other provisions of the Treaty, does not permit of any exceptions.

(b) It follows from Articles 95 et seq. that the concept of a charge having equivalent effect does not include taxation which is imposed in the same way within a State on imported products and similar domestic products, or which falls, in the absence of comparable domestic products, within the framework of general internal taxation, or which is intended to compensate for taxation of this nature within the limits laid down by the Treaty.
The rendering of a specific service may in certain specific cases warrant the payment of a fee in proportion to the service actually rendered.

4. The provisions of the Treaty laying down prohibitions on customs duties and charges having equivalent effect impose precise and clearly-defined obligations on Member States which do not require any subsequent intervention by Community or national authorities for their implementation. For this reason, these provisions directly confer rights on individuals concerned.

5. Without prejudice to any limitations which might be imposed in order to attain the objectives of the common customs tariff, pecuniary charges other than customs duties in the strict sense applied by a Member State before the introduction of that tariff on goods imported directly from third countries are not, according to the Treaty, incompatible with the requirements concerning the gradual alignment of national customs tariffs on the common external tariff.

In Joined Cases 2 and 3/69

Reference to the Court under Article 177 of the EEC Treaty by the Vrederechter, Antwerp (Second Canton), for a preliminary ruling in the action pending before that court between

SOCIAAL FONDS VOOR DE DIAMANTARBEIDERS, Antwerp,

and

SA CH. BRACHFELD & SONS, Antwerp,

(Case 2/69)

SOCIAAL FONDS VOOR DE DIAMANTARBEIDERS, Antwerp,

and

CHOUGAL DIAMOND CO., Antwerp,

(Case 3/69)

on the interpretation of Articles 9, 12, 13, 18, 37 and 95 of the Treaty,

THE COURT

composed of: R. Lecourt, President, A. Trabucchi (Rapporteur) and J. Mertens de Wilmars, Presidents of Chambers, A. M. Donner, W. Strauß, R. Monaco and P. Pescatore, Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

The Law of 12 April 1960 established in Belgium the Sociaal Fonds voor de Diamantarbeiders (Social Fund for Diamond Workers). This Fund is a public institution, the purpose of which is 'the financing, award and payment of additional social benefits' to such workers.

The Belgian State amended this Law by the Law of 28 July 1962 by inserting therein an Article 2(a) which was expressed in the following terms:

> 'All persons importing unworked diamonds shall be required to pay a contribution intended to enable the Social Fund to fulfil the task conferred upon it by Article 2.
>
> The amount of the contribution payable by such persons is equal to $\frac{1}{3}\%$ of the value of the unworked diamond imported.
>
> The King may, where appropriate, grant exemption from such contribution where the value of the diamond referred to in the preceding subparagraph does not exceed BF 300 per carat or where such diamond is imported from the Netherlands within the framework of the exchange agreement between the diamond industries of Belgium and the Netherlands.'

By virtue of this provision, in December 1963 the Sociaal Fonds voor de Diamantarbeiders brought actions against some 200 importers of unworked and industrial diamonds for the payment of contributions, additional charges and interest in respect of the period from 1 January 1960 to 30 September 1963.

The majority of these cases were heard by the Vrederechter of the Second Canton of Antwerp. It was agreed before this court between, first, counsel for the importers of unworked diamonds and industrial diamonds and, secondly, counsel for the Social Fund to consider two test cases, those of Sprl Chougol (an importer of industrial diamonds) and of SA Brachfeld (an importer of unworked diamonds).

