OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 14 JANUARY 1976 [1]

Mr President,
Members of the Court,

1. The questions of interpretation referred for a preliminary ruling in the present case by the Tribunale of Genova seek to establish whether the imposition of a pecuniary charge on hides imported into Italy from another Member State and from an African State associated with the Community constitutes a charge having an effect equivalent to a customs duty, which, as such, is prohibited both by the EEC Treaty and by the Conventions of Association signed at Yaoundé on 20 July 1963 and 29 July 1969 between the Community and the African States and Madagascar.

The events which gave rise to this question are as follows. In 1969 and 1970, the Conceria Bresciani of Genova imported various consignments of raw cow-hides from France and from the Republic of Senegal.

The Italian customs authorities charged on the aforesaid hides the medical inspection duty provided for under Law No 30 of 23 January 1968. When the EEC Treaty came into force, the duty amounted to Lit. 240 per quintal for dried hides and this was raised by the abovementioned Law to Lit. 300 per quintal for all raw hides.

Contending that the duty in question was incompatible with the prohibition laid down in Article 13 (2) of the Treaty and in Article 2 (1) of the two Conventions of Association between the EEC and the African States and Madagascar, the importer submitted to the President of the Tribunale of Genova an application for an order for repayment by the Italian financial authorities (the Amministrazione Finanziaria Italiana) of the amounts which it had, in its view improperly, been compelled to pay.

In these circumstances the court seised of the case has referred the following questions for a preliminary ruling under the second paragraph of Article 177 of the EEC Treaty.

1. Does the public health inspection duty, imposed under Article 32 (4) of Consolidated Health Laws No 1265 of 27 July 1934, the amount of which is fixed under Law No 30 of 23 January 1968, on imported goods of animal origin and which possesses the features described above, constitute a charge having effect equivalent to customs duties within the meaning of Article 13 (2) of the EEC Treaty?
2. Does Article 13 (2) of the EEC Treaty have the effect of abolishing charges having an effect equivalent to customs duties on imports in relation to intra-Community imports with effect from 1 July 1968 or from 1 January 1970?
3. Do the words 'charges having an effect equivalent to customs duties' have the same meaning
   (a) In Article 13 (2) of the EEC Treaty;
   (b) In Article 2 (1) of the Convention of Association between the EEC and the African States and Madagascar, signed at Yaoundé on 20 July 1963 and ratified by Italy by Law No 406 of 20 May 1964 and incorporated in Community law by Decision No 345/64/EEC of the Council of 5 November 1963;
   (c) In Article 2 (1) of the Convention of Association between the EEC and the African States and Madagascar, signed at Yaoundé on 29 July 1969 and ratified by Italy

1 – Translated from the Italian.

by Law No 1048 of 7 December 1970 and incorporated in Community law by Decision No 539/70/EEC of the Council of 29 September 1970?

4. Did Article 2 (1) of the Convention of Association between the EEC and the African States and Madagascar, signed at Yaoundé on 20 July 1963
   (a) have immediate effect;
   (b) confer on Community 'citizens' an individual right, which the national courts must protect, not to pay to the State charges having an effect equivalent to customs duties;
   (c) become thus effective on 1 July 1968 or on 1 January 1970?
5. Has the obligation of the States to refrain from imposing charges having an effect equivalent to customs duties, established by Article 2 (1) of the two successive Yaoundé Conventions, applied without interruption since the dates laid down in the answer to Question 4 (c)?

In order that the answer given by this Court may be of practical value, regard must be paid to the national legislation about the compatibility of which, with the State's Community obligations, the court has expressed doubts. As was recently held in the judgment of 30 September 1975 *(Fiorini, née Cristini)* Case 32/75 although the Court, when giving a ruling under Article 177, has no jurisdiction to apply a Community rule to a specific case or, consequently, to pronounce upon a provision of national law, it may nevertheless provide the national court with the factors of interpretation depending on Community law which might be useful to it in evaluating the effects of such provision.

