prohibition of quantitative restrictions on imports and measures having equivalent effect laid down by Article 30. The aspects of aid, which are not necessary for attainment of its object or for its proper functioning and which contravene this prohibition may for that reason be held to be incompatible with this provision.

4. The fact that an aspect of aid, which is not necessary for the attainment of its object or for its proper functioning, is incompatible with a provision of the Treaty other than Articles 92 and 93 does not in fact invalidate the aid as a whole or for that reason vitiate by reason of illegality the system of financing the said aid.
5. Since Article 95 of the Treaty refers to internal taxation of any kind the fact that a tax or levy is collected by a body governed by public law other than the State or is collected for its own benefit and is a charge which is special or appropriated for a specific purpose cannot prevent its falling within the field of application of Article 95 of the Treaty.

   In order to apply Article 95 of the Treaty not only the rate of direct and indirect internal taxation on domestic and imported products but also the basis of assessment and detailed rules for levying the tax must be taken into consideration.

   As soon as any differences in this respect result in the imported product being taxed at the same stage of production or marketing at a higher rate than the similar domestic product the prohibition of Article 95 is infringed.
6. It is nevertheless for the national court within the framework of its own legal system to decide whether the whole of any internal taxation which is discriminatory within the meaning of Article 95 or only that part of it which exceeds the tax assessed on the domestic product is to be regarded as not payable.

In Case 74/76

Reference to the Court under Article 177 of the EEC Treaty by the Pretore di Milano (IIIrd Civil Chamber) for a preliminary ruling in the action pending before that court between

IANNELLI & VOLPI S.P.A., Milan

and

PAOLO MERONI,

on the interpretation of Articles 30 and 95 of the EEC Treaty

THE COURT

composed of: H. Kutscher, President, A. M. Donner and P. Pescatore, Presidents of Chambers, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate-General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The order making the reference and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. When the Iannelli & Volpi company, the plaintiff in the main action, imported rolls of wallpaper from France into Italy, it paid the Ente Nazionale per la Cellulosa e per la Carta (hereinafter referred to as 'ENCC'), a body governed by Italian public law, by way of a levy, the sum of Lit 9 483 and, following a resale of all or part of the said rolls in 1974, charged Lit 7 875 of this amount to the purchaser, the Meroni company. The latter company refused to pay the levy on the ground that it is incompatible with Community law, on the one hand, because the levy in question is imposed for the purpose of financing a system of aids which contravenes Article 30 of the Treaty and, on the other hand, because in any case it infringes Article 95 of the Treaty.

2. Faced with this refusal to pay the levy, the Iannelli & Volpi firm brought proceedings before the Pretore di Milano, who, after ordering ENCC to intervene in the proceedings by order of 26 June 1976 stayed proceedings and, in accordance with Article 177 of the Treaty, referred to the Court of Justice for a preliminary ruling the following questions:

(1) Does a system of subsidies involving a public body and based on national regulations which (with reference to the period in question) enable domestic publishers to obtain at reduced prices only newsprint produced by national paper-mills, whilst newsprint imported from Member States can be obtained only at the full price since it does not benefit from any subsidy, constitute a measure having equivalent effect to a quantitative restriction on imports prohibited by Article 30 *et seq.* of the EEC Treaty?

(2) Does the fact that the above-mentioned system of subsidies may be illegal within the meaning of Article 30 or another rule of the EEC Treaty (in particular Directive No 70/50 of 31 December 1969), taking into account that it is financed by levies similar to taxes imposed upon paper products imported from the other Member States in its turn render such levies illegal in so far as they are imposed upon imported Community products — since the revenue concerned which is collected is intended to finance an activity contrary to the provisions of the Treaty and so illegal?

(3) If an affirmative answer is given to the questions set out above, are the rules in Article 30 *et seq.* of the EEC Treaty directly applicable and do they create an individual right for the importers of Community products to request the reimbursement of levies paid (further, from what date such right can be enforced)?

(4) If a negative reply is given to the preceding questions, does the prohibition against tax discrimination established by Article 95 of the Treaty also cover special levies imposed upon both domestic goods and imported goods the revenue from which is intended for minor public bodies other than the State?

(5) Does discrimination prohibited by Article 95 of the EEC Treaty obtain

if the abovementioned levies upon domestic products (in the present case, wallpaper), are imposed on the basis of the price of paper regarded solely as a raw material whilst the basis for the imposition of the levy upon the corresponding imported product is derived from its overall value; by the overall value of the imported product is understood the cost of the finished product shown on the invoice (composed therefore of the cost of the original raw material together with the added value) increased by the 'expenses of loading, shipping, commission, insurance, transport etc. as far as the frontier, even if the said expenses are not included in whole or in part in the invoice of sale'?

(6) If, from the answer to the question under point 5 above, it follows that the imposition of a levy in a discriminatory manner is prohibited because the basis for its calculation is higher only for imported products, does Article 95 of the Treaty create for importers of products coming from Community countries the individual right to request the reimbursement of that part of the said levy paid in excess as from 1 January 1962, the date of the beginning of the second stage?

3. ENCC, a body governed by public law, is an association of producers and consumers of cellulose and also of producers of paper and its object is to promote the use of cellulose in Italy and also to regulate the production and marketing of paper. Amongst other activities it subsidizes the purchase, by proprietors of newspapers and periodicals, of paper intended for these publications. Its operations are financed by levies on the production, sale and import of cellulose and paper. The detailed rules for the levy on sales and imports of paper and cardboard are laid down by the Ministerial Decree of 3 July 1940 and may be summarized as follows:

(a) in the case of *sales of paper and cardboard* manufactured in Italy a contribution of 3 % of *the net amount shown on the invoice* or other equivalent document is levied on the first delivery by the national paper mills (first paragraph of Article 1).

(b) *sales of finished products* processed by the paper manufacturer also bear the same contribution on the first delivery of the finished product on 70 % of the net amount shown on the invoice, that is to say 70 % of the net price of the finished product (second paragraph of Article 1).

(c) *imported paper products* are subject to a contribution of 3 % of 70 % of 'the value of the imported goods', which means 'the actual value of the goods increased by customs duties, licence fees and also certain transport, insurance and packaging expenses, even if these expenses are not included on the invoice' (second paragraph of Article 7; last paragraph of Article 8).

(d) imported paper and cardboard are subject to a contribution of 3 % of 100 % of the 'value of the imported goods' within the meaning of the second paragraph of Article 7.

