On those grounds,

THE COURT

hereby:

1. **Dismisses the application as unfounded;**

2. **Orders the applicant to pay the costs.**

Mertens de Wilmars Pescatore Mackenzie Stuart

Koopmans O'Keeffe Touffait Due

Delivered in open court in Luxembourg on 3 February 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 4 DECEMBER 1980

My Lords,

This is an action brought by the Commission against the French Republic under Article 169 of the EEC Treaty. The Commission contends that, in introducing by its "Loi de Finances" for 1976 a "levy on the use of reprography" ("redevance sur l'emploi de la reprographie"), the French Republic has failed to fulfil its obligations under:

(i) Article 12 of the Treaty, which requires Member States to refrain

from introducing between themselves any new customs duties or charges having equivalent effect; and

(ii) Article 113 of the Treaty and the Council regulations establishing the Common Customs Tariff, which between them require Member States to refrain from introducing any such duties or charges in trade with third countries (see for instance Joined Cases 37 and 38/73 *Diamant-arbeiders* v *Indiamex* [1973] 2 ECR 1609).

The relevant provision of the Loi de Finances for 1976 (No 75-1278 of 30 December 1975) is Article 22, which instituted as from 1 January 1976 (a) a levy payable by publishers on the sale, other than for export, of books and other "ouvrages de librairie de toute nature" published by them, subject to exceptions for school books, scientific and religious publications, and the like, and (b) the levy here in question.

The sums raised by means of those levies were allocated by Article 22 to an institution called the "Centre National des Lettres". They were to reach it through a special account to be opened in the books of the "Trésor" (the Treasury) and to be called the "Fonds National du Livre".

The levy on the use of reprography was to be paid (i) by French manufacturers of reprographic equipment on sales and on appropriations for their own use, other than for export, of such equipment and (ii) on imports of such equipment. The rate of levy was in either case 3%. A ministerial "arrêté" was to list the types of equipment to which the levy applied.

Such an "arrêté" was in fact promulgated on 12 July 1976. It lists the types of reprographic machines subject to the levy as follows (the numbers in brackets referring to the "nomenclature générale des produits", which seems to be based on the Common Customs Tariff):

"Machines à imprimer offset, de 500 kg ou moins, d'un format égal ou inférieur à 305 × 445 mm (84.35.31.0 et ex 84.35.33.1);

Duplicateurs hectographiques (84.54.31.0);

Duplicateurs à stencils (84.54.39.0);

Appareils photographiques spéciaux pour la copie des documents (90.07.13.1);

Microlecteurs combinés avec un appareil de reproduction (ex 90.09.11.0);

Appareils de photocopie à système optique (90.10.22.0);

Appareils de thermocopie (90.10.32.0);

Appareils de photocopie par contact, d'un format égal ou inférieur à 305 × 445 mm (90.10.42.0)".

The history of the Centre National des Lettres goes back to 1946. In that year there was enacted a statute (Loi No 46-2196 of 11 October 1946) creating a "Caisse Nationale des Lettres", an incorporated body endowed with financial independence and placed under the aegis of the "Ministre de l'Éducation Nationale". Its original objects, shortly stated, were to give financial support to French writers and publishers. Its resources were derived in the main from taxes on the turnover of French publishers and on the royalties payable by

them to authors. To those resources were added, by a statute of 1956 (Loi No 56-202 of 25 February 1956), royalties derived from an extension for the Caisse's benefit alone of the term of copyright in literary works beyond the term theretofore applicable. Those taxes and that extension of the term of copyright were abolished by Article 22 of the Loi de Finances for 1976. By a "décret" of 1973 (No 73-539 of 14 June 1973) the name of the Caisse was changed to "Centre National des Lettres" and it was placed under the aegis of the "Ministre des Affaires Culturelles". Legislation over the years (in particular the Statute of 1956, a Decree of the same year, No 56-1215 of 29 November 1956, a Decree of 1961, No 61-739 of 17 July 1961, the Decree of 1973 and a Decree of 1976, No 76-113 of 30 January 1976) modified the constitution of the Centre and widened its objects, but not in ways relevant to this case, except perhaps that the Centre now has power to help not only French authors but also authors of other nationalities who write in French and, as was emphasized to us on behalf of the French Government, the translation into French of works written in other languages.

