question are likely to constitute an obstacle, directly or indirectly, actually or potentially, to imports between Member States.

3. Although a maximum price applicable without distinction to domestic and imported products does not in itself constitute a measure having an effect equivalent to quantitative restrictions, it may have such an effect, however, when it is fixed at a level such that the sale of imported products becomes, if not impossible, more difficult than that of domestic products. A maximum price, in any event in so far as it applies to imported products, constitutes therefore a measure having an effect equivalent to a quantitative restriction, especially when it is fixed at such a low level that, having regard to the general situation of imported products compared to that of domestic products, dealers wishing to import the product in question into the Member State concerned can do so only at a loss.

4. By reason of its very nature and its function in the system of the sources of Community law the regulation produces immediate effects and as such is capable of conferring on parties rights which the national courts must protect.

In Case 65/75

Reference to the Court under Article 177 of the EEC Treaty by the Pretore of Padua for a preliminary ruling in the criminal proceedings instituted in that court against

RICCARDO TASCA

on the interpretation of Article 30 of the EEC Treaty and Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organization of the market in sugar (OJ English Special Edition, 1967, p. 304), especially Article 35,

THE COURT

composed of: R. Lecourt, President, H. Kutscher, President of Chamber, A. M. Donner, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart and A. O'Keeffe, judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The judgment making the reference, the procedure and 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. Article 14 of the Decreto Legislativo (Decree-law) No 896 of 15 September 1947 (Gazzetta Ufficiale 1947, p. 6087) makes persons who sell goods at prices higher than those fixed on the basis of the said Decree-law liable to penalties.

On 28 June 1974 the *'Comitato Interministeriale dei Prezzi'* (Inter-departmental Committee on Prices, hereinafter referred to as the 'CIP') issued the 'provvedimento' (Order) No 28/1974 (Gazzetta Ufficiale No 171 of 2 July 1974, p. 4463). As from 1 July 1974 'having regard to the increases laid down by the Community provisions and to the situation on the market' the first paragraph of the order fixed maximum consumer prices for certain categories of domestic or foreign sugar for the whole of the national territory:

— at Lit. 355/kg for refined caster sugar in paper bags of 50 kg;

— at Lit. 375/kg for refined sugar in cartons or in packets of 0·5 kg, 1 kg or 2 kg.

Paragraph (2) confirmed the previous amount of Lit. 17·50 per kg as 'the maximum charge for packing the sugar in cartons or packets' ('il compenso massimo per il confezionamento dello zucchero in astucci o pacchi') of one of the weights referred to in the second indent above. Paragraph (3) fixed 'the maximum total charges for the wholesale or retail distribution of the sugar' (compensi massimi complessivi per la distribuzione dello zucchero all'ingrosso e al dettaglio) at Lit. 25·70 per kg for the sale of loose sugar and Lit. 26·70 per kg for the sale in cartons or packets and stated that these charges were included in the abovementioned prices.

Order No 39/1974 of the CIP of 13 August 1974 (Gazzetta Ufficiale No 214 of 16 August 1974, p. 5460) set out the components, including certain duties and taxes, making up the maximum prices laid down by Order No 28/1974. It gave the following figures:

— Lit. 323·30 per kg as the maximum ex-factory price;

— Lit 329·30 per kg as the maximum price free-at-wholesaler's warehouse anywhere in the national territory;

— Lit. 25·70 per kg as the maximum charge for wholesale or retail distribution.

The abovementioned orders have in the meantime been replaced by new orders.

2. Criminal proceedings were brought before the Pretore of Padua against Mr Tasca in which the latter was charged with having, *inter alia*, infringed Article 14 of the Decreto Legislativo No 896 in conjunction with Order No 39/74 in that, acting as general partner and director of the undertaking Tasca & Co. SAS, he sold to an Italian national 25 000 kg of caster sugar at the price of Lit. 387·83 per kg.

By order dated 11 July 1975 the national court asked the Court the following questions:

1. Does the system of prices established by the common organization of the sugar sector, dealt with in Regulation No 1009/67/EEC, preclude a Member State from fixing unilaterally a maximum selling price?
2. In any case do the provisions on the free movement of goods, to which reference is made in Article 30 of the EEC Treaty, and those more particularly relating to sugar in Article 35 of Regulation No 1009/67/EEC, especially the prohibition against the application in intra-Community trade of measures having an effect equivalent to quantitative restrictions, prohibit the fixing of maximum prices valid only for the territory of a single Member State?
3. Do the abovementioned Community provisions create for Community traders individual rights which the national courts must protect so as to render a national system of maximum prices inapplicable as regards them?