(3) the Minister responsible may, on a proposal of ENCC, reduce the contribution in the case mentioned under (b) above (Article 9).

4. The operations of ENCC, in so far as they are a system of aids within the meaning of Articles 92 and 93 of the EEC Treaty, have been kept under constant review by the Commission as provided for by Article 93 (1). As a result of this review the Commission questioned whether some aspects of this system were compatible with the Treaty, in particular

(1) the fact that newsprint imported direct from abroad by newspaper undertakings is not subsidized whereas newsprint produced in Italy or imported through ENCC is subsidized;

(2) the fact that in the case of certain paper products there was one basis of assessment if they were manufactured in Italy and another if they were imported. This complaint has not been dropped even though, according to the Italian Government's explanation, it was the administration's practice to allow importers to apply to the Minister, who had complete discretion when making his decision, for a reduction of the basis of assessment.

After the system had been re-structured in a way which was designed to meet the Commission's observations the latter, by a letter of 20 November 1974, notified the Italian Government that as a result of the alterations made the system of aids in question 'now complied with the provisions of the Treaty relating to aids'.

5. The questions raised by the national court relate to those parts of the system described above, which were the subject of the Commission's observations, and concern the period preceding their abolition by the Italian Government, during which the levies, the legality of which is challenged before the national court, were in fact paid.

The order making the reference was registered at the Court Registry on 26 July 1976.

In accordance with Article 20 of the Protocol on the Statue of the Court of Justice of the EEC written observations were lodged by the Commission of the European Communities, the Ente Nazionale per la Cellulosa e per la Carta, the intervener in the main action, and the Meroni company, the defendant in the main action.

The Italian Government submitted its observations during the hearing in open court on 25 January 1977.

On hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure without holding any preliminary enquiry.

II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — Observations of the Commission

The Commission calls attention to Cases 77/72 (Capolongo) and 97/74 (IGAV) of which this case is an extension and analyses the discriminatory features of the system of aids before it was amended in 1974. In particular as far as concerns the taxation of certain imported paper it submits that

(a) not all imported processed paper products were treated in the same way as domestic products;

(b) the fact that pursuant to an administrative practice the Minister was permitted, on the application of the parties concerned, to eliminate this inequality is not sufficient to remove the fiscal discrimination prohibited by Article 95, because the principle of the protection of legal certainty precludes consideration of matters falling within the Minister's discretion for the purpose of determining whether or not there has been discrimination.

The need for all those liable to pay the levy to have recourse to a domestic administrative body to obtain equality of fiscal treatment amounts in the final analysis to a breach of the subjective rights which Article 95 confers upon individuals.

Therefore the Pretore was right not to mention the beforementioned administrative practice in the fifth question.

The first question

(a) The Commission takes the view that subsidies fall within Article 92 and not Article 30.

Although almost all systems of aid have an effect on trade and are for this reason capable of influencing it, their compatibility with the provisions of the Treaty should nevertheless be considered as a whole in relation to Article 92 and with due regard to the absolute discretionary power which Article 93 confers on the Commission. The effect of including aids within the area of application of Article 30 would be to modify adversely the scope of this provision, to replace the Commission's discretion by that of the Court and to grant private individuals full rights in an area in which they can take no legal action because Article 92 does not have direct effect.

Thus if the words of the first question, which is concerned with one system of aids viewed as a whole, are given their literal meaning, it must be answered in the negative.

(b) The Commission however points out that a logical interpretation of the question suggests that it refers to the possibility of separating, when a system of aids is analysed, the conditions or aspects which, although they are an integral part of the said system, can be evaluated independently under Article 30 without questioning whether the aid itself complies with Article 92.

According to the Commission, having regard to the case-law of the Court, if the question is put in that way it must be answered in the affirmative.

The circumstance referred to in the first question, namely that aids to newspaper undertakings were granted when paper was imported through ENCC but refused when it was imported direct is a condition of entitlement to aid, which is in no way connected with its purpose, does not have to be fulfilled to attain the objective envisaged and adversely affects intra-Community trade and consequently contravenes Article 30 independently of Article 92.

Therefore among the actions which persons liable to pay the levy might take three situations can be distinguished:

(1) aids prohibited by Article 92 and not subject to conditions which could be evaluated independently under Article 30: only Article 93 (2) is applied;

(2) aids prohibited by Article 92, subject to conditions which could be evaluated independently under Article 30. The procedure prescribed by Article 93 (2) is applicable to the aid viewed as a whole; recourse might be had to Article 169, as far as the separate constituent elements of infringements of other provisions of the Treaty are concerned, and, in the case of persons liable to pay the levy, legal actions are based on the direct effect of the provisions infringed by these separate elements;

(3) aids complying with the provisions of Article 92, but subject to conditions which could be evaluated independently under Article 30: possible application of Article 169 and of the guarantees that legal proceedings can be brought given to those persons liable to pay the levy as a consequence of the direct effect of Article 30.

The proposition that it might be possible to review certain aspects of a system of aids under provisions other than Article 92 is not new because the Court has already considered it in the IGAV case.

The second and third questions

The questions ask whether the effect of the illegality — particularly under Article 30 of the Treaty — of one or more aspects of a system of aids is in turn to invalidate indirectly the method of financing this system.

It is the Commission's view that the answer must be in the negative: an analytical examination of systems of aid implies that their various components must be treated separately so that their compatibility with the respective pro-

visions of the Treaty which apply to them can be established.

A finding that a parafiscal tax, such as the one described in the second question, is incompatible with the Treaty can only be made if this tax has itself the attributes of any of the taxation prohibited by Articles 13 or 95 of the Treaty.

The fourth question

The answer can only be in the affirmative because the prohibition under Article 95 also applies to parafiscal charges used to finance the operations of a body governed by public law other than the State.

The fifth and sixth questions

The answers to these questions must also be in the affirmative. In order to establish fiscal discrimination prohibited under Article 95 it is necessary to consider not only the rate of the tax but also, as the Court held in its judgment of 5 May 1970 in Case 77/69 *(Commission of the European Communities* v *Kingdom of Belgium* [1970] ECR 242), the basis and the detailed methods of levying the duty. Since the Italian regulations in question were adopted before the entry into force of the Treaty, the prohibition of any fiscal discrimination takes effect in accordance with the third paragraph of Article 95 as from 1 January 1962.

