In Joined Cases 267 to 269/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Corte Suprema di Cassazione [Supreme Court of Cassation], Italy, for a preliminary ruling in the proceedings pending before that court between

AMMINISTRAZIONE DELLE FINANZE DELLO STATO [State Finance Administration]

and

SOCIETÀ PETROLIFERA ITALIANA SPA (SPI), whose registered office is in Fornovo Taro (Case 267/81),

and

SPA MICHELIN ITALIANA (SAMI), whose registered office is in Turin (Cases 268 and 269/81),

on the jurisdiction of the Court of Justice to interpret the General Agreement on Tariffs and Trade (GATT), the effects of the substitution of the Community for the Member States with regard to the fulfilment of the obligations laid down by that agreement and the interpretation of several provisions of GATT with regard to the duty for administrative services levied on goods imported into Italy under Law No 330 of 15 June 1950,

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, A. O'Keeffe and U. Everling (Presidents of Chambers), Lord Mackenzie Stuart, G. Bosco, O. Due, K. Bahlmann and Y. Galmot, Judges,

Advocate General: G. Reischl
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

The General Agreement on Tariffs and Trade (GATT) was provisionally brought into force between the original Contracting Parties from 1 January 1948 by virtue of the Protocol of Provisional Application signed at Geneva on 30 October 1947.

The Italian Republic acceded to GATT by a Protocol signed at Annecy on 10 October 1949; GATT was brought into force in Italy by Law No 295 of 5 April 1950 (Supplemento Ordinario, Gazzetta Ufficiale No 130 of 9 June 1950), which entered into force on 30 May 1950.

According to Article 11 of GATT, the tariff concessions which each Contracting Party grants to the other parties to GATT are set out in a schedule of concessions. On its accession under the Protocol of Annecy, the Italian Republic negotiated its schedule of concessions, which was annexed to GATT as Schedule XXVII.

Article I of Italian Law No 330 of 15 June 1950 (Gazzetta Ufficiale No 137 of 17 June 1950) abolished the licence duty on goods imported from abroad, provided for in Decree-Law No 894 of 13 May 1935, transformed into Law No 334 of 17 February 1936, and Article 2 introduced a duty payable to the public treasury for administrative services, to be charged on goods imported from abroad at a rate of 0.5% of their value; for the application of that duty, the dutiable value of the goods was to be determined according to the rules in force for the application of *ad valorem* customs duties.

According to the first paragraph of Article 4 of the Law, the duty for administrative services was to take effect from the date of the entry into force of the new customs tariff; by virtue of the second paragraph of Article 4, however, from 30 May 1950 until the entry into force of the new tariff, in respect of goods included in Schedule XXVII attached to the Annecy Protocol of 10 October 1949, the total amount of the customs duties provided for by the tariff in force and the licence duty was not to exceed the amount of the duties fixed by agreement in that protocol.

At the end of the fifth conference on multilateral trade negotiations held in the framework of GATT in Geneva from September 1960 to July 1962 (the "Dillon Round"), in which the Community for the first time took part in its own right, the XL (EEC) Schedule of Concessions was drawn up to substitute a single schedule of Community concessions for the earlier schedules of tariff concessions of the Member States, in respect of all products apart from products falling within the ECSC Treaty. The protocol containing the results of the Dillon Round was concluded on

behalf of the Community by a decision of the Council of 3 July 1962 (unpublished); the XL (EEC) Schedule entered into force on 1 January 1963.

There were fresh negotiations on the XL (EEC) Schedule during the 1964 to 1967 Trade Conference (the "Kennedy Round"), the results of which were contained in the Geneva Protocol of 30 June 1967 and were ratified by Decision 68/411 of the Council of 27 November 1967 on the conclusion of multilateral agreements signed at the end of the 1964 to 1967 Trade Conference (Official Journal, English Special Edition, Second Series, I. External Relations (2), p. 228). The Geneva Protocol and the revised XL (EEC) Schedule entered into force on 1 January 1968.