In the grounds of the order the national court sets out the following matters:

In its judgment of 23 January 1975 in Case 31/74, *Galli*, [1975] ECR 47, the Court ruled that 'a national system which, by freezing prices and subjecting their alteration to administrative authorization, has the effect of modifying price formation as provided for within the framework of the common organization of the markets referred to' is incompatible with Regulation No 120/67 of the Council of 13 June 1967 on the common organization of the market in cereals (OJ English Special Edition, 1967, p. 33) and Regulation No 136/66 of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats (OJ English Special Edition, 1966, p. 221). This consideration likewise applies to Regulation No 1009/67 the price system of which is basically identical with that of Regulation No 120/67. Regulation No 1009/67 also relies on the same machinery for the formation of market prices, that is to say, free negotiation, which is restricted only in order to prevent these prices from falling below the intervention price. The fixing of a maximum price by a Member State would damage this machinery.

Even assuming that this is not so, such a measure would not be less incompatible with the Community rules by reason of the fact that the Member States no longer have powers in the matter. The Pretore infers this from the aforesaid judgment of the Court which states: 'in sectors covered by a common organization of the market, and especially when this organization is based on a common price system, Member States can no longer take action, through national provisions taken unilaterally, affecting the machinery of price formation as established under the common organization'.

The rights which individuals derive from Regulation No 1009/67 are not excluded by the adoption of national rules in the same sector; Mr Tasca should therefore be acquitted.

3. The order making the reference was registered at the Court's Registry on 22 July 1975.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by Mr Tasca, the Italian and United Kingdom Governments, the Commission and the Council.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without instituting a preparatory inquiry. It nevertheless called upon the Italian Government and the Commission to reply in writing to certain questions.

II — Observations submitted in accordance with Article 20 of the protocol on the Statute of the Court of Justice of the EEC

1. General Considerations

The *United Kingdom Government* considers that the questions raised by the national court must be approached in the light of the fact that the orders in question of the CIP relate to the fight against rising prices, a fight which is especially urgent in relation to necessities, such as a large number of food.

Although all the Member States agree on the necessity of combating inflation, they have not as yet managed to achieve a sufficiently close coordination of their economies to enable the anti-inflation measures to be adopted to be more or less the same. The Council in a series of resolutions has declared that it is the task of the Member States to ensure that their efforts are concerted and mutually reinforcing. Whilst recognizing that measures adopted in one country of the Community can have profound effects in other countries, the Council had recognized 'the specific and changing nature of the inflation problem throughout the Community'.

If no possibilities existed for Member States to intervene in price formation Member States would be prevented from fulfilling their obligations under Article 104 of the Treaty, that is, 'to ensure the equilibrium of [their] overall balance of payments and to maintain confidence in [their] currency, while taking care to ensure a high level of employment and the stable level of prices'. There would be the consequent danger to the financial stability of the Member States which Article 6 (2) enjoins the institutions of the Community not to prejudice.

The *Commission* first of all describes the situation existing in the Member States as regards the fixing of maximum consumer prices for different agricultural products, pointing out that each Member State with the exception of the Federal Republic of Germany has engaged in such fixing in respect of one or more products.

The Commission proposed to the Council in 1968 the adoption of the regulation in the milk sector the object of which was to limit the power of Member States to fix maximum consumer prices in respect of milk. This proposal was not adopted because the national delegations unanimously maintained that in this matter the power to lay down rules belonged to the Member States alone.

2. The first question

Mr Tasca states that the considerations in the judgment in *Galli* apply equally in the present case notwithstanding the fact that the national measures then at issue related to the production and wholesale stages whereas in the present case the rules at issue apply to all the marketing stages. The main thing is that the price system introduced by Regulation No 1009/67 is identical in essence with that enshrined in Regulation No 120/67. In support of this statement Mr Tasca gives a detailed analysis of the points which are common to the two systems, stressing in particular that they aim at guaranteeing to traders a minimum profit without preventing a larger profit being obtained in a case — theoretical at the time when the said regulations were adopted but real in the present situation where there is a sugar shortage and an increase in prices on the world market — where the prices which are formed freely on the market are higher than the threshold price laid down by the Community.

The Italian rules in question are incompatible with the Community rule (a) because the Member States have lost all power to intervene in the particular

sector and (b) in any event because it would adversely affect the objectives and would disturb the functioning of the common organization of the markets in sugar.

(a) Having replaced national organizations, every common organization of the market must be regarded as self-sufficient.

As regards sugar in particular Article 16 of Regulation No 1009/67, as amended by Regulation No 607/72 of the Council of 23 March 1972 (OJ English Special Edition 1972, p. 236), provides the Community with the instruments necessary to avoid price rises, that is to say, an export levy and import subsidies.

The judgment in *Galli* has confirmed, it is true, that Member States have in principle retained the power 'to take the appropriate measures relating to price formation at the retail and consumption stages' as distinct from the production and wholesale stages. It is possible, however, to take the view that the Court did not intend to give a definite ruling in this respect and that the passage quoted is explained by reason of the fact that the national rule in question in the *Galli* case related only to the production and wholesale stages. In reality the following factors support the argument that there is no reason to distinguish between the different marketing stages:

- Article 39 (1) (e) of the Treaty requires the Community 'to ensure that supplies reach consumers at reasonable prices'.
- Article 3 (3) of Regulation No 2931/74 of the Council of 18 November 1974 (OJ L 311, 1974 p. 8) on the introduction of a subsidy on imports of white and raw sugar requires a tenderer to abide by a maximum price fixed by the Community at the consumption stage.
- A pricing system established within the framework of a common organization cannot be identified solely with prices fixed by the Community. The Court has repeatedly rejected the argument that Member States were free to regulate any matter which is not expressly subject to a Community rule.

