in the same way within a State on imported products and similar domestic products, or which falls, in the absence of comparable domestic products, within the framework of taxation of this nature within the limits laid down by the Treaty.
The rendering of specific service may in certain cases warrant the payment of a fee in proportion to the service actually rendered.

In Case 24/68

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Sandro Gaudenzi, acting as Agent, with an address for service in Luxembourg at the offices of Emile Reuter, its Legal Adviser, 4 boulevard Royal,

applicant,

v

ITALIAN REPUBLIC, represented by Adolfo Maresca, Minister Plenipotentiary acting as Agent, assisted by Pietro Peronaci, assistant to the Avvocato Generale dello Stato (State Advocate-General), with an address for service in Luxembourg at the Embassy of the Italian Republic,

defendant,

Application for a ruling that the Italian Republic has failed to fulfil its obligations under the Treaty establishing the European Economic Community, by levying a charge called a statistical levy (diritto di statistica) on goods exported to the other Member States contrary to Article 16 of the said Treaty, and by levying a charge called a statistical levy on goods subject to the regulations of the Council concerning various common organizations of the agricultural markets and imported from other Member States, contrary to the said regulations;

THE COURT

composed of: R. Lecourt, President, A. Trabucchi and J. Mertens de Wilmars, (Rapporteur) Presidents of Chambers, A. M. Donner, W. Strauß, R. Monaco and P. Pescatore, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of the facts

For some time before the entry into force of the EEC Treaty the Italian Republic had levied on goods imported and exported a charge called a 'statistical levy'.

The levying of this charge is presently based on Article 42 of the introductory provisions concerning customs tariffs approved by Decree of the President of the Republic No 723 of 26 June 1965 and is payable at a fixed amount of 10 lire on every 100 kilogrammes or every metric ton of goods or on every animal or vehicle with a minimum of 10 lire payable in each case even for goods in the smallest quantities. Article 42 of the Decree excludes from the application of the tax goods in transit and moreover Article 43 provides a series of exemptions either general, as in the case of frontier traffic, or particular, as in the case of sulphur and aircraft.

After requesting clarification on this levy from the Italian authorities, the Commission took the view that it constituted a charge having an effect equivalent to customs duties on imports and exports: the Italian authorities disagreed and the Commission then initiated the procedure laid down by Article 169 of the Treaty and by two letters dated 24 November 1966 requested the Italian Republic to submit its observations within the period of one month.

The first letter concerned the compatibility of the statistical levy on goods exported to Member States with Article 16 of the Treaty. The second letter stated that the Italian Republic had failed to abolish the statistical levy which it collected on the import of goods subject to the provisions of the Regulations of the Council Nos 19, 20, 21, 22, 13/64/EEC, 14/64/EEC, 16/64/EEC and 136/66/EEC which, with the exception of Regulation No 136/66 have now been repealed and replaced by Regulations of the Council Nos 120/67, 121/67, 122/67, 123/67, 804/68, 805/68 and 359/67; it asked the defendant to submit its observations on the compatibility of the disputed charge with the said regulations.

Finally, by a directive also dated 24 November 1966 the Commission decided that the statistical levy must be abolished on the import of products other than agricultural products subject to a market regulation and determined the timetable for such elemination.

However, the manner in which the Italian Government dealt with this directive falls outside the scope of the dispute before the Court.

By two letters dated 23 December 1966 and 23 February 1967 the Italian Government submitted its observations to the Commission, maintaining that the statistical levy could not be treated as a charge having an effect equivalent to customs duties.

Since it found those observations unsatisfactory, the Commission, by two documents dated 7 November 1967, the first relating to the statistical levy on exports and the second relating to the statistical levy on the import of agricultural products subject to a market regulation, delivered a reasoned opinion on the basis of the first paragraph of Article 169 of the Treaty to the effect that the Italian Republic had failed to fulfil an obligation under the Treaty and laid down a period of one month in which it was required to comply with the said opinions. The Government of the Italian Republic replied on 21 December 1967.

The Commission brought the matters before the Court of Justice with a single application dated 27 September 1968 and lodged at the Court Registry on 5 October 1968.

