2. The concept of measures having an effect equivalent to quantitative restrictions has the same meaning when applied to imports from non-member countries of products covered by Regulations Nos 120/67 and 827/68 as it has when applied to trade between Member States.

In Joined Cases 206, 207, 209 and 210/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the First Civil Chamber of the Tribunale Civile [Civil District Court], Rome, for a preliminary ruling in the actions pending before that court between

ORLANDI ITALO E FIGLIO

and

THE MINISTRY OF FOREIGN TRADE

(Case 206/80)

SPA CARAPELLI

and

THE MINISTRY OF FOREIGN TRADE

(Case 207/80)

SNC ENRICO E LUIGI SAQUELLA

and

THE MINISTRY OF FOREIGN TRADE

(Case 209/80)

SPA DE FRANCESCHI

and

THE MINISTRY OF FOREIGN TRADE

(Case 210/80)

on the interpretation of Articles 7, 9, 10, 13, 30 to 36 and 106 of the Treaty and Articles 13, 15, 18 and 21 of Regulation No 120/67/EEC of the Council of 13 June 1967 (Official Journal, English Special Edition 1967, p. 33) on the common organization of the market in cereals.

THE COURT

composed of:

J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and procedure

The facts of the main actions may be summarized as follows:

Four Italian undertakings, the plaintiffs in the main actions, imported goods which came either from non-member countries or from another Member State.

Cases 206 and 207/80 concern goods coming from non-member countries, carob beans from Cyprus and maize from Argentina respectively, and Cases 209 and 210/80 concern goods already in free circulation in other Member States, coffee from the Netherlands and cotton meal from the Federal Republic of Germany respectively.

Article 1 of Italian Law No 1126 of 20 July 1952, containing supplementary provisions in the monetary and foreign trade spheres, provides that advance payments for goods which are to be imported are to be subject to the lodging by the importer of security amounting to 5% of the amount of such payments with the Ufficio Italiano dei Cambi [Italian Exchange Office] and that a bank guarantee may be substituted for such security. The return of the security or the release of the guarantee is made on presentation of the document proving that the goods have been imported within the period prescribed by the current legal provisions.

If evidence is not furnished that the importation was completed within the prescribed period, fixed at 30 days after the advance payment by Ministerial Order of 20 January 1973 published in the Gazzetta Ufficiale [Official Gazette] No 19 of 23 January 1973, the Ministry of Foreign Trade declares the security

wholly or partially forfeit, unless the importer shows that the failure to observe the time-limit is due to circumstances beyond his control.

The four plaintiffs in the main actions all sought and obtained a bank guarantee to cover the amount of the security required in order to make advance payment for the goods which they intended to import into Italy. Each of them subsequently submitted its declaration of importation, for all or part of the quantities which had been imported, after the period of 30 days prescribed by the Italian national rules had elapsed for various reasons, such as, for example, lack of space in the customs warehouses (Cases 207 and 210/80), or the need to substitute for a consignment of coffee from Indonesia another consignment from the Netherlands (Case 209/80), although the goods had reached Italian soil within the 30-day period.

The Italian Ministry of Foreign Trade decided in each case to appropriate so much of the security as corresponded to the quantity of goods in respect of which the declaration of importation had been made after the expiry of that 30-day period.

The plaintiffs in the main actions initiated proceedings against the said Ministry before the Tribunale Civile, Rome, seeking an order against it to the effect that it should refund the securities and release the bank guarantees. They based their request on the unlawfulness of the decision declaring the security forfeit, on the ground that not only were the rules governing the time-limits contrary to Article 23 of the Italian Constitution and to the Community rules, but, even if they were valid, they had been misapplied, for the expiry of the period must coincide with the time of arrival of the goods on national soil, and not with the date on which they are cleared through customs.

In the grounds for its decision the Tribunale Civile states that those rules, which are intended to discourage financial speculation in foreign exchange, are not contrary to Community law, but it expresses its doubts as to the correct interpretation of the word "importation": does it refer to the time at which the goods reach national territory, as the Corte d'Appello [Court of Appeal], Rome, held in a judgment of 20 March - 14 May 1979, No 1414 in *Matarrese SpA* v *The Ministry of Foreign Trade*, or to the time at which the goods are cleared through customs, as the Corte Suprema di Cassazione [Court of Cassation] held in a judgment of 25 December 1979 - 4 April 1980, No 2223?

It considers as a result that the question arises "whether in relation to the Community rules on the free movement of goods it is lawful to provide that the security shall be forfeit on the sole ground that although the goods were placed under the control of the customs authorities before the expiry of the period fixed customs clearance had not been obtained for them before expiry of that period".

The question concerns, according to that court, both imports from non-member countries and those from other Member States.

On the basis of a very ample statement of reasons the Tribunale Civile, Rome, considers that these cases raise a number of questions concerning Community law:

The interpretation of the Italian laws adopted by the Ministry of Foreign Trade affects intra-Community trade and thus creates discrimination against Italian importers;

That interpretation is liable to bring about an increase in the total price as a

result of the loss of the security, constituting either a measure having an effect equivalent to a quantitative restriction or a tax having an effect equivalent to a customs duty.