(b) The Community rules aim at maintaining the income of producers whereas the orders of the CIP are calculated to reduce them. In thus pursuing unilaterally only one of the objectives laid down in Article 39 of the Treaty the Italian State has placed itself in conflict with the action taken by the Community which is based on a different concept of the priorities to be made among these objectives which are not wholly compatible. It is significant that the system of import subsidies established by Regulation No 2931/74 had not been operated so as to reduce the cost of all sugar imported to the level of the Community threshold price which thus continues to act as a kind of minimum price. The liberal philosophy of the Community rules with regard to sugar is the result of a number of factors and in particular of Article 3 (2) of Regulation No 1009/67 according to which 'derived intervention prices shall be fixed for other areas, account being taken of the regional variations which, given a normal harvest and free movement of sugar, might be expected to occur in the price of sugar under natural conditions of price formation.'

The fixing of maximum prices for the last marketing stage necessarily affects the prices at the previous stages; these prices can therefore no longer be freely formed, as the Community rules assume.

The *Italian Government* considers that this question must be answered in the negative.

It cannot be inferred from the judgment in *Galli*, and it is not correct, that the Member States have lost their power unilaterally to fix maximum consumer prices. The objective of the national rules

in question in the case of *Galli* was a freezing of prices at the production and wholesale marketing stages, whereas the present case is concerned with rules relating to prices to be applied at the retail and consumer stages, in respect of which the judgment in *Galli* confirmed the principle of maintaining the power of Member States 'to take the appropriate measures relating to price formation'.

The common organization of the market in sugar is in substance no different from that of the market in cereals which was the subject of the judgment in *Galli*. In particular the price system which it established also concerns only the production and wholesale stages; its main objective is likewise 'to ensure that the necessary guarantees in respect of employment and standards of living are maintained for Community growers' (2nd recital to Regulation No 1009/67).

National rules on prices applicable to the retail and consumer stages is therefore incompatible with Regulation No 1009/67 only if it indirectly affects the prices fixed by the latter, for example by laying down a maximum consumer price lower than the intervention price or, in a more general manner, by fixing a maximum price in such a way as to affect the Community prices. This is not so in the present case since the maximum price fixed by Order No 28/1974 of the CIP assumes a price ex-factory appreciably higher than the Community threshold price and therefore than the target and intervention prices.

The *United Kingdom Government* gives a detailed analysis of the judgments of the Court concerned with the compatibility or incompatibility with the Community system of national interventions in the priceformation of products subject to a common organization of the market. One lesson which can be drawn from all these judgments is that:

— In the first place the scope and purpose of the Community regulation in question must be looked at, having regard to the provisions of the Treaty and in particular Articles 38 to 40.
— It seems that, according to the Court, both the effects and the objectives of the national rules relevant to a particular case must be compatible with the Community objectives.

A national measure comprising the fixing of maximum selling prices could well be in accordance with the objectives of Regulation No 1009/67, namely to achieve a stable market and to guarantee to growers security of employment and a fair standard of living whilst avoiding over-production. This regulation merely prevents such prices from being fixed at a level the object or effect of which would be to prevent these objectives from being attained.

According to the *Commission* the principle confirmed by the judgment in *Galli* that Member States can no longer take action unilaterally affecting the machinery of price formation as established under the common organization of the market in cereals and the market in fats likewise applies to sugar. This arises from the nature and function of the price system of Regulation No 1009/67 which aims at the complete liberalization of intra-Community trade and at the consequential regulation of trade with countries outside the Community.

On the other hand the judgment in *Galli* recognized that national measures relating to prices at the retail and consumption stages are compatible with the Community rules 'on condition that they do not jeopardize the aims or functioning of the common organization of the market in question'. In order to consider whether this is so in the present case it is necessary to deduct from the maximum consumer prices fixed by the CIP all the factors contributing to the cost of the goods from the time when they left the factory to when they are

sold to the consumer (marketing costs, duties and taxes, transport costs etc.); the price ex-factory is then obtained. The Commission does this; it arrives at the conclusions that at the time when the facts in question took place the price ex-factory so calculated was higher than the threshold price laid down by the Community and therefore *a fortiori* to the target and intervention prices. Accordingly the maximum prices in question do not jeopardize either the aims or functioning of the common organization.

Apart from these considerations it may nevertheless be asked whether the judgment in *Galli* does not lead to the denial of any power vested in the Member States with regard to the fixing of agricultural prices. Such a conclusion would, however, be hasty since the Community has never claimed an exclusive power in this field, a power the exercise of which would have serious implications in the political and economic spheres.