II — Conclusions of the parties

The *applicant* claims that the Court should:

(a) declare that the Italian Republic, in collecting the charge known as the 'statistical levy' on goods exported to other Member States has failed to fulfil its obligations under Article 16 of the EEC Treaty;

(b) declare that the Italian Republic, in collecting the charge known as the 'statistical levy' on goods subject to regulations of the Council concerning various common organizations of the agricultural markets and goods imported from other Member States, has failed to fulfil its obligations under the combined provisions of Article 189 of the EEC Treaty and of the undermentioned Articles of the respective regulations: Article 21(1) of Regulation No 120/67/EEC Article 19(1) of Regulation No 121/67/EEC Article 13(1) of Regulation No 122/67/EEC Article 13(1) of Regulation No 123/67/EEC Article 22(1) of Regulation No 804/68/EEC Article 22(1) of Regulation No 805/68/EEC Article 23(1) of Regulation No 359/67/EEC Article 3(1) of Regulation No 136/66/EEC;

(c) order the defendant to pay the costs.

The *defendant* contends that the Court should:

— dismiss the application made by the Commission of the European Communities on 27 September 1968 set out at the beginning of the statement now lodged;

— order the Commission to pay the costs.

III — Procedure

The written procedure followed the normal course.

After hearing the report of the Judge-Rapporteur and the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

The parties presented their oral arguments at the hearing on 7 May 1969.

The Advocate-General delivered his opinion at the hearing on 21 May 1969.

IV — Submissions and arguments of the parties

A — *Admissibility*

The defendant does not dispute the admissibility of the application.

B — *Substance*

According to the two parties the dispute is limited to the question whether the statistical levy is a charge having an effect equivalent to customs duties.

(1) For the purposes of examining it, the *applicant* distinguishes the statistical levy charged on imported goods from that charged on exported goods; in its view they constitute two legally distinct infringements; since the charge is levied on the import and export of goods these are two distinct charges having effects equivalent respectively to a customs duty on imports and to a customs duty on exports.

According to the *defendant* the Commission's reasoning was invalidated from the very outset because it separated the statistical levy into two distinct concepts one relating to imports and the other to exports whilst the legal nature of the disputed charge must be appraised by taking account of its true quality and not breaking down the two questions; the defendant furthermore considers that this procedure is illegal.

(2) Concept of a charge having equivalent effect

The *applicant* claims that all taxation or charges imposed unilaterally on imported goods and not on corresponding products sold in the home market constitute charges having an effect equivalent to customs duties on imports. It relies on the case-law of the Court in stating that *the equivalence of the effects* of the charges and of the customs duties constitutes the sole criterion for determining whether the disputed charge has an effect equivalent to a customs duty.

With regard to charges having an effect equivalent to customs duties on imports the Commission considers that reference should be made *mutatis mutandis* to the effect produced by customs duties on exports. Taxes having equivalent effect thus include all taxes imposed unilaterally on exported goods and not on corresponding domestic products sold in the home market. The effect of such charges is, like that of customs duties on exports, to make the exported products dearer than those intended for the home market.

The *defendant* replies that the Court of Justice has not yet had to give a ruling on a charge which arises when goods cross the frontier irrespective of whether the crossing is inward or outward.

Before eliminating the disputed charge, as the Commission had moreover promised in a reply given in the European Parliament, an examination should be made of the various charges other than customs duties levied at frontiers between Member States in order to arrive at a uniform application, possibly on the basis of directives from the Council.

The *applicant* replies that although this is a complex subject it does not call for legislation to be passed beforehand, but simply for the application of the rules of the Treaty to actual cases; the Treaty anyhow affords no legal foundation for directives of the Council in this connexion.

(3) Nature of the statistical levy

The *applicant* claims that the statistical levy is a charge having an effect equivalent to customs duties:

(a) because it is not imposed on domestic goods intended for the home market whilst it is levied on imports or exports;

(b) because, with regard to imports, no internal charge can justify the levying of the charge by reference to Article 95 of the Treaty;

(c) because this charge has discriminatory effects however small they may be.