The sixth question, which asks whether the persons who have suffered damage through an infringement of Article 95 can recover that part of the contribution paid in excess as from 1 January 1962, presents the same problem as the one at issue in Case 33/76 (REWE) and Case 45/76 (COMET) upon which the Court had not delivered judgment at the date when the observations were lodged but which it resolved in its judgments of 16 December 1976.

B — Observations of ENCC

ENCC takes the view that the questions referred by the Pretore di Milano are concerned mainly with:

(1) on the one hand the compatibility with Article 30 of the EEC Treaty of the systems, managed by ENCC, of aids to newspapers, and;
(2) on the other hand the compatibility with Article 95 of the EEC Treaty of the system of taxation by ENCC of paper products.

I — The compatibility of the system of aids to newspapers with Article 30 of the Treaty

The first question

ENCC first of all supplies exact particulars concerning the subsidies for newspapers. These subsidies constitute aid for the publishers and not for the paper industry. The publishers only pay part of the price of newsprint to the paper mills, the balance being provided by ENCC. The paper-mills on the other hand do not receive a price higher than the single price applicable in Italy to newsprint which is fixed and made mandatory by the Inter-Ministerial Prices Committee.

Until 31 December 1973 these subsidies were limited to the use of home-produced paper or paper imported by ENCC but after that date they were granted for the purchase of paper directly imported by consumers or their intermediaries. This extension, of which the first stage was carried out by means of administrative measures, has been formally enacted in Law No 172 of 6 June 1975. However the Commission was of the opinion that there was a risk of discrimination in the grant of aids and initiated a second procedure under Article 93. As a result of a Ministerial Decree of 13 January 1976 providing that aids were granted for the purchase of home-produced paper and also of imported paper, which was confirmed by

a note dated 14 July 1976 from the President of the Council of Ministers, the Commission by a decision of 16 June 1976 given pursuant to Article 93 (2) of the Treaty merely asked the Italian Republic to inform the persons concerned by appropriate methods of the way in which it would interpret and apply the new legislative provisions.

ENCC does not admit that in law Article 30 of the EEC Treaty applies to a system which falls within Article 92. It asserts that there has not been any infringement of Article 30 of the EEC Treaty or of Directive No 70/50/EEC of 22 December 1969 (OJ English Special Edition, 1970 (I), p. 17) and goes on to say that any discrimination there might be at a stage subsequent to that of importation falls moreover within the provisions which apply to aids and not within Article 30. Now such provisions are by their very nature always discriminatory and invariably exert a restrictive influence to the detriment of products competing with the subsidized products. As soon as subsidies become an issue every aspect of the problem can be dealt with under Articles 92 and 93 and consequently it is necessary to look to Article 92 (1) and not Article 30 to determine what effect the method of financing aid has on its legality. According to ENCC this view is confirmed by the judgment of the Court of Justice of 25 June 1970 in Case 47/69 *(Government of the French Republic* v *Commission of the European Communities* [1970] ECR 487).

It follows from this that the compatibility of parafiscal taxes forming part of a system of aid must, like the whole of the system, be examined with reference to the criterion of discrimination mentioned in Article 92 (1) namely, 'in so far as [they affect] trade between Member States' and not with reference to the stricter criterion, namely whether they are an obstacle to freedom of movement, which is the fundamental justification for the prohibition of measures having an effect equivalent to quantitative restrictions or charges having an effect equivalent to customs duties.

If the system of subsidizing prices applied earlier is considered in the light of Article 92 of the Treaty it is found not to have produced a restrictive effect to the detriment of foreign paper, and this is established by comparing the volume of imports of newsprint in 1973 (a period when direct imports did not derive any benefit from the subsidy unless they were effected through the medium of the ENCC) and in 1975 when this condition was no longer applied. ENCC's conclusions are:

(1) that the restrictive effect normally connected with aid has not even been established in this case and furthermore
(2) that in any event the aid benefits a product not exposed to competition from imported products, since it is the Italian newspaper industry which is concerned.

The answer to the third question must therefore be: 'a system of subsidies of the kind which has been and is still administered by Ente Nazionale per la Cellulosa e per la Carta cannot constitute (even if the erroneous information given in the question, that subsidies are only granted to home-produced paper was a correct statement of the facts, which it is not) a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 of the EEC Treaty'.

The second question

ENCC points out that, having regard to the suggested answer to the first question, it will examine the second in the alternative. It calls attention to the fact that, in this respect, no contribution is payable to ENCC in respect of the paper intended for the printing of the daily newspapers and that to the extent to which the tax is levied it is applied without any discrimination. It could not

therefore be abolished on the ground that the aid is alleged to be illegal. Further to allow the individual to take action on one part of the system thereby paralysing a scheme which can only be reviewed in the light of Article 93 and then only by the Commission, is tantamount to depriving this article of all practical effect.

The third question

In so far as it only relates to the direct effect of Article 30 the answer is *in abstracto* beyond doubt but the question has no relevance in this case.

II — The taxation of paper products in the light of Article 95 of the Treaty (the fifth question)

The question is whether the taxation of 'paper products' (prodotti cartotechnici), that is to say of products which do not get as far as the paper or cardboard stage but have undergone processing or to which various materials have been added (third paragraph of Article 1 of the Ministerial Decree of 3 July 1940) complies with Article 95 of the Treaty. Wallpaper, which is at issue in the main action, is one of these paper products.

The rate of the ENCC contribution is 3 %, most of which (5/6ths) is borne by the consumer, the balance being payable by the Italian producers or by the importer.

The charge to tax arises, both in the case of domestic and imported products, on the *disposal* of the products in question. Although in the case of imported products the contribution is levied on the import value, it is not paid until they are actually disposed of.

As far as concerns the determination of the basis of assessment this, according to fiscal rules, is the invoice value in the case of domestic products; in the case of imported products it is their import value, cif, plus any duties. This method of assessment, far from discriminating against imported products, favours them, since on their disposal, which is the chargeable event giving rise to payment of the tax, their prices are bound to be higher than the frontier price. Furthermore, before the liability arises to pay the levy on domestic products at the paper or cardboard stage, which is reached after the cellulose has been processed, a first payment of the levy on them has already been made to ENCC at earlier stages of production or importation of the cellulose.