2. Let us, therefore, consider the purposes of the inspection carried out both when animals are slaughtered for human consumption and when the raw hides of the said animals are imported, the methods employed and the way in which the relevant duties are calculated.

Home-reared animals for slaughter are subject, in Italy, to a veterinary inspection designed to ascertain whether their meat (which the Treaty classifies as an agricultural product) is edible.

The inspection is carried out in two stages: on the live animal, before slaughter and, afterwards, on the skinned animal. Although its object is, therefore, in the main to ascertain whether the flesh is edible it is, in addition, concerned with the hide in so far as the state of the latter has to be taken into account in judging the animal's condition.

The duty for each inspection is charged per carcase or on a flat rate basis.

The purpose of the examination of imported raw hides, which are classified as products and offal of animal origin for industrial use, is to prevent and combat epizootic diseases and to protect the nation's livestock. (Article 32 of Consolidated Health Laws No 1265, Decree Law of 27 July 1934, *Gazzetta Ufficiale* 9 August 1934 No 186, ordinary supplement). The set of rules and provisions issued for this purpose is contained in the Veterinary Inspection Regulation (Presidential Decree No 320 of 8 February 1954, especially Articles 56 and 57, *Gazzetta Ufficiale* 24 June 1954 No 142).

The inspection is carried out by the veterinary authorities at the frontier posts, ports and airports listed in the Ministerial Decree of 29 February 1960 *(Gazzetta Ufficiale* 1 April 1960 No 80). The methods vary according to whether the hides can still contain or transmit disease-carrying germs (fresh hides, salted fresh hides) or whether, because of the state which they are in or after certain types of processing, they can no longer transmit infectious diseases (wet salted or pickled hides, dried salted hides).

As a rule, examination is confined to ascertaining the state of preservation of

the goods and whether they conform to medical certificates of origin, where these are required. Whereas in the case of fresh hides, even when salted, additional laboratory tests may occasionally prove to be necessary, in the case of wet salted or pickled hides and of dried hides, veterinary inspection generally amounts to no more than a simple administrative check.

The duties collected help to cover the costs of any 'tests' for the presence of disease or of any laboratory tests which may prove necessary. The duties are calculated according to weight.

3. In order to ascertain whether the veterinary inspection duty collected on imported hides possesses the features which the case-law of the Court has defined as distinguishing charges having an equivalent effect, the first thing to be established is whether it is also levied on corresponding national products.

This does not appear to be the case. There is, in fact, for hides taken from animals slaughtered in the State, no inspection corresponding to that for which the charge under consideration in this case is levied. The health inspection carried out on animals for slaughter differs in both subject-matter and purpose. It is not applied specifically to hides but to the whole animal; moreover, it is carried out not to prevent infection of the country's livestock, but only to establish whether meat for human consumption is edible.

What is involved, therefore, is a charge which is applied when the goods enter the national territory, and it does not fall within a general system of internal taxation systematically applied to domestic products under the same conditions as those applied to imported products.

In view of the way in which, in its decisions, the Court has defined charges having an effect equivalent to customs duties, and, in particular, of its finding on the subject of charges relating to medical inspections at the frontier (Judgment in Case 29/72, *Marimex,* Rec. 1972, p. 1317), the import charge under consideration here could, in the absence of a corresponding domestic charge, escape the prohibition in Article 13 only if it could be regarded as consideration for a service rendered individually to the importer. This is impossible, however, since, as we have seen, the examination in question is imposed in the public interest.

4. As the present case is also concerned with imports from Senegal, a State associated with the Community, the third question asks the Court to determine whether the concept of charges having an effect equivalent to customs duties referred to in Article 2 (1) of the Conventions of Association between the Community and the African States and Madagascar, signed at Yaoundé on 20 July 1963 and on 29 July 1969, has exactly the same mandatory effect as that of the corresponding concept in Article 13 of the EEC Treaty. The Court has already declared that, by virtue of Article 177, it has jurisdiction to rule on questions concerning the interpretation of international conventions which the Community has concluded under Article 228 of the Treaty. This is, by implication, the conclusion to be drawn from the Court's judgment of 7 February 1973 *(Schroeder,* Case 40/72, [1973] ECR 125) and, expressly, from the judgment of 30 April 1974 (Case 181/73, *Haegeman,* [1974] ECR 459).

