alcohol originating in other Member States.

Such tax arrangements are justified even though the products in question, whilst derived from different raw materials, are capable of being put to the same uses and have the same practical application.

Where by reason of the taxation of synthetic alcohol, it has been impossible to develop profitable production of that type of alcohol on national territory, the application of such tax arrangements cannot be considered as constituting indirect protection of national production of alcohol obtained by fermentation within the meaning of the second paragraph of Article 95 of the EEC Treaty on the sole ground that their consequence is that the product subject to the heavier taxation is in fact a product which is exclusively imported from other Member States of the Community.

In Case 46/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura Civile [Civil Court], Casteggio, for a preliminary ruling in the action pending before that court between

SpA VINAL, having its registered office in Casteggio, Pavia,

and

SpA ORBAT, having its registered office in Milan,

on the interpretation of Article 95 of the EEC Treaty in relation to Italian legislation concerning a special revenue charge on denatured alcohol,

THE COURT

composed of: P. Pescatore, President of the Second Chamber, Acting as President, T. Koopmans (President of the First Chamber), Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco, A. Touffait and O. Due, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

On 5 January 1980 SpA Vinal, which has its registered office at Casteggio, Pavia, addressed to SpA Orbat, which has its registered office in Milan, a "note confirming sale" following a verbal order for 10 hectolitres of pure denatured synthetic alcohol imported from another Member State of the EEC. The selling price was LIT 62 000 per hectolitre.

By a letter of 9 January 1980 Orbat challenged the price since it included, in its opinion wrongly, the special revenue charge on denatured ethyl alcohol created by Decree-Law No 1200 of 6 October 1948 (Gazzetta Ufficiale [Italian Official Journal] No 233 of 6 October 1948) as amended by Decree-Law No 836 of 16 September 1955 (Gazzetta Ufficiale No 215 of 17 September 1955) and fixed at LIT 12 000 per hectolitre of pure alcohol by Article 3 of Law No 506 of 18 August 1978, amending the tax arrangements for alcohol (Gazzetta Ufficiale No 247 of 4 September 1978).

By a writ which was served on 16 and 21 January 1980 Vinal instituted proceedings against Orbat in the Pretura, Casteggio, for an order to implement the contract concluded between the parties and in particular an order that Orbat should take delivery of the goods and make payment of the price including the special revenue charge of LIT 12 000 per hectolitre of pure alcohol and value-added tax.

At the hearing on 29 January 1980 Orbat did not dispute that the basic price of LIT 50 000 per hectolitre of pure alcohol was payable, together with the value-added tax; however, it maintained that payment of the special revenue charge was not due since, in its opinion, it was incompatible with the prohibition of discrimination in taxation contained in Article 95 of the EEC Treaty.

On 30 January 1980 the Pretura, Casteggio, made an order under Article 177 of the EEC Treaty whereby it stayed the proceedings until the Court of Justice has given a preliminary ruling on the following questions:

(a) Must the first paragraph of Article 95 of the Treaty of Rome be interpreted as meaning that two products derived from different raw materials but capable of being put to the same uses and having the same practical application must be considered to be "similar"?

(b) If the reply to Question 1 is in the affirmative:

Must the first paragraph of Article 95 of the Treaty of Rome be interpreted as meaning that it must be considered to be prohibited to impose charges which, whilst appearing to place an identical burden on the Community product and the similar domestic product, in fact amount to discrimination in tax

matters to the detriment of similar products from other Member States in that the products subject to heavier taxation are exclusively imported and the products subject to lighter taxation are principally domestic?

(c) If the reply to either of the foregoing questions is in the negative:

Must the second paragraph of Article 95 be interpreted, in relation to the facts of this case, as meaning that that provision prohibits the imposition of heavier taxation on a product which principally comes from other Member States, thereby affording protection to competing national production?

The order of the Pretura of Casteggio was received at the Court Registry on 4 February 1980.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged on 2 April 1980 by the Commission of the European Communities, represented by its Legal Adviser, Antonino Abate, on 18 April by SpA Vinal, the plaintiff in the main action, represented by Giuseppe Marchesini, of the Milan Bar, and on the same date by the Government of the Italian Republic, represented by Arnaldo Squillante, Head of Contentious Diplomatic Business, Treaties and Legislative Matters at the Ministry for Foreign Affairs, acting as Agent, assisted by Marcello Conti, Avvocato dello Stato.

The Court, having heard the report of the Judge-Rapporteur and the views of the Advocate General, decided to open the oral procedure without any preparatory inquiry. However, it requested SpA Vinal and the Commission to reply to a certain number of questions before the opening of the oral procedure; that request was duly complied with.

II — Written observations submitted to the Court

SpA Vinal, the plaintiff in the main action, considers that the imposition of the special revenue charge on denatured ethyl alcohol does not entail any tax discrimination.