The sources of revenue of the Centre are listed in Article 15 of the Decree of 30 January 1976. They include, apart from the levies imposed by Article 22 of the Loi de Finances for 1976, subsidies from the State and from other public or private bodies, gifts and legacies, and other miscellaneous items. As to the amount of revenue derived by the Centre from the levies, Counsel for the Commission referred at the hearing to the answer given by the "Ministre de la Culture et de la Communication" to a written Parliamentary Question about the income and expenditure of the Centre, which is recorded in the "Journal Officiel de la République Française" (No 39 A.N. (O.) of 29 September 1980). The figures the Minister gave, which are expressed of course in French francs, may be set out as follows:

Table 1

Year	1977	1978	1979
Levy on publishers	5 140 371	6 306 295	7 784 682
Levy on reprographic equipment	18 895 134	21 097 744	25 554 510
Total	24 035 505	27 404 039	33 339 192

As to the extent to which the levy on reprographic equipment was borne, on the one hand by equipment manufactured in France and, on the other hand, by imported equipment, there was an issue between the parties on the pleadings. The Commission alleged, on the basis of statistics for 1976, 1977 and 1978, that the value of French-produced equipment subject to the levy was less

than 1% of the value of imported equipment and that that percentage was diminishing. The Commission further suggested that the figures thrown up by the statistics should be adjusted to take account of the different marketing stages at which imported equipment and home-produced equipment were, respectively, subjected to the levy and that, on that footing, the value of French production could be estimated at 0.33% of the value of imports. On behalf of the French Government, on the other hand, it was alleged, on the basis of other evidence, that French production amounted to over 8% of the whole. At the close of pleadings the Court invited the parties to endeavour to agree on the figures, which they did. The agreed figures, again expressed in French francs, are as follows:

Table 2

Year	Imports from other Member States	Imports from third countries	Domestic production
1977	741 262 000 (77 %)	209 600 000 (21·8 %)	11 768 000 (1·2 %)
1978	719 141 000 (72·3 %)	266 300 000 (26·8 %)	8 982 000 (0·9 %)
1979	943 146 000 (71·7 %)	358 700 000 (27·3 %)	13 427 000 (1·0 %)

At the hearing Counsel for the Commission resurrected the point that the figures for French production must be adjusted to an average of 0.33% to take account of the different marketing stages at which imports and sales of domestic products took place. He did not explain why that should be so. To me, indeed, it seems, that, probably, any adjustment should be the other way: the figures for the value of imports were those that were likely to be inflated. At all events Counsel for the French Republic expressed surprise at the Commission's attempt to resile from the agreement reached by the parties at the behest of the Court. I admired his moderation. He was in my opinion entitled to object to that attempt in the strongest terms.

since the levy is imposed on domestic production at the stage of sale by the manufacturer, whereas importations may take place at any marketing stage (even at the stage of sale by a retailer to the ultimate user) I should have thought that

Such information as the Court has about the expenditure of the Centre national des lettres is also contained in the answer to the Parliamentary Question that I have mentioned. It is as follows, expressed in French francs:

Table 3

Year	1977	1978	1979
Aids to literary creativity	1 523 965	1 256 879	1 545 351
Aids to authors of a welfare nature	655 460	956 210	1 084 250
Support for literary activities	1 689 940	1 741 050	1 903 075
Subsidies for the publication of difficult works	833 459	721 615	614 565
Loans for the publication of such works	3 119 630	3 579 505	4 921 100
Subsidies to public libraries	19 396 246	21 444 717	24 022 991
Total	27 218 700	29 699 976	34 091 332

From a comparison of the figures in that table with those in Table 1, two conclusions may be drawn. The first is that the levies imposed by Article 22 of the Loi de Finances for 1976 produce the bulk of the revenue of the Centre. The other is that the amount of revenue derived by the Centre from the levy on reprographic equipment and the amount of the expenditure of the Centre on subsidies to public libraries are much the same.