It also places Italian importers at a disadvantage as far as imports subject to the levy system are concerned (Case 207/80);

Finally, as far as imports from other Member States are concerned, it infringes Article 106 of the Treaty, concerning freedom of payments connected with the movement of goods or capital.

In view of the problems raised the First Civil Chamber of the Tribunale Civile, Rome, made four orders on 14 July 1980 staying the proceedings and referring the following two questions to the Court:

"(1) With reference to Articles 7, 30 to 36 and 106 of the Treaty and Article 21 of Regulation No 120/67/EEC of 13 June 1967, whereby Member States are under a duty to authorize, in the currency of the Member State in which the creditor resides, any payments connected with trade in goods in free circulation, and to Articles 9, 10, 13 and 30 to 36 of the Treaty on the free movement of goods in intra-Community trade, are the rules laid down by the Italian State and referred to in Articles 1, 3 and 4 of Law No 1126 of 20 July 1952, Article 2 of Decree Law No 476 of 6 June 1956 converted into Law No 786 of 25 July 1956 and Article 2 of the Ministerial Order of 20 January 1973 compatible with the above-mentioned provisions and do they not, because the result of those rules is to discourage importers into Italy from choosing the most appropriate date to release those goods to the market, amount to a measure having an effect equivalent to a quantitative restriction or a charge having an effect equivalent to a customs duty, when they are interpreted as meaning that forfeiture by the Ministry of Foreign Trade of the security which is required of importers into Italy of goods in free circulation in the Community in order to obtain the foreign currency necessary for the payments in advance against documents, may be made on the basis of the date on which the goods themselves are registered upon importation rather than the date on which the goods reached the national territory, in view of the particularly short period after the date of the foreign currency payment, within which the operation of obtaining customs clearance must be carried out?

(2) With reference to Articles 7, 9, 10, 13 and 30 to 36 of the Treaty on the free movement of goods and Articles 13, 15 and 18 of Regulation No 120/67/EEC of 13 June 1967 and subsequent amendments on the common organization of the agricultural market and on the system of levies, are the rules laid down by the Italian State and referred to in Articles 1, 3 and 4 of Law No 1126 of 20 July 1952, Article 2 of Decree Law No 476 of 6 June 1956, converted into Law No 786 of 25 July 1956, and Article 2 of the Ministerial Order of 20 January 1973 compatible with the above-mentioned provisions and do they not, because the result of those rules is to discourage importers into Italy from choosing the most appropriate date on which to release goods to the market, and

also having regard to the more favourable system of Community levies, amount to a measure having an effect equivalent to a quantitative restriction or to a charge having an effect equivalent to a customs duty, when they are interpreted as meaning that forfeiture by the Ministry of Foreign Trade of the security which is required of importers into Italy of agricultural goods and products which come from non-member countries and are subject to the levy system in order to be able to obtain the necessary foreign currency for the payments in advance against documents, may be made on the basis of the date on which those goods are registered upon importation rather than the date on which the goods themselves reached the national territory, in view of the particularly short period, after the date of the foreign currency payment, within which the operation of obtaining customs clearance must be carried out?"

The four orders making the references were lodged at the Court Registry on 23 October 1980.

By an order of 17 December 1980 the Court decided to join the different cases for the purposes of procedure and judgment.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observation were submitted by the plaintiffs in the main actions, represented by Nicola Catalano; by the Italian Government, represented by Ennio Viola, State Advocate; and by the Commission of the European Communities, represented by Rolf Wägenbaur, Legal Adviser at the Commission of the European Communities, acting as Agent, assisted by Giuliano Marenco, a member of its Legal Department.

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

II — Written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court

A — Observations of the plaintiffs in the main actions

Before commencing an examination of the questions which have been raised by the national court the *plaintiffs in the main actions* point out that other disputes equally concerned with these questions have given rise to conflicting decisions by the Corte d'Appello [Court of Appeal], Rome, and the Italian Corte Suprema di Cassazione [Supreme Court of Cassation].

In that respect the plaintiffs in the main actions express their concern that not only did the Tribunale Civile refuse to refer the matter to the Court of Justice on the ground that the questions was not relevant to a decision in the cases — a fact of which the Commission of the European Communities had been informed — but that the First Chamber of the Corte di Cassazione likewise refused to refer the questions to the Court of Justice on the ground that the cases in question showed no "essential legal basis on which the existence of a question of interpretation to be referred to the Court of Justice of the European Communities could be founded. Regard should be had in this matter to the fact that there is a clear distinction between interpretation and application of Com-

munity rules"; thus those rules which had been relied on in the case referred to the Corte di Cassazione had not, according to the latter, given rise to "any doubt with regard to their interpretation, so that the only question to be decided was whether the internal (pre-existing) rules were compatible with Community regulations, a problem concerning, not the interpretation of that law, but its application".