The alleged discrimination in relation to the origin of the products

(a) The same special revenue charge, amounting to LIT 12 000 per hectolitre of pure alcohol is payable on denatured synthetic alcohol whether it is of Italian or foreign origin; likewise, denatured alcohol obtained by fermentation, whether it is of Italian or Community origin, is liable to the same revenue charge of LIT 1 000 per hectolitre of pure alcohol. Thus no discrimination is to be discerned in the letter of the law.

(b) There is likewise no discrimination in fact.

It is indeed the case that, for incidental reasons, the Italian industry markets little or no synthetic alcohol; this fact does not mean that the production of that type of alcohol by national undertakings is excluded either on technical or practical grounds.

Ethylene, which is the principal source of synthetic alcohol, is produced on a large scale in Italy and there is a well-organized and efficient petro-chemical industry. The preference for other products is based not on any technical or objective impossibility but on a choice which may vary in accordance with time and circumstances.

The Court of Justice in its decisions precisely in the sphere of competition and intra-Community trade has properly taken account of potential market situations.

Furthermore, denatured synthetic alcohol produced in the Community is in fact in demand in and imported into Italy.

There is no truth in the statement that foreign alcohol obtained by fermentation does not qualify for the same tax treatment as Italian alcohol, purely because in practice it is technically impossible to verify whether the foreign product originated through fermentation or synthesis when it is submitted as a finished product to the competent Italian officials. Article 20 of Decree-Law No 46 of 18 March 1976 (Gazzetta Ufficiale No 73 of 18 March 1976), which became Law No 249 of 10 May 1976 (Gazzetta Ufficiale No 129 of 17 May 1976), implemented by the Ministerial Decree of 24 August 1977 (Gazzetta Ufficiale No 243 of 7 September 1977), states that a certificate of origin issued by the State of origin has probative value.

The alleged discrimination with regard to the raw materials used

(a) The reduction in the revenue charge is not granted on the basis of the "national" origin of the products, the sole circumstance which could be contrary to Article 95, but on the basis of objective conditions which apply without distinction to Italian and Community products.

The case-law of the Court indicates that Article 95 does not restrict the power of each Member State to establish the tax arrangements which it considers most appropriate for each product; in particular, according to the judgment of 9 January 1980 (Case 21/79 *Commission* v *Italian Republic* [1980] ECR 1: regenerated petroleum products), the first paragraph of Article 95 places Member States under an obligation to extend the tax advantages accruing to domestic products to similar products imported from the other Member States as well provided that the latter products satisfy the conditions to which a reduced rate or an exemption have been made subject, but it does not impose upon the Member States the duty to abolish as regards internal taxes on domestic products differences which are objectively justified and which may be introduced by domestic legislation.

That case-law confirms that the contested revenue charge, which is applied solely on the basis of the objective verification of the raw material used, is a neutral charge. Qualification for the reduced revenue charge is linked to an objective condition which can be fulfilled by both Italian and Community producers.

(b) In this case there is a specific justification for the difference in tax treatment. It is in no way intended to penalize Community products but is aimed at providing an incentive for products which deserve particular protection and is in line with the requirement which today is of ever-increasing moment, namely a reduction in the consumption of petroleum products.

The purpose of the tax advantage in dispute is to ensure that agricultural producers of the raw materials used in this sphere (wine, fruit, beet and sorghum) have an adequate level of employment and income and that agricultural distilleries can survive.

Furthermore, it is intended to restrict in the general interest the use of ethylene in

products which can be made from Italian and Community agricultural materials.

Conclusion

Article 95 of the EEC Treaty does not impose any prohibition on tax arrangements such as the Italian revenue charge on denatured ethyl alcohol.

The *Government of the Italian Republic* argues that the request for a preliminary ruling is inadmissible and, as to the substance of the case, that the tax arrangements in question are in accordance with Article 95 of the EEC Treaty.

The admissibility of the request for a preliminary ruling

A clear alternative is unavoidable: either the agreement concluded between Vinal and Orbat for the supply of alcohol produced solely by synthesis (to the exclusion of denatured alcohol obtained by fermentation) is well-founded and is in fact in accordance with the genuine interests of the purchaser; that finding is the clearest possible contradiction of the statement contained in the order making the reference to the effect that the two types of product are identical or similar in nature, and indeed deprives that order of all meaning; or the agreement merely constitutes an expedient devised in order to call in question before the Court of Justice, on the flimsy basis of a case which in fact constitutes a friendly suit, the Italian tax arrangements concerning denatured alcohol. The case-law of the Court of Justice, in particular the judgment of 11 March 1980 (Case 104/79 *Foglia*), shows clearly that this request is inadmissible.

The alleged discrimination

(a) It should be pointed out that in the Italian tax arrangements for denatured alcohol synthetic alcohol is not considered as constituting an independent tax category, involving special treatment; they provide in fact for a single ordinary rate of the "special revenue charge" which is at present fixed at LIT 12 000 per hectolitre of pure alcohol. That ordinary rate applies to synthetic alcohol and also to all denatured alcohol in general, including alcohol obtained by fermentation from raw materials other than those envisaged by special provisions. In addition to those ordinary tax arrangements there exist differentiated arrangements for three specified categories of denatured alcohol.

