its obligations under the provisions of Article 189 of the EEC Treaty in conjunction with the said regulations;

2. Declares that, by imposing an 0.50% charge for administrative services on goods, other than those to which the abovementioned regulations apply, imported from other Member States, the Italian Republic has failed to fulfil its obligations under the provisions of Article 13 of the EEC Treaty in conjunction with those of Directive No 68/31 EEC of 22 December 1967;

3. Orders the defendant to pay the costs.

Lecourt Donner Trabucchi

Monaco Mertens de Wilmars

Delivered in open court in Luxembourg on 18 November 1970.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 28 OCTOBER 1970[1]

Mr President,
Members of the Court,

In Italy a duty is levied on imported goods at the rate of 0.50% of their value by Law No 330 of 15 June 1950 (Official Journal of the Italian Republic No 137 of 17 June 1950). The relevant value of the goods in this respect is determined according to the rules to be observed in the application of *ad valorem* customs duty. The Commission regards these duties, in so far as they are imposed on imports from other Member States, as charges having an effect equivalent to customs duties which are no longer permitted under Community law. Therefore it initiated two procedures against the Italian Republic to obtain declarations that it had failed to fulfil its obligations under the Treaty.

This it did in a letter of 28 December 1967 as regards goods which come within regulations on the common organization of agricultural markets or result from the processing of agricultural products, because the relevant Community regulations contain prohibitions to this effect in respect of these goods. Following this, Italy's Permanent Representative stated in a letter of 23 April 1968 that it was not intended to submit observations on the Commission's considerations but that on the contrary the Italian Government was going to put before the national Parliament measures designed to bring to an end the infringements of which complaint had been made. Because the Commission did not consider this argument to be sufficient, it repeated its request for the legal situation to be altered by 1 July 1968 at the latest, that is, by the

1 — Translated from the German.

time the customs union had been achieved. However, this did not happen and on 20 January 1969 the Commission delivered a reasoned opinion in accordance with Article 169 of the Treaty, in which the Italian Government was once more given a period of one month to bring the infringement of the Treaty to an end.

As regards the duty which is imposed on goods which do not come within the regulations made under Articles 43 and 235 of the EEC Treaty, the Commission sent a directive in accordance with Article 13 (2) of the EEC Treaty to the Italian Government in a letter of 28 December 1967 requiring it to reduce the duty imposed on imports from other Member States progressively and to abolish it by 1 July 1968 at the latest. This directive was not challenged, nor was it complied with. Thus the result was that the Commission initiated the procedure under Article 169 of the EEC Treaty in a letter of 22 January 1969. Once again, the Italian Government did not react by objecting that the point of view taken by the Commission was incorrect, but merely stated in a telex message of 20 February 1969 from its Permanent Representative that a bill to abolish the duty in question had been drafted and it was anticipated that as regards the duty which was imposed on goods imported from other Member States the bill would enter into force retroactively from 1 July 1968 and in respect of goods from third countries with effect from 1 January 1971. However, as it was not stated when this change in the law would be carried out, the Commission was not satisfied with this communication either. On 12 June 1969, because this directive had been disregarded, it delivered a second reasoned opinion in accordance with Article 169 of the EEC Treaty, likewise requesting that it be complied with within one month. Although the periods laid down in both reasoned opinions expired to no avail, the Commission did not start legal proceedings immediately but waited until the end of 1969 to see what would develop. This was because Italy's Permanent Representative had stated in a letter of 25 June 1969 that the draft bill to abolish the duty in question which has already been mentioned had been approved by the Council of Ministers on 28 May 1969 and sent to Parliament.

After 1969 had also elapsed without the promised bill being passed and after several Member States had complained to the Commission about the legal situation in Italy, the Commission brought the matter before the Court of Justice on 7 March 1970 in accordance with Article 169 of the EEC Treaty.

