the concept of "similar products" with sufficient flexibility. Thus it is necessary to consider as "similar" products which have similar characteristics and meet the same needs from the point of view of consumers. It is accordingly necessary to determine the scope of the first paragraph of Article 95 on the basis not of the criterion of the strictly identical nature of the products but on that of their similar and comparable use.

3. If the condition of similarity required by the first paragraph of Article 95 of the Treaty is not fully met the second paragraph of that article has the function of covering all forms of indirect protection through taxation in the case of products which, without being similar within the meaning of the first paragraph, are nevertheless in competition, even partial, indirect or potential.

With regard to spirits for human consumption, spirits obtained from cereals and rum, as products of distillation, share with spirits obtained from wine sufficient common characteristics to form, at least in certain circumstances, an alternative choice for consumers. That finding constitutes sufficient ground for holding that such products are in competition with each other and that it is not permissible for taxation imposed on them to have a protective effect in favour of national production. In this respect it is important, disregarding any comparison of quantities consumed and imported, to take into consideration the potential market for the products in question in the absence of protective measures. Accordingly Article 95 prohibits a national system of taxation affecting differently imported whisky and domestic production of spirits obtained from wine.

In Case 216/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the First Civil Section of the Tribunale di Milano [District Court, Milan] for a preliminary ruling in the action pending before that court between

COGIS (COMPAGNIA GENERALE INTERSCAMBI)

and

AMMINISTRAZIONE DELLE FINANZE DELLO STATO

on the interpretation of Article 95 of the EEC Treaty,

THE COURT (Third Chamber)

composed of: A. Touffait, President of Chamber, Lord Mackenzie Stuart and U. Everling, Judges,

Advocate general: G. Reischl
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

The plaintiff in the main action, Compagnia Generale Interscambi, SpA [hereinafter referred to as "Cogis"], imported whisky from the United Kingdom between 1965 and 1974 and paid the frontier surcharge (sovrimposta di confine) and the State tax (diritto erariale) to the customs authorities of Milan on the basis of the amount of pure alcohol contained in the whisky.

With regard to the importations of whisky after the accession of the United Kingdom to the EEC Treaty it considered that the taxes paid were contrary to the provisions of the EEC Treaty and consequently instituted proceedings in 1976 before the Tribunale di Milano [District Court, Milan] against the Amministrazione delle Finanze dello Stato [State Finance Administration] in order to recover the taxes paid.

It based its claim on Article 95 of the EEC Treaty. It argued that the prohibition of discrimination in taxation laid down in that article was infringed because the spirits distilled from wine were products in competition with whisky and must be considered as similar with regard to the requirement of equality of taxation.

Thus the Court, applying that principle, held in its judgment of 27 February 1980 (Case 169/78 *Commission* v *Italy* [1980] ECR 385) that the tax banderoles applied by Italy to domestic spirits distilled from wine on payment of a tax considerably lower than that applied to imported whisky were incompatible with Article 95.

The application of the principles laid down by that judgment entails, according to the Tribunale di Milano, recognizing that in this case the consignments of whisky imported from the United Kingdom received unfavourable, discriminatory treatment in comparison with that reserved for domestic spirits distilled from wine.

Imported whisky is liable to the frontier surcharge at the full rate (whereas domestic spirits distilled from wine, whilst liable to the corresponding manu-

facturing tax, qualify for considerable reductions) and State tax (whereas domestic spirits are exempt therefrom).

Nevertheless, on the basis of subsequent legislation whisky is classified, under the Italian legal system, not only amongst spirits but also amongst ethyl alcohol of the first category. That is why whisky is liable to the above-mentioned taxes.

The court making the reference concludes from this that discrimination would no longer exist if a relationship of similarity for the purposes of Article 95 were established — as was also the view of the Court of Justice in its judgment of 15 April 1980 (Case 28/69 *Commission* v *Italy* [1970] ECR 187) — on the basis that the imported product and the domestic product fell under the same classification for tax purposes.