In Italy the taxation of synthetic alcohol is not governed by special provisions but comes within a general system which applies the same rate to an unspecified series of products without giving rise to unlawful discrimination between domestic and imported products.

(b) Taken as a whole, the Italian arrangements for the taxation of denatured alcohol do not entail any violation of the principles laid down by Article 95 of the EEC Treaty, even if it is conceded for the sake of argument that all kinds of denatured ethyl alcohol are identical or at least similar.

The case-law of the Court of Justice shows clearly that Article 95 of the Treaty does not limit the power of each Member State to lay down the system of taxation which it considers the most appropriate for each product, that Community law does not prohibit the Member States from granting tax advantages in the form of exemptions

from or reductions in taxation for certain types of alcohol or for certain categories of producers and that the Treaty does not prohibit in relation to domestic tax legislation the imposition of different taxation on products which may have the same economic uses. There is nothing to prevent the Member States from creating tax arrangements based on differentiated taxation of the same product on the basis of objective factors which distinguish different situations, in particular on the basis of the raw materials used. It is differentiated taxation of a discriminatory or protective nature which is prohibited.

(c) Tax arrangements according different treatment to the same product or to similar products may be declared incompatible with Article 95 only in two cases: that of failure to apply the arrangements for each of the subcategories fixed by national law to products imported from other Member States which fulfil the objective requirements for classification in the subcategory in question; and that of unlawful discrimination in the abstract determination of tax subcategories so that a group of products liable to a given tax is distinguished not in terms of objective features discernible in both domestic and imported products but of characteristics which are related more or less explicitly to their provenance. Neither of those cases obtains within the framework of the Italian tax arrangements for denatured alcohol.

For a system of differentiated taxation applicable to the same product to be in accordance with Article 95 it is not necessary that the imported product should invariably receive the most favourable tax treatment from amongst the possibilities laid down for the corresponding domestic product. That argument cannot be upheld; it would entail in practice the complete negation of the Member States' independence in matters of taxation since the latter would amount to the absurd power to create adverse discrimination at the sole expense of given domestic products.

(d) The provisions of Article 95 must be related to the tax categories in fact created by each national legal system; it is thus necessary to make a separate finding that the principle of non-discrimination has been observed for each of such tax categories and not to make inappropriate comparisons between products belonging to different categories. The treatment allotted to each group of products, determined objectively, must be applied both to domestic and to imported products; that uniformity of treatment is present in all its aspects in the Italian legislation on denatured ethyl alcohol: no discrimination exists between domestic and imported products in any of the three groups into which the kinds of alcohol are divided.

According to the case-law of the Court importers who wish to claim a reduced rate which is provided for a corresponding domestic product must prove that the imported product displays the necessary characteristics; the Italian legislation provides for alcohol imported from other Member States the same treatment as for corresponding domestic products, provided that it is stated on a special certificate, recognized as valid by the Italian authorities, that the manufacture and characteristics of the imported products with regard in

particular to the raw materials employed wholly conform to those which qualify the domestic products for exemptions from or reductions in taxation.

(e) The Italian tax arrangements for denatured alcohol do not display discriminatory characteristics either in respect of the treatment reserved for imported and domestic products within the various subcategories fixed by the tax legislation or in respect of the actual determination and the diversification of those subcategories. In particular, no discrimination resides in the fact that the ordinary, unreduced, rate is applied to synthetic alcohol, which is not produced in significant quantities in Italy.

Synthetic alcohol can be obtained easily in all industrialized countries and thus in Italy also. Italy produces ethylene, the raw material from which synthetic alcohol is obtained, on a large scale; it possesses the industrial organization necessary for the production of synthetic alcohol from ethylene, since the Italian petro-chemical industry is amongst the most advanced in the Community. There is no objective obstacle, whether natural or inherent in the existing industrial structure, which prevents the development of synthetic alcohol production in Italy. The fact that such development has not hitherto taken place is merely due to a lawful choice of economic policy, reinforced also by tax mechanisms; the absence of a consistent production of synthetic alcohol results from tax arrangements which have been voluntarily and deliberately adopted.

Since Article 95 does not restrict the independence of the Member States in matters of taxation, they are entitled to apply different tax treatment to products which are or could be produced domestically and which may be considered as identical or similar; in that case the differentiated taxation essentially forms an obstacle to any domestic production; it does not give rise to any problem of equality of treatment with products from other countries of the Community which, in endeavouring to penetrate the Italian market, encounter the same obstacle as corresponding domestic products and not a greater or more difficult obstacle.