By decisions of 24 December 1968 in these two cases the abovementioned Vrederechter asked the Court to interpret:

'1. Articles 9, 12, 13, 18 and 95 on the question:
   (a) Whether, in these articles or in certain of them, and if so in which, the duties and charges having equivalent effect to which

they refer must show all the features of a charge of a fiscal nature;

(b) Whether the duties or charges referred to are solely those which enrich or diminish the Treasury or whether they are in general all those which a Member State imposes when imports are made, without regard to their fiscal, administrative or social purpose;

2. The same articles on the question whether the decisive factor is the nature of the charge or its effect;

3. The same articles on the question whether the equivalent effect lies in the similarity of purpose or rather in the results of the charge;

4. The same articles on the question whether, where appropriate, the results must be considered in the light of the intended purpose of the sums raised or rather of their effect on the free movement of goods;

5. (a) Articles 9 and 12 on the question whether an obstacle to the free movement of goods always presupposes that the consequences of the duty imposed are always discriminatory or protective;

(b) The same articles on the question whether it is impossible for such an obstacle to exist if there is no competition from domestic products;

(c) Article 12, in conjunction with Articles 9 and 18, on the question whether a new charge imposed upon imports from all foreign countries is always prohibited as being likely to conflict with the objectives pursued in Articles 9 and 18 of the Treaty, in particular the introduction of a common customs tariff in the relations of Member States with third countries and the reduction of duties below the general level, with the result that the discriminatory or non-discriminatory nature of such a charge is of no importance;

(d) Articles 9 and 12, in comparison with Article 37, on the question whether the distinction made in Article 37 between monopolies which do and which do not result in discrimination between the nationals of Member States regarding the conditions under which goods are procured and marketed must also be made as regards the duties or charges referred to in Articles 9 and 12;

(e) Articles 9 and 12, in conjunction with Article 95, on the question whether the prohibition in Articles 9 and 12 is more absolute than that in Article 95, and in particular whether it makes no distinction according to whether or not the duties considered are in excess of those imposed on domestic products;

(f) Article 12, in conjunction with Articles 9 and 13, on the question whether Article 12 may be considered as a first step towards the achievement of the objective in Articles 9(1) and 13, and must therefore be understood in such a wide sense;

6. Articles 9 and 12 on the question whether, in considering the obstacle to the free movement of goods which is opposed by the Treaty, the only factor which may be taken into account is the disadvantage to the other Member States or to their inhabitants, or whether it involves a disadvantage for all the inhabitants of the Community, including those of the Member State which takes the measure in question, be it as a result of increased competition on the part of the inhabitants of other Member States; whether in this case the content of the prohibition may be interpreted in the light of the reply to this question.'

Before referring this matter to the Court, the Belgian court considered the ques-

tion whether, should the Belgian Law in question be shown to be incompatible with the EEC Treaty, the Treaty must be given precedence over the national Law. It is only after resolving this question in favour of Community law that it submitted these questions to the Court.

In its decisions to refer these questions the Belgian court considers that, in order to settle the cases in question, it is necessary to verify whether it is possible for the contribution imposed on importers of unworked diamonds by the Belgian Laws to correspond to one of the concepts of duties, charges or taxation referred to in Articles 8, 12, 18 and 95 of the EEC Treaty.

The court observes that legal opinion acknowledges that the nature and purpose of customs duties may differ greatly: their objective may be either to obtain revenue from taxes, or to further a commercial policy, or to cover the costs of a licence granted by the administration, or to enable statistics to be prepared.

The Belgian court refers to the judgment of the Court of Justice in Case 6/64 (*Costa* v *ENEL*) in order to maintain that, unlike Article 37 which this judgment was intended to interpret, Articles 9 and 12 do not prohibit only those duties which discriminate between the nationals of Member States.

Finally, the Vrederechter, Antwerp, observes that the Belgian importers of unworked diamonds are in a position to claim that they are at a disadvantage as compared with their competitors in other Member States who are not liable to pay the charge in dispute; they may thus consider that at their expense the diamond merchants of their country have an advantage over the merchants in other Member States, as by virtue of the law in dispute those Belgian undertakings which work diamonds are relieved of part of the burden which they ought to bear if, as in almost all the other branches of industry, they had to share the burden of the social security benefits paid to their workers. He observes further that, as the price of their purchases rises in consequence, the incidence of the charge is not, in fact, borne entirely by them since the charge is also imposed, *inter alia*, on industrial diamonds which represent a sizeable proportion of total imports and which are not worked by their craftsmen, or purchased or sold by the Belgian importers themselves.

