OPINION OF ADVOCATE GENERAL JACOBS
delivered on 21 November 1991 *

Mr President,
Members of the Court,

1. This case raises the issue of the legality of certain charges levied on the entry of goods into Réunion, a French overseas department. The case has been referred to the Court under Article 177 of the EEC Treaty by the Cour d'Appel, Saint-Denis, Réunion, which asks for a preliminary ruling on the following questions:

'1. Are Articles 3, 9 and 13, failing which the second paragraph of Article 95, of the EEC Treaty, to be interpreted as prohibiting the levying by a Member State or by a local authority within a Member State of an *ad valorem* charge on goods, distinct from VAT, which is imposed by reason of the introduction of the goods into a specific area only of the territory of that State and which affects in the same manner foreign goods and national goods other than those originating in the area in question?

2. More specifically:

(a) Are Articles 9 and 13 of the EEC Treaty to be interpreted as meaning that a charge may be defined as a charge having an effect equivalent to a customs duty when it is levied on the value of foreign or national goods on the occasion of their release for consumption, without direct or indirect reference to the crossing of a State frontier, or do they, on the contrary, mean that the crossing of a State frontier must be, *de facto* or *de jure*, one of the operative events giving rise to the levying of the charge?

(b) Pursuant to the second paragraph of Article 95 of the EEC Treaty:

(i) Can the regional origin of a product or class of products constitute a lawful criterion for different fiscal treatment established by a Member State, insofar as it necessarily excludes foreign producers from more favourable provisions, or must such different treatment be based also, or only, on the nature of the product concerned?

(ii) May the fiscal advantages enjoyed by products from the French overseas departments, particularly Réunion, as a result

* Original language: English.

of their exemption from *octroi de mer,* be regarded as pursuing aims of economic policy which are compatible with the requirements of the Treaty and of the secondary legislation?

3. Is the free trade agreement in force between the Community and Sweden to be interpreted as prohibiting the levying by a Member State or by a local authority within a Member State of an *ad valorem* charge on goods, distinct from VAT, which is imposed on the occasion of the release for consumption of goods imported from Sweden by reason of their introduction into a specific area of the territory of that State and which affects in the same manner Community goods other than those originating in the area in question?'

The background

2. Those questions have arisen in the course of a dispute between the Administration des Douanes et Droits Indirects and four individuals, who claim the reimbursement of certain charges they were required to pay on the importation of new cars into Réunion from metropolitan France. Similar questions were referred to the Court by the Tribunal d'Instance at an earlier stage in the proceedings, but that reference was withdrawn following a ruling by the Cour d'Appel quashing the lower court's decision to refer: see Cases C-222/89 to C-225/89, Order of 13 June 1990.

3. Three of the cars in question in the main action were manufactured in Germany, the fourth in Sweden. The referring court explains that 'the vehicles concerned were introduced into French territory under the benefit of suspended duty arrangements which lasted until they reached Réunion, where all the customs clearance formalities were carried out. Under French national law, the vehicles were, throughout that period, in a state of temporary transit amounting, for the purposes of Community law, to that of internal Community transit insofar as the three vehicles manufactured in Germany are concerned, and external Community transit for the vehicle originating in Sweden' (order for reference, p. 8). The importation of the vehicles concerned into Réunion cannot therefore be considered an internal French transaction, since it was not until then that the customs formalities were completed.

4. As far as the German cars are concerned, the answers to the questions referred to the Court depend on the effect of the Treaty provisions on customs duties and charges having equivalent effect and that of the prohibition of discriminatory internal taxation laid down in Article 95 of the Treaty. It will be observed, however, that the Swedish car did not enter into free circulation in the Community until after it had reached Réunion. Thus, at the time that car was imported into Réunion, it was not subject to the Treaty rules on the free movement of goods or to Article 95.