Since the Tribunale di Milano considered that "the application of the principles derived from the judgment of 27 February 1980 in [the above-mentioned] Case 169/78 and the judgment of 15 April 1970 in [the above-mentioned] Case 28/69" would lead to different results it stayed the proceedings and, by order of 2 April 1981, put the following question to the Court of Justice:

"Has the Italian State, by applying to imports of whisky from the United Kingdom a system of taxation comprising the State tax which is not charged on domestic spirits distilled from wine and the frontier surcharge at the full rate, when the manufacturing tax on domestic spirits distilled from wine is payable at a reduced rate, infringed Article 95 of the Treaty?"

The order making the reference was received at the Court Registry on 20 July 1981.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by Cogis, the plaintiff in the main action, represented by Mario Scalzo, of the Milan Bar, by the Government of the Italian Republic, represented by Marcello Conti, Avvocato dello Stato [State Advocate General], by the United Kingdom, represented by J. D. Howes, Treasury Solicitor's Department, acting as Agent, and by the Commission, represented by its Legal Adviser, Antonino Abate, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided, by order of 20 January 1982, to assign the case to the Third Chamber pursuant to Article 95 of the Rules of Procedure and to open the oral procedure without any preparatory inquiry.

II — Observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The *plaintiff in the main action* recalls that, during the period when the importations in question were effected, spirits distilled from cereals — spirits in the first category for the purposes of Italian law — both domestic and imported, were liable to the frontier surcharge (or manufacturing tax where the goods in question were domestic products) of LIT 90 000 per hectolitre of pure spirit, to the State tax of LIT 60 000 per hectolitre of pure spirit and to the banderole tax which varied according to the capacity of the containers.

According to the plaintiff in the main action, since the distillation of spirits from cereals was almost non-existent in Italy during that period the verification of equality of treatment in tax matters prescribed by Article 95 of the EEC Treaty must consist not in comparing imported spirits distilled from cereals with domestic spirits distilled from cereals but with spirits distilled from wine which must be considered as a "similar product".

Cogis considers that the Court has already dealt with that problem in Case 169/78 (mentioned above).

The Court has already held in its judgment of 10 October 1978 (Case 148/77 *Hansen* v *Hauptzollamt Flensburg* [1978] ECR 1787) that the words "similar product" within the meaning of Article 95 of the EEC Treaty must be interpreted not on the basis of a strict criterion of the identity of the products but by analogy with the comparability of their use.

On the basis of that criterion whisky and spirits distilled from wine must be considered as "similar products" since from the point of view of the consumer they display similar characteristics and are in competition with each other, at any rate potentially and indirectly; accordingly, the second paragraph of Article 95 is applicable.

In so far as the prohibition of discrimination contained in Article 95 applies to the products in question "it follows that the tax system applicable to whisky imported into Italy is unlawful".

In fact during the period in question whisky was liable to all the taxes mentioned above whilst spirits distilled from wine were exempt from the State tax and qualified for various abatements and reductions amounting to LIT 12 000 in respect of the manufacturing tax.

That comparison shows that there is discrimination against imported whisky as there was against cognac (cf. in this respect the judgment of 27 May 1981, *Essevi and Salengo*, Joined Cases 142 and 143/80 [1981] ECR 1413).

According to the plaintiff in the main action the principles laid down by the Court of Justice in the judgments delivered in Case 169/78 and Joined Cases 142 and 143/80 provide a basis for declaring, with regard to the State tax, that the discriminatory arrangements provided for whisky imported into Italy from the United Kingdom are protectionist in nature.

Furthermore, the reasons which have already been put forward by the Italian Government in the above-mentioned cases in order to justify the differential system, namely that it constitutes a means of equalization within the framework of Italian agricultural policy or an "aid" within the meaning of Articles 92 and 93 of the EEC Treaty, are also unacceptable in this case.

Consequently, the plaintiff in the main action considers that the following reply should be given to the question submitted to the Court:

"By applying to imports of spirits distilled from cereals imported into Italy from the United Kingdom the State tax, which is not charged on domestic spirits distilled from wine and marc, and the frontier surcharge, without making it subject to the reductions and abatements provided for in the case of the corresponding manufacturing tax to which domestic spirits distilled from wine and marc are liable, the Italian Republic has failed to fulfil its obligations under Article 95 of the Treaty."

The *Italian Government* considers first of all that the question, in the form in

which it has been submitted to the Court, is inadmissible and that it must be reformulated.

Secondly, it recalls the Italian system of taxation of ethyl alcohol, the principal features of which are, according to it, a general system in conjunction with special categories which qualify for different arrangements on the basis of the raw materials used.