The question at issue between the parties is whether the levy on reprographic equipment is a charge having equivalent effect to a customs duty forbidden by the provisions of Community law on which the Commission relies or is, as the French Government contends, an internal tax to which Article 95 of the Treaty applies. It is of course well established that no impost can be both, if only because charges having equivalent effect to customs duties are entirely forbidden as between Member States whereas, in the case of internal taxes, Article 95 only forbids discrimination against the products of other Member States — see for instance Case 10/65 *Deutschmann* v *Germany* [1965] 1 ECR 469, Case 57/65 *Lütticke* v *HZA Saarlouis* [1966] ECR 205, Case 94/74 *IGAV* v *ENCC* [1975] 1 ECR 699, Case 78/76 *Steinike & Weinlig* v *Germany* [1977] 1 ECR 595, Case 77/76 *Cucchi* v *Avez*, ibid. p. 987 and Case 105/76 *Interzuccheri* v *Rezzano*, ibid. p. 1029.

In order to understand the submissions of the parties on that question one has to have in mind a problem with which, so it appears, the legislatures of all developed countries are confronted, namely the problem arising from the fact that the widespread availability since the early 1960s of photocopiers and other reprographic machines that are simple to operate and relatively cheap to use has made the existing law of copyright in such countries unworkable.

In paragraph 24 of a Communication on "Community action in the cultural sector" sent by the Commission to the

Council on 22 November 1977 (published as Supplement 6/77 to the *Bulletin of the European Communities*), to which the French Government drew our attention, the Commission, under the heading "The consequences of technical progress", said this:

"The boom in audio and visual reproduction equipment confronts performers with a situation identical to that facing authors as a result of the massive photocopier boom. In both cases, outlets shrink without the subsequent loss being compensated by remuneration. Nor is the latter any longer in proportion to the use made of the original work. . . . While the greater spread of culture and, more generally, communication between peoples, may be applauded, a new problem is raised by the existence of a new audience for which the original producer has not remunerated authors, publishers or performers.

Duplicators (photocopiers, microcopiers) are now extensively used in libraries, schools, universities, research institutes, documentation centres, etc., and it is only a matter of time before individuals also buy and use copiers as commonly as tape recorders. This poses the difficult problem of establishing a balance between the interests of users and the need for authors and publishers to obtain a reasonalbe return for their work. Whilst it is true that what is in the interests of users often also aids the spread of culture, one cannot discount the risk, particularly with regard to books and high-quality magazines, of a reduction in the numbers printed, which would in turn lead to a fall in publishers' revenue and, as a result, in authors' remuneration. If a large number of authors and publishers were unable to continue, then the copier would ultimately be the victim of its own prodigious success — it would suffer the consequences of having killed off the publications which provided its originals".

The Commission concluded:

"As regards the reproduction of the written word, sounds and images, a sum ought to be included in the selling price of equipment (photocopiers, tape-recorders, video recorders) and the material they use (photocopy papers, tapes) to guarantee the remuneration which authors, publishers, and performers are entitled to expect (and must not be denied); it could be based on a percentage of the retail price. For example, when purchasing equipment or materials, users could pay a fixed fee which would cover subsequent utilization coming under the heading of copyright (including publishers' rights) and performers' rights. For large-scale reproduction equipment (libraries, universities, etc.) a periodic fee could be charged on top of that paid at the time of purchase or rental".

The Commission did not go further.