Before considering the questions raised by the court making the reference the plaintiffs in the main actions express the view that as far as the interpretation of the word "importation" is concerned application should be made of the "doctrine of reasonableness" of the Corte di Cassazione and in particular of a decision given on 10 March 1971, Decision No 674, reported in Giust. Civ. 1971 I 1096, in which it declared that "when a provision of law is open to a number of interpretations, one of which would confer on it a meaning which is unconstitutional, the doubt is merely apparent and must be avoided and the question resolved by interpreting the provision so as to make its meaning compatible with the Constitution and with constitutional law". That doctrine must be applied in questions concerning the relationship between national rules and Community rules since the latter must take precedence over the national rules in the same way as constitutional rules must, in the Italian internal legal order, take precedence over ordinary laws.

In the opinion of the plaintiffs in the main actions, in so far as "importation" is understood to denote the physical arrival of the imported goods on national soil, the Italian legal provisions cannot be considered incompatible with any provision of Community law whatsoever; in contrast, if "importation" is understood to mean the clearance through customs of such goods the Italian provision is undeniably incompatible with fundamental Community principles.

Whilst acknowledging that the Court of Justice has no power to interpret national law the plaintiffs in the main actions consider that it might be useful for the Court to know how the national rules, the incompatibility of which with provisions of Community law is being alleged, may be interpreted in order to be in a better position to define the scope of the Community provisions relied upon.

After those preliminary observations the plaintiffs in the main actions proceed to examine the two questions raised by the court making the reference. They point out that there is a conflict between the national Italian rules and Community rules in the case of both importations from other Member States and importations from non-member countries, and that this conflict "is considered both with regard to the prohibition of quantitative restrictions and measures having equivalent effect and in the light of the prohibition of the imposition of charges having an effect charges having an effect equivalent to customs duties".

First question

The plaintiffs in the main action are anxious to emphasize that the court making the reference has not asked the Court of Justice either to interpret national rules or to give a ruling on any incompatibility between national rules and Community rules, but has simply referred to the Court questions of interpretation in the light of which it will be able itself to apply or not apply the national rules.

Considering that they have little to add to the "ample, precise and objective statement of reasons given in the orders making the references" the plaintiffs in the main actions focus their argument principally on the following three points:

First, there can be no doubt that "to penalize any delay in clearing customs by appropriating the security is a disincentive to importation" especially as it would be sufficient, for the achievement of the monetary objectives in question in this instance, to ascertain that the transaction in respect of which the authorization to acquire foreign currency was granted is neither fictitious nor artificially delayed; so dissuasive an influence would certainly have an effect similar to that of quantitative restrictions on trade which is constituted by that rule in the case-law of the Court of Justice.

Secondly, it is equally incontestable that the unconditional obligation laid down in Article 106 of the Treaty has been infringed because the liberation of exchange rates is accompanied by a clause by virtue of which 5% of the security will be forfeit in the event of a delay, not in the commercial transaction in respect of which the currency has been freed, but in clearing through customs goods which have already been imported.

Thirdly, in so far as the delay, not in importation but in clearing customs, entails an increase of 5% in the cost of importing the goods into free circulation within the common market, it is difficult to deny that such a consequence "amounts in practice to a charge having an effect equivalent to a customs duty and constitutes discrimination contrary to the fundamental provision in Article 7 of the EEC Treaty".

Second question

According to the plaintiffs in the main actions "the precise and detailed examination of the problem in the orders making the reference does not require special comment, and to paraphrase it is even less useful". They confine themselves to illustrating the argument of the court making the reference with the concrete example which arose in the case of the Carapelli undertaking.

In conclusion the plaintiffs in the main actions ask the Court to "clarify and define the scope of the Community provisions in question as regards both importation from Member States of the Community of goods which are in free circulation within the common market, and importation from non-member countries, in order to enable the court which has made the reference to establish whether such provisions are compatible or not with the national rules contained in Articles 1, 3 and 4 of Law No 1126 of 20 July 1952 and Article 2 of Decree Law No 476 of 6 June 1956; and to state, in particular, whether they may (in either one of these two cases, or in both) amount to measures having an effect equivalent to quantitative restrictions and charges having an effect equivalent to customs duties or, at least, may contravene in either respect the Community provisions relied upon; and to state, should it consider that appropriate, whether the national rules are incompatible or not with the Community provisions in view of the way in which the national rules are interpreted and, in particular, in view of the meaning which

is to be given to the word 'importation' used in them".

B — Observations of the Italian Government

The *Italian Government* commences with a review of the national rules applicable in the four main actions and emphasizes that as a result of the special monetary scheme, "in no respect free and uncontrolled", international trade is subject to control under both the commercial and the monetary aspects. In the latter connection, that is to say, where goods are purchased abroad, the delay in completing the transaction of importation has predominantly or exclusively monetary repercussions. Therefore "the time-limit for each importation satisfies the concern of the State that the foreign currency in question be utilized exclusively for the transaction in respect of which it has been granted and consequently fulfils the purpose of preventing the lapse of time (should no time-limit have been imposed in respect of the importation) from enabling the foreign currency to be used for speculative purposes which are unrelated to payment for the imported goods". Hence by means of these rules the Italian legislature has determined that the proper performance within the time-limit imposed of the obligation to import "constitutes legal proof of due performance of the obligation to use the foreign currency allowed exclusively for the purpose envisaged".

