OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 5 FEBRUARY 1975 [1]

Mr President,

Members of the Court,

The questions of interpretation put in this case by the President of the Tribunale of Bolzano raise problems which are of indirect concern to various Member States which apply charges in connexion with quality control in the field of agriculture. According to information supplied by the Commission, charges of this nature are applied in France and the Netherlands as well as in Italy. The Commission instituted some time ago — without, however, being able so far to bring the matter to a conclusion — proceedings for failure to fulfil an obligation under Article 169 of the EEC Treaty in respect both of the charge which gave rise to this reference and of similar charges imposed on different products by Italy and the Netherlands.

Once again an issue which is essentially concerned with an alleged infringement of the Treaty by a Member State is submitted for examination by this Court under the preliminary reference procedure. While it is recognized that the way indicated by Article 169 may lead to a decision which deals more exhaustively with the subject-matter of the dispute, it has, with results which have been constructive and far-reaching, for some time been common practice for the validity of national measures to come up for review by the Court as a result of the interest, vigilance and initiative of the parties and with the cooperation of the national court. In order to produce the result which the parties seek to achieve through this procedure it is, however, necessary for the appraisal of the substance of the case to be just as exhaustive, and, indeed, because of this, for the reply which the Court is called upon to give to be kept within the specific limits of its jurisdiction, in other words, for the reply to be confined to the questions which may have been raised and which were, in fact, raised in the proceedings pending before the national court. This requirement acquires special importance in a case like the present, in which, while the immediate dispute is concerned with a particular economic charge, a different interest has been the subject of submissions before this Court, most of them from the Commission, which seeks not merely the abolition of the modest-charge which has to be paid but, more particularly, a declaration of the illegality of certain frontier inspections because of the way in which they are carried out.

As this latter topic lies, as it undeniably does, outside the immediate subject-matter of these proceedings, the question at issue, which is restricted to the reference which the nationale court has made exclusively concerning the legality of the charge to be levied, is easy to resolve, but the more delicate question concerning the legality of the inspections to be carried out on certain goods under the Community system is left open. On this subject, the Commission possesses the necessary means to enable it, should this be considered necessary, to find a satisfactory solution, based on fuller information on the position in the different states and more detailed discussion of the problems arising therefrom, using uniform criteria, and initiating proceedings with the immediate object of securing a review of the legality of the conduct of the Member

1 — Translated from the Italian.

States in this respect. We do not have to discuss this here.

The Tribunale of Bolzano wishes to know whether the imposition of the charge instituted by the ICE (Istituto nazionale per il commercio estero, national board for foreign trade) in connexion with the issue of a certificate of inspection in respect of certain fruit and vegetable products which is required under Italian legislation in order to export these products, is compatible with Community law. This charge, which was instituted by the Italian State before the entry into force of the EEC Treaty, is imposed exclusively on goods intended for export and is collected when they cross the frontier. The inspection carried out by the ICE of the goods specified by Decree Law No 2213 of 20 December 1937 originally served to establish that the goods met the requirements as to quality, grading, wrapping and packaging whose fulfilment is, under domestic rules, laid down as an essential condition for those goods to have an 'national quality mark' placed upon them. The charge levied by the ICE was intended to meet the cost of carrying out the inspections, as well as that of organizing information services for the benefit of Italian fruit and vegetable exports and, in addition, the encouragement of developments designed to improve national fruit and vegetable production to meet the requirements of the export trade.

According to the information supplied by the representative of the Italian Government, following the entry into force of the Community rules laying down quality standards for the marketing of fruit and vegetable products, the inspection carried out by the ICE with a view to application of the national mark was transformed into an examination to establish whether, when intended for export, those products complied with Community requirements as to quality, and nothing more.

We have seen in previous cases that a charge imposed on certain categories of dealer in order to finance bodies which operate in the interests of the category concerned or, in general, of certain national products connected with the commercial operations of those who have to pay the charge is not necessarily incompatible with Community law, even where there exists a common market organization. It is, however, first of all necessary that the charge should not be imposed in a discriminatory manner. Even if a charge were, like the one referred to by the Tribunale of Bolzano, of a really derisory amount, it would in principle contravene this condition if it were imposed solely on imported or exported products to the exclusion of national products marketed within the State. Unless the exemption of such national products from the charge can be justified on the ground that the tax is in the nature of consideration for a service rendered exclusively for the benefit of exporters or importers, such a charge is inadmissible because it conflicts with the prohibition of charges having an effect equivalent to duties, a prohibition which, as regards exporta tion of the products referred to by the Tribunale of Bolzano on the basis of measures existing prior to the entry into force of the Treaty, has been in force since 1 January 1962.

Let me first of all recall the words used by the Court in respect of a statistical levy imposed on imports as well as exports: 'any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 9, 12, 13 and 16 of the Treaty, even if it is not imposed for the benefit of the State'; and this is the case even if it is imposed on all trade crossing the frontier, without distinction, and is not protectionist in character (Case 24/68, *Commission v Italian Republic,* Rec. 1969, p. 193).