5. It does not necessarily follow, however, that the Swedish car should be treated differently from the cars manufactured in Germany. This is because Articles 3 and

6 respectively of the Agreement between the Community and Sweden concluded in 1972 (see Regulation No 2838/72, OJ, English Special Edition 1972 (31 December), p. 98) prohibit the imposition of customs duties on imports and charges having equivalent effect in trade between the Community and Sweden. Moreover, Article 18 of that Agreement requires the Contracting Parties to refrain from measures which result in discriminatory internal taxation.

6. It is true that the provisions of the 1972 Agreement are not necessarily to be interpreted in the same way as the equivalent provisions of the Treaty: see Case 270/80 *Polydor* v *Harlequin Record Shops* [1982] ECR 329; Case 104/81 *Hauptzollamt Mainz* v *Kupferberg* [1982] ECR 3641. None the less, for the reasons given at paragraph 28 below, I consider that, in the present context, both sets of provisions in substance have the same effect. Moreover, the *Kupferberg* case makes it clear that the provisions of the 1972 Agreement are capable of conferring rights on individuals which the national courts must protect. It has not been suggested in these proceedings that the relevant provisions of the Agreement, if breached, cannot be invoked before the referring court. In the following discussion, reference to the Treaty provisions on customs duties and charges having equivalent effect and on internal taxation should therefore, where the context permits, be understood as including the corresponding provisions of the 1972 Agreement.

7. The main element of the disputed charges is a levy called *octroi de mer*, or dock dues. Dues of this nature have been levied by the former French colonies since the 19th century. Their current legal basis is to be found in Law No 84-747 of 2 August 1984, according to Article 38 of which goods imported into the regions of Guadeloupe, Guyana, Martinique and Réunion are subject to a consumption tax known as *octroi de mer*, which is based on their value for customs purposes at the point of importation. The rate at which dock dues are levied is fixed by the regional council of the region in question. In Réunion, according to the referring court, dock dues are levied at four main rates ranging from two per cent to 22 per cent and one exceptional rate of 77 per cent. They are collected by the competent customs authorities in the same way as customs duties in the strict sense and are imposed on all goods introduced into Réunion with the exception of certain basic necessaries.

8. In addition to dock dues, the proceeds of which go to the communes of the regions which are authorized to collect them, those regions are entitled under Article 39 of Law No 84-747 to levy for their own benefit, and subject to the same conditions as dock dues, a surcharge of up to one per cent. The authorities in Réunion have taken advantage of that power and impose a surcharge of the full amount permissible. It is the imposition of both dock dues and the surcharge that is being challenged before the referring court. In the discussion which follows, references to dock dues should be understood as including the surcharge.

9. It should be noted that dock dues are in principle imposed on all goods coming from outside the region in question, whether they originate in other overseas departments, in

metropolitan France, in other Member States or in third countries. They account for a large part of the revenues of the regions which are authorized to collect them, all of which are heavily under-developed in relation to the Community as a whole. They are an effective way of raising revenue, being simple to calculate and to collect and difficult to avoid.

The EEC Treaty and the French overseas departments

10. In order to deal with the issues raised by the referring court, it is convenient to begin by considering the extent to which the rules laid down in the Treaty are applicable in the French overseas departments. Those departments, which also constitute regions for the purposes of French law, are an integral part of the French Republic and of the customs territory of the Community (see Regulation No 2151/84, OJ 1984 L 197, p. 1). Nevertheless, the application of the EEC Treaty there is the subject of special rules laid down in Article 227(2), which provides as follows:

'With regard to ... the French overseas departments, the general and particular provisions of this Treaty relating to:

— the free movement of goods;

— agriculture, save for Article 40(4);

— the liberalization of services;

— the rules on competition;

— the protective measures provided for in Articles 108, 109 and 226;

— the institutions,

shall apply as soon as this Treaty enters into force.

The conditions under which the other provisions of this Treaty are to apply shall be determined, within two years of the entry into force of this Treaty, by decisions of the Council, acting unanimously on a proposal from the Commission.