In Italy synthetic alcohol does not qualify for reduced rates but is liable to the normal rate of LIT 12 000 per hectolitre of pure alcohol in order to ensure market conditions providing an adequate level of employment and income for the agricultural producers of specified raw materials, in particular wine, fruit, beet, sorghum and sugar cane, and the survival of agricultural distilleries. The Italian tax arrangements fall wholly within that class of differentiated tax arrangements which are intended to guarantee the continuation of given products, which arrangements have been found fully lawful in the case-law of the Court of Justice.

Equal treatment for tax purposes of synthetic alcohol and alcohol of agricultural origin is also inappropriate for economic and social reasons since the petrol crisis requires a drastic reduction in consumption and careful choice as to the use of resources. It would be illogical to pursue a tax policy favouring the production of alcohol from petroleum. It is entirely logical and proper for Italy to

decide to impose increasingly stringent limits on the use of ethylene for a product such as alcohol which, even from the point of view of energy conservation, may be obtained much more beneficially for the general public from other sources. That decision does not entail any discrimination between domestic and imported products. The charge of LIT 12 000 per hectolitre of pure alcohol is imposed basically upon domestic production; the fact that it also hinders, without any discrimination, production in other States of the Community does not constitute an infringement of Article 95. That article in no way prohibits a State from providing an incentive for a given production or on the other hand from discouraging it; it merely requires that the incentives or disincentives should be applied uniformly to domestic and Community products. This is true of the application of the Italian tax arrangements in respect of denatured alcohol.

(f) With regard to the problem whether the products at issue in the main action are identical or similar it must be noted that the fact that the various types of denatured alcohol have an identical chemical formula does not mean that they are completely interchangeable for economic purposes and that with respect to trade in those products the raw material employed and the manufacturing process are entirely irrelevant. Synthetic alcohol displays important objective differences in relation to alcohol of agricultural origin since a chemical synthesis effected on an industrial scale is very different from a distillate of products of the soil. The difference between the conditions of production leads, in the case of both products, to price structures which are so completely different that despite any competitive relationship between the finished products it is impossible to make a direct and immediate comparison from the tax point of view. The judgment of the Court of Justice of 27 February 1980 (Case 170/80 *Commission* v *United Kingdom)* shows that it is impossible to refrain from clarifying the tax-relationship which may be considered appropriate as between products which are in competition but which have different conditions of production. At all events, the automatic approximation of the tax arrangements for all denatured alcohol may not be required.

Suggested replies

If the Court considers that it must rule that the request for a preliminary ruling is admissible it could give the following replies to the questions submitted:

(a) Tax arrangements which subject identical or similar products to treatment differentiated on the basis of the raw materials employed are not contrary to Article 95 of the EEC Treaty provided that such differentiated treatment is extended under the same conditions to the products of other Member States;

(b) Such a system of differentiated taxation for identical or similar products cannot be considered as contrary to Article 95 solely by reason of the fact that the application of the higher rate of taxation has attained the objective of discouraging the corresponding production within the country in question;

(c) In the case under consideration an infringement of Article 95 can exist only if the sole objective in fixing differentiated rates is to present an obstacle to products which, for objective reasons, it is impossible to produce on the national territory.

The *Commission* considers that in this case the conditions laid down in Article 177 of the EEC Treaty for referring a case to the Court of Justice have been fulfilled and that the Italian arrangements concerning the special revenue charge are contrary to Article 95.

The procedural aspect of the case

(a) There in fact exists between the parties to the main action a dispute as to whether Vinal's claim to recover from Orbat the amount of the special revenue charge paid at the time of the importation of a consignment of denatured ethyl alcohol of synthetic origin is well-founded. The questions on the interpretation of Article 95 submitted in the order making the reference thus appear to be entirely relevant.

(b) Likewise there are no objections to be raised concerning the need experienced by the national court to refer the questions to the Court of Justice for a preliminary ruling for the purposes of the decision to be delivered in the main action.

(c) With regard to the fact that the importer Vinal has not instituted proceedings directly against the competent Italian administration to challenge the lawfulness of the special revenue charge paid at the time of the customs clearance of the goods it must be stated that Article 95 creates individual rights for all citizens regardless of the nature of their activity. Whoever enjoys an individual right also has a right to institute proceedings, which he exercises in complete independence and at his entire discretion every time he has an interest in obtaining protection for the individual right which is threatened by the claims of another, whether a private person or a public administration.

Any acquiescence on the part of the importer cannot jeopardize or limit the extent or the exercise of the individual right or the right to institute proceedings enjoyed by traders who subsequently participate in the production or marketing process. Orbat is fully entitled to exercise independently and unconditionally the rights conferred upon it by the Treaty; it has a genuine interest in prosecuting its claim and obtaining a preliminary ruling from the Court, upon which depends the protection of the individual right conferred by Article 95 of the Treaty and the certainty of avoiding the tax discrimination inherent in the provisions on the special revenue charge. The interest of the national court in obtaining a preliminary ruling from the Court of Justice likewise cannot be called in question; it is for the former court to assess whether the claim of the undertaking which is the plaintiff in the main action is well-founded in law.