On 22 December 1967, the Commission adopted Directive 68/31 fixing a time-table for the abolition of the 0.5% duty for adminmistrative services charged by the Italian Republic on the importation of goods from other Member States (Journal Officiel, L 12, p. 8). According to Article 1 of the directive, in respect of imports from other Member States, the duty for administrative services was to be abolished by 1 July 1968, by means of successive reductions of the rate applied on 31 December 1957.

In accordance with Decision 66/532 of the Council of 26 July 1966 on the abolition of customs duties and the prohibition of quantitative restrictions between Member States and the implementation of the duties in the Common Customs Tariff for products other than those listed in Annex II to the Treaty (Journal Officiel 165, p. 2971) and Regulation No 950/68 of the Council of 28 June 1968 on the Common Customs Tariff (Official Journal, English Special Edition, 1968 (I), p. 275), the Community achieved the customs union before the specified time, in particular by the general introduction on 1 July 1968 of the Common Customs Tariff in trade relations with non-member countries.

Since the Italian Republic did not abolish the duty for administrative services by 1 July 1968, the Commission brought an action before the Court on 7 March 1970 under Article 169 of the EEC Treaty for a declaration that the Italian Republic had failed to fulfil its obligations. By judgment of 18 November 1970 in Case 8/70, *Commission* v *Italian Republic* [1970] ECR 961, the Court held that by levying a duty of 0.5% for administrative services on imports from other Member States the Italian Republic had failed to fulfil its obligations under the combined provisions of Article 189 of the Treaty and various regulations of the Council on certain common organizations of the agricultural market and also under the combined provisions of Article 13 of the Treaty and Directive 68/31 of 22 December 1967.

By its judgment of 17 December 1970 in Case 33/70, *SACE* v *Ministry of Finance of the Italian Republic*, [1970] ECR 1213, the Court decided *inter alia*, in response to a request for a preliminary ruling made by the President of the Tribunale [District Court], Brescia, that the obligation to abolish the duty for administrative services contained in Directive 68/31, in conjunction with Articles 9 and 13 (2) of the Treaty and with Decision 66/532 of the Council, had direct effect in the relations between the Member State to which the directive was addressed and those subject to its jurisdiction and conferred on them from 1 July 1968 rights which the national courts must protect.

The duty for administrative services was abolished by Law No 447 of 24 June

1971 (Gazzetta Ufficiale No 180 of 17. 7. 1971), with retroactive effect from 1 July 1968 for imports from other Member States of the EEC and with effect from the entry into force of the law for all other imports.

Previously, the Amministrazione delle Finanze dello Stato [hereinafter referred to as "the Administration"] had levied in respect of the duty for administrative services:

A sum of LIT 101 286 380 from the Società Petrolifera Italiana [hereinafter referred to as Petrolifera], whose registered office is in Fornovo Taro, in relation to imports from Kuwait of crude oil and shale oil effected between July 1964 and December 1967;

A sum of LIT 2 722 118 from Michelin Italiana SpA [hereinafter referred to as "Michelin"], whose registered office is in Turin, in relation to imports of synthetic rubber and machines from several countries which were parties to GATT between 1965 and 1971;

A sum of LIT 4 560 087 also from Michelin, in relation to imports of various products, such as machine-wire, valves, machine parts, speed-reducers and hand tools, from several countries which were parties to GATT between 15 October and 31 December 1963.

The two companies brought actions before the competent Italian courts for the refund of those payments, claiming essentially that the duty for administrative services was higher than the duties bound in the framework of GATT first by Italy and then by the Community.

Petrolifera and Michelin (in relation to the imports effected in 1963) succeeded at first instance; Michelin's claim was dismissed at first instance in relation to the imports effected from 1965 to 1971. On appeal, the Corte d'Appello [Court of Appeal], Genoa, by judgments of 21 June 1979 (case involving Petrolifera) and of 28 October 1977 (case concerning the imports effected between 1965 and 1971 by Michelin) and the Corte d'Appello, Turin, by judgment of 25 February 1978 (case involving Michelin in relation to the imports effected in 1973) ordered the Administration to refund to the companies in question the sums paid by them in respect of the duty for administrative services.

The Administration lodged an appeal in cassation against those judgments before the Corte Suprema di Cassazione. The three appeals were initially assigned to the First Civil Division but were then transferred to the Combined Divisions.