First question

1. The Italian Government first maintains that the Court of Justice is not competent to decide the question whether the Italian national rules are compatible with the Community law provisions in the context of a reference for a preliminary ruling, especially as the questions formulated in the main actions by the Italian Court require the Court to assess national legal provisions, and the Tribunale Civile to "apply directly the judgment of the Court to a given case".

2. In so far as the Italian Government considers that the question which has been raised is whether the Italian measures in question amount to discrimination on the ground of nationality and measures having an effect equivalent to a quantitative restriction or charges having an effect equivalent to a customs duty, "the only reply possible is in the negative".

2.1. Relying on Article 104 of the EEC Treaty, which stipulates that "each Member State shall pursue the economic policy needed to ensure the equilibrium of its overall balance of payments and to maintain confidence in its currency", the Italian Government maintains that the measures which are being challenged fall "squarely and exclusively within the context of monetary policy" and thus are quite unconnected with the Community provisions referred to in the questions. In fact the requirement that security be lodged, and the fixing of a specific period within which the goods acquired with foreign currency allowed by the State and paid for in advance of the date of importation must go through import formalities are intended to avoid disequilibrium in the balance of payments, for the absence of such measures would facilitate speculative transactions to the detriment of the Italian lira.

Moreover, the period thus prescribed was reduced to the bare minimum, that is to say, the time necessary to import

the goods, and it is calculated with reference to importation and not to the arrival of the goods on Italian soil, for the foreign currency is allowed for the importation of the goods.

If that relationship did not exist commercial operators would be able to divert the goods to another State without having first completed importation formalities and thus without being obliged to go through any export formalities whatsoever, so evading the monetary restrictions on such operations. Such an opening would bring about "serious disturbances in the balance of payments" for foreign currency would have been spent without actual importation of goods into Italy.

2.2. In the opinion of the Italian Government the measures in question also do not infringe the prohibition of discrimination under Article 7 of the EEC Treaty, mainly because these measures "do not fall within the Treaty's sphere of application" in view of the fact that there is no Community legal provision which regulates, in a manner other than that used by the Government of the Italian State, the holding of foreign currency by nationals of the Member States of the European Economic Community.

Even if it were accepted that the measures challenged did in fact apply in a sphere falling within the scope of the Treaty, no question of discrimination can arise as Decree Law No 476 of 6 June 1956 applies to "natural persons of foreign nationality and stateless persons residing in the territory of the Republic, to the extent only to which they carry on a gainful activity there" and provides likewise for legal persons; the absolute equality of treatment is therefore apparent.

According to the court making the reference, there is also discrimination inasmuch as the Italian importer is at a disadvantage *vis-à-vis* importers of the same goods in other Member States and — with sole reference to Case 207/80, having regard to the system of Community levies laid down by Regulation No 120/67 — inasmuch as the Italian importer cannot delay the importation to a date on which the incidence of the Community levy would be less.

The Italian Government takes the view that a negative reply must be given to those two questions. With particular regard to the discrimination in relation to importers in other Member States, the Italian Government asserts that discrimination may be assessed only in relation to an act performed in national territory and not in relation to the situation existing in another Member State, because the contrary view "would have the effect of subjecting in a negative manner the legal system of one Member State to those of other Member States".

Indeed, the Treaty as a whole and in particular Article 3 thereof permit the assertion that Member States are free to set up their legal systems with the sole reservation that they are bound to avoid any conflict which may arise with Community provisions; in that connection the Italian State maintains that the provisions in question do not entail any discrimination on grounds of nationality.

2.3. Even if "in all absurdity" Article 104 proved insufficient to exclude the question from the scope of Articles 30

and 13 of the Treaty, its exclusion must then follow from Article 36.

Indeed, that article allows measures to hinder the free movement of goods where such measures are justified in particular on grounds of public policy and do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. The concept of public policy, as the Court stated in its judgment of 23 November 1978 (Case 7/78 *Regina* v *Thompson* [1978] ECR 2247), concerns the fundamental interests of the State.

Furthermore, even on that assumption, the national provisions in question are justified by requirements for the protection of public policy, since those measures, which are of a monetary nature, must be regarded as involving fundamental interests of the Italian State. Moreover, the rules do not constitute a means of arbitrary discrimination — because all imports come within their scope — or a disguised restriction on trade between Member States — because they cover not the act of importation itself but a different act, namely the improper performance of the obligation to import within a specified period; on the contrary, they are necessary and appropriate for the attainment of the required objective.