(d) The contractual nature of the dispute before the national court, which arose between two undertakings governed by private law regarding the implementation of a contract and not between an individual and a public administration, in no way prevents reference of that action to the Court of Justice for a preliminary ruling. The national courts are obliged to deliver rulings on all cases brought before them, including those concerning "matters of principle" which arise in disputes over matters of negligible economic importance. Without the mechanism of Article 177 the courts, in the performance of their duties, would be obliged to apply the provisions of Community law in accordance with criteria relevant to the interpretation of national law; they would thus develop a varied case-law differing from State to State and indeed within the same State. In a situation of conflict between judgments delivered by different courts, national and Community, all equally

sovereign, independent and having the same substantive competence, the unity of Community law, the uniformity of its interpretation, its applicability and primacy would be irremediably impaired. Article 177 constitutes the sole means of ensuring that persons who defend rights which have been infringed through the misconduct of the Member States obtain the proper and uniform application of Community law. A reduction in the right to have recourse to the procedure under Article 177 amounts to imposing a like reduction in the individual rights of private persons.

Any refusal of jurisdiction by the Court of Justice in this case cannot fail to undermine the authority of the judgments hitherto delivered in similar cases.

The decision arrived at in the judgment of the Court of 11 March 1980 (Case 104/79 *Foglia)* is thus not applicable to this case.

It is likewise impossible to draw an analogy between this case and the dispute which gave rise to the judgment of the Court of 22 November 1978 (Case 93/78 *Mattheus* [1978] ECR 2203). In the present case the Court is asked to interpret a provision of the Treaty conferring individual rights in relation to existing national provisions whose legality or otherwise determines the outcome of the main action, whilst in Case 93/78 the dispute was completely abstract and theoretical since it did not concern the compatibility of any provision of a national legal system with the provisions of Community law; furthermore, since Article 237 governs international relations and thus does not confer individual rights on private persons, Case 93/78 did not raise any problem of the legal protection of individuals.

The similarity of the products in question

(a) The Commission recalls that pure ethyl alcohol is obtained by distilling products of the soil (cereals, wine, grape marc, fruit, potatoes, sugar cane, beet, molasses from cane or beet, wood, etc.) or by synthesis of mineral products (petroleum or coal). Although these kinds of alcohol are of differing origin, namely agricultural or mineral, they are identical from a chemical point of view (C_2H_5OH); in the finished state their origin can be identified only by means of delicate and complicated chemical analysis based on their degree of radioactivity. Where the degree of purity obtained at the end of the distilling or synthesising procedure is the same ethyl alcohols are thus perfectly interchangeable and they may all be employed without distinction for the same purposes. Ethyl alcohol is used chiefly in products for human consumption (alcoholic beverages and pharmaceutical and food products) and for industrial purposes (paints, enamels, solvents, cosmetics and perfumes, essences, plastic products, etc.). For purely economic reasons the legislation of two Member States, one of which is Italy, expressly prohibits the use of synthetic ethyl alcohol in preparations intended for human consumption.

These facts confirm not merely the similarity but the actual identity of synthetic alcohol and agricultural alcohol from the point of view of the requirements which these products are

capable of fulfilling. Both types of alcohol are furthermore grouped under subheading 22.08 B of the Common Customs Tariff.

(b) Denatured alcohol is merely ethyl alcohol to which a denaturing product has been added in order to alter its taste and prevent its use for human consumption. The reasons for denaturing the alcohol are essentially of a fiscal nature, since denatured alcohol intended for industrial use is not liable to the taxation imposed on alcohol intended for human consumption.

All kinds of denatured alcohol, like the pure alcohol from which they are obtained, are not merely similar but identical. They are all grouped under subheading 22.08 A of the Common Customs Tariff (denatured spirits (including ethyl alcohol and neutral spirits) of any strength).

The breach of Article 95

(a) In the Italian tax system denatured alcohol is liable neither to the manufacturing duty nor to the normal revenue charge; on the other hand it is liable to the special revenue charge, fixed at LIT 1 000 per hectolitre of pure alcohol in the case of alcohol obtained from molasses or similar materials, from sorghum or from sugar cane, and at LIT 12 000 per hectolitre for other alcohol, *inter alia* synthetic alcohol.

The reason for the difference in tax treatment is that in Italy the entire consumption of denatured ethyl alcohol (655 038 hectolitres of pure alcohol in 1977) is met by domestic alcohol, obtained largely from beet molasses; on the other hand, synthetic alcohol is not manufactured in Italy and importations of it are liable to the full rate of LIT 12 000 per hectolitre.

In fact, synthetic alcohol is only imported in very limited quantities since the tax is sufficiently heavy to render it unprofitable for importers and to confer a privileged competitive position on domestic alcohol.

The lower rate of the special revenue charge directly benefits the Italian production of denatured ethyl alcohol derived from beet molasses and indirectly benefits the Italian production of beet and beet molasses.