In accordance with Article 20(2) of the Protocol on the Statute of the Court of Justice of the EEC, the plaintiff and the defendants in the main action, the Commission of the European Communities and the Belgian Government submitted written observations.

The hearing took place on 6 May 1969.

The Advocate-General delivered his opinion on 21 May 1969.

By order of the Court of 18 June 1969 the present cases were joined for the purposes of the judgment.

II — Observations submitted under Article 20 of the Statute of the Court

The observations submitted under Article 20 of the Statute of the Court may be summarized as follows:

The *applicant in the main action* maintains that the aims of the Sociaal Fonds voor de Diamantarbeiders are purely social, as is clearly shown by the parliamentary studies which preceded the adoption of the Law in question. If, contrary to the general rule in matters of *Fonds de sécurité d'existence*,[1] the Social Fund is not maintained by contributions calculated on the basis of the salaries

1 — Translator's note: *Fonds de sécurité d'existence* are funds maintained by employers' contributions in respect of certain occupations particularly subject to intermittent periods of unemployment for the payment of additional benefits to those temporarily unemployed.

received by its beneficiaries, then to lay responsibility for the contribution on the importers of diamonds which are to be cut in Belgium will ensure that the whole of the diamond is taken into consideration in the calculation of contributions on the basis of its real value, as the charges are divided equitably between the distributor and the undertaking which works the diamond.

The choice of this system is also justified by reason of the structure of the Belgian diamond industry, which makes the application of a system of contributions calculated on the basis of salaries difficult. Moreover, the appropriateness of this choice is a matter to be considered by the Belgian legislature alone.

Further, the applicant in the main action maintains that the contribution is only calculated on the goods to be worked by the Belgian diamond industry, with the result that goods to be reshipped and goods in transit are never included in the calculation. As the importers of unworked diamonds, the undertakings which work the diamonds and the workers in the diamond industry are the successive links in a single economic chain, the concept of interdependence on which the social legislation is based is a reason for the importer also to contribute to the improvement in the social position of the workers employed in the diamond industry.

In addition, the Social Fund recalls that on 29 February 1968 the President of the Commission of the European Communities had addressed a letter to the Belgian Minister for Foreign Affairs followed, on 20 January 1969, by a reasoned opinion within the meaning of Article 169 of the Treaty, requesting the Belgian Government to eliminate from the legislation in question the contradiction with Article 7 of the Treaty, which results from the fact that only imports of unworked diamonds from the Netherlands were exempt from the abovementioned contribution. The Commission proposed an alternative which was either to exempt imports of unworked diamonds from every Member State, or, on the contrary, to abolish the exemption in favour of the Netherlands alone.

Whilst it observes that, by reason of the localization of the diamond industry, it seems very unlikely that exchange agreements exist between the Belgian industries and those of Member States other than the Netherlands, the plaintiff in the main action considers that Belgium will comply with this request by extending the exemption to imports effected within the context of the exchange agreements between the Belgian diamond industry and that of those Member States.

It follows from the concept which is the basis of the exemptions provided for by the Law in question that unworked diamonds are not taken into consideration for the imposition of the charge in question merely by reason of their importation, as the exemptions are specifically based on the fact that the diamond imports to which they apply do not add to the volume of the manufacturing operations. It is, first of all, technically impossible to cut an unworked diamond of a value of less than BF 300 per carat and, secondly, diamonds imported from the Netherlands within the context of the exchange agreement concluded between the Belgian and Netherlands diamond industries are merely substituted for those Belgian diamonds exported to the Netherlands under the terms of that agreement, such diamonds having already been included earlier in the basis of calculation of the contribution in dispute.

The plaintiff in the main action then refers to the preliminary studies of the EEC Treaty in order to support its statement that that Treaty does not intend to exempt goods put into free circulation from all taxes or charges, but only requires such goods to receive the same treatment, so that trade is not disturbed by protective intervention in one or other Member State.