Before them, the Administration contended that the prohibition laid down in Article II (1) (b) of GATT on increasing ordinary customs duties and all other duties or charges of any kind imposed on or in connexion with importation could not apply to products which had not been included in the schedule of original concessions applicable to Italy (Schedule XXVII). Thus the introduction in 1950 of a duty for administrative services could not constitute an increase in taxation in relation to the customs binding which was the subject of the Protocol of 1962 containing the results of the Dillon Round, by which the schedules of the Member States which were parties to GATT were replaced by the single Community XL (EEC) Schedule.

The defendants in cassation stated that in any event the introduction of new charges such as the duty for administrative services provided for by the Law of 15 June 1950 was contrary to

GATT, in particular to the combined provisions of the preamble and Articles II (1) (b), III (2), VI and VIII.

The three orders dated 21 May 1981, the Corte Suprema di Cassazione referred to its earlier judgments, whereby the date of reference for assessing the prohibition on increasing customs duties on imports and charges having equivalent effect, laid down in Article II (1) (b) of GATT, was to be the date of accession to GATT. Furthermore, it stated that there was a disparity between its own judgments and those of the Court of Justice in relation to the effect of the provisions of GATT in the national legal order; consequently, it decided to stay the proceedings in application of Article 177 of the EEC Treaty until the Court of Justice had given a preliminary ruling on the following questions:

(A) By way of a preliminary point: Since the Community has been substituted for the Member States with regard to the fulfilment of the obligations laid down in GATT and since it negotiated the concessions and bindings made within the framework thereof before 1 July 1968, do the provisions of GATT and the schedules thus negotiated fall (and if so, since when and subject to what limitation) within the measures on the interpretation of which the Court of Justice has jurisdiction to give a preliminary ruling under Article 177 of the Treaty, even where the national court is requested to apply them or to interpret them with reference to relations between parties for purposes other than that of determining whether or not a Community measure is valid?

(B) If the foregoing question is answered in the affirmative: What, if any, are the effects which follow, within the legal order of the Community and within those of the Member States, from the fact that the Community has been substituted for the Member States with regard to fulfilment of the obligations laid down in GATT and that it negotiated the new common schedule, XL (EEC)? If those effects occur at different times, what is their sequence? In particular, for the purpose of deducing therefrom a basis for the interpretation or a rule for the application of later national provisions which conflict with the provisions of GATT, is the national court obliged to take the view, having regard to the attribution of jurisdiction under Article 177 of the Treaty, that GATT, with specific reference to the provisions referred to in the following questions, operates at the level of a mere international obligation and has no direct effect internally, or else that it does have such effect with regard to relations between parties, and, if the latter is the case, has GATT the same status as, or greater status than, the conflicting national provisions?

(C) If an affirmative reply is given to Question (A) and whatever the reply to Question (B), with a view to providing the national court with guidelines relevant to the interpretation of the national provisions:

(1) Does GATT — and in particular the preamble (now Article 1 (2)) in conjunction with Articles II (now III) (1) (b) and (2), III (now IV) (2), VI and VIII — prohibit the introduction for any product, whether or not included in the schedules referred to in Article II (now III), of new customs duties or other duties or charges of any kind imposed on or in connexion with importation?

(2) In the case of the products included in the schedule of concessions granted by a State after its accession to GATT — and in particular, with regard to those States which are also members of the European Economic Community, in the case of goods included in the XL (EEC) Schedule drawn up on conclusion of, first, the Dillon Round and, secondly, the Kennedy Round — is the time which must be used as a reference to determine the level of the duties and other charges on imports covered by the prohibition on increases laid down in Article II (now III) (1) (b) of GATT the date of accession to GATT or the date of the protocol introducing the new concession?