The two governments which have intervened in these proceedings maintain however that, since these charges are applied exclusively to exports and relate to activities which benefit exporters, they should escape the general prohibition referred to, and that they should do so on the principle that it is lawful to require adequate consideration for a service actually rendered.

The Italian Government seeks in particular to distinguish the position in the present case from that to which the Court referred in Case 29/72 (SpA Marimex v Amministrazione finanziaria italiana, Rec. 1972, p. 1309) in which it was held that there was no service justifying a charge. In this connexion, Italy maintains that, unlike the case of veterinary duties collected on the basis of a health inspection carried out with a view to the interests of the public as a whole, the duty laid down for the grant of the national mark guaranteeing quality is consideration for a service which is specifically to the advantage of the exporter, who can count on the prestige and economic value of a rigorous technical examination which guarantees the quality of his goods.

Without the need to consider here whether a mandatory service imposed on all exporters of certain products can satisfy the concept of service rendered to an individual to an extent which, in accordance with the case-law of this Court, could justify the repayment of the actual cost of the service (see the recent judgment in Case 39/73, *Rewe-Zentral-finanz,* [1973] ECR, 1039), it suffices to observe that this concept of individual service cannot be satisfied by an operation which, as in the case of the inspection carried out by the ICE before the national mark can be applied, merely ascertains whether the goods correspond to the requirements of quality imposed by Community rules for the marketing of such goods.

The national body carries out this check on each consignment rather more intermittently than, according to the Commission, should be understood as being required by the Community legislative provisions referring to a system of check 'by sampling'. Because, as I have already indicated, it does not appear among the questions put by the national court, we need not consider the question raised by the Commission concerning the legality of this system of inspection, a question which is not at all clear since the same Community rules, while providing for compulsory inspection of each consignment intended for export to third countries, at the same time lay down that 'the inspection shall be carried out by selecting and examining samples' (see Articles 2 and 3 of Regulation No 496/70 of the Commission of 17. 3. 1972, OJ spec. ed. 1970 (I)). As far as products subject to common quality standards are concerned, a possible conflict of view concerning the frequency of the inspection, and not the criteria on which it is based, adds nothing to the substance of the national mark, which still does nothing more or other than testify that the article is suitable for marketing within the Community in accordance with those common standards.

Since, moreover, those standards also apply to the marketing of fruit and vegetable products within the producer State, and it can, therefore, be assumed that, albeit through different bodies, the national authorities also carry out adequate inspections for a similar purpose, in accordance with the provisions of Article 5 of Regulation No 158/66 of the Council, the imposition of a charge related only to quality inspection on exportation is discriminatory when compared with the treatment of identical products placed on the home market in the State and, as has been consistently held by the Court (see the recent judgment in Case 51/74, *Van der Hulst's Zonen,* paragraphs 13 and 14), therefore has the same restrictive effect on the free movement of goods as a customs duty on exports.

This does not, of course, affect the

legality of the inspection which is carried out in the common interest or merely in the interests of fair trading, provided that the inspection conforms to the Community rules. If, however, the national mark was considered to be something other than positive proof that the inspection had been carried out in accordance with Community regulations, this would constitute a difference of a kind which could only on certain conditions accord with the proper concept of a common market. The application of a mark which certified something more than what the Community rules required for the marketing of a national product subject to a common market organization might, indeed, also be in the interests of the dealer who applies it, and there is no doubt that it could be in the general interest of the particular category of dealers in maintaining their good name and in preventing dangerous competition from inferior products. In the first case, however, application of the mark is associated with the interest which everyone may have in voluntarily submitting his goods for inspection, albeit for a consideration; in the second case, the mandatory application of the mark has the effect of making sure that the national producer maintains standards which, I repeat, are acceptable only with the voluntary consent of those concerned.

The Community inspection which is carried out at the same time for the sake of producers, consumers, and fair trading between Member States is altogether another matter.

In reply to the first question of the Tribunale of Bolzano, I therefore recommend the Court to rule that a monetary charge relating to the issue of a certificate declaring that the goods exported satisfy the quality requirements established by Community law constitutes a charge having an effect equivalent to a customs duty in so far as identical goods marketed within the State are not subject to that charge.

As regards the second question, it is enough to state that the prohibition laid down in Article 16 of the Treaty on continuing to levy customs duties on exports and charges having equivalent effect, which existed before entry into force of the Treaty, applies to all products, including fruit and vegetables, with effect from 1 January 1962 and, in consequence, Article 13 of Regulation No 159/66/EEC (last amended by Regulation No 161/69), which provides for the elimination as from 1 July 1969 of customs duties and charges having equivalent effect in trade between Member States, can refer only to imports.