Since the arrangements therefore constitute a system of differentiated taxation on products falling within one and the same general category and which may accordingly be similar or in competition with each other for the purposes of Article 95 of the EEC Treaty the Italian Government analyses the case-law of the Court in this field.

In its view that case-law and in particular the above-mentioned judgments in Cases 148/77 and 169/78 and Joined Cases 142 and 143/80 and also the judgments of 14 January 1981 (Case 140/79 *Chemial* [1981] ECR 1 and Case 46/80 *Vinal* [1981] ECR 77), of 13 March 1979 (Case 91/78 *Hansen* [1979] ECR 935) and of 8 January 1980 (Case 21/79 *Commission* v *Italy* [1980] ECR 1), shows that the existence of differing tax arrangements applicable to certain types of products of the same nature is as such in no way at variance with Article 95 of the Treaty. Where national laws are not harmonized the Member States are free to choose for products the tax system which appears to them the most suitable. Having regard to the legitimate objectives of economic policy a differentiated system of taxation may privilege certain types of products or certain categories of producers.

It is necessary therefore to take as a basis and reference point the tax system chosen by the Member State for products of a given kind, with all the differences and classifications provided for by that system, as is apparent from the judgment of 22 June 1976 (Case 127/75 *Bobie* [1976] ECR 1079), and not to have recourse to a general and abstract notion of similarity of products classified differently under national law. Thus a comparison should always be made between the domestic product and the imported products. This should be done separately for each tax category established within the framework of that system.

It follows from the foregoing that Article 95 is complied with where the imported products are liable to the same tax as the corresponding domestic products.

However, there are limits to the freedom of the Member States to establish differentiated tax systems. In particular a Member State may not set up a tax system which, without being based on objective and neutral differences, discriminates between products on the basis of their origin.

Nevertheless, even with regard to this principle, it should be pointed out that differences in tax treatment are compatible with Community law if they are based on objectives of economic policy which are themselves compatible with Community law and if the procedures for their implementation are of such a nature as to avoid any form of discrimination against imported products or any form of protection of domestic products. Thus a difference in the rates of taxation on the basis of the raw materials is not contrary to Article 95

solely by reason of the fact that the result of this is that the more heavily taxed product is in practice always imported, as it has not been possible to develop production on a profitable basis on the national territory as well. The Italian Government refers in this regard to the *Chemial* and *Vinal* judgments (already mentioned).

It follows, then, according to the Italian Government, that for a differentiated tax system for products of the same kind to be incompatible with Article 95 it is necessary either that the tax treatment of domestic products should not extend to imported products displaying all the necessary characteristics or that the categories qualifying for different tax treatment should be determined in such a way as to result in disguised discrimination.

Accordingly, having regard to the principles derived from the case-law of the Court, taken as a whole, and not only from two judgments, it is possible, according to the Italian Government, to dispel the doubts of the court making the reference. The Italian Government considers that the foregoing conclusion is not at variance with the judgment in Case 169/78 and it argues, primarily on the basis of the *Chemial* and *Vinal* judgments, that the differentiated taxation is not discriminatory or protectionist in nature solely because of the fact that the product more heavily taxed is not manufactured in noteworthy quantities on the territory of the Member State if that is the result of a choice of economic policy the objective of which is that such production should not be profitable at national level. Such a result is thus not contrary to Community law.

The Italian Government considers that this is sufficient for the purposes of the answer to be given to the national court but that it is nevertheless appropriate to set out "certain considerations concerning the conformity of the Italian legislation with the principles of Community law which may be inferred from Article 95 of the Treaty".

In its view the problem which arises is one of ascertaining whether it is lawful to restrict certain tax advantages to alcohols distilled from wine and from fruit.

First of all, the Italian Government remarks that the advantage is extended to imported products which fulfil the same conditions. Secondly, the objective of that exceptional provision is not of a protectionist nature but is intended to encourage the distilling of wine, an objective which is in conformity with Community law. Nor are the procedures for implementing that lawful choice discriminatory.

Thirdly, the Italian Government maintains that this case is different from the one which was the subject of the judgment in Case 169/78. In the latter case the tax banderole in question was related to special arrangements. In this case the taxes to which whisky is liable are those of the general system applicable to all ethyl alcohol and only certain spirits do not come under that system.