The orders of the Corte Suprema di Cassazione of 21 May 1981 was lodged at the Court Registry on 6 October 1981 and entered in the Register under Nos 267/81, 268/81 and 269/81.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted as follows: on 22 December 1981 in each of the three cases by the Commission of the European Communities, represented by the Deputy Director General of its Legal Department, Giancarlo Olmi, and its Legal Adviser, Jacques Bourgeois; on 24 December 1981 in Case 267/81 by Petrolifera, represented by Guido Scarpa and Francesco Nicoletti, of the Milan Bar, and Giuseppe Guaroni, of the Rome Bar; on 12 January 1982 by the Government of the French Republic, represented by the Secretary General of the Interministerial Committee on Questions of European Economic Cooperation; on 15 January 1982 by the Kingdom of the Netherlands, represented by F. Italianer, General Secretary in the Ministry of Foreign Affairs; on 18 January 1982 in each of the three cases by the United Kingdom, represented by R. N. Ricks, Assistant Treasury Solicitor; and on 19 January 1982 in each of the three cases by the Government of the Italian Republic, represented by Arnaldo Squillante, President of Section in the Consiglio di Stato, Head of the Department for Contentious Diplomatic Affairs, Treaties and Legislative Matters, assisted by Sergio Laporta, Avvocato dello Stato.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decised to open the oral procedure without any preparatory inquiry. However, it requested the Italian Government and the Commission to reply in writing to certain questions. Those requests were complied with; Petrolifera also gave its views thereon.

By order of 5 May 1982, the Court decided to join Cases 267/81, 268/81 and 269/81 for the purposes of the oral procedure and the judgment.

II — Written observations submitted to the Court

Petrolifera, the respondent in the main action in Case 267/81, refers to the case-law of the Corte Suprema di Cassazione and the Court of Justice on the legality of the duty for administrative services with regard to GATT and Community law. It follows in particular from the judgment of the Court of Justice of 13 December 1973 in Joined Cases 37 and 38/73, *Sociaal Fonds voor de Diamantarbeiders* v *Indiamex*, [1973] ECR 1609, that, since the duty for administrative services is a charge having equivalent effect which does not apply to agricultural products and was introduced before the establishment of the Common Customs Tariff and even before the entry into force of the EEC Treaty, it is not covered by any Community rules; the problem whether it should be maintained or abolished should therefore be dealt with exclusively by reference to Italian legislation and case-law.

The first question

There are two aspects to the first question put by the Corte Suprema di Cassazione and these should be distinguished: the first concerns the jurisdiction of the Court to interpret international agreements, and the second concerns the effects of international agreements with regard to the law applied by the courts of the Member States.

It is clear from the case-law of the Court that its jurisdiction to interpret international law is justified by the need for uniform interpretation and application of Community law, which may be jeopardized by a rule of international law which is applicable within the Community legal order, where it might have priority over a provision of Community law. That may be the case only if the Community is bound by the provision of international law in question and if that provision is capable of conferring on those subject to Community law the right to rely upon it before the courts. In view of Article 234 of the EEC Treaty, the Court, when reference is made to it concerning the interpretation of a provision of an international agreement, has jurisdiction to interpret that agreement in order to determine its effect in the Community legal order.

Agreements concluded directly by the Community either under Articles 113 and 114 or under Articles 238 and 228 of the EEC Treaty bind the Community and the Member States thereof; they create directly-applicable rules, intended to confer personal rights on individuals. The same applies to "communitarized" agreements and in particular, since the introduction of the Common Customs Tariff on 1 July 1968, to GATT.

The Court of Justice would in any event have jurisdiction to interpret the international agreements concluded under Article 234 of the EEC Treaty by one or more Member States before the entry into force of the Treaty, regardless of whether the Community had been substituted for the Member States in relation to the obligations incumbent on them under those agreements. However, that

jurisdiction exists only in so far as according to the general scheme of the EEC Treaty the rule of international law is bound to have priority over Community rules contained in the Treaty or in measures of secondary Community law; it is a matter of avoiding the possibility that a rule of international law may be interpreted differently in the various Member States, in contrast to a rule of Community law, which should itself be applied in a uniform manner throughout the Community.

So far as "communitarized" agreements are concerned, their effects in relation to the law applied by the national courts arise when the Community officially implements them by a measure binding the Member States. Thus GATT took effect on the date of the introduction of the Common Customs Tariff on 1 July 1968; the jurisdiction of the Member States in customs matters ended on that date in relations with non-member countries.