The institutions of the Community will, within the framework of the procedures provided for in this Treaty, in particular Article 226, take care that the economic and social development of these areas is made possible.'

11. Article 227(2) was considered in Case 148/77 *Hansen* v *Hauptzollamt Flensburg* [1978] ECR 1787, where the plaintiff claimed that the tax provisions of the Treaty, and in particular the rule on non-discrimination laid down in Article 95, applied to goods imported into a Member State from a French overseas department. The Court was asked to clarify the effect of the second subparagraph of Article 227(2) in view of the fact that the Council had not, at that time, made use of its power to deter-

mine the conditions under which the provisions of the Treaty, other than those mentioned in the first subparagraph, were to apply in the French overseas departments. The Court explained (paragraphs 10 to 11 of the judgment) that:

'in order to make due allowance for the special geographic, economic and social situation of those departments, Article 227(2) made provision for the Treaty to be applied by stages, and in addition it made available the widest powers for the adoption of special provisions commensurate to the specific requirements of those parts of the French territories.

For that purpose, Article 227 precisely stated certain chapters and articles which were to apply as soon as the Treaty entered into force, while at the same time reserving a period of two years within which the Council could determine special conditions under which other groups of provisions were to apply.

Therefore after the expiry of that period, the provisions of the Treaty and of secondary law must apply automatically to the French overseas departments inasmuch as they are an integral part of the French Republic, it being understood, however, that it always remains possible subsequently to adopt specific measures in order to meet the needs of those territories.'

The Court concluded that, although the tax provisions of the Treaty were not mentioned in the first subparagraph of Article 227(2), those provisions, and particularly Article 95, were applicable on the expiry of the two-year period laid down in the second subparagraph to goods coming from the French overseas departments.

12. The practice of the Council and the Commission shows that they interpret the *Hansen* decision, in my view correctly, as meaning that the entire *corpus* of Community law is now in principle applicable to the French overseas departments, but that the Council has the power, notwithstanding the expiry of the two-year period laid down in the second subparagraph of Article 227(2), to adopt measures which derogate from the rules laid down by or under the Treaty, other than those referred to in the first subparagraph of that provision, where this would promote the economic and social development of those areas. Extensive use has subsequently been made of that power.

13. On 26 March 1980, for example, the Council adopted Directive 80/368 (OJ 1980 L 90, p. 41), which excludes the French overseas departments from the scope of the common system of value added tax established by Directive 77/388 (OJ 1977 L 145, p. 1). The Council subsequently adopted Decision 88/245 of 19 April 1988 'authorizing the French Republic to apply in its overseas departments and in metropolitan France, by way of derogation from Article 95 of the Treaty, a reduced rate of the revenue duty imposed on the consumption of "traditional" rum produced in those departments' (OJ 1988 L 106, p. 33).

14. Later the Council adopted Decision 89/687 of 22 December 1989 'establishing a programme of options specific to the remote and insular nature of the French overseas departments (Poseidom)' (OJ 1989 L 399, p. 39). The second recital of that decision emphasizes that the French overseas departments 'suffer from a serious structural lack of development aggravated by a number of constraints (remoteness, isolation, small size, difficult terrain and climate, and economic dependence on a small number of products) whose unchanging nature and combined impact have serious adverse effects on their economic and social development'. The same recital goes on to explain that 'these constraints differentiate sharply the social and economic context of the French overseas departments from that of the other Community regions, particularly in the area of unemployment, the level of which is among the highest in the Community ...'. According to paragraph 1 of the Annex to that decision, 'Poseidom will be based on the twofold principle that the French overseas departments form an integral part of the Community and that the regional reality, characterized by the special features and constraints specific to the regions concerned as distinct from the Community as a whole, must be recognized.'

