OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 20 SEPTEMBER 1973 [1]

Mr President,
Members of the Court,

Roma locuta est.

The questions of interpretation put in these proceedings by the German court have, expressely or by implication, already been resolved in the case law of this Court, in particular in the judgment of 14 December 1972 giving a preliminary ruling in Case 29/72 (*Marimex,* Rec. 1972).

I shall not confine myself, with a conciseness worthy of Tacitus, to saying *Roma locuta causa finita est,* but, in view of the abstract character of questions of interpretation under Article 177 of the Treaty and of the special authority carried by preliminary rulings given on questions of interpretation, only a few remarks are necessary. During the course of these proceedings, no arguments have been advanced worth considering as a criticism of the principles which have been established.

The first question asks whether the concept of charges having an effect equivalent to customs duties covers administrative charges levied on import of vegetable substances from one Member State to another in connexion with a phyto-sanitary examination. In the *Marimex* judgment which has been cited, this Court laid down that the prohibition on imposing customs duties or charges having equivalent effect in trade between Member States covers any charge which, imposed at the time or by reason of importation on imported goods but not on national goods of the same kind, affects the price, and therefore has the same restrictive effect on the movement of goods as a customs duty. The prohibition does not allow for any distinctions to be drawn on the basis of the objective sought to be achieved by means of the levy of the pecuniary charges whose abolition has been decreed; accordingly, the prohibition holds good for any charge levied on imported goods for purposes of hygiene control. There is no reason why this rule should not also be applied to phyto-sanitary inspections. In the preliminary ruling referred to, the Court declared that a different finding could be arrived at only if the pecuniary charges involved formed part of a general system of internal taxation applied to national and imported goods on precisely the same terms.

Specifically, it follows from this last part of the ruling that, in order to legitimize an import duty imposed for purposes of hygiene control, it is not enough to show that the goods in question are subject to charges for the same purposes of hygiene control when produced in the territory of the State concerned; it is essential that both the charges levied on the domestic product and those applied on importation should be part of the same system and be fixed and levied on the basis of identical considerations, thus clearly establishing that their effect on imported and domestic products is the same.

There is no need to add that, as was also confirmed in the same judgment, in the *Marimex* case, Article 36 of the Treaty can in no way justify payments being demanded on imported goods. There is no question here of restrictions or controls but only of imposing a charge to be paid on imports.

To answer the first question of the German Court, there is no need to do more than recall these principles and criteria.

1 — Translated from the Italian.

Secondly, the national court asks us whether the prohibition under Article 13 (2) of the Treaty holds good even if the duty levied on importation amounts to no more than the cost of the examination.

From precedents consistently established by this Court, expecially the judgment in Case 24/68, an act brought on by the Commission against the Italian Republic, and from the preliminary ruling given in the judgment in Joined Cases 2 and 3/69 *(Sociaal Fonds voor de Diamantarbeiders)*, it follows that a successful plea of services rendered can be used only in the case of a service rendered to the importer individually, in the sense that it produces a benefit peculiar to him, but this does not apply when the charge arises from expenses incurred in carrying out an inspection on behalf of authority which, while of value to the general public, does not constitute a benefit for the individual importer which is capable of assessment in economic terms. As this Court laid down in the judgment cited and in Case 34/68 (Rec. 1969), work carried out by a government department producing benefits of a wholly general character for certain categories of trader but whose value cannot be readily assessed, cannot be regarded as a service justifying imposition of a charge.

In view of these and the earlier considerations mentioned, the fact that the duty might not amount to more than the cost of the sanitary examination is irrelevant since the latter does not constitute an individual service and does not produce any direct benefit, assessable in economic terms, for the importer required to pay the charge.

I am not concealing the possibility that, in certain circumstances, given the present state of internal legislation, these principles could place imported products at an advantage compared with domestic products. This would apply particularly in cases where no provision was made for compulsory sanitary or phyto-sanitary inspection in the State of origin, but supervision along these lines and the charges associated with them were applied to the same goods when produced in the importing Member State.

However, even if this discrepancy were found to exist as a result of differences between national legislations, it would not be enough to justify a less strict application of the ban on charges having an effect equivalent to customs duties. Actually, each Member State is in a position to rectify such situations by including charges on imports and internal charges within a single system. It is not the court's business to take such a situation into account. Fresh legislative steps could also be taken within the province of the Community: in fact, ways and means exist at Community level of removing distortions of the kind indicated above by adoption of appropriate directives with the object of harmonizing national rules on the subject of phyto-sanitary safeguards.

I am therefore of the opinion that:

1. On the first point, in conformity with the operative part of the *Marimex* decision:

   'Pecuniary charges imposed for sanitary control purposes when they cross the frontier and determined on the basis of considerations peculiar to themselves, and unrelated to those determining percuniary charges attaching to similar domestic products, are deemed charges having an effect equivalent to customs duties.'

2. Even though not in excess of the cost of the administrative process in connexion with which it is levied, a charge on import comes within the prohibition in Article 13 (2) of the Treaty so long as the said intervention by the national authority does not produce any specific benefit, capable of being evaluated in economic terms, for the party charged.