In the United Kingdom the problem was examined by the Committee on Copyright and Design Law, the

Whitford Committee, who reported in March 1977, i.e. some months before the Commission's Communication to the Council. They devoted a whole chapter of their Report to it (see Cmnd. 6732, Chapter 4, "Reprography"). Besides the categories of users identified by the Commission, i.e. libraries, schools, universities, research institutes and documentation centres, the Whitford Committee pointed to the reprographic reproduction of copyright material by Government departments, by industry (mainly for the purpose of research) and by the professions. They found that the problem was particularly acute in the case of scholarly, scientific and technical periodicals, and that, in the case of such publications, the threat was more to the economic survival of their publishers than to the remuneration of authors, the latter being on the whole more interested in the esteem of their colleagues than in the receipt of royalties. "But", said the Committee, "the authors would be far from happy to see the publications in which their, and their colleagues' works appear, fail for financial reasons". The Committee, having examined the solutions considered or adopted in a number of other countries (the Federal Republic of Germany, The Netherlands, Sweden, Australia, Canada and the USA) recommended a flexible system of schemes for the "blanket licensing" of users of reprographic equipment, administered by Government-approved royalty-collecting societies acting on behalf of copyright owners.

A view of the problem as seen through French eyes was expressed by Mr Jean de Bagneux, the President of the "Commission des Affaires Culturelles" of the French Senate, during the debate in the Senate on what became Article 22 of the Loi de Finances for 1976. That debate took place on 22 November 1975 and had been preceded by a debate on the clause in the Assemblée Nationale on 23 October 1975. The Commission relied very much on what was said in those debates as evincing the true intent of the authors of Articles 22.

Mr de Bagneux put the accent on the shrinking turnover of publishers of scientific and technical works, which he attributed to the "développement foudroyant de la photocopie". He referred to the inadequacy of French copyright law (as embodied in the Statute of 11 March 1957) to cope with the problem, which he illustrated by mentioning the use by students and by researchers in industry of photocopies of such works, where previously more copies of them would have been bought. He welcomed the Government's proposals which envisaged, as he understood them, subsidizing the purchase by libraries, mostly municipal libraries, of scientific and technical works the publication of which was not profitable. He noted that the cost of so doing was estimated at FF 30 million and that the idea was to take that sum from the reprographic industry, by taxing sales and importations of reprographic equipment. He expressed his committee's support for the proposal on the ground that it was for the benefit of authors and publishers. As the same time he noted that the proceeds of the other levy to be

instituted by the clause, that on publishers, were to be devoted to aids for writers.

The Commission invited us to interpret the reports of those debates as showing that the French Government had decided to raise a sum of FF 30 million and that, instead of considering how such a sum could be raised by means of an internal tax to be extended to imports, the Government had, in view of the volume of imports of reprographic equipment, first defined the rate of the tax by reference to them and then extended it to French products, in the knowledge that French production of reprographic equipment was "insignificant".

I have, my Lords, read and re-read the reports of those debates and I cannot draw that conclusion from them. What was said in the Assemblée Nationale hardly seems to me to bear on the present point. In the Senate the debate was opened by Mr de Bagneux's speech. Most of what followed was concerned with objections raised against the Government's proposals by the "Commission des Finances" on technical grounds also without bearing on that point. It is true that, during the course of the debate, what I may perhaps be forgiven for calling "nationalistic noises" were made. Even Mr de Bagneux said in passing that, on his trips abroad, he had noticed that scientific and technical libraries there were full of English, American, German and Italian publications, but had few French ones. And the "Ministre de l'Économie et des Finances", Mr Jean-Pierre Fourcade, did make the remarks that were quoted to us on behalf of the Commission, to the effect that the levy would essentially hit imports since few reprographic machines were manufactured in France. But he did so in a speech of which the main purport was that what was at stake was the survival of scientific, technical and cultural publications, and in which he was endeavouring to counter the arguments of the Commission des Finances. The main result of the debate was a reduction in the rate of the levy from 5 % as originally proposed to 3 %.

In any event this Court should, in my opinion, view with, to say the least, extreme caution, any suggestion that it should pass judgment on the nature of legislation enacted by a Member State by reference to what has been said or, for that matter, been left unsaid, in debates in that Member State's parliament.