In its conclusions it requests that the Court declare that the Italian Republic has infringed Article 189 of the EEC Treaty in conjunction with certain Articles contained in specific regulations, by levying a 0.50% duty for administrative services under Law No 330 of 15 June 1950 on goods which came within these regulations and were imported from other Member States. Moreover, it requests that the Court declare that the Italian Republic has infringed Article 189 of the EEC Treaty in conjunction with Directive No 68/31 of 22 December 1967 by levying this duty on other goods.

1. The Italian Government did not submit any arguments as to the substance of the legal situation in reply to these requests, exactly as it had failed to do in the preliminary proceedings, that is, as to the interpretation of Community law and its application to the Italian duty for administrative services. There is no comment to be made as to the concept of charges having an effect equivalent to customs duties and its corresponding application to the charge which is now at issue, or at most it can be briefly said that the Commission's view seems incontestable. This can unquestionably be substantiated on the basis of previous case-law. I would refer in particular to the judgments in Joined Cases 2 and 3/62 ([1962] E.C.R. 425 *et seq.*), Joined Cases 52 and 55/65 ([1966] E.C.R. 159 *et seq.*), Case 24/68 ([1969] E.C.R.) and Joined Cases 2 and 3/69 ([1969] E.C.R.). In these cases it is repeatedly stressed with regard to the importance for the functioning of the Common Market of the rules as to the abolition of charges having an effect equivalent to customs duties, that it is indispensable that these rules by observed even if the charges have minimal effects or where there are no discriminating or pro-

tectionist effects. They show that the only deciding factor is that the charges are applied because the goods cross the frontier. Moreover, the judgments in Joined Cases 52 and 55/65 and in Case 24/68 make it clear of how little use is the concept of consideration for administrative services if there is no true economic benefit on the domestic market given to the imported goods upon which the duty for administrative services which is now to be considered is levied in the context of customs regulations and only on imported goods, whilst comparable domestic products which remain on the home market do not have a corresponding charge imposed upon them, and as it cannot be acknowledged that there is an economic benefit within the meaning which I have just indicated, there can be no objection to the description of the duty as a charge having an effect equivalent to a customs duty on imports and to the necessity for its abolition under Community law.

2. Having made these preliminary remarks, let us see whether it is possible to dismiss the Commission's application, in accordance with the submissions of the Italian Republic. As you know, the Italian Government merely refers to the fact that the application is based on a 'legislative situation which no longer corresponds to the existing legal situation in Italy' ('Situazione normativa che non corrisponde più alla realtà giuridica dell'ordinamento italiano'). It defines the existing situation as follows: the draft bill to abolish the charge in question had already been put before the Senate on 27 June 1969. On 29 April 1970 the Senate approved this bill, which even provided that it should have retroactive effect as from 1 July 1968 in respect of intra-Community trade, and it was thereupon submitted to the President of the Financial and Budgetary Commission of the Chamber of Deputies for urgent consideration. It was arranged for the bill to be considered by Parliament on 8 July 1970, but because of the governmental crisis which arose in the meantime, and owing to Parliament's summer recess, this had to be adjourned. The Italian Government claims that consequently it can be said that it had set about resolving the matter at issue within the context of its national constitutional system as it had been requested to do and had acted speedily. It maintains that the events which had prevented the matter from being finally settled must be described as instances of *force majeure*, owing to the national constitutional system. For these reasons, the complaint that the Italian Government had infringed the Treaty was wrongly made.

The Commission has not challenged any of these facts. However, in my opinion it rightly adheres to its conclusions and resists attempts to have its application dismissed. In this respect the function of the procedure under Article 169 of the EEC Treaty to obtain a declaration that there has been an infringement of the Treaty must first be recalled. I am persuaded that it is essentially an objective procedure which is intended to establish whether a specified national legal situation or administrative practice is in harmony with Community law, that is, a procedure which in principle excludes any considerations of fault. Therefore, under the system laid down in the Treaty, an application with this aim in view is admissible in principle if the reasoned opinion delivered by the Commission is not complied with within the period provided therein. As we know, this applies to both reasoned opinions delivered by the Commission in the present case and to the periods laid down by them. In addition, it cannot be said that the periods laid down were inappropriate either. In this connexion it is important that the legal situation was already basically clear since the judgment in Joined Cases 52 and 55/65 of 16 June 1966 had been delivered and that, although a bill drafted by the Italian Government with this aim in view had already been approved by the Council of Ministers in May 1969 the legal situation which was criticized still existed at the time when the application was lodged, that is, about seven months after the period fixed in the second reasoned opinion of the Commission had expired. Consequently there can be no objection made to the admissibility of the application in these circumstances.