Accordingly, there can be no question of discrimination, either from the point of view of the applicability to whisky of an unfavourable system, since it forms part of the general system, or from that of an alleged conferment of a tax advantage upon domestic production alone, since the advantages granted to spirits distilled from wine or fruit apply both to domestic products and to imported products.

Furthermore, it is of no consequence that Italian production of whisky is limited (cf. *Chemial* and *Vinal*).

In those circumstances, for the freedom of the Member States to be limited it is necessary that there should exist a genuine similarity, or at least that the products should be in competition with each other. That question, which constitutes a "preliminary" issue according to the Italian Government, has already been resolved by the Court in its judgments of 27 February 1980 (Case 169/78, mentioned above, and *Commission* v *United Kingdom* [1980] ECR 417; *Commission* v *France* [1980] ECR 347; *Commission* v *Denmark* [1980] ECR 447). The Court did not give a ruling on the question of similarity since it considered that in any case the products were in competition with each other. Nevertheless, whilst the Italian Government accepts the decision of the Court of Justice it finds that it is not the first paragraph of Article 95 which is applicable in this case but the second paragraph of that article. That provision does not provide that taxation applied to the two products must be absolutely equal. It merely prohibits a tax system of such a nature as to constitute a form of protection for domestic production.

Consequently the Italian Government suggests that the following reply should be given to the question submitted to the Court:

"(a) Tax arrangements consisting in taxing more or less heavily the various categories of ethyl alcohol and spirits on the basis of the raw materials used in their manufacture are not contrary to Article 95 of the EEC Treaty provided that such differentiated treatment is also extended to products coming from other Member States and meeting, at the same time, the condition of similarity referred to in the first paragraph of Article 95 of the Treaty and the conditions which national legislation lays down for the application of such treatment.

(b) The specific procedures for implementing such a system of taxation may however be contrary to the requirements contained in the first paragraph of Article 95 if they are based on criteria for classification which in practice discriminate between indentical or similar products solely on the basis of their origin, domestic or foreign. In that regard, however, the mere fact that within the framework of the tax system in question the goods more heavily taxed are mostly products imported from other Member States does not suffice to constitute an infringement of Article 95.

(c) The provision of differentiated tax systems for domestic and imported products which are not identical or similar but are merely in competition with each other cannot be contrary to the obligation referred to in the second paragraph of Article 95 unless in a given case it is apparent that the difference between the charges to tax to which the products are respectively subject is, having regard to all the factors influencing price formation and the choice of consumers, of such a nature as to produce a protectionist effect for the benefit of domestic production. In that case the second paragraph of Article 95 does not require the abolition of all differences in taxation, but merely that such differences should be kept within certain bounds so as to

prevent them from giving rise to a protectionist effect."

The *United Kingdom* bases itself exclusively on the judgments delivered on 27 February 1980. According to it, the fact that the taxes in question in this case favour Italian spirits distilled from wine is sufficient to establish that those taxes offend against the principle of non-discrimination contained in Article 95.

Although the problems of vine growers are important they should not be dealt with "by distorting the clear meaning of Article 95".

In its judgments of 27 February 1980 the Court, which was dealing with a group of cases, dealt with the problem of "similarity" "on a broad basis". Since this case concerns exclusively imports of whisky into Italy it appears appropriate for "the Court to rule that whisky and wine spirits are products which are 'similar'"; authority for this is to be found in paragraph 38 of the decision in Case 168/78 *(Commission* v *France)* and paragraph 10 of the decision in Case 169/78, and also in the principle laid down by the Court in its judgment in Case 45/75 *Rewe* ([1976] ECR 181) according to which it is necessary to consider as similar products those which "have similar characteristics and meet the same needs from the point of view of consumers".

Nevertheless, even if the similarity of the products were not to be upheld by the Court it would at least be necessary to find that the decision in Case 169/78 applied equally to this case and that the taxes in question afford indirect protection to Italian spirits.

With regard to the conflict alleged by the Tribunale di Milano to exist between Cases 169/78 and 28/69 there is no such conflict because it does not follow from the judgment delivered in Case 28/69 that only products which fall under the same classification for tax purposes must be considered as similar. That argument, which was moreover raised by Italy in Case 169/78, was rejected by the Court (cf. paragraph 31 of the decision).