The *defendant* replies first that the statistical levy is not fiscal charge by its nature, character or effects and that consequently it does not fall within the provisions of the EEC Treaty concerning charges having equivalent effect.

According to the defendant this charge, too insignificant in amount to disturb the market, is closely bound up with the aims of a statistical survey. The Italian Government has always wished to have a complete and fully accurate record of goods imported and exported. To this end it established the charge imposed exclusively on importers or exporters.

This charge is thus bound up with the special nature of the Italian market. The defendant claims in addition that the statistical levy is a measure of the service rendered to businesses which benefit by having *completely accurate* information on the movement of goods; businesses are required to pay the disputed charge to offset the cost of obtaining more accurate information than that obtainable from the subsequent surveys of the statistical institutions.

According to the defendant, importers are thus in a better competitive position in the Italian market and the exporter enjoys a similar advantage abroad. The arrangement thus makes possible more successful penetration of the respective markets.

The defendant continues that the case-law of the Court has never regarded the levy of a tax for a service rendered to individual businesses as prejudicial or as contrary to the Treaty. The argument that it is possible to insulate a market purely by an increase in the cost of service is false. In fact in those circumstances there would be nothing to prevent the Commission from instituting proceedings against a State having recourse to such methods.

The *applicant* replies that the extreme moderation of the charge cannot be considered in deciding its nature and there can be no question of paying for a service rendered as only those services which the individual importers enjoy may in certain circumstances justify charging a consideration.

According to the applicant the Italian Government is seeking to deviate from the case-law of the Court and the Commission considers this highly dangerous as it calls in question all the decisions which have been given on the basis of the criterion of equivalent effects. If the statistical levy were not regarded as a charge having equivalent effect the Commission claims that it cannot discern the arguments which might give grounds for prohibiting a charge differing only in the greatly increased cost of the 'service' financed at possibly prohibitive rates.

The *defendant* considers further that even if the Court were to admit that the statistical levy is in the nature of a charge, it is entitled to prescribe a tax bearing an objective relationship to the commercial activity of the person liable for payment as far as this charge is not discriminatory.

In this connexion the defendant considers it logical that importers or exporters should be liable when the statistical levy is not imposed on products sold in Italy since the charge has an object other than taxation levied on domestic products.

The defendant moreover emphasizes that the charge is not discriminatory or protective that it does not cause disturbances either in the domestic market or in the Common Market.

The charge is imposed on *all goods*, domestic and foreign alike. No distinction is made between imports and exports which would result in making the former more onerous than the latter or *vice versa*. Levying the charge at the frontier on each crossing automatically balances the burdens on dealers.

In its view various special features of the disputed charge show that it is not protective, that is that it is even imposed on reimported goods, that it is not imposed on goods in transit (the aim of the survey being to note the actual pattern of the movement of goods) and that it is not calculated according to the value of the item imported or exported.

The nature of the goods exempted also shows that the statistical levy is in no sense a customs duty.

The *applicant* observes that although the statistical levy is applied to all goods, domestic and foreign, it is none the less a fact that it is not imposed on goods produced in Italy and intended for the domestic market.

It also observes that the fact that the charge is imposed on almost all goods in no way diminishes the seriousness of the infringement.

It claims that the argument to the effect that the statistical levy is not collected on goods in transit, that it is imposed on reimported goods and is not calculated on the value of the goods, is invalid since this can apply equally to customs duties.

The applicant claims that the imposition of the statistical levy not only on the import but also on the export of a given product involves a double infringement.

In this case not only are imported goods placed at a disadvantage on the domestic market in relation to goods produced in the country but in addition the latter are placed at a disadvantage on the mar-

kets in other Member States in relation to foreign goods since in no case is there any internal tax corresponding to the said statistical levy.
In considering the effect of the disputed charge on imports and exports respectively the applicant is therefore correct in considering that they are two charges having an effect equivalent to customs duties.

Grounds of judgment

1 The Commission has made an application to the Court pursuant to Article 169 of the Treaty for a ruling that in collecting a statistical levy on goods exported to the other Member States, the Italian Republic has failed to fulfil its obligations under Article 16 of the Treaty establishing the European Economic Community.