The Treaty does not require all the fac-

tors which influence the cost price of the goods to be identical in every Member State. When such differences are likely to hinder the proper functioning of the Common Market, the Commission may implement the procedures provided for in Articles 100 et seq. of the Treaty. It is clear that the legislation concerning the Social Fund does not discriminate in any way between Belgian diamonds and foreign diamonds since the Belgian diamond trade and industry are neither protected nor favoured in relation to competition from abroad.

The contributions payable to the Social Fund can in no case be described as charges, and thus cannot be included in the prohibition contained in Articles 9 and 12 of the Treaty which deliberately used the term 'charges having equivalent effect' to replace the formula 'any measure having equivalent effect' which was originally suggested. In order to establish whether one is dealing with a charge having equivalent effect, it is necessary to verify whether the charge in question is discriminatory or protective in effect and whether, as a result, it affects competition between the Member States. In the opinion of the plaintiff in the main action this follows from the case-law of the Court.

In addition, it follows from Article 95 of the Treaty, considered in conjunction with Articles 9, 12 and 13, that it is only where the charges are in excess of those which are imposed directly or indirectly on domestic products that they may have an effect equivalent to that of a customs duty. The *two defendants in the main action* submitted a single statement of case, in which they set out the facts which led to the enactment of the Law in dispute and the factual situation surrounding the Belgian importation, processing and trade in unworked and industrial diamonds.

The defendants submit statistics, the purpose of which is to show, *inter alia*, the economic importance of this sphere of activity and the effect of the charge in dispute on the Antwerp market. According to the statistics drawn up for 1968, imports of unworked diamonds amounted to BF 11 748 000 000, of which BF 4 138 000 000 were re-exported in the same form. Imports of industrial diamonds were in the order of BF 2 951 000 000, while exports attained BF 2 950 000 000. The major part of these transactions concerns diamonds of a value in excess of BF 300 per carat which were, as a result, subject to the charge.

On imports of unworked diamonds in 1968, the tax of $\frac{1}{3}\%$ amounts to BF 39 160 000. The incidence of the charge on industrial diamonds is put at BF 8 660 000. The aggregate total amount of the charge imposed on the various sorts of diamonds exported from Belgium to the other countries of the EEC amounts to BF 5 400 000.

As regards industrial diamonds in particular, the defendants in the main action maintained that this branch of the industry has no connexion with the activities of the diamond workers and that this fact brings out to an even greater degree the anomaly of a law the effect of which is to render purchasers of diamonds throughout the Community liable to bear the burden of the social security benefits accorded to Belgian diamond workers. If this assessment were continued the commercial activity in question might move towards another country of the EEC, in particular towards the Netherlands.

As regards the points of law raised by the question of the Vrederechter, Antwerp, the defendants in the main action refer to an opinion of two professors of law of the University of Brussels, the text of which they submitted in a schedule to their statements of case.

As regards Articles 9 and 12 of the EEC Treaty, the authors of this opinion maintain that these general provisions must not be interpreted in the light of Article 37, the subject of which is quite specific. They do not accept the idea that a

charge imposed by reason and on the occasion of importation might only have an effect equivalent to that of a customs duty on condition that the products in question are in competition with domestic products. They consider that the Treaty wished to remove not only protection of the domestic industry, but all obstacles to trade. This purpose corresponds to a fundamental objective of the Common Market, namely the institution of a system ensuring that competition in that market is not distorted. As a result, it is incorrect to consider that the effect of a charge payable by reason of importation is not equivalent to that of a customs duty by reason of the fact that it is not intended to protect domestic production.

As regards the question whether a contribution may be considered to be a charge having equivalent effect even when it is not defined as a tax and is not imposed for the benefit of the Treasury, the abovementioned opinion refers to the judgment of the Court in Joined Cases 52 and 55/65 (*Federal Republic of Germany* v *Commission*), according to which the equivalence of a charge to a customs duty must be assessed by considering its effects in the light of the objectives of the Treaty, without having regard to the purpose for which it was introduced by the State, nor the detailed rules laid down for its application.

In order to define the concept of internal taxation referred to in Article 95 of the Treaty, it can first be observed that by virtue of an internationally acknowledged principle States do not lay the burden of such charges on foreign consumers and that the exporter has the right to a refund of the taxes imposed on the goods during earlier transport.