Consequently the United Kingdom submits

"that there is nothing in the judgment in Case 28/69 or otherwise to suggest that the Court should not in this case follow its decision in Case 169/78 by finding that taxes of a kind described in the question referred by the Tribunale di Milano infringe Article 95 of the EEC Treaty".

The *Commission* recalls first of all the Italian tax systems which form the subject-matter of the dispute in order to substantiate its submission that, in the case of the two taxes in question, the discrimination arises from the criterion of the raw material used for the production of spirits.

Whilst it is true that the Italian tax advantages apply both to domestic products and to imported products, that is so on a purely theoretical level since, given the fact that Italy does not have any domestic production of spirits from cereals, only imported spirits distilled from cereals are liable to the taxes in question.

In its judgment in Case 169/78 the Court has held that spirits distilled from cereals and from wine are similar or in

competition with each other or both. Even if they were merely in competition with each other it is apparent that the taxes in question, whose protective nature is manifest, infringe Article 95 of the Treaty.

Nor may the obligation under Article 95 of the Treaty be rendered inoperative by the Member States on the ground of considerations based on the objectives pursued by the tax systems. No importance is to be attached to the objectives of a law once it has been established that the tax system set up by the law in question has a protective effect.

Nevertheless the Commission does examine, as a secondary consideration, the arguments set out by the Italian Government in this connection. It disputes that they are well-founded and maintains that the arguments of the Italian Government with regard to the "system of aids", "the instrument of equalization" and the "orientations of traditional economic policy" have already been rejected by implication by the Court of Justice.

In consequence "taking into account the nature of the structure of the arrangements concerning the tax banderoles and of that of the two systems of taxation which form the subject-matter of this case, the Commission suggests that the Court should interpret Article 95 on the basis of its judgment in Case 169/78 in such a way as to ensure that equal tax treatment is afforded to imported spirits distilled from cereals and domestic spirits distilled from wine".

III — Oral procedure

At the sitting on 6 May 1982 the plaintiff in the main action, Cogis, represented by Mr Scalzo of the Milan Bar, the Italian Government, represented by Mr Conti, acting as Agent, and the Commission of the European Communities represented by Mr Abate, acting as Agent, presented oral argument and replied to questions put by the Court.

The Advocate General delivered his opinion at the sitting on 10 June 1982.

Decision

1 By order of 2 April 1981 which was received at the Court on 20 July 1981 the First Civil Section of the Tribunale di Milano [District Court, Milan] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 95 of the EEC Treaty in order that it may be able to determine whether a system of differentiated taxation applied to whisky and to spirits distilled from wine under the tax legislation in force in Italy after the accession of the United Kingdom to the EEC Treaty is compatible with that provision.

2 The dispute between the plaintiff in the main action, an undertaking which imports whisky, and the Amministrazione delle Finanze dello Stato [the Italian State Finance Administration] arose out of a claim for a refund of the frontier surcharge (sovrimposta di confine) payable on the importation of that product and corresponding to the manufacturing duty payable on spirits produced on the national territory and of the State tax [diritto erariale] calculated on the basis of the pure alcohol content of the whisky, in so far as such taxes have been levied and are higher than the taxes charged on domestic spirits or are not imposed on the latter.

3 Since the national court considered that in the light of the principles laid down by the Court of Justice in regard to the interpretation of Article 95, on the one hand in its judgment of 27 February 1980 Case 169/78 *(Commission* v *Italy* [1980] ECR 385) in which the Court found that the Common Customs Tariff is not decisive for the question of similarity, and on the other in its earlier judgment of 15 April 1970 (Case 28/69 *Commission* v *Italy* [1970] ECR 187) in which the fact that products fall under the same classification for tax purposes was considered to be an important factor in that relationship of similarity, there is a risk of reaching different results, it decided to submit the following question to the Court of Justice:

"Has the Italian State, by applying to imports of whisky from the United Kingdom a system of taxation comprising the State tax which is not charged on domestic spirits distilled from wine and the frontier surcharge at the full rate, when the manufacturing tax on domestic spirits distilled from wine is payable at a reduced rate, infringed Article 95 of the Treaty?"