The Commission underlined the fact that the legislation imposing the levy formed part of French fiscal law and not of French copyright law. The imposition of the levy did not, the Commission said, adequately or appropriately solve the problems that the increasing use of reprographic machines created in the field of copyright, which were much more complex than the arguments of the French Government acknowledged. The Commission, whilst conceding that there were different possible ways of solving those problems, went on to submit that, as a matter of Community law, the question whether the levy did or did not constitute an internal tax depended upon

whether its imposition "s'insère dans le système de réglementation du droit d'auteur" (Reply p. 6).

In my opinion that submission should be rejected. The question is not whether the legislation imposing the levy forms part of French fiscal law or of French copyright law, or whether as a piece of copyright law it would be appropriate or adequate for its purpose, but whether, granted that it forms part of French fiscal law, or rather independently of the fact that it does, it constitutes, within the meaning of the Treaty, an internal tax or a charge having equivalent effect to a customs duty.

As to that the Commission's case rests, as I understand it, on two principles which, the Commission submits, are established by decisions of this Court.

The first is not in doubt. It is the principle that a tax that appears at first sight to be an internal tax, because it is imposed on both imported and domestic products, must none the less be regarded as a charge having equivalent effect to a customs duty if it is levied for the sole purpose of financing activities intended specifically for the benefit of the taxed domectic products — see Case 77/72 *Capolongo* v *Maya* [1973] 1 ECR 611, Case 94/74 *IGAV* v *ENCC* [1975] 1 ECR 699, Case 78/76 *Steinike & Weinlig* v *Germany* [1977] 1 ECR 595, Case 77/76 *Cucchi* v *Avez,* ibid. p. 987, and Case 105/76 *Interzuccheri* v *Rezzano,* ibid. p. 1029. That principle, however, as the Court took pains to emphasize in the last two of those cases, cannot apply unless the products on which the tax is imposed and the domestic products benefiting from it are the same. That is because the rationale of the principle is that, in such a case, the burden of the tax on the domestic products is offset by the benefit that they derive from it, so that in the end the burden of the tax is felt by imports alone. As was pointed out on behalf of the French Government, that principle consequently cannot apply here, where the proceeds of the levy are in no way applied for the benefit of the French reprographic industry.

The other principle on which the Commission relies is more elusive. The Commission invokes it on the footing that French production of reprographic equipment is so small that it may be treated as non-existent. On that footing the Commission relies on authorities in this Court which, it submits, or so I understand, establish that a Member State may not impose a tax on goods of a kind not produced in its territory unless the tax applies "to whole classes of domestic or foreign products which are all in the same position no matter what their origin". The quotation is from paragraph 30 of the judgment of the Court in Case 78/76 *Steinike & Weinlig* v *Germany* [1977] 1 ECR at p. 613. In other words the Commission submits that, unless a tax on such goods fulfils

that test, it is to be classified as a charge having an effect equivalent to a customs duty.

To the objection of the French Government that such a principle would invalidate, for instance, a tax on hydrocarbon oils imposed by a Member State that was not an oil producer (such as France itself) or a tax on motor vehicles imposed by a Member State where motor vehicles were not manufactured (such as Denmark or Luxembourg), the Commission replied that one must distinguish between traditional taxes and new taxes. The Commission seemed to suggest that authority for such a distinction was to be found in the judgment of the Court in Case 105/76 *Interzuccheri* v *Rezzano* [1977] I ECR 1029. I can for my part find nothing in that judgment to justify that view, which, moreover, is in my opinion inconsistent with the provisions of the Treaty. The Treaty nowhere suggests that a tax may be classified as an internal tax and not as a charge having equivalent effect to a customs duty provided that it is old enough. On the contrary the Treaty distinguishes between the two kinds of impost by reference to their respective effects, and requires charges having equivalent effect to customs duties to be abolished as between Member States however old they are.

So I think it necessary to analyse with some care the authorities that were cited to us on this point.