It would therefore be absurd in the framework of the main action in Case 267/81 to ask the Court to give a ruling even indirectly on the compatibility of the duty for administrative services with the rules contained in GATT; that problem should be solved exclusively on the basis of criteria which may be drawn from Italian national case-law.

The second question

The duty for administrative services is charged on imports from non-member countries of products other than agricultural products; thus, according to the case-law of the Court, Community law is wholly inapplicable: it is for the Italian State to decide exclusively on the basis of its own legislation and case-law whether to maintain or abolish the duty.

Moreover, in its case-law the Court has not accepted that the provisions of GATT are capable of creating personal rights within the Community, inasmuch as they may be relied upon before a national court to defeat a rule contained in a Community regulation. The problem raised before the Corte Suprema di Cassazione is on the contrary that of the scope of a provision of GATT in relation to a national duty introduced before the entry into force of the EEC Treaty; that question does not fall within the Court's jurisdiction: under the general scheme of the EEC Treaty, the Member States are free to maintain or abolish such a duty, under their own national law, without infringing any provision of Community law.

The third question

(a) A reply by the Court to the first part of this Question may be only of a purely academic value.

In any event, it should be stated that the relevant provisions of GATT introduce a "standstill" rule, which has the same scope as those contained in various articles of the EEC Treaty, particularly Articles 12 and 95; the case-law of the Court in this regard is confirmed in relation to GATT by the case-law of the Italian Corte Constituzionale [Constitutional Court], the Corte di Cassazione and the Consiglio di Stato [State Council].

In its preamble, GATT imposes on the Contracting Parties an obligation substantially to reduce customs tariffs and other trade barriers; that obligation, which admittedly is in the nature of a programme, nevertheless involves a

directly-applicable prohibition on the introduction of new customs duties or new charges having equivalent effect. The system of the EEC Treaty, which contains directly-applicable rules giving rise to personal rights which must be protected by the national courts, is identical.

Article II (1) (b) of GATT prohibits the Contracting States from imposing on imported products duties or charges in excess of the customs duties applicable at the date of accession of GATT. That prohibition is defined more closely in Article II (2), which provides that the Contracting States may impose on the importation of a product only countervailing duties, anti-dumping duties and fees for services rendered; none of these cases applies to the duty for administrative services, which constitutes a classic example of a charge having an effect equivalent to a customs duty.

The provisions of GATT referred to in the question put by the Corte Suprema di Cassazione lay down a "standstill" rule, prohibiting the Contracting States from introducing any charge having equivalent effect on any imported product whatsoever, whether or not that product appears in the original schedule annexed to GATT or in a subsequent schedule by which the original schedule was replaced.

(b) In relation to the second part of the question, it should be noted that under Community law the only date on which obligations of a Community nature may have been imposed on Member States is 1 July 1968, the date of the introduction of the Common Customs Tariff. In this case, no earlier date may be taken into consideration under Community law; the dispute must therefore be determined by application of national law, in the light of the trend of the Italian case-law.

The *Government of the Italian Republic* submits essentially the following observations:

The first question

The Court has on several occasions stated that, in so far as by virtue of the EEC Treaty the Community, in the application of GATT, exercises powers which previously belonged exclusively to the Member States, it has been substituted for the Member States in relation to the fulfilment of the commitments provided for by GATT; the other Contracting Parties have accepted that position.

In so far as such substitution has actually taken place, the Court must have jurisdiction to give preliminary rulings concerning the interpretation of the provisions of GATT affected by the substitution, in order to check whether competing rules are compatible with one another; it must therefore, by analogy and in order to meet the obvious requirement of uniform application of the law, be regarded as having jurisdiction directly to interpret those provisions when they are directly relevant to the settlement of a dispute.

The second question

The Corte Suprema di Cassazione considered that Articles II and III of GATT must, in view of their self-executing character, be regarded as capable of conferring on individuals, in the framework of and by virtue of their incorporation into the Italian legal order, rights upon which they may rely before the courts; on the other hand, the Court of Justice has ruled that, regard being

had to the spirit, general scheme and terms of GATT, its provisions are not capable of conferring rights on citizens of the Community upon which they may rely before the courts.

