2. **In levying on imports from other Member States the charge provided for by Article 42 of the Decree of the President of the Republic No 723 of 26 June 1965 on goods subject to the regulations of the Council relating to certain common organizations of the agricultural markets, the Italian Republic has failed to fulfil its obligations under Article 189 of the Treaty and Articles 21(1) of Regulation No 120/67/EEC, 19(1) of Regulation No 121/67/EEC, 13(1) of Regulation No 122/67/EEC, 13(1) of Regulation No 123/67/EEC, 22(1) of Regulation No 804/68/EEC, 22(1) of Regulation No 805/68/EEC, 23(1) of Regulation No 359/67/EEC, and 3(1) of Regulation No 136/66/EEC;**

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

Lecourt Trabucchi Mertens de Wilmars

Donner Strauß Monaco Pescatore

Delivered in open court in Luxembourg on 1 July 1969.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 21 MAY 1969[1]

Mr President,
Members of the Court,

The matter in hand today involves a decision whether the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

We have been told that in Italy, before the entry into force of the EEC Treaty a charge for a statistical survey (which for brevity's sake I shall call the 'statistical levy') was levied on the import and export of goods. The system is presently governed by Article 42 of the introductory provisions of the Italian customs tariff, which entered into force by Decree of the President No 723 of 26 June 1965. The tax amounts to 10 lire per 100 kilogrammes or per metric ton or per animal or vehicle, and is not less than 10 lire apart from exemptions conceded for certain products.

On examining the tax the Commission came to the conclusion that it had an effect equivalent to customs duties on imports.

In this connexion we know that Article 13(2) of the EEC Treaty provides that charges having an effect equivalent to customs duties on imports in force between Member States, shall be progressively abolished by them during the transitional period in accordance with directives from the Commission. In fact

1 —Translated from the German.

on 24 November 1966 the Commission issued a directive to the Government of the Italian Republic with regard to goods not governed by the agricultural regulations. The directive was not contested but neither was it implemented and this led the Commission to institute proceedings under Article 169 of the EEC Treaty; with regard to the present case however those proceedings are not directly relevant.

The present case is above all concerned with the application of Article 16 of the EEC Treaty whereby Member States shall abolish between themselves customs duties on exports and charges having equivalent effect by the end of the first stage at the latest (within the meaning of Article 8). Where the statistical levy is imposed on products coming under the regulations of the Council on the common organization of the markets and imported from other Member States the particular issue is the application of the rules contained in those regulations which prohibit levying charges having an effect equivalent to customs duties. The Commission asked the Italian Government for further information, requiring it to be furnished within the period of one month. The Italian Government replied on 23 December 1966 asking for information with regard to the proceedings initiated and for an extension of the period of time which it was granted by Telex on 27 January 1967. The Italian Government submitted observations on the substance of the matter by letter of 23 February 1967 wherein it claimed *inter alia* that the statistical levy was not a charge having an effect equivalent to customs duties. As a result of those observations the Commission issued two opinions of 7 November 1967, one relating to the charges on imports and the other to the charges on exports. In those opinions the Italian Government was requested to take the necessary measures within one month to conform with the requirements of the Treaty; since the Italian Government by letter of 21 December 1967 maintained the point of view which it had previously set out and thereby refused to conform to the Commission's opinions an application was made on 5 October 1968 pursuant to Article 169 of the EEC Treaty.

It is with this that we are concerned today and we shall have to consider whether the Commission's conclusions are well founded when they request the Court to rule:

1. that the Italian Government has infringed Article 16 of the Treaty by imposing a statistical levy on the export of goods to other Member States;
2. that the Italian Republic infringed the Treaty and certain provisions of the regulations relating to the organization of the markets, in that it imposed the statistical levy on goods governed by specified regulations concerning the common organization of the agricultural markets and imported from other Member States; that in particular the following provisions were infringed: Article 189 of the EEC Treaty in conjunction with Articles 21 of Regulation No 120/67, 19 of Regulation No 121/67, 13 of Regulation No 122/67, 13 of Regulation No 123/67, 22 of Regulation No 804/68, 22 of Regulation No 805/68, 23 of Regulation No 359/67 and 3 of Regulation No 136/66).

The Italian Government maintains that the complaints are in no way justified and requests that the application be dismissed as unfounded.

