2. Following Commission Decision No 66/474 the Italian Republic was no longer entitled to rely, as against a trader, with regard to an importation occurring after that decision took effect, on the national provisions introduced by virtue of the protective measure which the Commission required to be abolished, even though those provisions were not repealed within the domestic legal order until after the decision of the Commission took effect.

3. In accordance with the second paragraph of Article 191 of the EEC Treaty, Commission Decision No 66/474 took effect at the time of its notification to the Italian Republic, that is, on 28 July 1966.

Mackenzie Stuart Pescatore Touffait

Delivered in open court in Luxembourg on 8 March 1979.

A. Van Houtte
Registrar

A. J. Mackenzie Stuart
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 8 FEBRUARY 1979 [1]

Mr President,
Members of the Court,

The proceedings in which the request for a preliminary ruling arose concern the legality of the imposition of supplementary levies by the Italian Finance Administration on the importation, for processing under customs supervision, of boneless frozen beef and veal coming under Common Customs Tariff heading 02.01 A II, Statistical number 58, which is therefore a product which is subject to Council Regulation No 14/64/EEC of 5 February 1964 on the progressive establishment of a common organization of the market for beef and veal (Journal Officiel 1964 No 34 of 27 February 1964, p. 562).

Article 5 of the above-mentioned regulation provides for the imposition of levies, by the importing Member State, on the importation of calves and adult bovine animals, and also of derived products, from non-member States.

1 — Translated from the German.

Under Article 12 (2) the imposition of customs duties or charges having equivalent effect on imports from non-member countries, otherwise than as provided in that regulation, is incompatible with the application thereof.

Article 18 permits the Council, acting on a proposal of the Commission, to take, with regard to products coming under the market organization for beef and veal, "any measures in derogation from this regulation in respect of the products set out in Article 1, to take account of special circumstances which may exist in regard to such products".

According to Article 16, however, the Member States may also take protective measures. The parts of this provision which are relevant to the present case provide as follows:

"(1) If, as a result of the application of the measures relating to the progressive establishment of a common organization of the market in beef and veal such market should, in one or more Member States, suffer or be threatened with serious disturbance due to imports, liable to endanger the objectives laid down in Article 39 of the Treaty, the Member State(s) concerned may, during the transitional period, take the necessary protective measures concerning importation of the products in question.

(2) The Member State(s) concerned shall be required to notify the other Member States and the Commission of such measures not later than the date of their entry into force.

...

On the basis of the provisions of paragraph (1) above and bearing in mind the importance of not increasing the level of protection between Member States, the Commission shall, after consulting the Member States through the Management Committee set up under Article 19, decide by means of emergency procedure, within a maximum of four working days calculated from the notification referred to in the first subparagraph above, whether the measures should be retained, amended or abolished.

...

The Commission's decision shall be notified to all Member States and shall come into force immediately."

On 21 April 1966, considering consumers to be inadequately supplied, the Council, in reliance on Article 18 of Regulation No 14/64/EEC, adopted Regulation No 42/66/EEC (Journal Officiel 1966, No 76 of 27 April 1966, p. 1141), by which Member States were authorized, in derogation from Article 5 of Regulation No 14/64/EEC, for the period from 1 May to 31 July 1966, to suspend the levies on the importation, for processing under Customs supervision, of frozen meat of domestic bovine animals covered by tariff heading 02.01 A from non-member countries.

The Government of the Italian Republic made use of this possibility, and by Circular No 165 of 13 May 1966, confirming telegraphic circular UTCD No 3422—3696 of 30 April 1966, suspended the levies on goods of the type in question during the period from 2 May to 31 July 1966. The Commission and the other Member States were duly informed within the prescribed period.

On 23 July 1966, that is, within the period for which the levies were suspended, the Government of the Italian Republic informed the

Commission by a telex message from its Permanent Representation that, owing to the persistently depressed state of the beef and veal market, which had worsened in the last few days, it was imposing in reliance on Article 16 of Regulation No 14/64/EEC, with effect from 24 July 1966, a supplementary levy on the importation of cattle and beef and veal from non-member countries at the rate of 60 % of the levy prescribed in Article 5 of the aforesaid regulation. The penultimate paragraph of that message expressly stated: "Calves weighing less than 340 kg and intended for fattening and frozen beef and veal intended for industrial processing are excluded from this protective measure".