This finding has given rise to doubts in so far as the preliminary ruling given by the Court on the interpretation of the Convention has been extended further than the cases in which it was given in the course of interpreting or reviewing the validity of a Community act. Nevertheless I am of the opinion that, when a national court has to determine whether an act or the conduct of a Member State is consistent with

obligations assumed by the Community under an international convention, which, under Article 228 (2) of the EEC Treaty, is also binding on every Member State, it is quite in order, indeed necessary, at the same time to take the Convention into account in order to identify the State's Community obligation, which is based on the Treaty and is specifically defined in the Convention binding the Community.

It is true that the convention is of necessity a bilateral or multilateral legal instrument and, as such, does not lend itself to identification with the acts of the Community executive, which are inherently unilateral. Nevertheless, the definition of the scope of a State's Community obligation is always a question of interpreting Community law and it is, therefore, not necessary to base the Court's jurisdiction to give a preliminary ruling in such circumstances on the assimilation of the international convention to an act of a Community institution.

In view of this, the reference made by the Court, in the abovequoted judgment in *Haegeman,* to a Community act and its relationship to international conventions concluded by the Community under Article 228, may be taken to mean that, as against those subject to the legal system of the Community, an international agreement is valid not in itself as a term of an agreement effective under international law but as a result of an act of the Community executive.

Against this background I now come to the substance of the third question referred by the Italian Court.

The first comment to be made is that, despite differences of form and the changed conditions in the countries which have attained independence, there is a substantial degree of continuity between the two Yaoundé Conventions as regards the system of association which was originally established, unilaterally, with the Overseas Countries and Territories by the EEC Treaty through the appropriate Implementing Convention annexed to the Treaty and to which there is a reference in Article 136.

For a definition of the subject-matter of the provisions of the two Yaoundé conventions with which we are concerned I must point out that Article 2 (1) of the first convention expressly refers to the corresponding provisions of the Treaty of Rome (Article 12 *et seq.*). Article 2 (1) provides as follows:

'Goods originating in Associated States shall, when imported into Member States, benefit from the progressive abolition of customs duties and charges having an effect equivalent to such duties, resulting between Member States under the provisions of Articles 12, 13, 14, 15 and 17 of the Treaty and the decisions which have been or may be adopted to accelerate the rate of achieving the aims of the Treaty.

It is clear from the wording of that provision that the meaning which it attaches to the concept of charges having equivalent effect is the same as that in the abovementioned provisions of the Treaty although in the Community's international relationships, which are the subject of the article, it is not possible to read into the provision all the implications which affect relationships within the common market and which are justified only on the basis of the process of integration which the EEC Treaty has established between Member States. There is no reason for believing that it was intended to mean anything different in the second convention which, since it was intended to come into effect after the end of the transitional period, when freedom of trade between Member States had become complete, was able to confine itself to providing as follows:

'Products originating in the Associated States shall, on importation into the

Community, be admitted free of customs duties and charges having equivalent effect, but the treatment applied to these products shall not be more favourable than that applied by the Member States among themselves.

5. The fourth question is whether the said provisions of the two conventions constitute provisions which are directly applicable under Community law the effect of which, already defined by the Court, is that they create rights in favour of individuals who have an interest in their correct application.

Here one may ask first of all whether a clause of an agreement put into effect under a system of law other than that of the Community, namely general international law, and, as such, subject to rules and circumstances peculiar to itself is capable of having direct effect within the Community's own system, with the same meaning and the same effects as a Community provision. Consideration of the question whether, in the light of its subject-matter and objectives, the international agreement with which we are concerned is based strictly on the principle of reciprocity may be of importance not in making the direct applicability of its provisions dependent on the extend to which, in practice, they are observed by the third State concerned but in establishing whether the agreement is, in principle, capable of creating directly applicable provisions.