15. Acting within the framework of Poseidom, the Council on the same day also adopted Decision 89/688 'concerning the dock dues in the French overseas departments' (OJ 1989 L 399, p. 46). The fourth recital of that decision explains that dock dues 'are a vital instrument of self-reliance and local democracy, the resources of which must constitute a means of economic and social development of the French overseas departments'. According to the ninth recital, however, dock dues should in principle, within a period of ten years, be brought 'fully in line with the principles of Article 95 of the Treaty'.

16. Accordingly, Article 1 of Decision 89/688 provides: 'By 31 December 1992 at the latest, the French authorities shall take the necessary measures for the dock dues arrangements at present in force in the French overseas departments to apply ... to all products whether imported into or produced in those areas.' Article 4 states that, subject to certain conditions, '... the French Republic shall be authorized to maintain the current dock dues arrangements, until not later than 31 December 1992 ...'. According to Article 2(3), France may, for a period of not more than ten years, authorize partial or total exemptions from dock dues for local production activities according to the economic requirements of the French overseas departments. It should be noted that Decision 89/688 did not enter into force until after the events which gave rise to the present proceedings took place.

17. These measures are evidence of what the fifth recital of the preamble to Decision 89/688 calls the 'fragile economic structure' of the French overseas departments and of the lengths to which the political institutions are prepared to go to shelter them from the cold winds of the Treaty. Nevertheless, it will be observed that, if the Court were to rule that levies such as dock dues were incompatible with Article 95 of the Treaty, such a ruling would only affect the period between the expiry of the two years men-

tioned in the second subparagraph of Article 227(2) and the entry into force of Decision 89/688. If, on the other hand, the Court were to rule that such levies were incompatible with the Treaty provisions on customs duties and charges having equivalent effect, such a ruling would in principle be applicable from the time those provisions entered into force. Moreover, as the Commission accepts, the Council would have no power subsequently to derogate from them.

The legality of levies such as dock dues

(a) *The Treaty provisions on customs duties and charges having equivalent effect*

18. Réunion and the French Government emphasize that dock dues are payable on all imports into the regions concerned, including imports from other overseas departments and from metropolitan France. Moreover, they point out that the event which gives rise to the imposition of dock dues is not the crossing of a national frontier, but the crossing of a regional boundary. These factors, it is said, take dock dues outside the scope of the Treaty provisions on customs duties and charges having equivalent effect.

19. The Commission informs us that, since 1980, it has received a number of complaints from traders concerning the imposition of dock dues. Those complaints led it to commence proceedings against France in 1984 under Article 169 of the Treaty. Having considered the observations of the French Government, the Commission decided to suspend the proceedings and seek a political solution to the problem. Nevertheless, the Commission maintains that, because dock dues become payable by reason of the fact that goods cross the frontier of the region concerned and locally produced goods are not subject to any similar charge, such levies amount to charges having an effect equivalent to customs duties. In view of the fact that dock dues have existed since the last century, the Commission takes the view that they fall within the scope of Article 13 of the Treaty. To the extent to which (a) they have been extended, since the entry into force of the Treaty, to products which were not previously subject to them, or (b) the rate has been increased since that date, the Commission considers that they fall foul of Article 12 of the Treaty.

20. Although dock dues possess several of the characteristics of true customs duties, the Commission concedes that the concept of customs duties *stricto sensu* within the meaning of the Treaty may be confined to duties imposed at the national or Community level. It is for this reason that, in the letter of formal notice sent to the French Government in 1984, the Commission classified dock dues as charges having equivalent effect. The Commission acknowledges that the distinction between the two categories is of no practical significance as far as imports from other Member States are concerned, since both types of levy are subject to the same rules. It points out, however, that the distinction is relevant in relation to imports from third countries where, as in the case of the Agreement between the Community and Sweden (cf. Articles 3 and 6), the two are not treated in exactly the same way.