For the implementation of that protective measure the Italian Ministry of Finance addressed circular U.T.C.D. — 1966.373 — DOG.000 (Protocol No 6363) to the customs offices on 25 July 1966. This circular, in confirmation of the telegraphic circular No 6349/U.T.C. of 23 July 1966, introduced, with effect from 24 July 1966, a supplementary levy on beef and veal products imported from non-member countries at the rate of 60 % of the levy in force at the time of importation. However, in contrast to the telex message sent to the Commission, the seventh subparagraph of the circular expressly directs that "there shall likewise be a supplementary levy on frozen beef and veal for processing under customs supervision in accordance with telegraphic circular No 3696 U.T.C.D. of 30 April 1966, whereby the suspension of the levy is maintained".

On 28 July 1966 the Commission, acting under the third subparagraph of Article 16 (2) of Regulation No 14/64/EEC, adopted Decision No 66/474/EEC (Journal Officiel 1966, No 153 of 23 August 1966, p. 2796), Article 1 of which provides as follows:

"The Italian Republic shall abolish the protective measures, notified to the Commission on 23 July 1966, which introduced a supplementary levy of 60 % of the levy imposed under Article 5 of Regulation No 14/64/EEC".

The Commission based its decision on the consideration that the requirements for a protective measure under Article 16 (1) of Regulation No 14/64/EEC did not exist, since the Italian market in bovine animals was at that time neither suffering, nor threatened with, a serious disturbance. That was clear, in the Commission's view, from the fact that the Italian Republic was continuing to make use of the permission granted in Regulation No 42/66/EEC to suspend the levies as regards certain types of frozen beef and veal intended for processing under customs supervision.

The Italian Government was notified of this decision of the Commission on 28 July 1966.

Also on 28 July 1966, the Council, in reliance on Article 18 of Regulation No 14/64, and acting on a prosposal from the Commission, adopted Decision No 66/455/EEC (Journal Officiel 1966 No 144 of 5 August 1966, p. 2659), by which the Italian Republic was authorized to increase the levies on specified imports of beef and veal from non-member countries under certain conditions and within specified limits. Article 1 of the decision provides as follows:

"The Italian Republic shall be authorized to increase, up to 2 October 1966, the levies determined in accordance with Regulation No 14/64/EEC, Article 5, applicable to imports from non-member countries:

— In respect of products coming under section (b) of Annex I to Regulation

No 14/64/EEC by an amount corresponding to a maximum of 7.5 units of account per 100 kg;

— In respect of products coming under section (b) of Annex II to Regulation No 14/64/EEC by an amount calculated by multiplying the levy on these products by a coefficient representing the relation existing between the amount applied by virtue of the first indent and the levy fixed in accordance with Article 5 (1) of Regulation No 14/64/EEC for adult bovine animals".

Article 3 of the decision states:

"The Italian Republic shall immediately inform the Commission of the measures taken in application of Article 1".

The Council and the Commission found these measures necessary in order to raise the prices of the imported products to the level of the guide price without adversely affecting the volume of imports more than absolutely necessary, because the prices for adult bovine animals on the Italian market were below the guide price.

The Italian Republic was informed of the decision of the Council on 29 July. In implementation of the above-mentioned decisions of the Commission and the Council the Italian Republic abolished the aforesaid protective measures with effect from 1 August 1966 and availed itself, from the same day, of the Council's authorization to raise the levies in accordance with the methods of calculation described above.

On 29 July 1966 Salumificio di Cornuda S.p.A. informed the customs authorities in Turin of the import from Argentina of 179 179 kg of frozen beef and veal for processing under customs supervision. A later check revealed that the supplementary levy had not been charged in respect of this import. By a decision served on 8 September 1971 the responsible authorities demanded from Salumificio payment of 16 817 380 Italian lire in respect of the supplementary levy.

The company disputed this decision before the Tribunale, Turin, which gave judgment for the plaintiff on 5 August 1972.

On appeal by the State Finance Administration the Corte d'Appello, Turin, quashed the judgment of the lower court by a judgment of 22 May 1975 and declared the demand for payment of the supplementary levy lawful.