It follows from the case-law of the Court that a compulsory contribution cannot be put in the same category as the internal taxation referred to in Article 95 where such charge—as is the case of the contribution in dispute—is not intended to place the products imported in a comparable fiscal position to that of the other categories of products, whatever their origin, is not levied within the context of legislation concerning turnover tax but constitutes a specific charge on imported products, and is not refunded when the products are re-exported, either in an unworked state or after being worked.

The abovementioned consultants consider that the limitations on the freedom of action of Member States as regards the imposition of charges having equivalent effect in their relations with third countries arise out of Articles 18 to 28 of the Treaty concerning the common customs tariff, independently of the implementation of Articles 110 et seq. concerning the common commercial policy.

However, in this instance these limits do not appear to have been exceeded.

More generally, this opinion maintains that a charge, although without protective effects, may very well distort conditions of competition in the Common Market, as does the charge in question. The procedure provided for in Article 101 to eliminate distortions of competition is only a secondary procedure to be applied in cases in which no other provision of the Treaty is applicable. In this instance, the abovementioned effects must be eliminated by application of the prohibition provided for in Article 12 of the Treaty.

Moreover, the charge in question is even protective in effect as regards domestic consumers, as it imposes a burden on all the consumers of the Community for the benefit of certain employers established in just one country of the EEC.

Finally, the opinion refers to the case-law of the Court which shows Articles 12 and 37(2) and the first paragraph of Article 95 to be directly applicable.

The *Commission of the European Communities* observes that the charge in question may be classified as part of the very large sector known as quasi-taxa-

tion ('parafiscalité'). Experience shows that, in order to assess a charge of this type in the light of Community law, a general consideration of the charge is insufficient and that each one must be studied in detail in terms of its own nature and taking into account all relevant factors. Consequently, in this matter it is necessary to avoid any general conclusion capable of being extended to other charges which may, at first sight, appear to be closely related to that which gave rise to the main action, but as regards which it is necessary, both in fact and in law, to take other factors into account.

As regards Article 12, the Commission observes that in order to determine whether a charge is to be regarded as having an effect equivalent to a customs duty, it is necessary to consider such effect in the light of the objectives of the Treaty and in particular in relation to the free movement of goods, without the need to enquire into either the designation or mode of application of the charge, the objectives which the State concerned hopes to achieve in imposing it, or the intended use of the sums raised. However, the mere fact that it results in an obstacle to imports is not sufficient for a charge or taxation to be regarded as prohibited by Articles 9 and 12 of the Treaty.

As regards Article 95, the Commission observes that in the absence of the production of similar goods in the importing country (Cases 27/67 and 31/67), the case-law of the Court concerning certain taxation on imports does not directly refer to Articles 9 and 12 and the prohibition contained therein on the imposition of charges having equivalent effect. This case-law attributed great importance to the fact that the taxation concerned in these cases fell within a general charge imposed without distinction on all categories of products both domestic and imported. For this reason, the principles thus laid down may not be applied without further consideration to taxation of the type concerned in this instance, which constitutes special taxation imposed on a particular product. The power of Member States to impose special internal taxation cannot be contested on the basis of the Treaty as Article 95, whilst laying down limits on the exercise of this power, expressly refers to internal taxation 'of any kind'. In the absence of similar domestic products the distinction between a special charge on imports and internal taxation has no significance in relation to the objectives of the Treaty. Internal taxation which is imposed solely on imports where no domestic product exists is still not compatible with the Treaty, as is shown by the judgment of the Court in Case 31/67 which lays down limits on the freedom of Member States to fix the level of the rates of such taxation.

As regards Article 18 of the Treaty, the Commission observes that it is not an obstacle to the imposition, within the limits laid down by the Treaty, of internal taxation on imports of products from other Member States, as such internal taxation is not likely to conflict with the establishment of a common customs tariff.

In the opinion of the Commission it does not appear possible to draw conclusions from Article 37 regarding the concept of a charge having equivalent effect.