Moreover, it cannot be claimed either that there is no need for initiating this procedure

because there are no differences of opinion with regard to the substance of the legal situation and that accordingly there is no corresponding need to clarify it. It is impossible to argue in this way since the purpose of the procedure under Article 169 is not only to investigate whether national legislation is compatible with Community law and to achieve clarification of the legal situation but also to *implement* Community law and to ensure that it is applied, for example, to an existing national administrative practice. In this respect the deciding factor here is that the legal and administrative situation in Italy which has been criticized is still in fact in existence. For this reason, let it be said in passing, it seems senseless to refer to the argument that Community law, in any case where it is contained in regulations and perhaps also in directives, can directly prevail over national law. The existing Italian legal situation does not accord with this argument, quite apart from the fact that in any case the situation would have to be *formally* settled. Therefore it is impossible to say that the application is inadmissible having regard to the considerations which have just been set out.

Accordingly it only remains to show that the *subject-matter* of the application has not been lost. This cannot be the case as long as the legal situation in force does not comply with the Treaty and as long as what until now has been considered contrary to the Treaty has not in fact been abolished, even if this might occur in the near future and with retroactive effect (in this connexion it seems only to have been envisaged that the law should have retroactive effect as from 1 July 1968). The obligations imposed by the Treaty are not fulfilled merely by the fact that a *government* has done all that is necessary to set the legislative procedure in motion. Such circumstances may at most justify certain expectations; however, there is no guarantee that during the proceedings in Parliament no further obstacles will be put in the way of the adoption of bills which have been introduced to meet the requirements of the Treaty. Moreover it should not be forgotten that under the procedure under Article 169 neither the behaviour of a government nor the proceedings of the legislature are at issue but the behaviour of the Member State concerned which is represented by its government in the proceedings before the Court of Justice. This was clearly emphasized in Case 77/69 ([1970] E.C.R.) in the following sentence taken from judgment in that case: 'the liability of the Member State under Article 169 arises whatever the agency of the State whose action or inaction is the cause of the failure to fulfil its obligations, even in the case of a constitutionally independent institution'.

Finally, therefore, even having regard to certain constitutional difficulties which the government claims it had no power to overcome, it is impossible to speak of a case of *force majeure* and thus to challenge the Commission's justification in taking proceedings for infringement of the Treaty. Even if it is not desired to go into the details of Italian constitutional law and into the possibility of issuing Decree-laws, as the Commission has done, it must still be declared that, considering the time-limits in question, it is certainly impossible to maintain that it was at no time possible for the Italian Government to effect a change in the Italian legal situation in good time. Since in fact no substantial objection can therefore be made to the Commission's request for a declaration that there has been a failure to fufil an obligation, and since moreover the Court of Justice cannot in principle make a ruling on the advisibility (Opportunität) of initiating and continuing proceedings, I can see no other choice but to grant the Commission's requests. Accordingly, the Court of Justice must declare that the Italian Republic infringed Article 189 of

the EEC Treaty in conjunction with specific articles contained in a series of regulations on agriculture by levying under Law No 330 of 15 June 1950 an 0.50% duty for administrative services on goods which come within these regulations and are imported from other Member States. Moreover it must declare that the Italian Republic has infringed Article 189 of the EEC Treaty in conjunction with Directive No 68/31 of 22 December 1967 by levying this duty on other goods which are imported from Member States.

Of course, as the Italian Republic has been unsuccessful in these proceedings it must be ordered to pay the costs.