The appellant appealed against this decision to the Corte Suprema di Cassazione [Supreme Court of Appeal] which, by a decision of 17 February 1978, stayed the proceedings pursuant to Article 177 of the EEC Treaty and requested from the Court of Justice an interpretation of Articles 189 and 191 of the EEC Treaty, the fourth subparagraph of Article 16 (2) of Regulation No 14/64 of the Council, Articles 1 and 3 of Council Decision No 66/455 and Article 1 of Commission Decision No 66/474. The court making the reference requests, having regard to the aforesaid provisions, answers to the following questions:

1. Within the system of sources of Community law, which of the following takes precedence: a "decision" of the Commission of the European Economic Community, adopted pursuant to the said Article 16 within the field covered by the said Regulation No 14/64, or a "decision" of the Council of the European Economic Community, adopted pursuant to Article 18 of the same regulation?
2. Is the decision of the Commission of the European Economic Community adopted pursuant to the above-mentioned article and within the field indicated above at 1. directly applicable within the domestic legal system of the Member State in

question (the Italian Republic), or, on the contrary, is domestic implementing legislation necessary for that purpose?

3. If Question 2 is answered in the way suggested first, that is, if the decision is directly applicable, does that decision become applicable at the time of its adoption or at the time of its notification to the State to which it was addressed?

4. If Question 2 is answered in the way suggested first, does the said "decision" of the Commission take effect, with regard to the abrogated measure, as a technical "annulment", that is, does it have effect *ex tunc* from the time of the adoption of that measure, withdrawing with retroactive effect all the consequences thereof, or does it constitute with regard to that measure a technical "repeal", that is, does it have effect *ex nunc* from the time (of adoption or of notification) of the "decision" itself?

5. If Question 2 is answered in the second way suggested, that is, if the said "decision" of the Commission requires the adoption of domestic legislation by the Member State in order to give effect to it within the legal system of that State, do the Community provisions of which an interpretation is requested provide that such domestic implementing legislation must take effect, with regard to the domestic measure which it is intended to abrogate pursuant to the Community "decision", as a technical "annulment" or as a technical "repeal" ("annulment" and "repeal" being used here in the particular sense clarified in Question 3)?

I — Before going into the question raised, I should first like to draw the Court's attention to the fact, apparent from the case file, that the text by which the Italian Government notified the Commission of the protective measure does not accord with the wording of the circular by which the protective measure was brought into operation in Italy. Whilst the Italian Government's notification expressly excludes from the protective measure beef and veal intended for processing under customs supervision, the interval circular gives instructions for the imposition of a supplementary levy on beef and veal of the type in question. So the Italian Government introduced a protective measure of the type in question in respect of frozen boneless beef and veal, although it had not notified the Commission thereof, but, on the contrary, had expressly excluded the meat in question from the protective measure notified. However, under the first subparagraph of Article 16 (2) of Regulation No 14/64 such a measure should have been notified to the other Member States and to the Commission not later than the date of its entry into force.

If one regards notification as a condition precedent for the effectiveness of the protective measures adopted under Article 16 of Regulation No 14/64, an unnotified protective measure is to be treated as a charge equivalent in effect to customs duties, which according to Article 12 (2) of Regulation No 14/64 is not compatible with that provision. In that case the persons affected would be able to rely directly on Article 12 (2) of Regulation No 14/64, which in accordance with Article 189 of the EEC Treaty is directly applicable in every Member State. A decision on the questions raised would then no longer be required for the determination of the proceedings.

The Italian Government, however, is of the opinion that the failure to notify a protective measure adopted under Article

16 of Regulation No 14/64 cannot prevent its coming into force or impair its effectiveness. It considers that its view is confirmed by the judgment of the Court of 3 October 1978 in Case 27/78 *(Amministrazione delle Finanze dello Stato* v *The Rasham Undertaking,* [1978] ECR 1761). It maintains that in that decision the Court held, with regard to the second paragraph of Article 115 of the EEC Treaty, is so far as it is comparable, that although the duty to notify imposed thereby is indeed mandatory, compliance with it could not constitute a condition precedent for the entry into force of the protective measures adopted.