(b) On 31 July 1978 the Commission addressed a reasoned opinion to the Italian Republic under Article 169 of the EEC Treaty requesting the Italian Government to modify within a period of two months the provisions relating to the special revenue charge in order to bring them into line with Article 95 of the Treaty. Since the Italian Government did not comply with that reasoned opinion the Commission intends to bring proceedings before the Court of Justice in the near future.

In its reasoned opinion the Commission took the view that it was unnecessary to take into consideration for the proper application of Article 95 factors relating to the raw materials used in the manufacture of the various types of denatured ethyl alcohol or to the manufacturing process.

Furthermore, in this case factors of an economic or social nature cannot be relied upon in order to justify the reduced rate reserved for denatured alcohol obtained from beet molasses. Such factors cannot justify the failure to comply with Article 95 and the adoption of any measures of support for the production of beet or beet molasses now

falls within the sole competence of the Community institutions by virtue of the common organization of the market in sugar established by Regulation (EEC) No 3330/74 of the Council of 19 December 1974 (Official Journal 1974, L 359, p. 1).

The Italian arrangements for the taxation of denatured alcohol do not embrace objectives concerning energy and ecology; in this case it is impossible to apply the principles laid down by the Court in its judgment of 8 January 1980 (regenerated petroleum products).

(c) The tax arrangements of which the special revenue charge in question forms part could be considered compatible with the first paragraph of Article 95 of the Treaty only if an identical rate of taxation were applied to domestic products and similar products imported from other Member States, including denatured ethyl alcohol of synthetic origin. This conclusion appears to be in accordance with the principles laid down by the Court in its judgment of 27 February 1980 on the tax arrangements applying to alcoholic beverages.

(d) The first two questions submitted to the Court of Justice should receive the following reply:

According to the requirements laid down in the first paragraph of Article 95 of the Treaty, where internal tax arrangements provide for favourable treatment in the form of tax exemptions or the granting of reduced rates of taxation for the production of certain kinds of denatured ethyl alcohol obtained, for example, from alcohol produced from molasses, such favourable treatment must be extended to similar types of denatured ethyl alcohol, obtained, for example, from synthetic alcohol, imported from other Member States, and the raw materials and processes employed in the production of the various kinds of denatured ethyl alcohol must not be taken into account.

The reply suggested to the first two questions renders consideration of the third question unnecessary.

III — Oral procedure

At the sitting on 30 September 1980, SpA Vinal, the plaintiff in the main action, represented by Giuseppe Marchesini, the Government of the Italian Republic, represented by Marcello Conti, and the Commission of the European Communities, represented by Antonino Abate, submitted oral argument and replied to questions from the Court.

The Advocate General delivered his opinion at the sitting on 11 November 1980.

Decision

1 By an order of 30 January 1980 which was received at the Court on 4 February 1980 the Pretura Civile [Civil Court], Casteggio, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Article 95 of the EEC Treaty in order to make it possible to assess whether the system of differential taxation applied by virtue of Decree-Law No 1200 of 6 October 1948, as amended by Decree-Law No 836 of 16 September 1955, and Article 3 of Law No 506 of

18 August 1978 to denatured synthetic ethyl alcohol and denatured ethyl alcohol obtained by fermentation is compatible with the requirements of the Treaty.

2 These questions have been submitted in the context of civil proceedings concerning the performance of a contract concluded in January 1980 between the plaintiff in the main action, SpA Vinal, a producer and importer of alcohol, and SpA Orbat, relating to the supply of a consignment of denatured synthetic alcohol from France.

3 The order making the reference for a preliminary ruling shows that SpA Orbat, the defendant in the main action, does not dispute that it is bound to pay the agreed price but challenges the imposition in this case of the special revenue charge of LIT 12 000 per hectolitre of pure alcohol, stating that it is prepared to reimburse the plaintiff only the special charge of LIT 1 000 per hectolitre applicable to denatured alcohol obtained by fermentation. The defendant claims in fact that the levying of the said revenue charge of LIT 12 000 per hectolitre of denatured synthetic alcohol is unlawful by virtue of Article 95 of the EEC Treaty since it constitutes tax discrimination which is prohibited by that provision.

4 In order to decide this dispute the Pretura submitted the following questions to the Court for a preliminary ruling:

(a) Must the first paragraph of Article 95 of the Treaty of Rome be interpreted as meaning that two products derived from different raw materials but capable of being put to the same uses and having the same practical application must be considered to be "similar"?

(b) If the reply to Question 1 is in the affirmative:

Must the first paragraph of Article 95 of the Treaty of Rome be interpreted as meaning that it must be considered to be prohibited to impose charges which, whilst appearing to place an identical burden on the Community product and the similar domestic product, in fact amount to discrimination in tax matters to the detriment of similar products from other Member States in that the products subject to heavier taxation are exclusively imported and the products subject to lighter taxation are principally domestic?