According to the *Council* the reply should be sought partly 'in the philosophy of the system of prices of the organizations of the markets' and more particularly the common organization of the market in sugar and partly 'in the division of powers between the Community and the Member States with regard to 'general economic policy'.

(a) The first aim of Regulation No 1009/67 is not the formation of prices of current transactions about the target price but rather the protection of employment and the standard of living of Community growers and free movement within the Community. As for the aim 'to ensure that supplies reach consumers at reasonable prices' (Article 39 (1) (e) of the Treaty) it was taken account of in the proper fixing of the target and threshold prices.

Of the prices provided for in the said regulation only the threshold and intervention prices are capable of involving legal consequences: with regard to the threshold price, payment of a variable differential levy on goods with an import price less than it; with regard to the intervention price, guarantee of obtaining it from the intervention agency in the event of the delivery of the goods to the agency. On the other hand since the basic function of the target price is to regulate production it plays a lesser role in the later stages. Regulation No 1009/67 transferred only limited powers to the Community relating solely to frontier transactions and to intervention. The Community was not able to establish a too restrictive organization for agriculture and trade in agricultural products since it had not done so for the industrial sector, especially in view of the fictitious nature of the distinction between agricultural and industrial products. Moreover, since the Community is not principally responsible in this sphere of 'general economic policy' in particular with regard to retail prices and consumer selling prices, it would have risked extending the effect of its regulation of prices, if this had been too rigid, to that of the system of retail prices. Finally, the differences between the economic systems of the Member States and the surplus or deficit nature of their respective productions stand in the way of any set of Community rules which is harmonized down to the finest details.

These considerations lead to the conclusion that national measures on prices are in any event unlawful when they affect the intervention or threshold prices whereas if they are capable of affecting only the target price they are not incompatible with the Community rules unless they obstruct the functioning of the common organization of the market in sugar. The statement in the judgment in *Galli* that Member States are free 'to take the appropriate measures relating to price formation at the retail and consumption stages, on condition that they do not jeopardize the aims or

functioning of the common organization of the market in question' must also apply to the previous stages.

(b) Article 145 of the Treaty gives the Council only the task of coordinating 'the general economic policies of the Member States'. This shows that with the exception of those spheres in which the Treaty expressly gives the Council a power to take 'decisions' (2nd indent of Article 145), numerous powers, in particular those relating to prices in general, to currency, to conjunctural policy and to expansion remain the responsibility of the Member States. For this reason again it is not possible to say that the common organization of the market rules out any national intervention in the abovementioned spheres.

The statement in the judgment in *Galli* that 'Article 103, which refers to Member States' conjunctural policies, does not relate to those areas already subject to common rules such as the organization of agricultural markets' involves a serious restriction of the scope of Article 103. Moreover it implies excessive reliance on Articles 39 and 43 of the Treaty since the Community can no longer in the agricultural sphere, even where there are conjunctural difficulties intervene except on the basis of these articles. The function of Article 39 would therefore be exceeded, since that provision does not place conjunctural policy among the aims of the common agricultural policy and recognizes on the other hand that 'in the Member States agriculture constitutes a sector closely linked with the economy as a whole'.

So long as there has been no progress towards economic and monetary union there will be a problem of distinguishing between the general economic policy which will remain within the power of the Member States and the common agricultural policy. 'This problem must be resolved by reconciling the necessary respect for the Community mechanisms of the organization of the market and the necessity, no less imperative, of not depriving Member States of the instruments which they need in order to carry out their responsibilities in the sphere of the general economic equilibrium. This is particularly important in a period of crisis.

If the solution advocated by the defendant in the main proceedings were accepted, the Community would be obliged to supplement its price rules, for example with the aim of fighting inflation, which would create considerable difficulties.

3. Second question

Mr Tasca observes in the first place that the scope of this question goes beyond the agricultural sector.

Article 2 (3) (d) and (e) of Directive No 70/50/EEC of 22 December 1969 of the Commission (OJ, English Special Edition, 1970 (I) p.17) 'on the abolition of measures which have an effect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty', covers those measures which 'preclude any increase in the price of the imported product corresponding to the supplementary costs and charges inherent in importation' or 'fix the prices of products solely on the basis of the cost price or the quality of domestic products at such a level as to create a hindrance to importation'. In practice these provisions prevent any fixing of prices by the national authorities, for such a measure by its rigidity is always capable, and the Court has judged this sufficient, at least of preventing the importation of products which, because they have to bear higher production costs than the national products, cannot be sold in the State in question except at prices higher than those of the national products. This applies *a fortiori* in so far as the other Member States leave the formation of prices to the free play of supply and demand.

The *Italian Government* states that the national system of the kind in question is not in itself incompatible with the Community provisions on the free movement of goods and in particular with the provisions prohibiting measures having an effect equivalent to quantitative restrictions. Such incompatiblity could result only from circumstances peculiar to a particular case: it would occur, for example, if the maximum price were fixed at a lower level than the threshold price. This is not so in the present case.