The first is Case 27/67 *Fink-Frucht* v *HZA München* [1968] ECR 223. The tax there in question was the "turnover equalization tax" ("Umsatzausgleichssteuer") that formed part of the German turnover tax system before the introduction of VAT. *Fink Frucht* claimed in proceedings before a Finanzgericht that Article 95 of the Treaty forbade the charging of that tax on sweet peppers that it had imported from Italy. It seems that sweet peppers are not grown in Germany. The Finanzgericht referred to this Court a number of questions on the interpretation of Article 95, one of which also mentioned Article 30 of the Treaty concerning quantitative restrictions and measures having equivalent effect to them. One may leave aside the question relating to Article 30. The Court held, so far as here material, that Article 95 did not prohibit a Member State from imposing internal taxation on products imported from other Member States where there were no similar domestic products or other domestic products susceptible of being protected. In reaching that conclusion the Court said:

"Article 95 is intended to remove certain restrictions on the free movement of goods. But to conclude that it prohibits the imposition of any internal taxation on imported goods which do not compete with domestic products would be to give it a scope exceeding its purpose. Internal taxes, and turnover tax in particular, are essentially fiscal in purpose. There is therefore no reason why certain imported prodcuts should be given privileged treatment because they do not compete with any domestic products capable of being protected. Where such a tax is imposed at the import stage, even on products which do not compete with domestic products, its

purpose is to put every kind of product whatever its origin, in a comparable fiscal situation in the territory of the State imposing the tax".

The Court said nothing about charges having equivalent effect to customs duties, about which it had not been asked.

The second case is Case 31/67 *Stier* v. *HZA Hamburg-Ericus* [1968] ECR 235, which was decided on the same day as the *Fink-Frucht* case. The tax there in question was again the German turnover equalization tax. The product in question was Italian lemons. Only Article 95 was discussed. The Court reached the same conclusion, for the same reasons, as in the *Fink-Frucht* case. It pointed out in passing that the tax was not "a specific tax on imported products" and it observed that it would not be permissible for a Member State "to impose on products which, in the absence of comparable domestic production, would escape from the application of the prohibitions contained in Article 95, charges of such an amount that the free movement of goods within the common market would be impeded as far as those products were concerned".

Next came Case 24/68 *Commission* v *Italy* [1969] ECR 193. That was about a "statistical levy" charged by virtue of Italian legislation on imports and exports, and on them only. There could therefore be no question of its being an internal tax. The question was whether it was a charge having an effect equivalent to a customs duty or, as contended by the Italian Government, a charge for a service and as such permitted by the Treaty. In defining, in the introductory part of its judgment, the concept of a charge having equivalent effect to a customs duty the Court said:

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

(Paragraph 11 of the judgment)

On the same day the Court delivered judgment in Joined Cases 2 and 3/69 *Diamantarbeiders* v *Brachfeld* [1969] ECR 211. Those cases were about a levy imposed by Belgian legislation on imports of unworked diamonds. There again there was no suggestion that the levy could be an internal tax — though one may speculate as to what the approach of the Court would have been if the levy had been expressed, by the legislation, to apply both to imports and to diamonds mined in Belgium. At all events the Court began its judgment by repeating, *mutatis mutandis,* the introductory part of its judgment in Case 24/68, including paragraph 11 of it, which in the judgment in Joined Cases 3 and 4/69 is numbered 20 but is otherwise in identical terms.

Lastly, there is the *Steinike & Weinlig* case. That was about levies imposed by German legislation on those engaged in agriculture, the food industries and forestry as contributions to a fund for

the promotion of German agriuclture, the German food industries and German forestry. The levies were charged in different ways on different kinds of contributors. The plaintiffs imported citrus concentrates from Italy and from third countries for processing. They disputed before a Verwaltungsgericht their liability to pay the levy imposed on processors of fruit and vegetables. Among the questions referred by the Verwaltungsgericht to this Court, were questions that gave rise, implicitly, to the point whether that levy, as applied to the plaintiffs, was an internal tax or a charge having equivalent effect to a customs duty. As to that the Court said this (in paragraph 30 of the judgment):

"Financial charges within a general system of internal taxation applying systematically to domestic and imported products according to the same criteria are not to be considered as charges having equivalent effect. This could be the case even where there is no domestic product similar to the imported product providing that the charge applies to whole classes of domestic or foreign products which are all in the same position no matter what their origin".