Thus, not only do the national provisions in question not constitute a quantitative restriction on free movement, they do not constitute a measure having equivalent effect either. In fact, even if the atypical consequence of the measures was that they caused quantitative restrictions on trade, they would nevertheless not be contrary to Article 30 of the Treaty, first on account of the fact that they apply in a sphere which is different from that of trade in goods between Member States and secondly because they do not exceed the limits of what is necessary and appropriate in order to achieve the objective pursued by the provision: that objective, consisting in the safeguarding of the State's interest in the equilibrium of its balance of payments, would not be attainable in the absence of any mandatory measure such as that in question.

2.4. The Italian Government also asserts that the Italian national provisions in question are not contrary to Article 106 of the EEC Treaty on the ground that the imports were paid for in US dollars and therefore in the currency of a State in which none of the creditors resided (leaving aside the imports concerned in Case 207/80).

2.5. Finally, the Italian Government maintains that the measures challenged do not moreover constitute charges having an effect equivalent to a customs duty.

In its opinion, that question — which applies only to Case 206/80 — does not arise in this case because the measures in question do not impose a duty on goods but are the penalty for the failure to perform an obligation; they apply therefore independently of the importation to the conduct of the importer. The Italian legislation is thus designed to ensure not only the importation of the goods but also their importation within a specified period. It thus meets the Community requirement of the free movement of goods.

Consequently, the price distortion resulting from the possible forfeiture of the security is caused by the importer's

conduct and no causal link can be established with the importation, as can be done in the case of customs duty. It is possible to speak of a charge having an effect equivalent to a customs duty only if the legislation in question also applied where no blame was attributable for the failure to carry out the obligation to import.

Second question

The Italian Government refers essentially to its observations on the first question and merely considers the problem raised by the reference to Regulation No 120/67 of the Council.

In the opinion of the Italian Government, the provisions in question do not moreover infringe Regulation No 120/67 because the choice of the date of importation — and not the date on which the foreign goods are subjected to the import formalities — and of the date on which the levy is fixed, are a result of the risk inherent in any commercial transaction. For that reason the importer determines the date for importation himself, having regard to the obligations which he has assumed when the foreign currency was granted. The fact that the day thus chosen results in the levy being fixed in a manner which does not suit the importer cannot have the effect of transforming the Italian legislation into a charge having an effect equivalent to a customs duty. That is particularly so since the choice is not imposed by the State, as for the above-mentioned reasons it is made when the goods are purchased abroad.

Furthermore, "the delaying of importation does not amount to fixing the date of importation at the date which best suits the exporter, as the amount of the levies is always dependent on future uncertainties". The delay in importations does not endanger the Community's interest in safeguarding the cereal production of the Member States, to the extent to which that interest is in fact protected by the system of levies.

C — Observations of the Commission of the European Communities

The *Commission* considers each case separately but in fact develops the same principal line of argument in the four cases, maintaining that the national rules in question constitute measures having an effect equivalent to quantitative restrictions. It merely states that in Cases 209 and 210/80, concerning imports from other Member States, it is the provisions of the Treaty which apply, and in particular Article 30, whereas in the other two cases, 206 and 207/80, concerning imports coming from non-member countries, respectively carob beans from Cyprus and maize from Argentina, Regulation No 827/68 of the Council of 28 June 1968 applies to the first case and Regulation No 120/67 of the Council of 13 June 1967 to the second.

Having recalled the provisions of the Italian legislation which is challenged, the Commission points out that that legislation has given rise to various complaints by Italian importers and as a result of those complaints the Commission, by a letter of 13 August 1980, initiated proceedings against Italy for infringement of the Treaty, which, at the time when reference for a preliminary ruling was made, had reached the stage of the reasoned opinion.

1. The Commission asserts principally that the system of security put up by the

bank, laid down by the Italian legislation, constitutes a measure having an effect equivalent to a quantitative restriction.

Having observed that advance payments are as a rule required in international trade, the Commission takes the view that the rules in question impose particular burdens on commercial operators residing in Italy inasmuch as not only are they bound to comply with the formalities inherent in the system and to observe its procedures, but they must also take on the "considerable financial burdens entailed in lodging security or providing a bank guarantee", which are particularly heavy where the security is forfeited because the period allowed is exceeded. Consequently, the importation of goods into Italy is made more difficult and more costly in comparison with transactions carried out within other Member States where such burdens do not exist. Those rules therefore hinder imports into Italy.

The Commission recalls in that regard that under Article 2 of Directive 70/50/EEC of 22 December 1969 (Official Journal, English Special Edition 1970 (I), p. 17) measures having an effect equivalent to quantitative restrictions include measures which hinder imports which could otherwise take place, including measures which make importation more difficult or costly than the disposal of domestic production, in particular measures which "require, for imports only, the giving of guarantees or making of payments on account" (Article 2 (3) (i)).

Consequently, the Italian rules constitute measures having an effect equivalent to a quantitative restriction. Certainly, the Italian authorities have maintained in the past in response to that argument that, first, the obligation to lodge the security in question arises from monetary provisions and not from commercial provisions which alone are the subject of Directive 70/50 cited above and that, secondly, that requirement meets solely the need to avoid speculative movements of money and is not the result of protectionist considerations.