The *United Kingdom Government* infers from the case-law of the Court that national rules affecting prices are in no way caught *ipso facto* by the prohibition on measures having an effect equivalent to quantitative restrictions whether or not they relate to agricultural products. It is necessary in each case to consider the scope, the effect and the objective of the rules in question.

The provisions contained in Article 30 of the Treaty are subject to a certain number of exceptions apart from those mentioned in Article 36. Thus interference in the process of price formation may frequently be an element in the conjunctural policy referred to in Article 103. While Article 103 may not apply to create an exception to the specific provisions contained in the rules of the common organizations of the market, it plainly does apply, in the general field governed by the principle contained in Article 30.

Certain agreements concluded between the Community and third countries involved a prohibition similar to that in Article 30 of the Treaty. The Community has never accepted, however, the argument that pricing systems laid down under a common organization of the market have effects equivalent to quantitative restrictions on imports.

The *Commission* gives a similar opinion without however expressing itself specifically on whether the rules in question are compatible with the Community rules.

A national measure such as that in the present case would be equivalent to a quantitative restriction only if, while appearing formally to apply without distinction to national products and imported products, it were drawn up in such a way as to constitute a hindrance to imports which could be effected without it, whereas the sale of national products do not suffer the same degree of disadvantage. This is the case when, for example, the price fixed is lower than that for which the imported product could be sold by reason of the fact that the national authority has not taken into account, in respect of imported products, possibly different marketing margins or costs inherent in imports. It is possible, moreover, that a national measure, which at the beginning was not capable of affecting adversely the free movement of goods, may become so subsequently. This could occur for example when the said measure makes it impossible to increase the price of the imported product to cover the increase in the production costs arising, for example, in the producer Member State. The provisions of Directive No 70/50/EEC referred to by Mr Tasca (see above) would then apply. It would then be for the national court to compare the prices laid down by the orders of the CIP at the time when the facts with which Mr Tasca is charged occurred with the prices then obtaining on the markets of the other Member States.

The *Council* does not express a view on the second question.

4. Third question

Mr Tasca states that the affirmative answer to be given to this question stems from the case-law of the Court.

The *Italian Government* admits that in so far as a maximum consumer price laid down by national authorities is incompatible with Community rules it

would be open both to the national court and to the Commission to find so.

By means of the rule laid down in Article 35 of Regulation No 1009/67, Article 30 of the Treaty creates in favour of individuals subjective rights which the national courts are required to protect.

The *United Kingdom Government* takes the view that although the specific provisions of the regulations setting up the common organization of the markets are directly applicable, the argument that the same goes for Article 30 of the Treaty could give rise to difficulties.

The *Commission* considers that 'in cases where the power of adopting measures required to deal with the increase in the prices of products subject (to the) common organizations (of the markets) is reserved to the Community institutions or in so far as a measure taken by national authorities constitutes a measure having an effect equivalent to quantitative restrictions, individuals' in favour of whom the provisions in question, and in particular Article 30 of the Treaty, give rise to direct effects, 'are not required to observe measures unilaterally adopted in the matter by States.'

The *Council* does not express a view on the third question.

When the oral procedure was closed, the Court called upon the Italian Government to reply in writing before the hearing to four questions the fourth of which was addressed at the same time to the Commission.

The answers given may be summarized as follows:

1. The first and second questions put by the Court

These questions were worded as follows:

What is meant by 'sale to the consumer' in Order No 28/1974 of the CIP? In particular: Do prices laid down by this order apply only to sales effected by the retailer to the ultimate consumer or also to other transactions (and if so, to which)?

Can the sale of a large quantity of sugar (for example 25 000 kg of caster sugar) also constitute a sale to the consumer within the meaning of the order?

The *Italian Government* states that the prices fixed by Order No 28/1974 apply only to sales in which the immediate buyer is the ultimate consumer. The expression 'sale to the consumer' is the same as 'retail sale'. Sales made to other traders, wholesalers, retailers, industrial users or other bulk users must be regarded as wholesale sales.

The quantity of products involveld in a particular transaction is irrelevant for the purposes of the distinction between 'sales to the consumer' and 'wholesale sales'. Even a transaction, such as the one in the present case, involving 25 000 kg of caster sugar, may constitute a 'sale to the consumer'. However, the Italian Government does not know whether the sale in question was or was not made to an ultimate consumer.

2. The third question put by the Court

This question called upon the Italian Government:

to give more detailed reasons ... for its statements that Orders Nos 28/1974 and 39/1974 of the CIP are not concerned with the production and wholesale stages whereas Order No 39/1974 states that components of the maximum consumer prices include the maximum ex-factory price, the maximum price free-at-warehouse and the maximum charge for wholesale and retail distribution, and fixes the amount of these components.

The *Italian Government* replies that Order No 39/1974 according to its first

recital, was adopted 'having regard to the need to show how the price of sugar referred to in Order ... No 28/1974 was made up'. It does not therefore involve either fixing maximum consumer prices or *a fortiori* fixing ex-factory prices or free-at-wholesaler's warehouse prices but is limited to stating these factors, and the maximum charges intended to cover distribution costs, as components of the said maximum prices.