4 The question put by the national court amounts to requesting the Court of Justice to clarify the criteria for the interpretation of Article 95 in relation to the dispute in order to enable the national court to apply Italian tax law only in so far as it is not contrary to the relevant Community law.

5 In this regard it is important first of all to recall that, in its judgment of 27 February 1980 delivered in Case 169/78, *Commission* v *Italy,* the Court declared that "by the application of differential taxation in the form of tax banderoles affixed to receptacles containing spirits intended for retail, as

provided for by the Italian tax legislation resulting from the provisions of Article 6 of Decree Law No 745 of 26 October 1970, ratified by Law No 1034 of 18 December 1970, as regards, first, spirits obtained by the distillation of cereals and sugar-cane and, secondly, spirits obtained from wine and marc, the Italian Republic, has failed, as regards products imported from the other Member States, to fulfil its obligations under Article 95 of the EEC Treaty".

6 That statement was based on an interpretation of Article 95 which was founded on the system of the EEC Treaty and according to which the first and second paragraphs of that article complement the provisions on the abolition of customs duties and charges having equivalent effect since their objective is to ensure the free movement of goods between the Member States under normal conditions of competition by eliminating any form of protection which may result in the application of internal taxation which discriminates against products from other Member States. In that respect Article 95 guarantees the complete neutrality of internal taxation as regards competition between domestic products and imported products.

7 It was stated that the first paragraph of Article 95 must be interpreted widely so as to cover all taxation procedures which conflict with the principle of the equality of treatment of domestic products and imported products; in order to do so it is therefore necessary to interpret the concept of "similar products" with sufficient flexibility. Thus it is necessary to consider as "similar" products which have similar characteristics and meet the same needs from the point of view of consumers. It is accordingly necessary to determine the scope of the first paragraph of Article 95 on the basis not of the criterion of the strictly identical nature of the products but on that of their similar and comparable use.

8 With regard to spirits for human consumption it should be determined whether, having regard to distinguishing criteria such as the origin and method of manufacture of the beverages, their possible application and the habits of consumers throughout the Community as a whole, the products display a sufficient degree of similarity. That determination is is to be made without taking into account any purely national differentiations in taxation and without the need to refer to customs classifications. If the products are found to be similar on the basis of the above-mentioned criteria the first paragraph of Article 95 is applicable.

9 If the condition of similarity required by the first paragraph of Article 95 is not fully met the second paragraph of that article, as was stated in the judgment in Case 169/78, has the function of covering all forms of indirect protection through taxation in the case of products which, without being similar within the meaning of the first paragraph, are nevertheless in competition, even partial, indirect or potential.

10 With regard to spirits for human consumption it has already been made clear in the same judgment that spirits obtained from cereals and rum, as products of distillation, share with spirits obtained from wine and marc sufficient common characteristics to form, at least in certain circumstances, an alternative choice for consumers. That finding constitutes sufficient ground for holding that such products are in competition with each other and that it is not permissible for taxation imposed on them to have a protective effect in favour of national production. In this respect it is important, disregarding any comparison of quantities consumed and imported, to take into consideration the potential market for the products in question in the absence of protective measures.

11 With regard to the protective nature of the tax system in question it was found in the judgment in Case 169/78 that the system was characterized by the fact that the most typical domestic products, namely spirits obtained from wine and marc, were in the most favoured tax category whereas two types of product almost all of which were imported from other Member States, that is to say rum and spirits obtained from cereals, were subject to heavier taxation. The fact that domestic production of those spirits also exists does not alter this assessment, since it is not contested that only minimal quantities are involved. Such differences in taxation affect the market in the products in question by reducing the potential consumption of imported products.

12 The reply which must thus be given to the question submitted by the national court is that Article 95 prohibits a system of taxation affecting differently whisky and other spirits.

Costs

13 The costs incurred by the Government of the Italian Republic, by the United Kingdom and by the Commission of the European Communities, which submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber)

in answer to the question referred to it by the First Civil Section of the Tribunale di Milano by order of 2 April 1981, hereby rules:

Article 95 prohibits a system of taxation affecting differently whisky and other spirits.

Touffait Mackenzie Stuart Everling

Delivered in open court in Luxembourg on 15 July 1982.

J. A. Pompe
Deputy Registrar

A. Touffait
President of the Third Chamber