ENCC rejects the argument of the Meroni undertaking that the foreign product is bound to be taxed on its value as a finished product when it is imported, whereas the Italian paper product is discharged once and for all by the tax levied, if the occasion arises, when the paper or cardboard used in the manufacturing process are bought. It points out that the position is different in the case of integrated national industries which dispose of the finished product obtained from the cellulose (already taxed) (second paragraph of Article 1 of the Decree of 3 July 1940) for the first time and that moreover provision has been made for adequate corrective factors. In fact the last paragraph of Article 8 of the Ministerial Decree of 3 July 1940 provided for a flat-rate reduction of the assessable value of imported paper products to 70 % thereof, that is to say that a rate of 2·10 % instead of 3 % is applied. Moreover the administrative authority's practice in interpreting Article 9 allowed not only paper manufacturers but also importers who had good reason to consider the reduction to 70 % as inadequate to apply to the Minister responsible with a view to arranging for a more satisfactory appraisal of the non-taxable elements which would enable them to be taxed in a manner which reflected the actual assessable content of the paper and cardboard in the products concerned. It is impossible to do better than that, since determining

the amount of the assessable content of the product on a *flat-rate* basis is bound to imply a serious risk of discrimination.

ENCC proceeds to examine specifically this system of contributions in the light of Article 95 and calls attention to the fact that whenever any person liable to pay the contribution asked for the ENCC tax to be charged on the actual amounts of paper and paper products respectively this was done systematically. Imported wallpaper was and is subject to a system of taxation which is compatible with the Treaty and fair: *until 28 September 1976* following the reduction of the taxable value to 70 % a rate of 2·10 % rather than 3 % was applied; a special rate is applied also on application by any person liable to the tax; *after 28 September 1976* as a result of reducing the taxable value to 1/3rd a flat-rate of 1 % was applied and a special rate was applied as well on application by any person liable to the tax.

ENCC points out that the Commission in a memorandum of 20 November 1974 took official note of the compatibility under Article 95 of the taxation of paper products by ENCC and that it had not initiated any procedure on this point under Article 169.

C — Observations submitted by Meroni

By way of a preliminary observation Meroni stresses the fact that, since the importation and payment took place in 1971, the questions referred must be answered with reference to the situation at that time.

The first three questions (Article 30 of the Treaty)

The first three questions deal with the possibility of using Community provisions prohibiting measures having an effect equivalent to quantitative restrictions in order to classify a system of parafiscal charges forming part of a system of subsidies so as to discover the nature of the rights of which the persons liable to pay these charges can avail themselves. These three questions should therefore be considered together.

The levies at issue apply to domestic products as well as to imported products but in a different way and they are appropriated to the financing of a system of aids thought to be imcompatible with the Treaty, *inter alia*, because of this appropriation. This incompatibility with the Treaty, from a more general point of view, is due to the fact that the aim of the system of aids applied by ENCC is to restrict imports of paper to the amount which is absolutely necessary to make up the difference between demand and domestic production. The levies are therefore illegal under this head.

It is however necessary to consider whether such a system is not inconsistent with Article 30, and, if so, to resolve the problem created by the fact that the same matter is governed by a provision having direct effect (Article 30) and a provision (Article 92) which only has direct effect after the administrative procedure laid down in Article 93 has been completed in each specific case. On this aspect of the matter Meroni makes the following submissions:

The main purpose of Articles 92 to 94 of the Treaty is to avoid distortion of competition within the common market. The reference made in Article 92 to trade between Member States being affected by aid has two functions, like the same reference in Articles 85 and 96 of the Treaty. On the one hand it is the criterion for the division of legislative powers between the Community and Member States and on the other hand it is the material criterion for the applicability of Article 92. Therefore Article 92 also applies to the premise in this case of aid permitting imports within the EEC to be restricted.

However, in so far as such a system of State aid completes a measure having

an effect equivalent to quantitative restrictions on imports within the meaning of Article 30 of the Treaty, the rules concerning measures having equivalent effect prevail over those relating to aid since they are moreover the only ones which can be correctly applied.

The aim of the rules relating to the free movement of goods and the abolition of quantitative restrictions is in fact to guarantee one of the foundations of the Community, namely the establishment of a common market within which goods can circulate freely as they do within the territory of a single State. This 'foundation' is so important that attainment of the objectives arising out of the free movement of goods cannot be restricted by the rules relating to aid which form part of the 'Policy of the Community' (Part three of the Treaty). Finally it follows from the direct applicability of the rules relating to the free movement of goods that the supremacy of the rules relating to measures having equivalent effect over those dealing with State aid is better able to satisfy both the general interest in economic integration and the several individual interests.

The appropriate answer to the first question is therefore that the system of aids together with the practices of concerted planning in which ENCC participates, which system is financed by the yield of the disputed levy, completes a measure having an effect equivalent to quantitative restrictions on imports and is for this reason directly prohibited by Article 30 *et seq.* of the Treaty.

With regard to the second question Meroni considers that Community rules relating to the free movement of goods also apply as regards the ENCC levy which is illegal by reason only of the effect of Articles 30 *et seq*, at the very least to the extent to which it affects imports of Community products. On this point Meroni argues in the first place that the Court has held in its decided cases and in particular in its judgment of 15 February 1976 (Case 91/75, *Hauptzollamt Göttingen and Bundesfinanzminister* v *Wolfgang Miritz GmbH & Co.* [1976] ECR 217) that the legality of a levy is to be determined with reference not only to the prohibition of charges having an effect equivalent to customs duties but also to the prohibition of measures having an effect equivalent to quantitative restrictions. It relies in the second place on the unity of the system at issue, since the yield from the disputed levy is to be used to finance a system restricting imports.

Finally in Meroni's view the point cannot be taken against it that Commission Directive No 70/50/EEC of 22 December 1969 (OJ, English Special Edition, 1970 (I), p. 17) which defines measures having an effect equivalent to quantitative restrictions on imports not covered by other provisions, shows that the measures at issue are not measures of this kind because this directive excludes from its field of application measures 'applicable equally to domestic and imported products'. The ENCC system contains at least three kinds of discrimination between domestic and imported products:

(a) the levies are not applied equally to the two products;
(b) the yield from the levy is intended to finance activities from which domestic goods and their producers are the principal beneficiaries and
(c) the system at issue places obstacles in the way of imports to the detriment of Community products.

Moreover Directive No 70/50/EEC does not aim at giving a complete and exhaustive definition of measures having equivalent effect and does not even rule out the possibility that national measures applying equally to domestic and imported products may be incompatible with Article 30.

