OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 26 SEPTEMBER 1973 [1]

Mr President,

Members of the Court,

No doubt you will be led, by the questions referred to the Court under Article 177 of the European Economic Community Treaty by the President of the Trieste Tribunal, to re-affirm the law already well-established by previous cases.

Here are the facts:

The Fratelli Variola firm imported cargoes of cereal in 1965 and again in 1967, first from Argentina, then from Canada; for that it had to pay the customs authorities of the Port of Trieste various sums of money in connection with, firstly, a duty 'for administrative services', secondly a charge known as 'statistical' duty, and, lastly, an unloading charge. The firm brought an appeal before the President of the Trieste Tribunal by way of proceedings for an injunction, requesting an order against the customs authorities to refund the money it had paid, on the grounds that these impositions constituted, in the firm's view, charges having equivalent effect to customs duties, the levy of which is prohibited by Articles 18 and 20 of Regulation No 19/62 on the gradual establishment of the common organization of the markets in the cereals sector and by Articles 18 and 21 of Regulation of the Council No 120/67 introducing the full scheme still in force for that agricultural sector.

The Italian tribunal dealing with the case found it necessary to request the Court to settle certain questions of interpretation of Community law as to the character of the unloading charge in relation to the concept of charges having equivalent effect to customs duties, as used in Regulations Nos 19/62 and 120/67, the priority these provisions were to be given over the Italian Republic's internal legislative measures implementing the obligations placed on it by these Regulations, and the rights which could be claimed directly in the national courts by the plaintiff firm in the main action by virtue of the same Regulations.

I — The fact that the President of the Trieste Tribunal exercised the option given by Article 177 of the Rome Treaty in the course of summary proceedings for an injunction does not in any way affect the application of this provision in the Treaty. It has already been held by the Court that a reference for a preliminary ruling from a national court is admissible even during the course of proceedings for an injunction, purely on the basis of the plaintiff's allegations and without any prior condition that the other party be heard. All that is required, the Court said, is that the national body is 'exercising a judicial *function*' and that some Community law requires — in its opinion — interpretation to enable it to reach a decision, there being no necessity for this Court to consider the point in the proceedings at which the question arose (Case 43/71, *Politi*, judgment 14 December 1971, Rec. 1971).

This ruling was confirmed by the Court in Case 84/71 — *Marimex v Ministry of Finance of the Italian Republic.*

In other words, recourse to Article 177 does not mean that a question involving the interpretation of Community law is actually the subject of a case between parties appearing before a national court, only that such a question was raised before that court. There can therefore be no doubt as to the

1 — Translated from the French.

competence of this Court to decide the question of interpretation.

II — The President of the Trieste Tribunal quite properly refrained from asking about the nature of the statistical duty and the administration duty, which in your judgments of 1 July 1969 (Case 24/68, Rec. 1969) and 18 November 1970 (Case 8/70, Rec. 1970), you have already characterized as charges having equivalent effect to customs duties, the imposition of which, accordingly, is contrary to the provisions both in the Treaty of Rome and in the regulations on the common organization of agricultural markets.

On the other hand, he does request the Court for a ruling on the nature of the unloading charge collected on importation of goods shipped into Italy, coming from other member countries of the Community as well as from third countries.

This tax was introduced by Article 27 of Italian Law No 82 of 9 February 1963. It was fixed, as regards cereals, at the rate of 30 lire per metric ton.

Note that in the present case the unloading charge was levied on cereals imported from third countries. The relevant Community provisions are therefore Article 20 (1) of Regulation No 19/62 for the first of the imports concerned, and Article 18 (2) of Regulation No 120/67 for the second transaction.

The first question to be decided by the Court is whether the concept of 'charges having equivalent effect' mentioned by the regulations has the same scope as that used in Article 9 *et seq.* in the Rome Treaty.

On this point the law established by the cases is clear and consistent. Any pecuniary charge imposed unilaterally, however small and irrespective of its title and method of collection, which is levied on domestic or foreign goods because they are crossing a border, constitutes, the Court decided, a charge having equivalent effect to a customs duty within the meaning of Articles 9, 12, 13 and 16 of the EEC Treaty, even when it is not levied for the benefit of the State, is not discriminatory or protectionist in character, and when the product charged is not in competition with a national product.