2 This application also asks for a ruling that by collecting a statistical levy on goods subject to the regulations of the Council concerning certain common organizations of agricultural markets and imported from other Member States, the Italian Republic has failed in its obligations under the combined provisions of Article 189 of the EEC Treaty and of Articles 21(1) of Regulation No 120/67/EEC, 19(1) of Regulation 121/67/EEC, 13(1) of Regulation No 122/67/EEC, 13(1) of Regulation No 123/67/EEC, 22(1) of Regulation No 804/68/EEC, 22(1) of Regulation No 805/68/EEC, 23(1) of Regulation No 359/67/EEC, and 3(1) of Regulation No 136/66/EEC.

The concept of a charge having equivalent effect

3 According to Article 9 of the EEC Treaty, the Community shall be based upon a customs union founded upon the prohibition between Member States of customs duties and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

Article 12 prohibits the introduction of new customs duties on imports or exports or any charges having equivalent effect. Under Articles 13 and 16 customs duties and charges having equivalent effect on both exports and imports in force between Member States are to be abolished in the manner laid down in those articles.

4 The position of these articles at the beginning of that Part of the Treaty reserved for the foundations of the Community, Article 9 being the first provision appearing at the very beginning of the Title dealing with the free movement of goods and Articles 12, 13 and 16 at the beginning of the section on the elimination of customs duties between Member States, is sufficient to show the fundamental role of the prohibitions laid down therein.

The importance of these prohibitions is such that in order to prevent their circumvention by means of various customs and fiscal measures, the Treaty was intended to prevent any possible failure in their implementation.

5 Article 17 therefore specifies that the prohibitions in Article 9 shall also apply to customs duties of a fiscal nature.

Article 95, which appears both in that Part of the Treaty which deals with the 'Policy of the Community' and in the Chapter on tax provisions, is intended to fill in any breaches which a fiscal measure might open in the prohibitions laid down, by prohibiting the imposition on imported products of internal taxation in excess of that imposed on domestic products.

6 In prohibiting the imposition of customs duties, the Treaty does not distinguish between goods according to whether or not they enter into competition with the products of the importing country.

Thus, the purpose of the abolition of customs barriers is not merely to eliminate their protective nature, as the Treaty sought on the contrary to give general scope and effect to the rule on the elimination of customs duties and charges having equivalent effect, in order to ensure the free movement of goods.

7 It follows from the system as a whole and from the general and absolute nature of the prohibition of any customs duty applicable to goods moving between Member States that customs duties are prohibited independently of any consideration of the purpose for which they were introduced and the destination of the revenue obtained therefrom.

The justification for this prohibition is based on the fact that any pecuniary charge, however small, imposed on goods by reason of the fact that they cross a frontier constitutes an obstacle to the movement of such goods.

8 The extension of the prohibition of customs duties to charges having equivalent effect is intended to supplement the prohibition against obstacles to trade created by such duties by increasing its efficiency.

The use of these two complementary concepts thus tends, in trade between Member States, to avoid the imposition of any pecuniary charge on goods circulating within the Community by virtue of the fact that they cross a national frontier.

9 Thus, in order to ascribe to a charge an effect equivalent to a customs duty, it is important to consider this effect in the light of the objectives of the Treaty, in the Parts, Titles and Chapters in which Articles 9, 12, 13 and 16 are to be found, particularly in relation to the free movement of goods.

Consequently, 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, is not discriminatory or protective in effect and if the product on which the charge is imposed is not in competition with any domestic product.

10 It follows from all the provisions referred to and from their relationship with the other provisions of the Treaty that the prohibition of new customs duties or charges having equivalent effect, linked to the principle of the free movement of goods, constitutes a fundamental rule which, without prejudice to the other provisions of the Treaty, does not permit of any exceptions.

11 In this respect, it follows from Articles 95 et seq that the concept of a charge having equivalent effect does not include taxation which is imposed in the same way within a State on similar or comparable domestic products, or at least falls, in the absence of such products, within the framework of general internal taxation, or which is intended to compensate for such internal taxation within the limits laid down by the Treaty.