In using the expressions 'ex-factory maximum prices', 'maximum prices free-at-wholesaler's warehouse', and 'maximum charges for wholesale and retail distribution' Order No 39/1974 was not expressed precisely. It was in fact concerned with cost factors which had to be taken into account in fixing the maximum consumer prices but which were not made mandatory.

The Italian Government annexes to its reply a table containing an analysis of the consumer prices fixed by Order No 28/1974. This table confirms what has been said and shows that the CIP took into account an ex-factory price well above the Community threshold price then in force.

3. Fourth question put by the Court

This question requested the Italian Government and the Commission: to state in more detail ... in what circumstances in their opinion national price rules of the kind presently in question may:

(1) alter the formation of prices as provided for under the common organization of the market in sugar:
(2) in a more general way jeopardize the aims and functioning of this common organization.

Whereas the *Italian Government* has not given an opinion on this matter the *Commission* has submitted the following observations, stating that it is not dealing with the question of the compatibility of the measures in question with Article 30 of the Treaty.

The common organization of the market in sugar is orientated around three basic prices, the target price, the threshold price and the intervention price. The target price is the 'policy', that is the desired price, but is not imposed. In order to help this price to be obtained on the common market the Community has had recourse to a series of indirect methods: publication of the fixed target price, import levies intervention on the internal market and export refunds.

Before the judgment in *Galli* the Commission's position with regard to measures taken unilaterally by certain Member States in the sphere of agricultural prices was as follows:

— As regards production and wholesale prices Member States could fix maximum sale prices only in so far as this was not likely adversely to affect the functioning of the machinery of the common organization of the market or at least to impede it or make it more difficult. Thus to fix a maximum selling price at a lower level than the intervention price would have amounted to an infringement for it would have directly prevented the price level guaranteed by Community law from being attained. It would have been the same if the prices had been fixed at a level lower than the target price since in such a case the national measure would have prevented the target price from being attained. Finally if the maximum selling prices had been fixed at a level higher than the target price it would have been necessary to examine each case to see whether or not the national measure prevented this price from being attained.
— As regards consumer prices, Member States retained the power to fix them in so far as this was not incompatible with Community provisions taken within the framework of the relevant common organization.
Nevertheless, the common organizations of the market are capable

of extending their scope also to the consumer stage as appears from Article 39 (1) (e) of the Treaty according to which an objective of the common agricultural policy is *inter alia* 'to ensure that supplies reach consumers at reasonable prices'. To judge whether a maximum consumer price laid down by a Member State is compatible with the Community prices it is necessary to inquire what, having regard to the average profit margins of the middle men, is the price level free-factory assumed by the said maximum price.

The judgment in *Galli* leads the Commission, as regards more particularly the present case, to the following considerations:

— The case submitted to the Court is of a special nature in that of all agricultural products sugar is the one which shows most clearly the relationship between the selling prices at the production and wholesale stages on the one hand and on the other selling prices at retail and consumer stages. The orders in question of the CIP show that in Italy and as regards sugar it is possible 'to control prices without distinction by regulating one or the other stage'.

— Although in its written observations the Commission stated that because the consumer price laid down by Order No 28/1974 assumed an ex-factory price above the Community threshold price it did not jeopardize the objectives and functioning of the common organization of the markets in sugar, it is aware that this opinion is open to criticism. First the distinction between production and the wholesale trade on the one hand and the retail trade on the other hand is not clear-out. Then the method chosen by the Commission to establish that the prices in question are compatible with the Community rules, a method which consists in going back to the ex-factory price, could lead to the objection that it is incompatible with the judgment in *Galli*.

During the oral procedure, which took place on 16 December 1975, Mr Tasca, represented by Donà Viscardini of the Padua Bar, the United Kingdom Government, represented by Gordon Slynn of the Treasury Solicitor's Department, the Italian Government, represented by Ivo Maria Braguglia, Vice-avvocato dello Stato, the Commission, represented by its Legal Adviser, Cesare Maestripieri, and the Council, represented by its Legal Adviser, M.C. Giorgi, amplified the arguments set out in the written procedure.

The new factors put forward on this occasion may be summarized as follows:

Mr Tasca considers that the questions put by the national court do not relate only to the consumer stage. No such limitation arises from the wording of these questions and the supply in question made to an industrial user, was wholesale. The statements of the Italian Government are not correct in so far as they allege that Orders Nos 28/1974 and 39/1974 apply only to sales to ultimate consumers and that the second of these orders, in using expressions such as 'maximum ex-factory price' is limited to taking account of certain cost factors without making them mandatory. This argument conflicts with the interpretation of the orders given by the Italian courts and in particular with the view guiding the Pretore of Padua in the present case.