(c) If the reply to either of the foregoing questions is in the negative:

Must the second paragraph of Article 95 be interpreted, in relation to the facts of this case, as meaning that that provision prohibits the imposition of heavier taxation on a product which principally comes from other Member States, thereby affording protection to competing national production?

The jurisdiction of the Court

5 The Italian Government has put in issue the admissibility of the request for a preliminary ruling submitted by the Pretura, Casteggio. It raises the question whether the action brought before the national court is not really a fictitious dispute and whether the procedure under Article 177 has not been employed in this case to impeach the Italian State in the absence of any actual dispute giving rise to questions of Community law as between the parties. In these circumstances the Italian Government asks whether the situation should not be compared to that which formed the subject-matter of the judgment of the Court of 11 March 1980 in Case 104/79 *Foglia* v *Novello* [1980] ECR 745 in which the Court held that it had no jurisdiction to give a ruling on the questions put by the national court.

6 In view of that contention, which the Italian Government set out in its written observations, the Court requested the parties to supply it with additional information.

7 Having studied the replies given to those questions the Court considers that in this case it is possible to set aside the doubts expressed by the Italian Government and to broach the substance of the case.

Substance

8 It appears from the order making the reference for a preliminary ruling that the defendant in the main action contends that the Italian tax arrangements are incompatible with Article 95 of the Treaty in reliance on two facts. It is

maintained, first, that denatured synthetic alcohol should be considered as similar or indeed identical to denatured alcohol obtained by fermentation and, secondly, that synthetic alcohol is only imported into Italy whereas the denatured alcohol obtained by fermentation which is marketed in Italy comes exclusively from domestic production. Thus despite the formal identity of tax treatment a similar product from other Member States is in fact taxed more heavily than the domestic product.

9 That position is supported in principle by the Commission which has expressed the opinion that, despite the different origins of the two products in question — namely synthetic alcohol, which is derived in particular from petroleum, and alcohol obtained by fermentation, which is produced by distilling products of the soil (cereals, wine, fruit, potatoes, beet and molasses) — the two kinds of alcohol in question are chemically identical and fully interchangeable in their uses. There is thus not only similarity between these two products but actual identity in regard to the needs which the two products are called upon to fulfil. Furthermore, the two kinds of alcohol fall within the same tariff subheading, 22.08 A, under the description "denatured spirits (including ethyl alcohol and neutral spirits) of any strength". In the absence of production of synthetic alcohol in Italy, the difference in the rate of tax prescribed by Italian law for denatured synthetic alcohol on the one hand and denatured alcohol obtained by fermentation on the other has the result of preventing practically all imports of synthetic alcohol from other Member States and of directly favouring national production of alcohol by fermentation. The Commission thus considers that, being a product similar to denatured alcohol obtained by fermentation, denatured synthetic alcohol imported from other Member States should qualify for the same rate of tax as the former.

10 The plaintiff in the main action on the other hand claims that the Italian system of taxes is compatible with the requirements of Article 95. It points out that Italy has a considerable production of ethylene, a petroleum derivative which is used in the manufacture of synthetic alcohol.

It is accordingly impossible to accept that there is discrimination against imported synthetic alcohol when there is at least a potential for production of the same product in Italy. With regard to alcohol obtained by fermentation, SpA Vinal is concerned to show that there is no tax discrimination between alcohol produced in Italy and imported alcohol. Thus it appears that the Italian system of taxes is applied on the basis of objective conditions which are applicable without distinction to Italian products and to the products of other Member States. In this case there is a specific justification for these differing tax arrangements in that they are intended to promote types of production deserving of particular protection, namely the processing

of a number of agricultural products, and to reduce correspondingly the consumption of petroleum products.

11 The argument advanced by SpA Vinal was further developed by the Italian Government. It recalls that in a number of judgments the Court has recognized that the Member States may lay down differing tax arrangements, even for identical products, on the basis of objective criteria such as the conditions of production and the raw materials used (judgment of 22 June 1976 in Case 127/75 *Bobie* [1976] ECR 1079; judgment of 10 October 1978 in Case 148/77 *Hansen* [1978] ECR 1787; judgment of 8 January 1980 in Case 21/79 *Commission* v *Italy* [1980] ECR 1). According to the Court, such arrangements are compatible with the Treaty if they are laid down on the basis of objective factors and are not discriminatory or protective in their nature.

12 The arrangements challenged before the national court meet these requirements. In fact the different taxation of synthetic alcohol and of alcohol produced by fermentation in Italy is the result of an economic policy decision to favour the manufacture of alcohol from agricultural products and, correspondingly, to restrain the processing into alcohol of ethylene, a derivative of petroleum, in order to reserve that raw material for other more important economic uses. It accordingly constitutes a legitimate choice of economic policy to which effect is given by fiscal means. The implementation of that policy does not lead to any discrimination since although it results in discouraging imports of synthetic alcohol into Italy, it also has the consequence of hampering the development in Italy itself of production of alcohol from ethylene, that production being technically perfectly possible.