Legal consideration

From the parties' written and oral arguments it is plain that the decision on the dispute turns exclusively on the definition of the concept of 'charges having an effect equivalent to customs duties'. The concept has already been frequently discussed in the case-law of the Court (Joined Cases Nos 2 and 3/62, Joined Cases 90 and 91/63 and Joined

Cases 52 and 55/65). The solution of the problem with which we are concerned ought not therefore to present exceptional difficulties even though it is not completely identical with the problems of earlier decided cases. First of all let us call to mind the principles laid down by the Court in its earlier judgments in this sphere. The first important finding is that as the Treaty intended to render the prohibitions on customs duties as effective as possible, any exceptions must be interpreted *restrictively*. In deciding whether a charge has an effect equivalent to customs duties on imports the Court takes the view that first and foremost the *effects* of the charge in question must be examined without however requiring that it should have all the effects of a customs duty. One must therefore consider whether the charge has discriminatory or protective effects, whether it causes an increase in the price of imported goods and distorts competition so far as a corresponding duty is not imposed on similar domestic products. In this connexion the *amount* of the charge is irrelevant as indeed are any other objectives it may have. Joined Cases Nos 52 and 55/65 led the Court to consider especially whether charges which are to be regarded as consideration for a service rendered by the administration do not cease to be charges having an effect equivalent to customs duties. This was the Court's view, although it emphasized, that, on a strict interpretation the service rendered must embody an advantage *pertaining to the imported product itself*. Finally in Case No 7/68 concerning charges on exports the Court considered that it must also restrict itself to the effects alone; in other words it emphasized the factor of an increase in the price and stressed that it was unnecessary to make a distinction according to the objectives which the State sought to attain in imposing the levy.

I can see nothing which should lead the Court to depart from those principles. In any event it appears to me that the factors put forward in the present case are not such as to involve an alteration in the case-law of the Court.

When the disputed statistical levy is considered in terms of the criteria which I have mentioned it is undeniable that it has effects equivalent to customs duties. It is in fact imposed unilaterally by decision of the State when goods are imported and exported, whilst no comparable charge is imposed on similar domestic products intended for the home market. This latter point is undeniable although local authorities apparently have power to raise a similar levy. But in fact there can be no question of taking into account the charge which they are entitled to levy because this clearly relates to a type of payment in advance against a tax on consumption which is a charge of a different nature. Moreover, to the extent that it is imposed on the same goods as the statistical levy, the (fixed) rates of this charge are also applied to imported goods. Finally, contrary to the view of the Italian Government, it is irrelevant to point out that one and the same statistical levy is payable on import and export and to say that, according to national law, it is the same charge. In fact from the point of view of Community law—and it is thus that the present situation must be considered —it is quite possible to consider the two operations separately. When this distinction is made one perceives—as does the Commission—that the statistical levy has a double discriminatory effect, provided that in approaching the question of discrimination one considers not whether there is a difference of treatment between importers and exporters, but whether a burden is imposed on goods produced internally which do not leave the country. If the definition of a charge is determined by its general effects, then in the nature of things it is irrelevant that certain imported goods have no comparable domestic products as their counterpart. No distinction on

the basis of this criterion seems possible because in maters of this nature customs duties properly so-called are concerned; the decisive factor is that the charge in question is bound up with the process of import and export. It is of no importance, as the Commission rightly points out, that the statistical levy is not calculated in terms of the value of the goods imported or exported and that it is not payable on goods in transit and that it is payable on re-imported goods. These phenomena are also to be found in customs duties properly so-called. One must moreover observe, as does the Commission, that individual divergences from the law on customs duties in no way permit decisive conclusions to be drawn since the Court has already expressly declared that a charge having an effect equivalent to customs duties need not necessarily have *all* the effects thereof.

You will recall that the argument of the Italian Government largely rests on the view that the statistical levy is really the consideration for a special service provided by the administration. The Government explained that in Italy importance was always attached to completely accurate statistics on exports and imports. Those statistics can only be obtained, it states, by recording in detail each export and import transaction, and this involves extra expense for the administration. The end-product of this work is particularly valuable to importers and exporters since it constitutes the basis of their planning as to when and where to do their business thereby rendering their products more competitive. The Italian Government thus concludes that it is justified in making those dealers liable for the costs of the survey of external trade.