21. I consider that the Commission's suggestion that the notion of customs duties *simpliciter* is confined to levies imposed exclusively at the national or Community level may well be correct. It would perhaps be stretching language to describe as customs duties levies imposed at a regional border within a Member State on goods imported from elsewhere in the same State, even if those levies are also imposed on imports into the region concerned from other Member States. I shall therefore concentrate on the question whether levies such as dock dues may be described as charges having an effect equivalent to customs duties.

22. It will be observed that where, as in this case, dock dues are imposed on imports in respect of which the customs formalities are not completed until the goods concerned reach Réunion, the regional border coincides with the national frontier. The same is true where dock dues are levied on goods imported directly into Réunion from other Member States. In my view, this strongly suggests that the imposition of dock dues in such circumstances is incompatible with the Treaty provisions on charges having equivalent effect, since those provisions clearly prohibit levies imposed on imports at national frontiers.

23. The French Government maintains, however, that dock dues form part of a system of internal taxation and that they are therefore subject, not to the Treaty provisions on charges having equivalent effect, but to Article 95 of the Treaty. I will deal with Article 95 at greater length below, but I should make it clear at once that the approach of the French Government is in my view misconceived. The Court held in Case 77/72 *Capolongo* v *Maya* [1973] ECR 611 that Article 95 covers financial charges which are levied within a general system of internal taxation and which apply systematically to domestic and imported products according to the same criteria. As the Commission points out, dock dues do not satisfy this test because they are not imposed on goods produced in Réunion. It follows that such levies do not constitute internal taxation within the meaning of Article 95.

24. In order to reply more fully to the referring court's questions, however, I shall consider whether the Treaty provisions on charges having equivalent effect apply to levies imposed when products cross a regional boundary which does not coincide with the national frontier.

25. According to Article 9 of the Treaty, the customs union on which the Community is based involves 'the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect ...'. Similarly, Article 13 of the Treaty speaks of the abolition of customs duties on imports and charges having equivalent effect 'in force between Member States'. As the Commission acknowledges, these provisions are evidently concerned principally with the elimination of customs duties and charges having equivalent effect which are imposed between Member States. Indeed, it is in that sense that those provisions have to date been applied by the Court: see e. g. Case 24/68 *Commission* v *Italy* [1969] ECR 193; Joined Cases 2/69 and

3/69 *Diamantarbeiders* v *Brachfeld* [1969] ECR 211; Case 87/75 *Bresciani* v *Amministrazione Italiana delle Finanze* [1976] ECR 129. This is not surprising, for, as the Commission points out, the Treaty was drawn up with unified customs territories in mind.

26. It does not in my view follow, however, that the Treaty rules on charges having equivalent effect do not apply to levies imposed by a particular region of a Member State on imports from other Member States. Indeed, the Court made it clear in *Diamantarbeiders* v *Brachfeld* that the purpose of the Treaty was 'to give general scope and effect to the rule on the elimination of customs duties and charges having equivalent effect in order to ensure the free movement of goods'. I consider that the customs union envisaged by Article 9 implies a territory in which no such duties or charges are imposed anywhere within its borders. It would in my view be inconsistent with the objectives of the Treaty to regard the prohibition of charges having equivalent effect as confined to charges imposed by reason of the fact that a national frontier has been crossed, to the exclusion of charges imposed when a regional frontier is crossed. If regional authorities remained free to impose such charges, the free movement of goods within the Community could be completely disrupted. Indeed, as the Commission points out, regional charges might have a more serious effect on the free movement of goods than charges imposed at the national level because of the innumerable regional frontiers which exist within the Community. It can hardly be supposed that the authors of the Treaty intended to countenance such a situation, which would be all the more anomalous on the eve of the establishment of the internal market.