The last three questions (Article 95 of the Treaty)

Meroni points out in the first place that its analysis of the compatibility of the levies with Article 95 of the Treaty is an alternative argument. It is only necessary if they cannot be prohibited under Article 30. In its view the levies do not form part of a general internal system of fiscal charges but are rather to be regarded as coming under parafiscal taxation and individual resources of public bodies of comparatively small importance. Further they do not apply equally to imported and domestic products. If the rate of the levy is the same in both cases, the basis for the assessment to tax is only the same in the case of paper and cardboard. On the other hand in the case of the products of the paper industry and processed paper, that is to say, in the case of more finely finished products containing paper or cardboard as raw material, the basic taxable amount differs according to whether the products are domestic or imported.

(a) *In the case of the domestic product* two sets of circumstances must be distinguished:
   — if the producer of a raw material sells it to a manufacturer who processes it (for example, into wallpaper), the basic taxable amount is the net amount shown on the invoice (first paragraph of Article 1 of the Ministerial Decree of 3 July 1940);
   — if the producer of a raw material himself processes it into a more finely finished product and resells it, the basic taxable amount is in principle 70 % of the net amount shown on the invoice relating to the sale, that is to say 70 % of the net price of the finished product;

   On a proposal from ENCC the Minister for Industry can however vary the rate of 70 %, particularly if the value of the paper represents a small percentage which is less than 70 % of the total value of the finished product (Article 9 of the Ministerial Decree of 3 July 1940).

(b) *In the case of the imported product,* on the other hand, the basic taxable amount is *always* 70 % of the value of the goods, which, according to the second paragraph of Article 1 of the Ministerial Decree of 3 July 1940, represents the actual value of the goods plus certain packaging, insurance and transport costs, even if these expenses are not invoiced to the importer. Therefore discrimination occurs twice:
   — if the levy on the imported product is compared to that applied to domestic *raw material,* the imported product is taxed on the total value shown on the invoice and not merely on the basis of the cost of the paper treated as a raw material;
   — if the levy on the imported product is compared to that on the domestic finished product, the basic taxable amount in the case of the domestic product is 70 % of the net price as against 70 % of the gross price in the case of the imported product. In the case of imported products the rate of 70 % is a fixed rate and cannot be varied as the rate applicable to domestic products can be.

If the assessments of the levy on the imported product and on the domestic product treated as a raw material are compared, the discrimination is particularly serious but it is even present if the assessments of the levy on the imported product and on the domestic finished product after the raw material has been processed are compared.

On the basis of these considerations Meroni suggests that the last three questions relating to the interpretation of Article 95 should be answered as follows.

(a) Having regard to the case-law of the Court in Case 77/72 *Carmine Capolongo* v *Azienda Agricola Maya* [1973] ECR 611 and Case 94/74 *Industria Gomma Articoli*

Vari, IGAV v *Ente Nazionale per la Cellulosa e per la Carta, ENCC* [1975] ECR 699 the answer to the fourth question must be that Article 95 applies to parafiscal charges.

(b) The answer to the fifth question must be:
- that there is fiscal discrimination prohibited by Article 95 if the tax borne by the domestic finished product (in this case wallpaper) is assessed on the net price of the raw material (in this case paper), whereas the basic taxable amount of the similar imported product is the total value of the product within the meaning given to this expression in the fifth question of the order making the reference;
- that there is fiscal discrimination within the meaning of Article 95 if the national rules provide in theory for the taxation of the domestic finished product on the basis of its total value but are only applied if the finished product is manufactured by the actual producer of the raw material and in fact there is no domestic finished product derived from this source or if such a product at least represents a marginal part of the Italian market;
- that the fact that there are national rules which give the public authority a discretion to reduce the basic taxable amount (equally) in the case of imported products does not preclude the circumstances described in a case of this kind from being treated as fiscal discrimination within the meaning of Article 95 of the Treaty.

(c) The answer to the sixth question, which asks whether importers of a product against which there has been tax discrimination within the meaning of Article 95 derive from the direct effect of this provision the right to recover the amount which they overpaid, must also be in the affirmative.

This subjective right has undoubtedly been in existence since 1 February 1962 by virtue of the third paragraph of Article 95 of the Treaty.

Meroni, having thus settled its proposed answers to the questions referred by the Pretore di Milano, challenges the reasoning used by ENCC to prove that the disputed system of taxation, because of the amendments already incorporated into it by the Decree of 3 July 1940, was not discriminatory. Whatever ENCC may say Article 9 of this decree only covers domestic finished products other than imports. The subsequent amendments to this decree, in particular those effected by Article 5 of the Ministerial Decree of 26 June 1976 (which refers specifically to imported products) as well as the decision of the Board of Management of ENCC of 28 September 1976 reducing by 2/3rds the basic taxable amount for imported products (Annexes 7 and 8 to Meroni's pleading) confirm this view.

Even if it is assumed that ENCC's argument is correct and that the reduction provided for in Article 9 of the Ministerial Decree of 3 July 1940 applies also to imported products, the fact that this reduction, which is left to the discretion of the authorities, is merely permissive is not sufficient to eliminate the discrimination prohibited by Article 95. National rules would only be in a form compatible with this provision if they took the value of the amount of paper contained in the finished product as the basis for the calculation of the amount of the levy on the imported product obtained by the processing of the raw material. According to Meroni even the new system introduced by the Ministerial Decree of 26 June 1976 allows discrimination to continue.

The decision of the Board of Management of ENCC to reduce the basic taxable amount for imported wallpaper by 2/3rds for the purpose of the ENCC levy also contravenes Community provisions as long as

internal rules do not provide that the value of the paper contained in the product is the only uniform basis of assessment for both processed domestic products and similar imported products.

At the hearing on 25 January 1977 the defendant in the main action represented by Messrs Ubertazzi and Capelli, Advocates at the Milan Bar, ENCC represented by Mr Marchesini, Advocate at the Milan Bar, the Commission of the European Communities represented by its Agent, Mr Abate and the Government of the Italian Republic, represented by its Agent, Mr Fiumara, submitted their oral observations.

At the hearing in open court the Government of the Italian Republic submitted the following observations.