In my opinion there are several reasons why the decision cited cannot be invoked for the solution of the present case. The first paragraph of Article 115 of the EEC Treaty starts with the basic premise that in the event of a risk of deflection of trade or economic difficulties the *Commission* is to recommend the methods for the requisite co-operation between Member States. If that is not sufficient, the Commission is to authorize Member States to take the necessary measures, the conditions and details of which it is to determine. According to the second paragraph of the aforesaid provision Member States may *only in case of urgency* during the transitional period take the necessary measures themselves and must notify the other Member States and the Commission thereof. Thus the second paragraph of Article 115 of the EEC Treaty assumes that such notification will be, at the earliest, simultaneous with the adoption of the measures, but, as a general rule, subsequent thereto, no time-limits being imposed for notification. In the decision in Case 27/78, in considering whether the notification required by the second paragraph of Article 115 of the EEC Treaty constitutes a condition precedent for the validity or effectiveness of a protective measure adopted in accordance with the aforesaid provision, the Court of Justice simply ruled that it cannot be inferred from the provision that *previous or simultaneous notification* is a condition precedent for the entry into force of the measures adopted. On the other hand, the Court did not express any opinion as to the legal consequences of a complete failure to notify the adoption of a measure, but, on the contrary, it inferred from the provision that the notification to the Commission and the other Member States should take place without delay, although no time-limit is laid down. Moreover Mr Advocate General Warner expressed a similar view in his opinion on that case, emphasizing that, on its plain wording, Article 115 envisaged that such notification should take place "as soon as, but not necessarily before, the measures were introduced".

However, the requirements of Article 16 of Regulation No 14/64 are formulated quite differently, as is also the case with the procedure to be followed under that provision. Both the Commission and the Italian Government rightly proceed on the assumption that the protective measures taken under Article 16 of Regulation No 14/64 come into force by virtue of independent decisions by the Member States, which do not have to await the outcome of prior procedures under Community law in order to take such measures. Moreover, the Member States can take action under this provision not only in case of urgency, but also whenever the factual requirements of Article 16 are present. Since this provision may lead to a temporary suspension of the highly detailed organization of the market in beef and veal, these requirements are defined narrowly. Article 16 (2) therefore provides that the Member States concerned must notify these measures to the other Member States and to the Commission if possible

before, but in any case not later than, the date of their entry into force. It is only through this notification that the Commission is put in a position to ascertain by means of emergency procedure, after consulting the Member States, whether the requirements of Article 16 (1) are present. In the interests of the Community, the Member States and those involved in economic activity the Commission must decide by means of the prescribed procedure, within the very short period of a maximum of four working days calculated from the notification, whether the requirements are present and whether the measures are necessary. Again in the interests of all concerned, the fourth subparagraph of Article 16 (2) provides that the Commission's decision shall come into force immediately. Thus it is only the notification which enables the Commission to learn of the protective measures adopted and initiate the emergency procedure within the stated period. The argument advanced by the Commission that the requirement, imposed by Article 16 (2), of notification not later than the date of the entry into force of a protective measure would be futile if Member States could, by failing to notify, prevent an examination on legal and economic grounds of the measures adopted and thereby endanger the working of the agricultural market, strikes me as compelling. Therefore, in contrast to the second paragraph of Article 115 of the EEC Treaty — precisely as a result of the judgment in Case 27/78 — the prior notification of a protective measure adopted under Article 16 of Regulation No 14/64 must constitute a condition precedent for the validity or the effectiveness of that measure. Thus unnotified levies which are not provided for by Regulation No 14/64 constitute charges equivalent in effect to customs duties within the meaning of Article 12 (2) of the said regulation, which is directly applicable and so renders the relevant national provisions inapplicable.

II — In case the Court is not able to endorse this solution, which I tend to favour myself, I should now like to examine the questions referred to the Court. I shall apply myself first to the task of answering the second question, which concerns the direct applicability of Article 1 of Commission Decision No 66/474 of 28 July 1966. Closely connected therewith is the third question, in which the Corte Suprema di Cassazione seeks information as to when the decision — assuming it to be directly applicable — takes effect. Then, in the context of an examination of those two problems, we must also consider the matter raised in the first question, namely the relationship between Council Decision No 66/455 of 28 July 1966 and Commission Decision No 66/474 of the same day.