27. It would in my view be illogical to distinguish cases where the regional border coincides with the national frontier, and where I consider that the Treaty provisions on charges having equivalent effect are plainly applicable, from cases where products originating in other Member States clear customs in a different part of France and are only subsequently imported into Réunion. In the latter situation, the Treaty prohibition of charges having equivalent effect must be regarded as equally applicable. In circumstances such as those of the present case, it is in my view immaterial that dock dues are also imposed on imports from other overseas departments and from metropolitan France, for it is not necessary in order to establish an infringement of that prohibition that the contested charges are discriminatory or protective in the effect they produce: see *Diamantarbeiders* v *Brachfeld*.

28. I conclude that the Treaty prohibition of charges having an effect equivalent to customs duties, and the equivalent prohibition in Article 6 of the Agreement between the Community and Sweden, are not confined to charges imposed when a national frontier is crossed, but extend to charges imposed when a regional frontier within a State is crossed. Both prohibitions clearly have the same effect in the present context for, as the Commission points out, the concept of charges having an effect equivalent to customs duties for the purposes of Article 6 of the Agreement, even if more limited than the equivalent concept in the EEC Treaty, must in any event cover, in order to be effective, charges such as dock dues which so closely resemble customs duties proper.

29. One further point should be made. Both the Treaty and Article 6 of the Agreement distinguish between existing charges having equivalent effect (see Article 13 of the Treaty and Article 6(2) and (3) of the Agreement) and new such charges (see Article 12 of the Treaty and Article 6(1) of the Agreement). It will therefore be for the national court to determine, if it considers it necessary, which of the Treaty provisions prohibiting such charges, and which paragraph of Article 6 of the Agreement, is relevant in the particular circumstances of the main action.

(b) *Article 95 of the Treaty*

30. In view of the conclusion I have reached on the scope of the Treaty prohibition on charges having an effect equivalent to customs duties, it is not strictly necessary for me to consider whether dock dues are compatible with the prohibition of discriminatory internal taxation laid down in Article 95, for it is well established that the two prohibitions are mutually exclusive: see e. g. Case 94/74 *IGAV* v *ENCC* [1975] ECR 699. As I have explained, it is in my view evident that levies such as dock dues fall outside the scope of Article 95. Had I considered Article 95 applicable in circumstances such as those of the present case, however, I would not have regarded it as having been infringed.

31. The first two paragraphs of Article 95 provide as follows:

'No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.'

32. Réunion and the French Government maintain that, since imports into Réunion from other parts of France are subject to dock dues in the same way as imports from other Member States and from third countries, such levies cannot be considered discriminatory. Moreover, they claim that, according to the Court's case-law, the Member States are entitled to lay down tax arrangements which differentiate between certain products on the basis of objective criteria. They point out that the Court has recognized that 'Such differentiation is compatible with Community law if it pursues objectives of economic policy which are themselves compatible with the requirements of the Treaty and its secondary legislation, and if the detailed rules are such as to avoid any form of discrimination, direct or indirect, in regard to imports from other Member States or any form of protection of competing domestic products': see e. g. Case 106/84 *Commission* v *Denmark* [1986] ECR 833, paragraph 20.

33. The premise on which that argument is based — namely that dock dues are non-discriminatory because they are also levied

on imports from other parts of France — is in my view false. As the Commission rightly points out, discrimination on the basis of regional origin constitutes partial discrimination on the basis of nationality, since the region concerned forms part of the national territory of a Member State. To put the point another way, goods which originate in other Member States inevitably suffer less favourable treatment. That this amounts to discrimination on the basis of nationality is now firmly established in the Court's case-law: see Case C-21/88 *Du Pont de Nemours Italiana* v *Unità Sanitaria Locale No. 2 di Carrara* [1990] ECR I-889, paragraph 11; Joined Cases C-1/90 and C-176/90 *Aragonesa de Publicidad Exterior* v *Departamento de Sanidad y Seguridad Social de la Generalitat de Cataluña* [1991] ECR I-4151, paragraph 24. The fact that levies such as dock dues are also imposed on goods which come from other parts of France does not therefore mean that they cannot be regarded as discriminatory for the purposes of Article 95.