As far as concerns the conformity of the ENCC system of subsidies with Article 30 of the Treaty it asserts that the fact that the purchase of imported newsprint only benefits from the subsidy if the importing is carried out by ENCC is not an infringement of this provision. This condition does not restrict importing but directs it through specific channels. Even if it were to lead to an indirect restriction, this would correspond to the restrictions which are the inevitable consequence of every form of aid. Therefore the compatibility of the ENCC system with the Treaty must only be considered in the light of Articles 92 to 94 of the Treaty. The distinction drawn by the Commission between the substantive aspects of aid (such as its economic justification, the nature of the products which it benefits and the size of the subsidy) which fall within Articles 92 and 94 of the Treaty and the formal conditions, such as the conditions of elegibility for the subsidy, which might as such fall within other provisions of the Treaty, is arbitrary. As the condition of eligibility for aid is one of the rules relating thereto, it is a feature of aid and therefore an integral part thereof.

The amendment on this point which entered into force as from 1 January 1974 and was notified by Law No 172 of 6 June 1975 and the Ministerial Decree of 13 January 1976 does not prove that the previous system was incompatible. This was merely designed to remove the doubts to which the previous system gave rise.

The Italian Government then considers the questions relating to Article 95 of the Treaty. In its view the assertion that there are different basic taxable amounts for domestic and imported products is wrong. Article 1 of the Ministerial Decree of 3 July 1940 distinguishes between three cases where domestic products are taxed:

(1) In the case of a disposal of paper or cardboard the levy is charged on the net amount shown on the invoice on the occasion of the first disposal by the paper-mill;

(2) in the case of a disposal of the finished product tax is charged on 70 % of the net amount shown on the invoice on the occasion of the first disposal;

(3) if the paper or cardboard is utilized or directly consumed by the paper-mill for purposes other than the production of the finished product tax is charged in full on the occasion of the said utilization or consumption on an amount equivalent to the value of the commodity (paper) used.

In each of these three cases the basis of assessment, the paper content, is the same. In the second of these cases in which the paper content is normally high a flat-rate of 70 % is charged, since this is deemed to represent the proportion of the value of the finished product attributable to the paper. Since however this fixed rate may prove to be too high the Minister is authorized, on request being made, to reduce this coefficient.

In the view of the Italian Government imported products may also benefit from

such a reduction as a result of a strict interpretation of Articles 8 and 9 and not as a result of administrative action. Article 9 which provides for the reduction refers back to Article 1 which is also referred to in Article 8 applying to imports.

An element of discrimination against imported products cannot be inferred either from the discretionary nature of the power given to the Minister by Article 9 to reduce the coefficient of 70 % because this discretion covers domestic as well as imported products.

With regard to the objection that the assessment of the levy is different in so far as it includes in the case of imported products elements which are excluded in the case of domestic products, the Italian Government takes the view that there has been a misunderstanding. In substance the only obvious difference lies in the costs of transport to the frontier which only have to be taken into account in the case of imported products. That is a difference which does not amount to discrimination: imported and domestic products are only in a comparable situation after they have been put into circulation in the Italian consumer network.

As far as concerns the right which undertakings may have to recover the contributions which they have paid, the Italian Government calls attention to its view which it has already expressed in Case 33/76 (judgment of 16 December 1976) *Rewe* v *Landwirtschaftskammer für das Saarland Saarbrücken (Agricultural Chamber for the Saar)* (not yet published) and in Case 77/76 *Cucchi* v *Avez S.p.A.* (where the proceedings are in progress) that the direct effect of Community rules on the prohibition of charges having an effect equivalent to customs duties cannot be relied on in support of a claim for recovery of duties paid before they have been designated as charges having equivalent effect. The same conclusion applies *mutatis mutandis* to Articles 30 and 95 of the Treaty.

The Advocate-General delivered his opinion at the hearing on 10 February 1977.

Decision

1 By order of 25 June 1976 which reached the Court Registry on 26 July 1976 the Pretore di Milano, referred to the Court under Article 177 of the EEC Treaty various questions relating to the interpretation of Articles 30 and 95 of the Treaty.

These questions were raised during proceedings against the defendant in the main action, an Italian purchaser of imported wallpaper, by the Italian vendor, the plaintiff in the main action, which charged the purchaser a proportion of the levy which on importing the goods into Italy it had previously paid to Ente Nazionale per la Cellulosa e per la Carta (hereinafter referred to as 'ENCC' pursuant to Law No 868 of 13 June 1940 (Gazzetta Ufficiale No 170 of 22 July 1940), Law No 168 of 28 March 1956 (Gazzetta Ufficiale No 79 of 3 April 1956) and to the Ministerial Decree (Decreto Ministeriale) of 3 July 1940 (Gazzetta Ufficiale No 175 of 25 July 1940).

2 ENCC is a body governed by Italian public law and its object is to promote and regulate, in particular by means of subsidies, the production of cellulose and paper in this Member State.

A large part of the aids administered by ENCC consists of subsidies to newspaper publishers for the purpose of enabling them to obtain at a reduced price paper purchased from paper mills and used for publishing.

ENCC's operations are financed by levies charged on home-produced cellulose, paper and cardboard at various stages of their production or marketing and on similar imported products when they are imported.

3 The abovementioned Italian legal provisions allow the importer who has made a payment to ENCC in respect of the levy which he was required to pay to pass on a proportion thereof to the ultimate purchasers.

The defendant in the main action submits by way of justification for its refusal to pay this proportion, on the one hand, that the scheme for granting aid introduced by the legislative provisions in question is, considered as a whole, incompatible with the Treaty because it infringes Article 30 of the said Treaty, so that the scheme cannot in law justify the collection of the levies which the plaintiff in the main action was called upon to pay or consequently permit the latter to pass on part thereof to its purchaser and, on the other hand, that the levy at issue itself constitutes discriminatory internal taxation in contravention of Article 95 of the Treaty.

4 It is advisable to state that the alleged infringement of Article 30 is due to the fact that the granting by ENCC of subsidies to newspaper undertakings to enable them to obtain newsprint more cheaply was at the time subject to the condition that the newsprint in question was newsprint produced in Italy or imported by ENCC other than newsprint directly imported from another Member State.

As far as concerns the levy charged by ENCC the infringement of Article 95 arises because there was one basis of assessment for paper and cardboard and paper products (including wallpaper) if they were manufactured in Italy and another if they were imported.

5 The main point raised by the questions referred is whether a national court, when asked to rule whether a system of State aids within the meaning of

Article 92 or some of its aspects are compatible with the Treaty, may take account of a possible infringement of Articles 30 and 95 and, if so, what are the criteria which make it possible to ascertain whether in circumstances such as those which have arisen in this case the said articles have in fact been infringed.