The *Italian Government* states that although the objective of Regulation No 1009/67 is to guarantee the employment and the standard of living of sugar-growers, it achieves this aim by means of fixing the intervention price, the only binding Community price, and ensuring that growers are never forced to grow at a loss. In other words the

regulation guarantees growers a minimum return but not the maximum profit which growers could obtain if they were free to determine the consumer prices. Replying in more detail to the fourth question raised by the Court after the written procedure was closed, the Italian Government states that the fixing of maximum consumer prices does not jeopardize the aims and functioning of the common organization unless it is done in such a way as to make it impossible, or more difficult, to achieve the said minimum return.

The Advocate-General delivered his opinion at the hearing of 21 January 1976.

Law

1 By order dated 11 July 1975 received at the Court Registry on 22 July the Pretore of Padua referred, under Article 177 of the EEC Treaty, three questions on the interpretation of Article 30 of the EEC Treaty and the provisions of Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organization of the market in sugar (OJ, English Special Edition 1967, p. 304), especially Article 35 thereof. These questions have arisen in the context of criminal proceedings against a trader charged with having contravened Order No 39/1974 of the *Comitato Interministeriale dei Prezzi* (Inter-departmental Committee on Prices), hereafter referred to as the 'CIP', of 13 August 1974 (Gazzetta Ufficiale No 214 of 16 August 1974) by having charged a price higher than the maximum price under the said order on the sale of 25 000 kg of caster sugar. The Court's reply must enable the national court to decide whether the provisions which the accused in the main proceedings is alleged to have infringed are compatible with the Community rules.

2 Order No 39/1974 stated the factors making up the maximum consumer prices for both domestic and foreign sugar laid down by Order No 28/1974 of the CIP of 28 June 1974 (Gazzetta Ufficiale No 171 of 2 July 1974) which factors comprised *inter alia,* the 'maximum ex-factory price', the 'maximum price free-at-wholesaler's warehouse' and the 'maximum charge for wholesale and retail distribution'. In the procedure before the Court disagreement was revealed on whether as a whole these orders fixed obligatory maximum prices only for sales in which the immediate buyer is the ultimate consumer or whether they did so also for sales made at previous marketing stages and in particular in respect of sales made by sugar growers. It is not for the Court to settle this dispute, and having regard to the fact that the questions raised by the national court make no distinction between the different marketing

stages, it is proper to construe these questions as referring in a general manner to the fixing of maximum prices for the sale of sugar whether it be a question of sales made by growers, importers, wholesalers or retailers.

On the first question

3 The first question asks the Court to say whether the system of prices established by the common organization of the sugar sector, dealt with in Regulation No 1009/67, preclude a Member State from fixing unilaterally a maximum selling price.

4 Regulation No 1009/67, adopted within the framework of the common agricultural policy, is intended to establish a common organization of the market within the meaning of Article 40 of the EEC Treaty. This common organization of the market is intended, as is emphasized repeatedly in the preamble to the regulation, to create for the Community a single market in sugar subject to common administration and based on a system of common prices.

5 As the Court has already indicated (Case 31/74 *Galli* [1975] ECR 47) in respect of national rules freezing the prices of other products at the production and wholesale stages 'in sectors covered by a common organization of the market — even more so when this organziation is based on a common price system — Member States can no longer interfere through national provisions taken unilaterally in the machinery of price formation as established under the common organization' so that 'a national system which by freezing prices ... has the effect of modifying the formation of prices as provided for in the context of the common organization of the market, is incompatible' with the Community rules. The same judgment stated that the provisions of a Community agricultural regulation involving a system of prices applying to the production and wholesale stages 'leave Member States free — without prejudice to other provisions of the Treaty — to take the appropriate measures relating to price formation at the retail and consumption stages, on condition that they do not jeopardize the aims or functioning of the common organization of the market in question.' These considerations which were put forward at the time in respect of Regulations Nos 120/67 and 136/66 on the common organization of the market in cereals and of that of oils and fats respectively are equally valid for the purposes of the interpretation of Regulation No 1009/67 on the common organization of the market in sugar in view of the similarity of the respective price systems established by Regulations Nos 120/67 and 1009/67.

6 From the point of view of compatibility with the Community rules on the fixing of prices by national authorities a strict distinction between maximum consumer prices and maximum prices applicable at previous marketing stages is difficult due to the fact that on the one hand price rules at the stage of the sale to the ultimate consumer may well have repercussions on price formation at the previous stages and that on the other hand the prices prescribed by the Community system in the sugar sector are not prices applicable to particular sales to dealers, industrial users or consumers. It must be admitted that, in fact, in the matter of agricultural prices, national rules for the same marketing stages as the system of Community prices will normally run a greater risk of conflicting with the said system than rules applying exclusively to other stages. It must therefore be concluded that the unilateral fixing by a Member State of maximum prices for the sale of sugar, whatever the marketing stage in question, is incompatible with Regulation No 1009/67 once it jeopardizes the objectives and the functioning of this organization and in particular its system of prices.

7 In order to indicate to the national court how such incompatibility could arise it is well to consider this system in more detail.