34. In order to establish an infringement of Article 95, however, it is necessary to identify a domestic product which is similar to, or competes with, an imported product which is taxed more heavily. The Court made it clear in Case C-47/88 *Commission* v *Denmark* [1990] ECR I-4509, which concerned the compatibility with Article 95 of Danish legislation on the taxation of cars, that that article was not applicable in the absence of similar or competing domestic products. Although some of the products on which dock dues are levied may be produced in Réunion, this is not true of cars, the subject of the proceedings before the referring court, and it has not been claimed that the situation is likely to change in the foreseeable future. Cars are, of course, produced in metropolitan France, but such cars are subject to dock dues when imported into Réunion in the same way as cars imported from other Member States. Thus, it cannot be said that dock dues bear more heavily on the products of other Member States than on similar domestic products, nor can it be said that they afford indirect protection to domestic products. It follows that, as far as cars are concerned, levies such as dock dues, if within the scope of Article 95 of the Treaty, must be regarded as compatible with that provision. The Court is not asked in these proceedings to address their legality in relation to other products, nor is it in a position to do so.

The temporal effect of a ruling of incompatibility

35. Réunion and the French Government have suggested that, should the Court find levies such as dock dues unlawful, it should limit the temporal effect of its ruling. Since I consider dock dues incompatible with the Treaty prohibition of charges having an effect equivalent to customs duties, I must examine whether the Court should follow that suggestion by limiting the effect of its ruling on claims for the recovery of dues paid prior to the date of its judgment.

36. In Case 43/75 *Defrenne* v *SABENA* [1976] ECR 455, the Court recognized that, in exceptional circumstances, it was entitled, by virtue of the general principle of legal certainty, to restrict the effects of its judgments on events which took place in the past. In deciding whether to limit its rulings in this way, the Court takes account of two main factors. First, what are the practical consequences likely to be if it fails to limit the temporal effect of its ruling? Secondly, have those who are liable to be affected by the ruling been led to believe that the legal position was different from that declared by the Court? See the *Defrenne* case, *supra*; Case 24/86 *Blaizot* v *University of Liège and Others* [1988] ECR 379; Case C-262/88 *Barber* v *Guardian Royal Exchange Assurance Group* [1990] ECR I-1889. However, the Court has emphasized that it 'cannot go so far as to diminish the objectivity of the law and compromise its future application on the ground of the possible repercussions which might result, as regards the past, from a judicial decision' (*Blaizot*, paragraph 30).

37. A ruling by the Court that dock dues are unlawful would undoubtedly have serious consequences, for considerable sums in dues which had previously been levied might have to be repaid. Réunion would clearly have great difficulty in supporting such a burden. It is true that, in Case 68/79 *Just* v *Ministry for Fiscal Affairs* [1980] ECR 501, the Court accepted that Community law did not prevent a national legal system from disallowing the repayment of charges which had been unduly levied where repayment would entail the unjust enrichment of the recipients, for example where the unlawfully levied charges had been incorporated in the price of goods and passed on to purchasers (see also Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595). Moreover, in Joined Cases 142 and 143/80 *Amministrazione delle Finanze dello Stato* v *Essevi and Salengo* [1981] ECR 1413, at paragraph 35, the Court relied on that principle in declining a request to limit the temporal effect of its judgment in that case. The *Just* principle would not, however, defeat claims for the repayment of dock dues brought by applicants who had acquired the goods in question for private use.

38. It is also true that claims for the repayment of charges which had been levied unlawfully would in principle be subject to any limitation periods laid down in national law. However, we were told at the hearing by the representative of the French Government that the limitation period applicable in such cases would probably be as long as 30 years. Such a period would do little to protect Réunion from the grave financial repercussions which would plainly ensue from claims for the repayment of dock dues levied in the past.