The Commission observes in that regard that the measure challenged would be compatible with Article 30 et seq. only if it could be justified under Article 36 or if it had been the subject of an authorization under Article 108 (3).

With regard to Article 36, whilst not disputing that the Italian rules fit into a monetary context, the Commission however points out that that "argument is not included amongst the justifications listed in Article 36" and that inasmuch as that article, being an exceptive clause, must be interpreted strictly, the argument cannot be accepted. In any event, there are, according to the Commission, other means of preventing advance payments from leading to speculative dealings resulting in a loss of currency. Furthermore, it is not proper to draw a distinction with regard to Directive 70/50 between commercial provisions and monetary provisions, because "the more or less monetary nature of a national measure is immaterial to the assessment thereof as a measure having an effect equivalent to a quantitative restriction".

As far as concerns the power to authorize a State which is in difficulties to take protective measures, the Commission points out that no

derogation was granted by it to the Italian Government pursuant to Article 108 (3).

2. In the two cases (209 and 210/80) concerning imports coming from other Member States, the Commission considers the question concerned with the interpretation of Article 106 of the Treaty.

That article, which provides that the Member States undertake to authorize, in the currency of the Member State in which the creditor or the beneficiary resides, any payments connected in particular with the movement of goods, to the extent that the movement of goods between Member States has been liberalized pursuant to the EEC Treaty, constitutes "the fifth freedom of the common market". Thus, is so far as payment in the currency of the creditor remains possible, it cannot be maintained that a Member State infringes that Community provision by creating an obstacle — in the form of a security in favour of the Ufficio dei Cambi — to the advance payment for goods acquired abroad and intended for import. However, a question of commercial credit is involved, and Article 67 of the Treaty and the directives adopted in implementation thereof unconditionally liberalized "the granting and repayment of short-term and medium-term credits in respect of commercial transactions in which a resident is participating" (Annex I, List A, to the First Directive of 11 May 1960, Official Journal, English Special Edition 1959-62, p. 49, added to and amended by the Second Council Directive of 18 December 1962, Official Journal, English Special Edition 1963-64, p. 5). Therefore, since the payments made before the delivery of the goods amount to the granting of credit in respect of a commercial transaction, there is an infringement of that provision.

3. With regard to the questions concerning the levy system and the concept of a tax having an effect equivalent to a customs duty, the Commission takes the view that it is not necessary to consider those questions, since the requirement of security put up by the bank constitutes in itself a measure having an effect equivalent to a quantitative restriction. Consequently, the Commission proposes that the following reply should be given to the Tribunale Civile, Rome:

In Case 206/80:

"Rules subjecting the advance payment for carob beans intended for import from Cyprus to the lodging of security or the provision of a bank guarantee constitute measures having an effect equivalent to quantitative restrictions prohibited by Regulation No 827/68 of the Council of 28 June 1968."

In Case 207/80:

"National rules subjecting the advance payment for maize intended in 1973 for import from Argentina to the lodging of security or the provision of a bank guarantee constitute measures having an effect equivalent to a quantitative restriction prohibited by Regulation No 120/67 of the Council of 13 June 1967."

In Cases 209 and 210/80:

"National rules subjecting the advance payment for goods from another Member State which are intended for import to the lodging of security or the provision of a bank guarantee constitute

measures having an effect equivalent to a quantitative restriction. Furthermore, such rules are incompatible with the Community provisions on the free movement of capital."

III — Oral procedure

At the sitting on 27 January 1982 oral argument was presented, together with replies to the questions which had been raised, by the following: N. Catalano, of the Rome Bar, for the plaintiffs in the main actions; Mr Ferri, acting as Agent, for the Government of the Italian Republic; A. Carnelutti, acting as Agent, for the Government of the French Republic, who referred to his observations in Case 95/81; and G. Marenco, acting as Agent, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 17 March 1982.

Decision

1 By four orders dated 14 July 1980 which were received at the Court Registry on 23 October 1980 the First Civil Chamber of the Tribunale Civile [Civil District Court], Rome, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Articles 7, 9, 10, 13, 30 to 36 and 106 of the Treaty and Articles 13, 15, 18 and 21 of Regulation No 120/67/EEC of the Council of 13 June 1967 (Official Journal, English Special Edition 1967, p. 33) on the common organization of the market in cereals. Since the two questions were identically worded in the four orders making the references the Court decided by order of 17 December 1980 to join the four cases for the purposes of procedure and judgment.

2 The questions arose in the course of four actions brought against the Italian Ministry of Foreign Trade by Italian undertakings which had imported agricultural products. Cases 206 and 207/80 concerned products from non-member countries, namely carob beans from Cyprus and maize from Argentina respectively, and Cases 209 and 210/80 concerned goods already in free circulation in other Member States, namely coffee from the Netherlands and cotton meal from the Federal Republic of Germany.