13 As the Court has stated on many occasions, particularly in the judgments cited by the Italian Government, in its present stage of development Community law does not restrict the freedom of each Member State to lay down tax arrangements which differentiate between certain products on the basis of objective criteria, such as the nature of the raw materials used or the production processes employed. Such differentiation is compatible with Community law if it pursues economic policy objectives which are themselves compatible with the requirements of the Treaty and its secondary law 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.

14 Differential taxation such as that which exists in Italy for denatured synthetic alcohol on the one hand and denatured alcohol obtained by fermentation on the other satisfies these requirements. It appears in fact that that system of taxation pursues an objective of legitimate industrial policy in that it is such as to promote the distillation of agricultural products as against the manufacture of alcohol from petroleum derivatives. That choice does not conflict with the rules of Community law or the requirements of a policy decided within the framework of the Community.

15 The detailed provisions of the legislation at issue before the national court cannot be considered as discriminatory since, on the one hand, it is not disputed that imports from other Member States of alcohol obtained by fermentation qualify for the same tax treatment as Italian alcohol produced by fermentation and, on the other hand, although the rate of tax prescribed for synthetic alcohol results in restraining the importation of synthetic alcohol originating in other Member States, it has an equivalent economic effect in the national territory in that it also hampers the establishment of profitable production of the same product by Italian industry.

16 Having regard to the foregoing, the questions submitted by the Pretura, Casteggio, should be answered as follows.

17 With regard to the first and second questions, taken together, the reply should be that tax arrangements which impose heavier charges on denatured synthetic alcohol than on denatured alcohol obtained by fermentation on the basis of the raw materials and the manufacturing processes employed for the two products are not at variance with the first paragraph of Article 95 of the EEC Treaty if they are applied identically to the two categories of alcohol originating in other Member States. Such tax arrangements are justified even though the products in question, whilst derived from different raw materials, are capable of being put to the same uses and have the same practical application.

18 With regard to the third question the reply should be that where, by reason of the taxation of synthetic alcohol, it has been impossible to develop profitable production of that type of alcohol on national territory, the application of such tax arrangements cannot be considered as constituting indirect protection of national production of alcohol obtained by fermentation within the meaning of the second paragraph of Article 95 on the sole ground that

their consequence is that the product subject to the heavier taxation is in fact a product which is exclusively imported from other Member States of the Community.

Costs

19 The costs incurred by the Government of the Italian Republic and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As the 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,

in answer to the questions referred to it by the Pretura, Casteggio, by order of 30 January 1980, hereby rules:

1. **Tax arrangements which impose heavier charges on denatured synthetic alcohol than on denatured alcohol obtained by fermentation on the basis of the raw materials and the manufacturing processes employed for the two products are not at variance with the first paragraph of Article 95 of the EEC Treaty if they are applied identically to the two categories of alcohol originating in other Member States. Such tax arrangements are justified even though the products in question, whilst derived from different raw materials, are capable of being put to the same uses and have the same practical application.**

2. **Where, by reason of the taxation of synthetic alcohol, it has been impossible to develop profitable production of that type of alcohol on national territory, the application of such tax arrangements cannot be considered as constituting indirect protection of national production of alcohol obtained by fermentation within the meaning of the second**

paragraph of Article 95 of the EEC Treaty on the sole ground that their consequence is that the product subject to the heavier taxation is in fact a product which is exclusively imported from other Member States of the Community.

Pescatore Koopmans Mackenzie Stuart

O'Keeffe Bosco Touffait Due

Delivered in open court in Luxembourg on 14 January 1981.

A. Van Houtte
Registrar

P. Pescatore
President of the Second Chamber,
Acting as President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 11 NOVEMBER 1980 [1]

Mr President,
Members of the Court,

The reference for a preliminary ruling on which I am today to give my opinion again concerns the interpretation of Article 95 of the EEC Treaty in relation to differing internal taxation on alcoholic products.

As SpA Vinal's note confirming sale shows, SpA Orbat, which has its registered office in Milan, placed a verbal order with the former, which has its registered office in Casteggio, for 10 hectolitres of pure denatured synthetic ethyl alcohol imported from another Member State of the EEC at a price of LIT 62 000 per hectolitre of alcohol together with value-added tax. That price included a special revenue charge (diritto erariale speciale) which, in accordance with Article 3 of Law No 506 of 18 August 1978 amending the tax arrangements for alcohol (Gazzetta Ufficiale [Italian Official Journal] No 247 of 4 September 1978), was fixed at LIT 12 000 per hectolitre of pure alcohol and was paid by Vinal on the importation of the goods in question.

When Orbat refused to pay the special revenue charge, which in its view had been unlawfully imposed, Vinal instituted proceedings before the Pretura, Casteggio, calling upon the

1 — Translated from the German.