39. These factors might not in themselves be enough to justify limiting the temporal effect of the ruling I propose the Court should give. Whatever the outcome of these proceedings, however, it might reasonably have been thought hitherto that dock dues were compatible with the Treaty.

40. Although, as I mentioned above (see paragraph 19), the Commission took the view in 1984 that dock dues were incompatible with the Treaty provisions on charges having an effect equivalent to customs duties, and that view was repeated in an answer given on behalf of the Commission in 1987 to a written question from a Member of the European Parliament (see OJ 1987 C 351, p. 27), the infringement proceedings instituted by the Commission against France were not pursued. Moreover, the Commission's view that dock dues constitute charges having equivalent effect is difficult to reconcile with its proposal (OJ 1989 C 39, p. 6) which formed the basis for Decision 89/688. [1] Like Article 4 of Decision 89/688, Article 4 of the Commission's proposal stated that, subject to certain conditions, France 'shall be authorized to maintain the current dock dues arrangements until not later than 31 December 1992'.

41. I must point out that, since the Commission has always accepted that Article 227(2), as interpreted by the Court in *Hansen*, does not permit the institutions to create derogations from the Treaty rules on the free movement of goods for the benefit of the French overseas departments, it is curious, to say the least, that it should have proposed the adoption of a measure which it considered *ultra vires*. The Commission sought to explain its position at the hearing on the basis that the approach ultimately embodied in Decision 89/688 was the only one it considered politically realistic. While I accept that that may have been so, the fact remains that the Commission was proposing an approach which it considered unlawful. The Commission's approach can only be regarded as prejudicial to legal certainty, on which the Court has relied, notably in *Defrenne*, when limiting the temporal scope of its rulings. In any event, both the Commission's proposal and the adoption by the Council of Decision 89/688 may well have created an expectation that dock dues were, at least for the time being, lawful.

42. In the light of all of these factors, which are certainly at least as weighty as the considerations mentioned in *Blaizot*, I therefore consider that the Court should declare that the incompatibility with the Treaty of levies such as dock dues may not be invoked in respect of sums paid prior to the date of its judgment, except by those who have brought legal proceedings or made an equivalent claim before that date.

The validity of Decision 89/688

43. Finally, it will be apparent from what has just been said that, on the view I take, Decision 89/688 is invalid in so far as it purports to authorize the maintenance of the current dock dues arrangements. Although the national court has not specifically raised this issue, it seems to me desirable, in the interests of clarity, that a ruling should be given on it.

1 — Although I note that the proposal referred to in the preamble to that decision is in fact the one which led to Decision 89/687.

Conclusion

44. I am therefore of the opinion that the questions referred in this case should be answered as follows:

(1) The provisions of the EEC Treaty relating to charges having an effect equivalent to customs duties on imports must be interpreted as prohibiting a levy imposed by a region forming part of a Member State on goods imported from another Member State by virtue of the fact that they have crossed the frontier of the region concerned, notwithstanding the fact that goods entering that region from elsewhere in the first State are also subject to the levy.

(2) Article 6 of the Agreement between the Community and Sweden signed in Brussels on 22 July 1972 must be interpreted as prohibiting a levy imposed by a region forming part of a Member State on goods imported from Sweden by virtue of the fact that they have crossed the frontier of the region concerned, notwithstanding the fact that goods entering that region from elsewhere in the Member State concerned are also subject to the levy.

(3) Council Decision 89/688/EEC of 22 December 1989 concerning the dock dues in the French overseas departments is invalid insofar as it purports to authorize the maintenance of the current dock dues arrangements.

(4) Neither the provisions of the EEC Treaty relating to charges having an effect equivalent to customs duties on imports, nor Article 6 of the Agreement between the Community and Sweden, nor the invalidity of Council Decision 89/688, may be relied on in support of claims for the repayment of such levies where they were imposed prior to the date of this judgment, except by applicants who have brought legal proceedings or submitted an equivalent claim before that date.