It is appropriate to point out that these questions refer to the situation which existed before the modification of the system of aids in question, which the Commission required to be carried out under the powers vested in it by Article 93 (2) of the Treaty and which the Italian State put into effect as from 1 January 1974.

The first three questions

6 The first question asks whether 'a system of subsidies involving a public body and based on national regulations which (with reference to the period in question) enable domestic publishers to obtain at reduced prices only newsprint produced by national paper-mills, whilst newsprint imported from Member States can be obtained only at the full price since it does not benefit from any subsidy, constitutes a measure having equivalent effect to a quantitative restriction on imports prohibited by Articles 30 *et seq.* of the EEC Treaty'.

On this question it is necessary to state that the abovementioned factors make it clear that the answer must be given after taking into account the fact that at the time withholding the benefit of aid to newspapers was limited to paper imported directly and not through ENCC.

The purpose of the second question is to ascertain whether 'the fact that the abovementioned system of subsidies may be illegal within the meaning of Article 30 or another rule of the EEC Treaty (in particular Directive No 70/50/EEC of 22 December 1969), taking into account that it is financed by levies similar to taxes imposed upon paper products imported from the other Member States in its turn renders such levies illegal in so far as they are imposed upon imported Community products — since the revenue concerned which is collected is intended to finance an activity contrary to the provisions of the Treaty and so is illegal'.

The third question asks 'whether, if an affirmative answer is given to the questions set out above, the rules in Articles 30 *et seq.* of the EEC Treaty are directly applicable and whether they create an individual right for the importers of Community products to request the reimbursement of levies paid (further, from what date such right can be enforced)'.

7 It is advisable to answer all these questions together.

8 The prohibition in Article 30 of the Treaty of all quantitative restrictions on imports or measures having equivalent effect is aimed, on the one hand, at those measures prohibiting imports in whole or in part and, on the other hand, as mentioned by Commission Directive No 70/50/EEC of 22 December 1969 (OJ, English Special Edition 1970 (I), p. 17) at 'measures, other than those applicable equally to domestic or imported products', which hinder imports which could otherwise take place, including measures of importation 'more difficult or costly than the disposal of domestic production'.

9 However wide the field of application of Article 30 may be, it nevertheless does not include obstacles to trade covered by other provisions of the Treaty.

In fact, since the legal consequences of the application or of a possible infringement of these various provisons have to be determined having regard to their particular purpose in the context of all the objectives of the Treaty, they may be of a different kind and this implies that their respective fields of application must be distinguished, except in those cases which may fall simultaneously within the field of application of two or more provisions of Community law.

Thus obstacles which are of a fiscal nature or have equivalent effect and are covered by Articles 9 to 16 and 95 of the Treaty do not fall within the prohibition in Article 30.

10 Similarly the fact that a system of aids provided by the State or by means of State resources may, simply because it benefits certain national undertakings or products, hinder, at least indirectly, the importation of similar or competing products coming from other Member States is not in itself sufficient to put an aid as such on the same footing as a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30.

11 Moreover it is apparent both from Article 92 (1) and (3) and the third subparagraph of Article 93 (2) that the incompatibility of aid with the common market as provided for in Article 92 (1) is neither absolute nor unconditional.

Article 92 (2) not only provides for exceptions but in addition both Article 92 and Article 93 give the Commission a wide discretion and the Council wide powers to accept State aid in derogation from the general prohibition in Article 92 (1).

12 The conclusion to be drawn from all these considerations is that the intention of the Treaty, in providing through Article 93 for aid to be kept under constant review and supervised by the Commission, is that the finding that an aid may be incompatible with the common market is to be determined, subject to review by the Court, by means of an appropriate procedure which it is the Commission's responsibility to set in motion.

The parties concerned cannot therefore simply, on the basis of Article 92 alone, challenge the compatibility of an aid with Community law before national courts or ask them to decide as to any incompatibility which may be the main issue in actions before them or may arise as a subsidiary issue.

The effect of an interpretation of Article 30 which is so wide as to treat an aid as such within the meaning of Article 92 as being similar to a quantitative restriction referred to in Article 30 would be to alter the scope of Articles 92 and 93 of the Treaty and to interfere with the system adopted in the Treaty for the division of powers by means of the procedure for keeping aids under constant review as described in Article 93.

13 The prohibition of quantitative restrictions and measures having equivalent effect laid down in Article 30 of the Treaty is mandatory and explicit and its implementation does not require any subsequent intervention of the Member States or Community institutions.

The prohibition therefore has direct effect and creates individual rights which national courts must protect; this occurred at the end of the transitional period at the latest, that is to say on 1 January 1970 as the provisions of the second paragraph of Article 32 of the Treaty indicate.

14 Those aspects of aid which contravene specific provisions of the Treaty other than Articles 92 and 93 may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately so that their effect on the compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in Article 93.

Nevertheless the position is different if it is possible when a system of aid is being analysed to separate those conditions or factors which, even though they form part of this system, may be regarded as not being necessary for the attainment of its object or for its proper functioning.

In the latter case there are no reasons based on the division of powers under Articles 92 and 93 which permit the conclusion to be drawn that, if other provisions of the Treaty which have direct effect are infringed, those provisions may not be invoked before national courts simply because the factor in question is an aspect of aid.

15 The fact that the inevitable consequence of the aid itself is often protection and therefore some partitioning of the market in question, as far as concerns the production of undertakings which do not derive any benefit from it, cannot imply that the aid produces restrictive effects which exceed what is necessary to enable it to attain the objectives permitted by the Treaty.

This is the position in the case of an arrangement whereby aid is granted to traders who obtain supplies of imported products through a State agency but is withheld when the products are imported direct, if this distinction is not clearly necessary for attainment of the objective of the said aid or for its proper functioning.

16 Nevertheless when answering the second question it is necessary to state that, if one of the constituent elements of a system of aids might be a measure having an effect equivalent to a quantitative restriction which is not necessary for attainment of this objective of the aid, national courts are not entitled to make a declaration to the effect that the system of aids as a whole is incompatible with the Treaty or, consequently, to hold that for this reason alone the levies which finance the aid are illegal, because they finance an aid incompatible with the Treaty.