In fact those are the considerations best qualified to illustrate the compatibility of the statistical levy with the provisions of the Treaty. It must not be forgotten however that in Joined Cases Nos 52 and 55/65 the Court established very strict criteria for the concept of 'consideration for service rendered' contrary to the view which I expressed on it at the time. In accordance with those criteria a charge only constitutes the consideration for services provided by the administration where it forms the counterpart of a benefit which shows its effect on the specific product on which it is imposed. The Court's view is that only in such cases can it be said that the fiscal effect is in fact eliminated and that consequently the provisions of the Treaty relating to charges affecting the movement of goods between Member States cease to apply. I do not think this can be said of the statistical levy. In my view this levy, collected on most goods coming under the customs tariff, serves rather as a general instrument of economic policy. According to the explanations of those exemptions supplied to the Court by the Italian Government the decisive criterion for imposing the levy is whether a specific movement of goods alters that *state of the market* in Italy. It is indisputable that a change in the state of the market affects those economic groups which are not concerned with foreign trade, such as producers whose objective is to dispose of their products exclusively on the domestic market. It may therefore be said without hesitation that the statistics of foreign trade afford advantages for the economy in general. In any event it appears to me definitely impossible to maintain that *exporters* obtain a particular benefit from it: in fact their planning is primarily determined by the state of the market in the importing country (which moreover shows why the statistical levy is not payable on sulphur which is only exported from Italy). I cannot see how it would be possible for those particular importers to make their products more competitive by means of the information derived from the statistics of external trade since they hardly afford any precise indications as to when commercial transactions can best be car-

ried out. It is certain that there can be no question of this in cases where their sales networks are already well established. But even if one has to admit that these statistics might improve the importers' position, by affording them some specific advantage, it is even more difficult to maintain that this constitutes within the meaning of the case-law of the Court a benefit to the specific product and above all a benefit capable of evaluation with any degree of accuracy and which may accordingly constitute a *quid pro quo* of a special levy. Consequently in the present case the concept of a consideration affords no more assistance than in Joined Cases 52 and 55/65.

Finally it appears that the procedural objections, whereby the Italian Government also seeks to have the Commission's conclusions dismissed are unsound. First, it is wrong in complaining that the Commission commenced *two distinct procedures* in connexion with the statistical levy imposed in Italy. The simple answer to this criticism is that although the Commission acted thus, it did so because with regard to the charges referred to by Article 13 of the Treaty it was bound to begin by issuing a directive, a measure unnecessary in the case of the customs duties on exports referred to by Article 16 and of taxation levied on products coming under the regulations concerning the common organization of the agricultural markets. Secondly, the Italian Government is also wrong in its view that before the Commission initiated proceedings against one State it was bound to consider the situation in all the Member States and evolve a general definition of the concept of 'charges having equivalent effect'. Comprehensive investigations preparatory to handling a complex problem are certainly desirable and indeed necessary in order to arrive at an objective and uniform solution. But the Commission's failure to undertake them does not constitute failure to fulfil a legal obligation so long as some factors concerning the movement of goods between Member States can be considered without further difficulty and independently of other factors, on the basis of information already elicited and confirmed by the Court (as moreover occurred in Joined Cases 52 to 55/65, despite the doubts which had been expressed). In the present case it must be added that the Commission undoubtedly has great experience in this field, since on its initiative the Member States have already abolished more than a hundred charges of this nature (many of which were closely related to the statistical levy). Finally, the Commission was not obliged to wait until the Council issued directives. The Treaty does not specify that directives shall be issued in cases such as this. Consequently the Commission was able without other preliminaries to apply directly the relevant articles of the Treaty together with the regulations concerning the organization of the agricultural markets.

To conclude, my opinion is that the Commission made a proper appraisal of the charge which the Italian Republic levied on imports and exports. Although the statistical levy in dispute scarcely has an appreciable affect on the movement of goods between Member States it must be regarded as a charge having an effect equivalent to customs duties. By cointinuing to impose the levy on exports to other Member States after the expiry of the first stage of the transitional period, the Italian Republic infringes Article 16 of the EEC Treaty. By imposing it on products imported from other Member States and on goods falling within the scope of the regulations relating to the common organization of the agricultural markets it infringes those regulations based on

the Treaty which lay down an absolute prohibition on Member States levying charges having an effect equivalent to customs duties.

Consequently you should rule in favour of the Commission's conclusions whereby it asks you to find that the Italian Republic has infringed the Treaty. In accordance with the applicant's conclusions the defendant must bear the costs of the proceedings.