As regards the relationship between Articles 9 and 12, on the one hand, and Article 95, on the other, the Commission observes that the prohibitions set out in the first two articles cannot be regarded as more absolute in nature than those appearing in Article 95. According to the latter provision, in the absence of a domestic product a charge on an imported product must be considered to constitute internal taxation which is lawful to the extent to which its amount remains within the general framework of taxation of the Member State in question.

As regards the respective positions of Belgian importers and importers in other Member States, the Commission maintains that the position of these two groups is the same as regards the Belgian market, as the obligation to pay the charge in dispute as regards sales in the market applies uniformly to them all. On the other hand, a difference exists when a Belgian importer wishes to resell his goods in another Member State, since he has no right to the refund of the charge which he paid on the import of the goods into Belgium. However, the Commission maintains that as regards exports from a Member State the principle of equality of treatment within the spirit of the Treaty is not so strict that Member States are bound to refund certain taxation.

Finally, as regards the difference in treatment which the Law in question involves to the detriment of Belgian diamond importers in relation to undertakings which work diamonds in Belgium and those in other Member States, the Commission observes that in fiscal and social matters the legislation of Member States still differs greatly and that no conclusion regarding the interpretation of Articles 9 and 12 can be drawn from the differences in treatment which result therefrom.

The *Government of the Kingdom of Belgium* observes that according to Belgian law customs duties are included in the concept of taxes. Contributions to social security cannot be confused with this concept, even where they are fixed and charged in the same way as certain categories of taxes.

It emerges from the preliminary studies of the EEC Treaty that Articles 12 et seq. do not refer simply to any measure taken by a Member State the actual effects of which are equivalent to those of a customs duty. By using the concept of a charge having equivalent effect the authors of the Treaty wished to avoid certain Member States' taking advantage of a domestic interpretation of the concept of customs duties in order to circumvent the real objectives of the Treaty.

Thus, the abovementioned concept only includes charges which complement customs duties and which are only imposed on goods coming from abroad to the exclusion of similar goods produced within the country. Even if a charge shows the characteristics of a tax it cannot be considered as having an effect equivalent to that of a customs duty unless it is more unfavourable to the imported product than to the correspond domestic product.

In the absence of a similar domestic product it is impossible to maintain that such a charge is protective in nature and that that charge imposed on imported products cannot lead to a distortion of competition between Member States.

As regards the charge in dispute in particular, the Belgian Government maintains that it is only intended to lay on importers of unworked diamonds the burden of financing a fund the purpose of which is to obtain social benefits for diamond workers because it is those importers who draw an indirect benefit from the activity of such workers.

This system is also justified by reason of the practical difficulties which the calculation of the contribution on the basis of salaries presupposes.

Finally, the Belgian Government observes that the Commission of the European Communities has not considered the contribution in dispute to constitute a charge having an effect equivalent to a customs duty as, in its letter of 29 February 1968 addressed to the Belgian Government, it considers the possibility of abolishing the exemption granted in favour of the Netherlands alone which it considers to contradict Article 7 of the EEC Treaty; this means that in principle there is nothing to prevent the contributions being charged on the import of unworked diamonds from Member States.

Grounds of judgment

1 By judgment of 24 December 1968, received at the Court Registry on 16 January 1969, the Vrederechter of the Second Canton of Antwerp referred to the Court, under Article 177 of the Treaty establishing the EEC, several questions concerning the interpretation of Articles 9, 12, 13, 18 and 95 of the EEC Treaty.

2/4 With the exception of Question No 5(c), the purpose of these questions is essentially to clarify the concept of a charge having an effect equivalent to a customs duty, referred to in Articles 9 and 12 of the EEC Treaty, and the scope of the prohibition laid down therein. The same purpose is present in the references made to Articles 18, 37 and 95 with a view to comparing and distinguishing Articles 9 and 12. These questions must therefore be considered in their entirety.

5/6 According to Article 9, the Community shall be based upon a customs union founded upon the prohibition between Member States of customs duties and of 'all charges having equivalent effect', and the adoption of a common customs tariff in their relations with third countries. Article 12 prohibits the introduction of 'new customs duties on imports . . . or any charges having equivalent effect'.