— judgments of 1 July 1969, Case 24/68 — *Commission v Italian Republic* —, on the statistical tax, Joined Cases 2 and 3/69 — *Sociaal Fonds voor de Diamantarbeiders,* (Rec. 1969); a similar definition was adopted in the judgments of 18 November 1970, Case 8/70 — *Commission v Italian Republic* — (Rec. 1970), as regards the administration duty, and of 14 December 1972, Case 29/72 — *Marimex* — (Rec. 1972), as regards the Italian charge for hygiene control.

Furthermore, the Court has held that in the provisions of the regulations on the common organization of agricultural markets which prohibit collection of such taxes on imports of goods from either Member States or third countries, the concept of charges having equivalent effect has the same scope as in Article 9 and the subsequent Articles in the Rome Treaty (judgment of 14 December 1971 cited above, Case 43/71, *Politi,* Rec. 1971).

The first question will therefore be answered in the affirmative.

III — We must then see whether the tax collected only where goods of foreign, not national, origin are unloaded in an Italian port constitutes a charge having equivalent effect to a customs duty, within the meaning of the Treaty and of the regulations in question.

The Court has already held that a charge levied when goods are cleared for circulation either within the Community or coming from third countries need not be a charge of equivalent effect provided it corresponds to a specific service actually performed.

The unloading charge can only be held to be compatible with Community law,

then, if it is consideration for a service actually performed by the Administration. But according to the Court's case law, it is also necessary for the performance of the service emanating from administrative action to give the goods subject to the charge an advantage which is concrete, specific and capable of being valued.

In addition, the charge must be in definite and reasonable proportion to the advantage increasing the value of the goods.

Without going into the somewhat theoretical distinction which the Commission suggests that you should draw, depending on whether the service provided by the administration amounted to *consideration*, properly so called, for the charge, or was simply the *purpose* for which it was imposed, I think all that needs to be established is that while the revenue from unloading charges goes towards fitting out the ports and to maintenance costs, it cannot amount to consideration for a concrete and measurable advantage precisely because that object is so general in nature. In any event, the benefit importers enjoy from Italian ports being well-equipped extends to all involved in the economic process, including those concerned with trade in national products, and not only importers of foreign goods.

As to the fact that the charge is of a very small amount, this, in my opinion, in no way modifies the prohibition in principle.

If allowances were to be made according to whether the financial burden imposed was great or small, the Court would be induced to make assessments, and that subjectively, quite out of line with its function of simple interpretation of Community law.

IV — I now come to the questions referred by the President of the Trieste Tribunal which concern the *direct* and *immediate* applicability, in the legal order of Member States, of the disputed provisions in Regulations Nos 19/62 and 120/67.

The very wording of Article 189 of the Treaty of Rome makes it abundantly clear that Community regulations as such are binding in their entirety and directly applicable in all Member States; in addition, the regulations, by reason of their character and function in the system of sources of Community law, are capable of conferring rights on private parties which national courts have a duty to acknowledge and protect. Lastly, mere publication of them in the Official Journal of the Communities brings them into force on the date specified in them or, in the absence thereof, as determined by the Treaty.

Of course, not all the relevant subject matter is covered exhaustively by the detailed provisions in regulations issued by the Council or the Commission. Consequently Member States are requested in certain cases, quite naturally, to undertake themselves some of the implementing measures, e.g. to decide which internal bodies shall be competent in matters relating to the organization of the agricultural markets.

This was exactly what was done by Article 23 of Regulation No 19 when it allowed for action to be taken on a national level to ensure effective implementation of the provisions of the Regulation.

On the other hand Member States are certainly not empowered to adopt any measure, even a legislative one, which does not merely complement a Community regulation, but alters, or even conflicts with it. Finally, the regulations have direct effect — thus mere reiteration of their provisions in the country's internal legislation is a pointless exercise.