1. A constant theme of the Court of Justice's case-law, beginning with Case 9/70 (*Franz Grad* v *Finanzamt Traunstein*, Judgment of 6 October 1970; [1970] ECR 825), has been the recognition that even decisions and directives which are in principle addressed only to States can produce direct effects in the legal relationship between Member States and individuals if the following requirements are met: the obligation imposed on Member States by the decision must be clear and unambiguous, it must not be dependent on any condition and in particular it must not leave the addressee any margin of discretion as to the manner of its implementation. If these criteria are met, a decision directly obliges the authorities and courts of the Member States to protect the interests of individuals

affected by a breach thereof. Thus the Court has emphasized on several occasions that "particularly in cases where, for example, the Community authorities by means of a decision have imposed an obligation on a Member State or on all the Member States to act in a certain way, the effectiveness ("l'effet utile") of such a measure would be weakened if the nationals of that State could not invoke it in the courts and the national courts could not take it into consideration as part of Community law" (Case 9/70, *Franz Grad* v *Finanzamt Traunstein,* Judgment of 6 October 1970; [1970] ECR at p. 837).

If we now consider Article 1 of Commission Decision No 66/474 in the light of these principles, it is clear from the wording that the Italian Republic is obliged to abolish the protective measures *notified* to the Commission on 23 July 1966. It would be possible, pursuing a purely formal argument, to contend that this wording does not unambiguously refer also to protective measures in that field which are *not notified.* However, since frozen beef and veal for processing under customs supervision were expressly excluded from the protective measure in the notification to the Commission, the Commission had to assume that the levies on goods of that description continued to be suspended, and so it did not need to order the abolition of the supplementary levies on them. Moreover it is clear from the preamble to the decision that the Commission did not consider the requirements of Article 16 (1) of Regulation No 14/64 to have been satisfied and so regarded protective measures for all products covered by Regulation No 14/64 as unnecessary. Therefore a correct interpretation of the decision can only lead to the conclusion that all protective measures which were adopted in respect of products subject to the market organization for beef and veal had to be removed.

It must also be ascertained whether the decision left the Italian Government any margin of discretion in its implementation. The Italian Government submits that such a margin may be inferred from the fact that on the very day on which the Commission took its decision, a Council decision was taken on a proposal of the Commission, authorizing the Italian Republic to increase the levies on the goods in question. The Italian Government argues that, even though the last-mentioned decision was taken in reliance on a different provision of Regulation No 14/64, it none the less recognized the necessity of a price increase and thereby confirmed that the protective measure taken by Italy was necessary and justified. Reading the two provisions together and bearing in mind that no time-limit was stated for the abolition, it is possible, in the Italian Government's view, to conclude that the intention was to allow the Italian Republic to determine for itself the methods and the appropriate time for adapting the decision to its own legal order.

To that the Commission objects that there is no connexion between its decision, based on Article 16 of Regulation No 14/64, and the Council's decision, based on Article 18 of the same regulation: the two decisions are subject to different conditions and have different effects. It is true, says the Commission, that at that time it had been necessary to take note of certain anomalies in the market; however, they would not have justified protective measures under Article 16 of Regulation No 14/64, since provision had been made for such measures only for extreme cases. For market anomalies of the type described, the appropriate instrument, in the Commission's view, was provided by Article 18 of Regulation No 14/64, since the Member State could be authorized to

deal with the anomalies within a stated period and by specified methods. The decision ordering the abolition of the protective measures constituted in this respect, says the Commission, nothing more than a repetition of the prohibition, contained in Article 12 (2) of Regulation No 14/64, of the imposition of charges equivalent in effect to customs duties and was therefore capable of producing direct effects.