Thus in none of those cases, except the *Diamantarbeiders* case, was the Court confronted with a tax imposed exclusively on a specific category of goods of which there was no production in the Member State imposing the tax, and in the *Diamantarbeiders* case the question whether the tax could be classified as an internal tax did not arise. None of the cases is therefore direct authority for saying that such a tax must inevitably be classified as a charge having an effect equivalent to a customs duty. On the other hand the dicta of the Court in those cases are to the effect that a tax on imports of goods of which there is no domestic production can be classified as an internal tax only if imposed as part of a wider system of taxation that applies to both imported and domestic goods. That, of course, is consistent with what has been said by the Court in numerous other cases, to the effect that a tax can be classified as an internal tax only if it applies systematically and in the same way to domestic products and imported products.

I have come to the conclusion that it is not necessary for Your Lordships to decide in this case whether a tax on goods of a kind of which there is no domestic production, and on such goods alone, must inevitably be classified as a charge having equivalent effect to a customs duty. The reason is that, in my opinion, the premise on which the Commission's argument rests, namely that French production of reprographic equipment can be ingored, is wrong.

There is no doubt a well-established principle that Article 85 of the Treaty does not apply to undertakings whose position in the market is so weak that an agreement between them can affect the free play of competition and trade between Member States only to an insignificant extent. But I do not think that that principle can be transposed into the present context in the way suggested

by the Commission. For one thing we are here concerned with an industrial product. Unlike the production of sweet peppers or of citrus fruit in Germany, or the mining of diamonds in Belgium, there is no reason in nature why the production of reprographic machines in France should not develop. Any increase in that production would be hit by the levy just as is the existing production. Secondly, small though French production of reprographic machines is in relation to the total value of reprographic equipment sold annually in France, it cannot in my opinion be treated as insignificant. Its value rose in 1979 to nearly FF 13½ million. That is not a figure that can be dismissed under the *de minimis* rule.

There is perhaps another point. The "arrêté" of 12 July 1976 lists, Your Lordships remember, eight different types of equipment to which the levy applies. We were told on behalf of the French Government that that list comprised every type of reprographic equipment on the market. That assertion was not seriously challenged by the Commission, though the Commission put in evidence showing that equipment for the reproduction of plans, as distinct from equipment for the reproduction of the written word, was not included. That may explain why, in the case of two kinds of equipment listed in the "arrêté" of 12 July 1976, there is a limitation by reference to site ("inférieur à 305 × 445 mm").

We may therefore probably take it that the levy extends to all types of reprographic equipment designed for the reproduction of the written word. In answer to a question put by one of Your Lordships at the hearing, it transpired that, whilst neither the Commission nor the French Government had investigated the facts, it was probable that some of those types were not manufactured at all in France, whilst others were manufactured there in greater proportion than the average. It may well be, therefore, that in fact reprographic equipment constitutes a category of goods, some of which are not manufactured in France and others of which are manufactured there to an extent that cannot, on any view, be regarded as negligible.

At all events it appears to me that, if one takes into account French production, the levy on reprographic equipment constitutes a charge applying to a whole class of domestic and foreign products which are all in the same position no matter what their origin, and is therefore fairly and squarely within the definition of an internal tax given by the Court in the *Steinike & Weinlig* case — for I hardly think that the use by the Court, in that definition, of the word "classes" in the plural was deliberately intended to exclude an impost applying to a single class of goods. Indeed it might not be easy in many cases to draw the line between what constituted a "class" of goods and what constituted "classes" of goods.

In the result, I am of the opinion that this action should be dismissed with costs.