3 As required by the Italian legislation in force at the material time, the four plaintiffs requested and obtained, in order to make advance payment in US

dollars for the goods in question, a bank guarantee to cover the 5% security required in respect of all advance payments for imported goods. Under the same legislation the security (either provided by the importer or guaranteed by his bank) is forfeit to the Treasury if proof is not given that the importation has been effected within a period laid down by ministerial order, which was at that time 30 days from the date of the advance payment.

4 In the four main actions the imported goods reached Italian territory before the expiry of the 30-day period provided for by the Italian legislation in force at the time, but parts, or in some cases the whole, of the consignments could not be released for consumption until after the 30 days had elapsed. Considering that the 30-day limit had been exceeded, the Italian Ministry of Foreign Trade decided to confiscate so much of the security as corresponded to the quantity of goods in respect of which the declaration of importation had been made after the period had expired.

5 The plaintiffs in the main action initiated proceedings against the Ministry of Foreign Trade in the court which has made the reference, seeking an order to the effect that the Ministry should refund the securities and release the bank guarantees. They claimed that the Italian legislation was to be constructed as requiring forfeiture of the security only if more than 30 days had elapsed between the advance payment and the arrival of the goods on Italian soil. If, on the contrary, it was to be interpreted as requiring the goods to be cleared through customs within 30 days, the Italian legislation must be regarded as a measure having an effect equivalent to a quantitative restriction, which is prohibited in intra-Community trade by Article 30 of the Treaty in conjunction with Article 18 of Regulation No 120/67/EEC of the Council on the common organization of the market in cereals in the case of maize, and in conjunction with Regulation (EEC) No 827/68 of the Council of 28 June 1968 (Official Journal, English Special Edition 1968 (I), p. 209) in the case of carob beans.

6 On those facts, the Tribunale Civile, Rome, referred to the Court for a preliminary ruling the following two questions:

"(1) With reference to Articles 7, 30 to 36 and 106 of the Treaty and Article 21 of Regulation No 120/67/EEC of 13 June 1967, whereby Member States are under a duty to authorize, in the currency of the Member

States in which the creditor resides, any payments connected with the trade in goods in free circulation, and to Articles 9, 10, 13 and 30 to 36 of the Treaty on the free movement of goods in intra-Community trade, are the rules laid down by the Italian State and referred to in Articles 1, 3 and 4 of Law No 1126 of 20 July 1952, Article 2 of Decree Law No 476 of 6 June 1956 converted into Law No 786 of 25 July 1956 and Article 2 of the Ministerial Order of 20 January 1973 compatible with the above-mentioned provisions and do they not, because the result of those rules is to discourage importers into Italy from choosing the most appropriate date to release those goods to the market, amount to a measure having an effect equivalent to a quantitative restriction or a charge having an effect equivalent to a customs duty, when they are interpreted as meaning that forfeiture by the Ministry of Foreign Trade of the security which is required of importers into Italy of goods in free circulation in the Community in order to obtain the foreign currency necessary for the payments in advance against documents, may be made on the basis of the date on which the goods themselves are registered upon importation rather than the date on which the goods reached the national territory, in view of the particularly short period, after the date of the foreign currency payment, within which the operation of obtaining customs clearance must be carried out?

(2) With reference to Articles 7, 9, 10, 13 and 30 to 36 of the Treaty on the free movement of goods and Articles 13, 15 and 18 of Regulation No 120/67/EEC of 13 June 1967 and subsequent amendments on the common organization of the agricultural market and on the system of levies, are the rules laid down by the Italian State and referred to in Articles 1, 3 and 4 of Law No 1126 of 20 July 1952, Article 2 of Decree Law No 476 of 6 June 1956, converted into Law No 786 of 25 July 1956, and Article 2 of the Ministerial Order of 20 January 1973 compatible with the above-mentioned provisions and do they not, because the result of those rules is to discourage importers into Italy from choosing the most appropriate date on which to release goods to the market, and also having regard to the more favourable system of Community levies, amount to a measure having an effect equivalent to a quantitative restriction or to a charge having an effect equivalent to a customs duty, when they are interpreted as meaning that forfeiture by the Ministry of Foreign Trade of the security which is required of importers into Italy of agricultural goods and products which come from non-member countries and are subject to the levy system in order to be able to obtain the necessary foreign currency for the payments in advance against documents, may be made on the basis of the date on which those goods are registered upon importation rather than the date on which the goods themselves reached the national territory, in view

of the particularly short period, after the date of the foreign currency payment, within which the operation of obtaining customs clearance must be carried out?"

7 The object of the questions which have been submitted is to discover *first*, whether the provisions of Community law which prohibit measures having an effect equivalent to quantitative restrictions in intra-Community trade and those concerning Member States' obligations regarding payments for such trade must be interpreted as covering the requirement to provide a security in the circumstances described above where goods imported from other Member States are paid for in advance, and *secondly*, whether the same interpretation is to be given to Article 18 of Regulation No 120/67 and to Article 2 of Regulation No 827/68 in the case of agricultural products covered by those regulations and imported into the Community from non-member countries.