It is a rather complicated question which, when raised in connexion with standard international conventions to which the Community is a party, deserves closer attention.

I am reluctant to accept, without reservation and without going further into the question, that any international agreement whatsoever, signed by the Community, concerning identical mutual obligations and, therefore, based strictly on the criterion of reciprocity, is capable of creating rights which individuals can invoke against both the Communities and the Member States.

While, in the judgment in Joined Cases 21 and 24/72 *(International Fruit,* Rec. 1972, p. 1219) the need for the Community to solve the problem of defining the scope of the agreement in the legal system of the EEC States was emphasized, the Court rightly refrained from automatically applying to the relationship between Community law and international law the concepts and criteria which it had accepted in comparing Community law with national law. All the Court's decisions on this latter aspect, upholding fundamental principles and concepts, such as the supremacy of Community rules over national law and their direct applicability, are based on characteristics and operational requirements peculiar to the Community system the essential nature of which clearly distinguishes the legal order of the European Community from that of international law. It was on account of those differences, which the Court has more than once emphasized — see, in particular, the Judgments in Case 26/62 *Van Gend & Loos* [1963] ECR 1 and Case 6/74 *ENEL* [1964] ECR 585 — it has proved possible to overcome the objections raised by case-law and academic writings in those States which, comparing Community law with international law, placed obstacles of various kinds in the way of realization of the principle of the uniformity of Community law throughout the common market.

For this reason, it might seem contradictory and perhaps, in practice, also counter-productive, at least as far as certain States are concerned, simply to apply to the law of international agreements the Community concept of directly applicable law, which has been developed specifically in order to promote the aforesaid uniformity.

However, the present case is concerned with international conventions which

have features of their own. In the first place, it is possible, on a considered view of the position, to state that they are the perfect continuation of the system which was originally laid down in the Treaty establishing the EEC. As the essential purpose of the system of association with the developing countries was to further their interests, the said conventions are not based strictly on the principle of reciprocity. The obligations assumed, on the one hand, by the Community and by its Member States and, on the other, by the associated States, are not the same. The conventions are mainly concerned with privileges granted by the Community and its Member States to the associated countries in order to help their development.

This emerges in particular with respect to the obligations assumed by the Community and by its Member States affecting imports of products originating in the associated States when the rule providing for them in Article 2 is compared with the much more flexible rule in Article 3, which covers the same ground in connexion with entry of Community products into the territory of the associated States.

The alignment of individual rights with the obligations imposed on Member States by the conventions in question appears, therefore, to be consistent with the nature and purpose of the conventions if, viewed in the context of the system of agreements of which they form part, the rules providing for them satisfy the requirements laid down in the Court's decisions for recognizing direct applicability.

Bearing in mind the abovementioned peculiarities of the system of association with which we are concerned, I am therefore of the opinion that it is possible, without needing to resolve, on a broader basis, the question set forth above, to recognize that the special conventions under consideration here are capable of creating individual rights.

6. I can now go on to consider whether the abovementioned rule in Article 2 of the Yaoundé Convention is of such a nature as directly to confer rights on individuals. In view of the principles followed by the Court in the *International Fruit* cases, to which I have already referred, it is not enough simply to establish whether the rule in the convention is complete in itself, whether its operative effect is sufficiently clear and whether, therefore, before it can be applied by the courts, there is any need for the Community executive to have previously adopted legislative measures implementing it: in addition to establishing those features it is also necessary to consider whether the rule, although taken by itself, satisfying those requirements, is not placed in a legislative setting of such a nature as, in contrast to the Community legal system, to prevent it from being directly applicable by the national courts so that it is impossible for individual rights to arise thereunder. It must be pointed out at once that the prohibition which this rule imposes on the Community and, consequently, also on its members is very specific as regards its subject-matter and is unconditional. In contrast to what was observed in connexion with Article XI of GATT, which prohibits the introduction of import and export quotas for products originating in the territory of another of the contracting parties, the provision under consideration here makes the power to derogate from it subject to substantive rules and to well-defined procedural requirements. The only provision to this effect is contained in Article 13 (2) of the first Convention and in the corresponding provision in Article 16 (2) of the second Convention. Recourse to the clause is permitted only as an exceptional measure, in case of serious difficulties and on clearly defined conditions, expressed in terms comparable to those of the safeguard clause in Article 226 of the EEC Treaty. Moreover, even when such exceptional measures are adopted by Member States, they must be the subject of prior

authorization by the Community, and this ensures that the legality of the application of the derogative provision is always subject to review by this Court.