7/10 The position of these articles at the beginning of that Part of the Treaty reserved for the 'Foundations of the Community', Article 9 being the first provision appearing at the very beginning of the Title dealing with the 'Free movement of goods' and Article 12 heading the section on the 'Elimination of customs duties between Member States', is sufficient to show the fundamental role of the prohibitions laid down therein. The importance of these prohibitions is such that, in order to prevent their circumvention by means of various customs and fiscal measures, the Treaty was intended to prevent any possible failure in their implementation. Article 17 therefore specifies that the prohibitions in Article 9 shall also apply to customs duties of a fiscal nature. Article 95, which appears both in that Part of the Treaty which deals with the 'Policy of the Community' and in the Chapter on 'Tax provisions', is intended to fill in any breaches which a fiscal measure might open in the prohibitions laid down, by prohibiting the imposition on imported products of internal taxation in excess of that imposed on domestic products.

11/14 In prohibiting the imposition of customs duties, the Treaty does not distinguish between goods according to whether or not they enter into competition with the products of the importing country. Thus, the purpose of the abolition of customs barriers is not merely to eliminate their protective nature,

as the Treaty sought on the contrary to give general scope and effect to the rule on the elimination of customs duties and charges having equivalent effect in order to ensure the free movement of goods. It follows from the system as a whole and from the general and absolute nature of the prohibition of any customs duty applicable to goods moving between Member States that customs duties are prohibited independently of any consideration of the purpose for which they were introduced and the destination of the revenue obtained therefrom. The justification for this prohibition is based on the fact that any pecuniary charge—however small—imposed on goods by reason of the fact that they cross a frontier constitutes an obstacle to the movement of such goods.

15/18 The extension of the prohibition of customs duties to charges having equivalent effect is intended to supplement the prohibition against obstacles to trade created by such duties by increasing its efficiency. The use of these two complementary concepts thus tends, in trade between Member States, to avoid the imposition of any pecuniary charge on goods circulating within the Community by virtue of the fact that they cross a national frontier. Thus, in order to ascribe to a charge an effect equivalent to a customs duty, it is important to consider this effect in the light of the objectives of the Treaty, in the Parts, Titles and Chapters in which Articles 9 and 12 are to be found, particularly in relation to the free movement of goods. Consequently, any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 9 and 12 of the Treaty, even if it is not imposed for the benefit of the State, is not discriminatory or protective in effect or if the product on which the charge is imposed is not in competition with any domestic product.

19/21 It follows from all the provisions referred to and from their relationship with the other provisions of the Treaty that the prohibition of new customs duties or charges having equivalent effect, linked to the principle of the free movement of goods, constitutes a fundamental rule which, without prejudice to the other provisions of the Treaty, does not permit of any exceptions. In this respect, it follows from Articles 95 et seq. that the concept of a charge having equivalent effect does not include taxation which is imposed in the same way within a State on similar or comparable domestic products, or at least which falls, in the absence of such products, within the framework of general internal taxation, or which is intended to compensate for such internal taxation within the limits laid down by the Treaty. Although it is not impossible that in certain circumstances a specific service actually rendered may form the

consideration for a possible proportional payment for the service in question, this may only apply in specific cases which cannot lead to the circumvention of the provisions of Articles 9 and 12 of the Treaty.

22/23 The provisions of the Treaty laying down the abovementioned prohibitions impose precise and clearly-defined obligations on Member States which do not require any subsequent intervention by Community or national authorities for their implementation. For this reason, these provisions directly confer rights on individuals concerned.

24/26 In prohibiting the application of any new pecuniary charge to goods circulating within the Community when they cross a frontier, the Treaty does not distinguish between the nationals of the various Member States. In fact the Treaty prohibits any pecuniary charge on imports and exports between Member States, irrespective of the nationality of the traders who might be placed at a disadvantage by such measures. Thus, in applying these provisions, there is no justifications for a distinction to be made according to whether the measures in question adversely affect certain Member States and their nationals, or all the citizens of the Community, or only the nationals of the Member State which was responsible for the measures in question.