The reply to the question put in this case by the Corte Suprema di Cassazione must be sought in the light of the need for a uniform application of GATT in the Community.

The preamble to GATT makes it clear that it seeks to achieve, by means of reciprocal and mutually advantageous arrangements, on the one hand, the substantial reduction of tariffs and other barriers to trade and, on the other, the elimination of discriminatory treatment in international commerce. In relation to the first point, Article II of GATT first of all fixes, in relation to the products described in the national schedules of each of the Contracting Parties, the maximum level of customs duties, which may not exceed the level provided for in the corresponding schedules annexed to GATT, and then prohibits for the same products any increase in all other import duties in force in the wording of those provisions that the prohibition of the imposition on products of any new customs duties or other charges on importation applies only to products included in those schedules.

International practice in negotiations in the framework of GATT shows that the Contracting Parties have always, albeit tacitly, regarded Article II as applying exclusively to products which are covered by tariff concessions and as such are included in the schedules annexed to GATT or to the protocols of accession of new Contracting States.

Furthermore, in relation to a systematic interpretation of the provisions of GATT, a special place should be given to the rules laid down in Articles XXVII (Withholding or withdrawal of concessions) and XXVIII (Modification of schedules).

Article XXVII seeks to ensure the constant application of the principle of reciprocity and balance between the sum of the tariff concessions granted by one party in relation to imports into its territory and the sum of the concessions obtained by it for exports of its own products into the territory of the other parties; the machinery of GATT, resulting from the combined provisions of Articles II and XXVII, is therefore indissoluble from the schedule of Concessions.

Article XXVIII of GATT, which provides for the withdrawal of substantially equivalent concessions, points to the same conclusion.

Thus the prohibition on the introduction of any new customs duties or the increase of those in force on a certain date applies under the provisions of GATT exclusively to the products appearing in the schedules of tariff concessions.

The third question

Article II (1) (b) of GATT, after fixing the ceiling for customs duties which may be imposed on the importation of products described in Part I of the schedule of any Contracting Party, provides that: "Such products shall also be exempt from all other duties or charges of any kind imposed on or in connexion with importation in excess of those imposed on the date of this

Agreement"; Article 5 (a) of the Annecy Protocol of 10 October 1949, whereby Italy acceded to GATT, provides that: "In each case in which Article II of the General Agreement refers to the date of that Agreement, the applicable date in respect of the schedule annexed to this protocol shall be the date of this protocol." Those two provisions, read together, clearly show, on the one hand, that the prohibition on the increase of customs duties applies only to the products which are covered by tariff concessions and as such appear in the schedule relating to each country and are subject to the customs rules contained in GATT, and on the other, that Article II of GATT, inasmuch as it contains an obligation not to increase charges on importation other than customs duties which existed in the Italian legal order on 10 October 1949, excludes the possibility of imposing on products subject to the rules of GATT duties such as the duty for administrative services, which was introduced after the date of the signature of the Annecy Protocol; conversely, there was nothing to prevent Italy from imposing on products which do not appear in Schedule XXVII negotiated at the time of the Annecy Protocol and which therefore do not fall under the special customs rules laid down by Article II of GATT new duties higher than those in force on 10 October 1949.

The schedule of tariff concessions was indeed modified and extended on the occasion of the accession of other countries to GATT, and there was a corresponding change in the number of products subject to the rules laid down in GATT; however, all the protocols whose object or effect is to extend the rules contained in GATT to products which were not previously subject thereto contain a clause which is wholly identical to Article 5 (a) of the Annecy Protocol and defers to the date of the respective protocols the entry into force of the prohibition on the increase of customs duties on products which by virtue of those protocols are for the first time covered by tariff concessions. In relation to the products which did not appear in the original Schedule XXVII but were later included, for example, in the schedule annexed to the Torquay Protocol of 21 April 1951, the limit beyond which, by virtue of Article II of GATT, the duties on importation may not be increased must therefore be determined by the reference to the tax rules applicable to those products in the Italian legal order on 21 April 1951; those products, which have been lawfully subject to the duty for administrative services since the entry into force of the law by which they were introduced, continue to be lawfully subject thereto after 21 April 1951, since the resulting customs charge, which was already in force on that date, cannot represent an increase in the customs levy applicable to those products on that date. Similar considerations apply to the schedules of concessions negotiated by the Community, particularly during the tariff conferences of the Dillon Round and the Kennedy Round, since the measures or protocols in question clearly excluded any retroactive effect.