8 According to Article 2 (1) of Regulation No 1009/67 'a target price for white sugar shall be fixed each year for the Community area having the largest surplus' — that is, certain departments in northern France. According to Article 3 (1) and (2) 'an intervention price for white sugar shall be fixed each year' for the said area whereas 'derived intervention prices shall be fixed for other areas, account being taken of the regional variations ...' According to Article 9 (1) of Regulation No 1009/67 'intervention agencies designated by sugar-producing Member States shall be required ... to buy in ... sugar ... offered to them ... at the intervention price valid for the area in which the sugar is located at the time of purchase' while Article 10 provides that as a rule they 'may only sell sugar on the domestic market at a price which is higher than the intervention price'. According to the combined provisions of Article 4 (1) and (2) and Article 5 (1) of the regulation 'Each year, for each beet sugar producing area ... a minimum price for beet shall be fixed ... when the minimum price for beet is being established, the intervention price for white sugar in the area in question ... shall be taken into account ... sugar manufacturers buying beet for processing into sugar shall be required to pay at least the minimum price for sugar beet'.

9 During the period in question the derived intervention price for Italy was fixed at a higher level than that of the target price so that it suffices to

consider the question raised by the national court with regard to this situation.

10 The Community rules aim at ensuring as far as possible that sugar manufacturers may obtain, in their sales in the area for which a derived intervention price has been fixed, an ex-factory price at least equal to this price. Otherwise manufacturers could find it impossible to pay beet growers the minimum price which the Community rules guarantee to them. Thus a Member State in respect of which the intervention price has been fixed at a level higher than the target price jeopardizes the objectives and the functioning of the sugar markets if it regulates the prices in such a way as directly or indirectly to make it difficult for the sugar manufacturers to obtain an ex-factory price at least equal to the said intervention price. Such an indirect obstruction exists when the Member State in question, without regulating the prices at the production stage, fixes maximum selling prices for the wholesale and retail stages at such a low level that the grower finds it practically impossible to sell at the intervention price since, if he were to do so, it would force the wholesalers or retailers, bound by the said maximum prices, to sell at a loss.

11 In every case it is for the national court to decide, having regard to the considerations which have just been set out, whether the maximum prices which it is called upon to consider produce such effects as to make them incompatible with the Community provisions on sugar.

Second question

12 The second question asks whether Article 30 of the EEC Treaty and Article 35 of Regulation No 1009/67, especially the prohibition against the application in intra-Community trade of measures having an effect equivalent to quantitative restrictions, prohibit the fixing of maximum prices valid only for the territory of a single Member State.

13 Article 30 of the Treaty prohibits in trade between Member States all measures having an effect equivalent to quantitative restrictions and this prohibition is repeated in Article 35 of Regulation No 1009/67 as regards the market in sugar. For the purposes of this prohibition it is sufficient that the

measures in question are likely to constitute an obstacle, directly or indirectly, actually or potentially, to imports between Member States. Although a maximum price applicable without distinction to domestic and imported products does not in itself constitute a measure having an effect equivalent to a quantitative restriction, it may have such an effect, however, when it is fixed at a level such that the sale of imported products becomes, if not impossible, more difficult than that of domestic products. A maximum price, in any event in so far as it applies to imported products, constitutes therefore a measure having an effect equivalent to a quantitative restriction, especially when it is fixed at such a low level that, having regard to the general situation of imported products compared to that of domestic products, dealers wishing to import the product in question into the Member State concerned can do so only at a loss.

14 It is for the national court to decide whether this is so in the present case.

Third question

15 The third question asks the Court to say whether the provisions of Regulation No 1009/67 create for Community traders individual rights which the national courts must protect so as to render a national system of maximum prices inapplicable as regards them.

16 According to the second paragraph of Article 189 of the Treaty a regulation 'shall have general application' and 'shall be directly applicable in all Member States'. Accordingly, by reason of its very nature and its function in the system of the sources of Community law it produces immediate effects and as such is capable of conferring on parties rights which the national courts must protect. The question should therefore be answered in the affirmative.

Costs

17 The costs incurred by the Commission of the European Communities, the Council of the European Communities and the United Kingdom and Italian Governments, which have submitted observations to the Court, are not recoverable, and as these proceedings are a step in the criminal proceedings pending before the Pretore of Padua, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Pretore of Padua by order of 11 July 1975, hereby rules:

1. **The unilateral fixing by a Member State of maximum prices for the sale of sugar, whatever the marketing stage in question, is incompatible with Regulation No 1009/67 once it jeopardizes the objectives and the functioning of this organization and in particular its system of prices.**

2. **A maximum price, in any event in so far as it applies to imported products, constitutes a measure having an effect equivalent to a quantitative restriction, especially when it is fixed at such a low level that, having regard to the general situation of imported products compared to that of domestic products, dealers wishing to import the product in question into the Member State concerned can do so only at a loss.**

3. **The provisions of Regulation No 1009/67 cited by the national court produce immediate effects and as such are capable of conferring on parties rights which the national courts must protect.**

Lecourt Kutscher O'Keeffe

Donner Mertens de Willmars Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 26 February 1976.

A. Van Houtte
Registrar

R. Lecourt
President