27 Question 5(c) submitted by the Vrederechter of the Second Canton of Antwerp asks whether a new charge on imports from all foreign countries is always prohibited as incompatible with the Treaty on the ground that it would form an obstacle to the establishment of the common customs tariff.

28/32 As regards trade with third countries, the Treaty contains no express provisions similar to those which prohibit the imposition of charges having an effect equivalent to customs duties in trade between Member States. The existence of pecuniary charges other than customs duties in the strict sense which, before the establishment of the common customs tariff, were imposed by a Member State at the time of the importation into its territory of goods coming directly from third countries, was not likely to act as an obstacle to the alignment of the customs tariffs of each Member State with the rates of the common customs tariff. It is true that the objectives sought by the uniform application of the common customs tariff by all Member States in the relations with third countries might be hindered by the unilateral adoption or retention of such measures by a Member State, especially where the principle of the free movement of goods in free circulation in a Member State would be insufficient to correct the effects of such national measures. In such circumstances, the question might arise whether the Treaty imposes limits on the freedom of States to adopt or to maintain measures which might adversely affect the operation of the

common customs tariff. However, such a question can only arise in respect of the period after the introduction of the common customs tariff.

Costs

The costs incurred by the Commission of the European Communities and the Government of the Kingdom of Belgium, which have both submitted observations to the Court, are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Vrederechter, Antwerp, the decision as to costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral observations of the applicant and defendants in the main action, the Government of the Kingdom of Belgium and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 9, 12, 13, 18, 37, 95 and 177;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the Vrederechter, Antwerp, by judgment of that court dated 24 December 1968, hereby rules:

1. **The concept of a charge having equivalent effect referred to in Articles 9 and 12 of the EEC Treaty includes any pecuniary charge, other than a customs duty in the strict sense, imposed on goods circulating within the Community by reason of the fact that they cross a frontier, in so far as such a charge is not permitted by a specific provision of the Treaty;**

2. **Without prejudice to any limitations which might be imposed in order to attain the objectives of the common customs tariff,**

pecuniary charges other than customs duties in the strict sense applied by a Member State before the introduction of that tariff on goods imported directly from third countries are not, according to the Treaty, incompatible with the requirements concerning the gradual alignment of national customs tariffs on the common external tariff.

Lecourt Trabucchi Mertens de Wilmars

Donner Strauß Monaco Pescatore

Delivered in open court in Luxembourg on 1 July 1969.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 21 MAY 1969[1]

Mr President,
Members of the Court,

This request for the interpretation of certain articles of the Treaty of Rome, submitted to you by the Vrederechter of the Second Canton of Antwerp, is important for more than one reason. First, because it arises from a dispute concerning the contribution, introduced by the Belgian Laws of 12 April 1960 and 28 July 1962, which importers of unworked diamonds are required to make to the Sociaal Fonds voor de Diamantarbeiders. Before referring this matter to you, the national court gave lengthy consideration to the much discussed problem of the relationship between the Treaty and subsequent legislation and came to a conclusion along the lines of your judgment of 15 July 1964 in *Costa* v *ENEL* (Case 6/64 [1964] ECR 585). Furthermore, you will be dealing once again, in relation to a specific case, with concepts which have been the subject of a great deal of case-law, such as those of a 'charge having equivalent effect' and of 'internal taxation' and you will have to fix the limits of the rights of States. Finally, I would add that the issues raised here are not unconnected with those which you will be called on to consider in Case 24/68, brought by the Commission of the Communities against the Italian Government over the statistical levy imposed by that State on imports and exports.

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Although the issues concern, and can only concern, the interpretation of Community provisions, in this instance Articles 9, 12, 13, 18 and 95 of the Treaty, their scope can only be understood and a proper reply given if they are looked at in the context of the dispute which gave rise to them at national level. For this reason I propose to deal with this aspect first.

1. The Law of 12 April 1960 established in Belgium a social fund for

1 — Translated from the French.