In order to determine the level of charge which may not, according to Article II (1) (b) of GATT, be imposed on imports into Italy, it is therefore necessary to refer to 10 October 1949 for the products which were included in the original Schedule XXVII and to the date of the final protocol of the Dillon Round for the products which, whilst not

appearing in Schedule XXVII, were included in the schedule of concessions negotiated by the Community; in relation to the latter, it must be regarded as legitimate to impose the duty for administrative services which, since it existed in the Italian legal order prior to 1963, cannot constitute a prohibited increase in the level of charges on importation. The same applies to the products covered by the tariff concessions which were negotiated by the Community in the framework of the Kennedy Round, which ended in 1967.

The answer to the third question should therefore be that, in the case of products which were included for the first time in the so-called common schedules and which did not appear in the national schedules, previously negotiated by each of the States which later became Members of the Community, the date to be taken into consideration with regard to Article II of GATT is that of the protocols signed on conclusion of the tariff negotiations in the Dillon Round and the Kennedy Round.

The *Government of the French Republic* observes that the main actions concern the implementation of an Italian law with regard to the provisions of GATT, that is to say the compatibility of national legislation with an international rule; thus no Community rule is applicable in these cases. Schedule XL (EEC) only appears to be a Community measure, inasmuch as it merely reproduces the schedules of the various Member States; it does not appear in the Common Customs Tariff and does not form part of Community law.

According to Article 113 of the EEC Treaty, jurisdiction with regard to the common commercial policy has been exercised by the Community since the end of the transitional period. From that internal jurisdiction, an external jurisdiction has been inferred, which enables the Commission to negotiate in the framework of GATT on behalf of the Member States which have remained Contracting Parties. However, it has been possible to exercise that jurisdiction only with effect from 1 July 1968; any interpretation by the Court of the provisions and schedules of GATT may consequently apply only to facts which have arisen since that date.

The question of interpretation submitted by the Corte Suprema di Cassazione therefore has no bearing on Cases 267/81 and 269/81, in which the facts arose before 1968; in relation to Case 268/81, the interpretation given by the Court may apply only to the facts which arose between 1968 and 1971.

With regard to the parties, it should be remembered that the disputes are between the Italian State and legal persons; the question referred to the Court relates to the relations between individuals and is therefore irrelevant to the determination of the disputes.

More generally, it should be noted that the Court of Justice has frequently stated that it has jurisdiction to interpret agreements concluded by the Member States in a sphere in which the Community has since become competent or agreements signed and then ratified in the framework of the Community; in a long line of cases the Court has

developed the principle of the external jurisdiction of the Communities in spheres governed by the Treaties. It has also stated that it has jurisdiction to interpret GATT; in order to found that jurisdiction, it has developed two conditions referring to criteria peculiar to Community law: the Community must be bound by a provision of international law which may affect the validity of a Community measure and that provision must be capable of conferring on citizens of the Community the right to reply on it before the courts.

With regard to the first condition, it may be inferred that, conversely, in the absence of any disputed Community measure the Court has no jurisdiction of interpretation; that is the case here.

In relation to the second condition, the Court has already decided that, in view of "the spirit, the general scheme and the terms" of GATT, certain provisions thereof are not capable of conferring on citizens of the Community rights which they may invoke before the courts.

In fact, GATT is based according to its preamble on the principle of negotiation undertaken "on a reciprocal and mutually advantageous basis" and is characterized by the great flexibility of its provisions, in particular those concerning possibilities of derogation; moreover, GATT does not set up any international organization and under its legal rules national parliaments retain their powers.

The fact that GATT does not create any rights for individuals follows more particularly from:

The decision-making process: Decisions within the framework of GATT are taken by agreement, on the basis of negotiations of a political nature; without prejudice to the need for judicial review of the legality of measures, a decision of a court cannot affect a political decision adopted by an international body;

The method of settlement of disputes: this is by negotiation between States.