The technique of 'reproducing' Community law in a country's internal legislation, or even the procedure of 'reception' of Community law into the domestic laws of a country is not only superfluous but also, according to

previous decisions, detrimental, for resort to such procedures can create ambiquity both as to the legal character of the provisions to be applied, and as to the date of their entry into force. That was very clearly stated by the Court in its judgment of 7 February 1973 (Case 39/72, *Commission v Italian Republic*), in particular when it drew attention to the fact that any method of implementation which could impede the direct effectiveness of Community regulations and thus prejudice the simultaneous and uniform application of them throughout the Community was contrary to the Treaty. Similarly, by using the technique of reproduction of Community regulations, no national legislator can possibly relieve his country's courts of their obligation to apply Community law, unless they seek an interpretation — should they think it necessary — from this Court. That is also a consequence of the principle, repeatedly confirmed, that the enforceability of Community law cannot change from one country to another in tune with their national laws, even those passed subsequently, without jeopardizing the achievement of the objectives of the Treaty. Indeed, by transferring some of their powers to the Community institutions, Member States accepted a restriction of their sovereign rights, against which a subsequent unilateral act, incompatible with the essential concept of the Community, cannot prevail, (judgment of 15 July 1964, Case 6/64, *Costa v Enel*, Rec. 1964).

The reply to be given to the President of the Trieste Tribunal, then, based on the above principles, is that Article 20 (1) of Regulation No 19 and Article 18 (2) of Regulation No 120/67, being regulations within the meaning of Article 189 of the Treaty which are directly applicable in their entirety, in the sense that their entry into force is not conditional on subsequent adoption of Community implementing provisions, nor even, in this instance, of national legislative provisions, bound every Member State not to impose any longer any customs duties or charges having equivalent effect and, correspondingly, created a right for the individual to withhold payment of any such charges.

V — On the same grounds, the answer to the question whether the date on which individuals acquire rights dependent on directly applicable Community provisions can be altered by an internal legislative act must be no.

As you are aware, although the principle prohibiting the imposition of charges having equivalent effect to customs duties on imports from third countries was laid down by Regulation No 19/62 — a measure which came into effect on 30 July 1962, the date finally fixed by Regulation No 49 for the entry into force of the levy system — and although this prohibition was subsequently maintained, without any break in continuity, by the 1967 Regulation, the Italian Government did not abolish some of the charges having equivalent effect in force at the time under Italian law until 1 August 1971. The same question was put forward in Case 84/71 in connection with the law abolishing the statistical duty and the administration duty. Now, this late abolition could not possibly have hindered the immediate application, in Italy as well as in each of the other member countries of the provisions of the regulations in question. Similarly the failure to repeal the law creating the unloading charge cannot affect the primacy of Community law.

The truth is that the Italian law became incompatible with Community law and hence inapplicable as soon as the Regulations in question came into force, and I am wholly in agreement with the Commission when it says that, however useful, and perhaps desirable, from the point of view of legal certainty, it may be to repeal internal laws expressly, it is nothing more than a mere formality of no effect.

To conclude, I am of the opinion that the Court should declare:

1. that the concept of 'charges having equivalent effect' in Article 20 (1) of Regulation No 19, and in Articles 18 (2) and 21 (1) of Regulation No 120/67 has the same meaning as in Article 9 and the subsequent provisions in the Treaty of Rome;

2. that a charge levied under national law exclusively on imported goods by reason of their being unloaded in national ports, is in the nature of a charge having equivalent effect to a customs duty within the meaning of the above provisions;

3. that the provisions contained in Regulations Nos 19/62 and 120/67 are directly applicable and are of such a nature as to confer on individuals rights which the national courts must protect;

4. that the subjective rights created by the successive provisions of Regulation No 19 and Regulation No 120/67 must be enjoyed by private parties without any break in continuity;

5. that the direct effect of the Community provisions in question prevents the application of any internal legislative provision, even if subsequent, which would be incompatible with those provisions;

6. that all provisions which may be adopted by national law to the same effect as any Community regulation are devoid of effect, even if they are no more than a simple repetition of its provisions.