distillation; (3) the aims of the exemption correspond to the aims of Council Directive No 75/439/EEC and the exemption is in actual fact the indemnity which Articles 13 and 14 of the directive authorize the Member States to grant.

21 The first argument cannot be accepted as justification of the alleged differential treatment. It is for the importers of mineral oils from the other Member States who wish to qualify for the reduced rate to produce evidence that the oils imported by them into Italy are regenerated oils and the Italian administration, without being able nonetheless to set a higher standard of proof than is necessary, is entitled to require in particular that the evidence be adduced in a form that removes the risk of tax evasion, for example by producing certificates from the authorities or other appropriate bodies of the exporting Member State permitting the regenerated oil to be identified as from the premises where it was regenerated. The practice in the Community, especially in relation to the discontinuance of public health inspections at the frontiers between Member States, offers numerous examples of such forms of permissible inspection.

22 The foregoing considerations also answer the Commission's argument that the alleged infringement of the first paragraph of Article 95 can be remedied only by abolishing the reduced rate on a national level. The Italian Republic

has the choice between abolishing the reduced rate and retaining it provided only that, if it opts for the latter solution, it must allow regenerated oils from the other Member States, in respect of which evidence of regeneration has been produced, to benefit from the same reduced rate so as to avoid any form of discrimination between the imported product and the similar domestic product.

23 The second and third arguments are related and must be considered together. The conclusion to be drawn in the light of that examination is that they must be rejected.

25 Although it is true that the reductions of the imposta di fabbricazione are justified by the high cost of regeneration compared with primary distillation, the more favourable tax treatment is not in any way jeopardized by the obligation to apply it with due regard to Article 95 of the Treaty. The tax reductions which thus accrue to undertakings engaged in the regeneration of mineral oil are not in fact endangered by the obligation to allow regenerated oils imported from the other Member States to benefit from them.

25 On the other hand it is impossible to accept the contention on which the Italian Government relies that the system introduced by the Italian Law of 1962 and in particular by Article 12 thereof is in actual fact advance application of Council Directive No 75/439/EEC of 16 June 1975 and that the reduction of the imposta di fabbricazione is the indemnity which, under Article 13 of the Directive, Member States may grant to undertakings engaged in the recovery, disposal or regeneration of used oils.

26 There is no need to decide the question whether the Italian Republic has applied Council Directive No 75/439/EEC or not and it is sufficient to point out that this directive does not affect the rights of Member States to introduce a system of internal taxation involving reduced rates of tax. Article 13 of the directive authorizes Member States to grant indemnities without however making it obligatory for them to do so, but has made sure that if indemnities are granted they do not constitute obstacles to the free movement of goods. Consequently when Member States implement the directive they are free either to grant the indemnities directly to the under-

takings in question or to allow regenerated oils to benefit from more favourable tax treatment, or even to combine the two systems. Nevertheless, if in the exercise of their discretion in this field they opt for a system of lower internal taxation, they must accept the consequences of that choice and ensure that the system chosen complies with the fundamental principle laid down in Article 95 of the EEC Treaty that there must be no tax discrimination against imported products.

27 It follows from the foregoing considerations that by maintaining, pursuant to Law No 1852 of 31 December 1962 modifying the tax system applicable to petroleum products, different rates for the imposta di fabbricazione [internal production tax] on regenerated mineral oils produced in Italy and for the sovraimposta di confine [frontier surcharge] on regenerated oils from other Member States, the Italian Republic has failed to fulfil its obligations under the first paragraph of Article 95 of the EEC Treaty.

Costs

28 Under Article 69 (3) of the Rules of Procedure the Court may order that the parties bear their own costs.

29 In the view of the Court, having regard to the uncertainty during both the administrative proceedings and the proceedings before the Court as to the real scope of the complaints made by the Commission, the parties should bear their own costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by maintaining, pursuant to Law No 1852 of 31 December 1962 modifying the tax system applicable to petroleum products, different rates for the "imposta di fabbricazione" [internal**

production tax] on regenerated mineral oils produced in Italy and for the "sovraimposta di confine" [frontier surcharge] on regenerated oils from other Member States, the Italian Republic has failed to fulfil its obligations under the first paragraph of Article 95 of the EEC Treaty;

2. Orders the parties to bear their own costs.

Kutscher O'Keeffe Touffait Mertens de Wilmars Pescatore

Mackenzie Stuart Bosco Koopmans Due

Delivered in open court in Luxembourg on 8 January 1980.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 15 NOVEMBER 1979 [1]

Mr President,
Members of the Court,

I — The use of lubricants both for combustion engines (motor oils) and for a number of industrial purposes (industrial oils) gives rise to a substantial residue in the form of used oils. In part the used oils are too impure to be used again and can only be disposed of by discharge into the environment or by incineration; for the rest they can either be burnt (in their existing state) or after elutriation in order to produce heat (heating oil used by refiners) or regenerated by distillation or other methods with a view to being re-used for the same purposes as new oils.

These operations have fostered a profitable industry. The market in lubricants (motor oils) is supplied on the one hand by refiners (refining and distributing lubricants go hand in hand) and, on the other, by manufacturers of lubricants

1 — Translated from the French.