I have already described the distinguishing features of the international rule in question, in terms of the system of conventions to which it belongs; these, together with its inclusion within the ambit of the system comprising the EEC Treaty and the machinery of supervision and safeguards provided thereunder, applied to the use made of it by the Community and national authorities, make it possible to acknowledge it as having direct effect in the Community and, therefore, within the legal systems of Member States and, in particular, as capable of conferring on individuals the right not to be subject to payment of charges prohibited under it.

7. The effect of Article 2 (1) of the Convention signed at Yaoundé on 20 July 1963, taken together with Article 13 (2) of the EEC Treaty, to which the former refers, is that the prohibition against the imposition by Member States of charges having an effect equivalent to customs duties is effective from 1 January 1970, as was decided by the Court in its judgment of 18 June 1975 in Case 94/74 IGAV v ENCC [1975] ECR 711.

The corresponding provision of the Convention signed at Yaoundé on 29 July 1969 is effective from 1 January 1971, the date when the Convention came into force.

From the reference made to Article 12 of the EEC Treaty in Article 2 (1) of the first Yaoundé Convention it follows, moreover, that, after the Convention came into force, the Member States could not, in their trade with the associated States, introduce new measures having equivalent effect or extend existing ones.

8. In its final question, the Italian court asks whether the prohibitions considered above have applied without interruption since they came into effect.

The manner in which, on two occasions, provision was made to extend the said convention is not capable of affecting the direct applicability of the provision as long as such extensions may be regarded as valid under Community law.

The first Convention of association expired on 30 May 1969, and during the period which elapsed before the second Convention entered into force on 1 January 1971, the Association Council, acting under the powers conferred on it by Articles 44 and 47 of the Convention provided on two occasions for its extension in Decisions No 30/69 of 29 May 1969 and No 31/70 of 15 May 1970, thus preventing any loss of continuity.

No doubts were expressed concerning the legality of this procedure either by the court making the reference or by those submitting observations in connexion with the reference to the Court, as was also the position with regard to the same Convention at the same period in Case 48/74 *Charmasson* v *Minister for Economic Affairs and Finance (Paris)* [1974) ECR 1392. The Court's judgment in that case expressly acknowledged in the fourth ground of judgment that the Convention remained in existence by virtue of the decision of the Associated Council.

The possibility that there was any interruption in the applicability of the obligations imposed on Member States under Article 2 (1) can, therefore, be dismissed.

I am, accordingly, of the opinion that the questions referred to the Court should be answered as follows:

1. Regardless of their amount, pecuniary charges imposed for public health inspection at the frontier must be treated as charges having an effect

equivalent to customs duties and, as such, are prohibited with effect from 1 January 1970, when they are determined according to criteria which are peculiar to themselves and are not comparable with the criteria used to determine the pecuniary charge imposed on the similar domestic goods.

2. The concept of charges having equivalent effect contained in Article 2 (1) of the two Conventions of Association signed at Yaoundé on 20 July 1963 and 29 July 1969 respectively has the same meaning and effect as those of the corresponding concept in Article 13 (2) of the EEC Treaty.

3. Article 2 (1) of the aforesaid Conventions is directly applicable in the legal order of the Member States and, in respect of charges having equivalent effect, accordingly created, with effect from 1 January 1970, individual rights which national courts must protect.

4. The rights thus conferred on individuals by virtue of Article 2 (1) of the Convention of 1963 have continued to exist without interruption until the entry into force of the Convention of 1969.