I share the Commission's opinion that even though the two legal instruments were adopted on the same day, they are subject to different conditions, pursue different aims, provide for different methods and produce different effects. The protective measures taken under Article 16 constitute independent acts of the Member States, partially suspending the market organization for beef and veal and capable of review, as regards their compatibility with Community law, only by means of a procedure operating *ex post facto*. They are permissible only if the market in beef and veal suffers, or is threatened with, serious disturbances liable to endanger the objectives laid down in Article 39 of the Treaty. In contrast the procedure under Article 18 of Regulation No 14/64 does not suspend the market organization even partially; it simply modifies it. Accordingly the conditions under which the Council may act are not as strict as those of Article 16. Any measures may be adopted to take account of special circumstances in the beef and veal market. If Member States are authorized to act by virtue of *Article 16*, they may make use of that authorization — which is based on a political and economic appraisal undertaken by the Community institutions, the Commission and the Council — only within the prescribed limits. But Articles 5 and 12 of Regulation No 14/64 show us that the Community institutions intended essentially to retain the regulation of the levies in their own hands. It was therefore logical that the Commission should first demand the removal of the protective measures and at the same time propose to the Council a decision under Article 18 as a less severe method. The two instruments should, for the reasons given, be considered separately, with the result that the question of precedence does not arise. Consequently Council Decision No 66/455, which allows the Italian Republic a margin of discretion as to the manner of its application, cannot change anything in the unequivocal decision of the Commission, which merely imposes a negative obligation on the addressee and so does not allow any margin of discretion.

Lastly, the fact that the Commission decision does not prescribe any period within which the protective measure must be removed is not such as to cast doubt on the unequivocal nature of the order. In this respect the decision must be considered in conjunction with the fourth subparagraph of Article 16 (2) of Regulation No 14/64 which provides that it shall come into force immediately. It may be inferred from this that, if the Commission had wanted to depart from the general principle, it would have had to state such an intention expressly.

The obligation imposed by Article 1 of Commission Decision No 66/474 is therefore unconditional, sufficiently clear and unequivocal and allows the Italian Republic no margin of discretion as to the manner of its execution. So the provision is capable of producing direct effects in the legal relationships between the Member State to which it is addressed and individuals and of creating for the latter the right to rely on it before national courts. The supremacy of Community law has the effect that in this

respect national law which conflicts with it may not be applied.

2. That leads to a further question: at what time did those direct effects commence? As we know, the Commission's decision was notified to the Italian Republic on 28 July 1966, that is to say one day before the imports with which we are concerned.

The Italian Government is of the opinion that, even supposing that the Commission's decision had direct effect, the earliest that this could have occurred was the date on which individuals could have become aware of it, that is to say not before its publication in Official Journal No 153 of 23 August 1966.

As the Commission and the appellant in the main action rightly point out, this opinion is contradicted by the very wording of the second paragraph of Article 191 of the EEC Treaty, which provides that directives and decisions shall be notified to those to whom they are addressed and shall take effect upon such notification. Unlike regulations, which have general application, publication is not prescribed for measures in Community law addressed to individuals. It follows that their effectiveness cannot be made dependent on publication. Although publication does take place as a rule, it is not an absolute requirement. For reasons of legal certainty the question cannot be decided by reference to the date on which all persons who might be concerned become aware of the measure. Since the Italian Government, as addressee, was notified of the decision on 28 July 1966, it entered into effect from that date.

3. Since that date is prior to the import of the goods in question we can leave aside the question whether retroactive force should be attributed to the decision.

III — Accordingly, I propose that the request for a preliminary ruling be answered as follows:

1. The notification of a protective measure under Article 16 of Regulation No 14/64 of the Council by a Member State to the other Member States and the Commission, which must ensue not later than the date of the measure's entry into force is a condition precedent for its entry into force. A supplementary levy on imports from non-member countries which is not provided for in Article 5 of Regulation No 14/64 and which is imposed by means of an unnotified protective measure within the meaning of Article 16 of that regulation constitutes a charge having an effect equivalent to the imposition of customs duties within the meaning of Article 12 (2) of Regulation No 14/64. That provision must be directly applied by national courts.

2. By Article 1 of Commission Decision No 66/474 the Italian Republic is obliged to abolish, with effect from 28 July 1966, the protective measures by which a supplementary levy was introduced at the rate of 60 % of the levy established in accordance with Article 5 of Regulation No 14/64.

This obligation is capable of producing direct effects in the relationships between the Member State to which it is addressed and the persons affected, who derive from it rights which national courts must protect.