17 Therefore the answer to the first three questions must be: (a) that Article 30 of the Treaty has direct effect and creates, at the end of the transitional period at the latest, for all persons subject to Community law rights which national courts must protect; (b) that the aids referred to in Articles 92 and 93 of the Treaty do not as such fall within the field of application of the prohibition of quantitative restrictions on imports and measures having equivalent effect laid down by Article 30 but those aspects of aid, which are not necessary for the attainment of its object or for its proper functioning and which contravene

this prohibition, may for that reason be held to be incompatible with this provision; (c) the fact that an aspect of aid, which is not necessary for the attainment of its object of for its proper functioning, is incompatible with a provision of the Treaty other than Articles 92 and 93 does not in fact invalidate the aid as a whole or for that reason vitiate by reason of illegality the system of financing the said aid.

The fourth question

18 The fourth question asks whether 'if a negative reply is given to the preceding questions, the prohibition against tax discrimination established by Article 95 of the Treaty also covers special levies imposed upon both domestic goods and imported goods the revenue from which is intended for minor public bodies other than the State' Having regard to the answers to the first three questions it appears to be advisable to answer the fourth question.

19 Since Article 95 of the Treaty refers to internal taxation of any kind, the fact that a tax or levy is collected by a body governed by public law other than the State or is collected for its benefit and is a charge which is special or appropriated for a specific purpose cannot prevent its falling within the field of application of Article 95 of the Treaty.

The fifth and sixth questions

20 The fifth question asks whether 'discrimination prohibited by Article 95 of the EEC Treaty obtains if the abovementioned levies upon domestic products (in the present case, wallpaper), are imposed on the basis of the price of paper regarded solely as a raw material whilst the basis for the imposition of the levy upon the corresponding imported product is derived from its overall value; by the overall value of the imported product is understood the cost of the finished product shown on the invoice (composed therefore of the cost of the original raw material together with the added value) increased by the 'expenses of loading, shipping, commission, insurance, transport etc. as far as the frontier, even if the said expenses are not included in whole or in part in the invoice of sale'. The sixth questions asks whether, should it follow from the answer to the fifth question 'that the imposition of a levy in a discriminatory manner is prohibited because the basis for its calculation is higher only for imported products, Article 95 of the Treaty creates for importers of products coming from Community countries the individual right

to request the reimbursement of that part of the said levy paid in excess as from 1 January 1962, the date of the beginning of the second stage'.

21 In order to apply Article 95 of the Treaty not only the rate of direct and indirect internal taxation on domestic and imported products but also the basis of assessment and detailed rules for levying the tax must be taken into consideration.

As soon as any differences in this respect result in the imported product being taxed at the same stage of production or marketing at a higher rate than the similar domestic product the prohibition of Article 95 is infringed.

This is what would happen if a tax is assessed on the value of a product and in the case of the imported product factors for assessment are taken into consideration which are likely to increase the value of the imported product *vis-à-vis* the corresponding domestic product.

The fact that the administration has a discretion in specific cases to grant reductions of the tax assessed on both domestic and imported products cannot remove any discrimination which is incompatible with Article 95.

22 As the Court has held, on the last occasion in its judgment of 17 February 1976 (Case 45/75 *Rewe-Zentrale des Lebensmittel-Großhandels GmbH* v *Hauptzollamt Landau/Pfalz [1976] ECR 193)* Article 95 of the Treaty has direct effect and creates individual rights which national courts must protect.

It is nevertheless for the national court within the framework of its own legal system to decide whether the whole of any internal taxation which is discriminatory within the meaning of Article 95 or only that part of it which exceeds the tax assessed on the domestic product is to be regarded as not payable.

Costs

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

On those grounds,

THE COURT

in answer to the questions referred to it by the Pretore di Milano, by order of 25 June 1976 hereby rules:

1. **Article 30 of the Treaty has direct effect and creates, at the end of the transitional period at the latest, for all persons subject to Community law, rights which national courts must protect;**

2. **The aids referred to in Articles 92 and 93 of the Treaty do not as such fall within the field of application of the prohibition of quantitative restrictions on imports and measures having equivalent effect laid down by Article 30 but the aspects of aid, which are not necessary for the attainment of its object or for its proper functioning and which contravene this prohibition may for that reason be held to be incompatible with this provision;**

3. **The fact that an aspect of aid, which is not necessary for the attainment of its object or for its proper functioning, is incompatible with a provision of the Treaty other than Articles 92 and 93 does not in fact invalidate the aid as a whole or for that reason vitiate by reason of illegality the system of financing the said aid;**

4. **Since Article 95 of the Treaty refers to internal taxation of any kind the fact that a tax or levy is collected by a body governed by public law other than the State or is collected for its benefit and is a tax charge which is special or appropriated for a specific purpose cannot prevent its falling within the field of application of Article 95 of the Treaty;**

5. **In order to apply Article 95 of the Treaty not only the rate of direct and indirect internal taxation on domestic and imported products but also the basis of assessment and detailed rules for levying the tax must be taken into consideration;**

   As soon as any differences in this respect result in the imported product being taxed at the same stage of production

or marketing at a higher rate than the similar domestic product the prohibition of Article 95 is infringed;

6. It is nevertheless for the national court within the framework of its own legal system to decide whether the whole of any internal taxation which is discriminatory within the meaning of Article 95 or only that part of it which exceeds the tax assessed on the domestic product is to be regarded as not payable.

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 22 March 1977.

A. Van Houtte — Registrar

H. Kutscher — President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 10 FEBRUARY 1977

My Lords,

Of these two cases, one, Case 74/76, which I shall for convenience call 'the Italian case', comes to the Court by way of a reference for a preliminary ruling under Article 177 of the EEC Treaty by the Pretura of Milan; the other, Case 78/76, which I shall call 'the German case', comes to the Court by way of a reference for such a ruling by the Verwaltungsgericht of Frankfurt-am-Main.

Putting it very simply, both cases are about charges imposed by national law on imported goods and payable to bodies whose resources are used to promote certain sectors of the economy of the Member State concerned. Both cases raise questions relating to the interpretation of and interrelationship between the provisions of the EEC Treaty on aids granted by Member States (Articles 92 and 93), on internal taxation (Article 95), and, in the Italian case, on measures having equivalent effect to quantitative restrictions on imports (Article 30), and, in the German case, on charges having equivalent effect to customs duties (Articles 9 (1), 12 and 13 (2)). In addition the German case raises a question of interpretation of Article 177 itself.