Although it is not impossible that in certain circumstances a specific service actually rendered may form the consideration for a possible proportional payment for the service in question, this may only apply in specific cases which cannot lead to the circumvention of the provisions of Articles 9, 12, 13 and 16 of the Treaty.

The disputed charge

12 The defendant emphasizes in the first place that the Commission is wrong in dividing the statistical levy into two distinct concepts, one relating to imports and the other to exports, when the legal nature of the disputed charge should be determined by taking account of its true nature and not by breaking it down into two distinct charges.

According to the defendant the circumstance that the statistical levy is imposed whenever goods cross the frontier without distinguishing between exports and imports or between domestic and foreign goods *ipso facto* precludes any possibility of considering it as a charge having an effect equivalent to customs duties since any protection of domestic production or discrimination is eliminated.

13 On the other hand the Commission breaks down the disputed levy into two distinct charges having effects equivalent respectively to a customs duty on

imports and to a customs duty on exports and with protective or discriminatory effects although to a very slight degree.

[14] It is of no consequence for its designation under the Treaty whether the disputed charge is treated as a general charge or as two distinct charges, one on exports and the other on imports.

As it is imposed universally on goods crossing the frontier, the charge in question hampers the interpenetration at which the Treaty aims and thus has an effect on the free circulation of goods equivalent to a customs duty.

The very low rate of the charge cannot change its character with regard to the principles of the Treaty which, for the purpose of determining the legality of those charges, do not admit of the substitution of quantitative criteria for those based on the nature of the charge.

[15] The Italian Government further maintains that the disputed charge constitutes the consideration for a service rendered and as such cannot be designated as a charge having equivalent effect.

According to the Italian Government the object of the statistics in question is to determine precisely the actual movements of goods and, consequently, changes the state of the market. It claims that the exactness of the information thus supplied affords importers a better competitive position in the Italian market whilst exporters enjoy a similar advantage abroad and that the special advantages which dealers obtain from the survey justifies their paying for this public service and moreover demonstrates that the disputed charge is in the nature of a *quid pro quo*.

[16] The statistical information in question is beneficial to the economy as a whole and *inter alia* to the relevant administrative authorities.

Even if the competitive position of importers and exporters were to be particularly improved as a result, the statistics still constitute an advantage so general, and so difficult to assess, that the disputed charge cannot be regarded as the consideration for a specific benefit actually conferred.

[17] It appears from the abovementioned considerations that in so far as the disputed charge is levied on exports it is contrary to Article 16 of the Treaty.

[18] With regard to the statistical levy on the import from other Member States of products subject to regulations relating to the common organization of the the markets the abovementioned provisions of such regulations prohibit the levying of any customs duty or charge having equivalent effect on trade between the Member States.

The concept of a 'charge having equivalent effect' accessory to that of 'customs duty' was re-enacted in the abovementioned regulations from Articles 9, 12 and 13 of the Treaty.

Nothing in the said regulations justifies the conclusion that they are intended to confer on this concept a scope different from that which it has within the framework of the Treaty itself, especially as, when those regulations take account of the particular conditions for establishing a common market in agrciultural products, they pursue the same objectives as Articles 9 to 13 of the Treaty which they implement.

[19] According to Article 189 of the Treaty those regulations are to be binding in their entirety and directly applicable in all Member States. In infringing their provisions the defendant has thus failed to fulfil an obligations under the Treaty.

Costs

[20] Under Article 69(3) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

The defendant has failed in its submissions.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 3, 9, 12, 13, 16, 38, 169 and 171;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby declares:

1. **On levying on exports to other Member States of the Community the charge provided for by Article 42 of the Decree of the President of the Republic No 723 of 26 June 1965, the Italian Republic has failed to fulfil its obligations under Article 16 of the Treaty establishing the European Economic Community;**

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

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

Lecourt Trabucchi Mertens de Wilmars

Donner Strauß Monaco Pescatore

Delivered in open court in Luxembourg on 1 July 1969.

A. Van Houtte
Registrar

R. Lecourt
President

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

Mr President,
Members of the Court,

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

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

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

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

1 —Translated from the German.