I — Intra-Community trade

8 The measures to which the national court refers were the subject of another case concerning the intra-Community trade described in its first question, Case 95/81, an action under Article 169 of the EEC Treaty brought by the Commission against a Member State for failure to fulfil its obligations under the Treaty.

9 The question of law which was considered in Case 95/81 is identical in substance to that raised by the first question from the Tribunale Civile inasmuch as it appears from the files that the national court did not restrict its question solely to cases in which national law provides for forfeiture of the guarantees which have been given when the goods are detained for a time by the customs authorities at the port of entry, so that the question covers equally cases in which a trader is in danger of losing his security on the ground that more than 30 days have elapsed between the date of the advance payment and the arrival of the goods at the port of entry.

10 In a judgment delivered this day the Court has declared that by requiring all importers of goods from other Member States to provide security or a bank guarantee equal to 5% of the value of the goods when payment is made in advance, the words "payment in advance" referring not only to payments for

speculative purposes but also to normal and current payments concerning intra-Community transactions, the Italian Republic has failed to fulfil its obligations under Articles 30 and 36 of the Treaty.

11 Since the measures objected to by the Commission were the same as those which are the subject of the present proceedings, the only difference being that the prescribed period, which amounted to 120 days in the action for failure to fulfil obligations, was only 30 days under the rules in force at the time of the main actions in these cases, it is sufficient to refer to the judgment in Case 95/81, a copy of which is annexed to this judgment. Since that judgment contains all the information necessary for a decision in the main actions, an interpretation of Articles 7, 9, 10 and 13 of the EEC Treaty is not required.

12 For the reasons set out in that decision the reply to the first question put by the Tribunale Civile, Rome, should be that the concept of measures having an effect equivalent to a quantitative restriction in Article 30 of the Treaty is to be understood as meaning that that provision covers a national measure requiring all importers of goods coming from other Member States to provide a security or a bank guarantee amounting to 5% of the value of the goods when payment is in advance, the words "payment in advance" referring not only to payments for speculative purposes but also to normal and current payments in intra-Community transactions. That applies regardless of the point in time at which the authorities of the Member State consider the importation to have been effected.

II — Trade with non-member countries

13 As far as concerns the trade with non-member countries referred to in the second question from the national court, it must be remembered that Article 18(2) of Regulation No 120/67 of the Council, which appears under Title II, headed "Trade with third countries" and applies to trade in maize from Argentina, and Article 2 of Regulation No 827/68 of the Council, governing the market in carob beans from Cyprus, are in substance identical; the latter provides that:

"(2) Save as otherwise provided in this regulation, and save derogations decided on by the Council . . . the following shall be prohibited in trade with third countries:

The levying of any charge having an effect equivant to a customs duty; and

The application of any quantitative restriction or measure having equivalent effect . . ."

14 From the files in the main actions it appears that in the cases under consideration the prohibitions laid down are not the subject of contrary provisions in the relevant rules, or of any derogation decided upon by the Council.

15 The Court has already had occasion to construe Articles 18 and 21 of Regulation No 120/67 in its judgment of 10 October 1973 (Case 34/73 *Variola* [1973] ECR 981) in which it declared: "There is no consideration which could justify different interpretations of the concept of 'charge having equivalent effect' as it appears in Article 9 et seq. of the Treaty, on the one hand, and . . . Articles 18 and 21 of Regulation No 120/67, on the other."

16 Those considerations apply equally with regard to the expression "measures having equivalent effect" as used both in Article 30 of the Treaty and in the above-mentioned articles of Regulations No 120/67 and 827/68.

17 The reply to the second question must therefore be that the concept of measures having an effect equivalent to quantitative restrictions has the same meaning when applied to imports from non-member countries of products covered by Regulations Nos 120/67 and 827/68 as it has when applied to trade between Member States.

Costs

18 The costs incurred by the Italian Government, the French Government and the Commission, which have submitted observations to the Court, are not recoverable.

19 As the proceedings are, in so far as the parties to the main actions are concerned, in the nature of a step in the proceedings 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 Tribunale Civile, Rome, by orders of 14 July 1980, hereby rules;

1. **The concept of measures having an effect equivalent to a quantitative restriction in Article 30 of the Treaty is to be understood as meaning that that provision covers a national measure requiring all importers of goods coming from other Member States to provide a security or a bank guarantee amounting to 5% of the value of the goods when payment is in advance, the words "payment in advance" referring not only to payments for speculative purposes but also to normal and current payments in intra-Community transactions. That applies regardless of the point in time at which the authorities of the Member State consider the importation to have been effected.**

2. **The concept of measures having an effect equivalent to quantitative restrictions has the same meaning when applied to imports from non-member countries of products covered by Regulations Nos 120/67 and 827/68 as it has when applied to trade between Member States.**

Mertens de Wilmars Bosco Touffait

Due Pescatore Mackenzie Stuart O'Keeffe

Koopmans Everling Chloros Grévisse

Delivered in open court in Luxembourg on 9 June 1982.

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
President