It follows from the inter-State nature of the decision-making process and the method of settlement of disputes under GATT that the rules of GATT do not produce any effects upon which individuals may rely; therefore in application of the conditions laid down in the case-law of the Court, the latter cannot regard itself as having jurisdiction to interpret GATT. Since the first question put by the Corte Suprema di Cassazione must be answered in the negative, the two other questions have no purpose.

The *Government of the Kingdom of the Netherlands* considers that the questions submitted by the Corte Suprema di Cassazione, Italy, concern the limits of the Community legal order; basically, it is necessary to determine whether GATT may be regarded as forming part of Community law within the meaning of Article 164 of the EEC Treaty.

The Community legal system is an open system: certain provisions of international agreements concluded by the Community with non-member countries or with international organizations, by which the Community as such is bound, may form part of Community law, in so

far as they are capable of direct applications and may "influence" relations within the Community, without requiring the adoption of any legal measure for that purpose.

Article 228 (2) of the EEC Treaty, which provides that international agreements concluded by the Community are to be binding on the institutions of the Community, apply *mutatis mutandis* to the preparation of decisions which bind the Community in the framework of international organizations, such as GATT, in so far as the Community can play a full part in the decision-making process.

If the Community is bound by an international agreement and if the provisions of that agreement which must be specifically relied upon have a direct effect on relations within the Community, the provisions in question may be regarded as forming part of Community law and must therefore be interpreted and applied by the Court of Justice.

The Court of Justice has ruled that it has jurisdiction to interpret international agreements which "bind" the Community, without distinguishing between agreements which have been concluded by the Community itself within the limits of its powers and agreements concluded by the Member States relating to a sphere in which the Member States' powers have been transferred to the Community by virtue of the EEC Treaty.

The jurisdiction of the Court to interpret a particular provision of an international agreement cannot be made conditional upon the existence of a measure of Community law.

In this case, since the Community is bound by the provisions of GATT, the Court has jurisdiction to interpret the relevant provisions thereof and to apply them, in so far as they have direct effect within the meaning of the case-law of the Court.

The question whether the provisions of GATT concerning tariff concessions and bindings are "acts" within the meaning of Article 177 of the EEC Treaty is of no real interest, since the Court in any event has jurisdiction to interpret the whole of GATT.

The *United Kingdom* submits that, having regard to the nature and purpose of GATT and of the provisions in issue in the main action, those provisions do not create for citizens of the Community rights which may be invoked in national courts.

The provisions of GATT generally and the provisions referred to in the questions submitted to the Court in particular do not have direct effect because of the language and the intention of GATT itself and because of the case-law of the Court of Justice.

GATT is primarily concerned with reciprocal arrangements for the reduction of tariffs and other barriers to trade; by contrast, the intention and purpose of the EEC Treaty is not merely to facilitate trade between Member States but also to create a single economic Community with its own legal order, its own institutions and its own

machinery for its interpretation and implementation.

When the effect of an international agreement is considered, the ordinary meaning must be given to the terms of the Treaty in their context and in the light of its object and purpose. In several of its judgments, applying that principle, the Court stated that the provisions of GATT are not capable of conferring on citizens of the Community rights which they may invoke before the courts.

To give direct effect to a treaty such as GATT would lead to wholly undesirable results which were not intended by the parties thereto: the consequence would be unilaterally to enlarge the EEC, so far as Member States only are concerned, to countries which have not accepted the obligations inherent in membership of the EEC.

There is no reason for the Court to depart from its previous rulings, whereby the provisions of GATT in question in the main action cannot confer on nationals of Member States of the Community rights which may be invoked in national courts.

The *Commission* submits essentially the following observations in the three cases referred to the Court:

First question

(a) The Community has now been substituted for the Member States in relation to the fulfilment of the commitments arising out of GATT: the Court of Justice has confirmed that on several occasions, in particular in its judgment of 19 November 1975 in Case 38/75, *Douaneagent der NV Nederlandse Spoorwegen* v *Inspecteur der Invoerrechten en Accijnzen*, [1975] ECR 1439.

That substitution of the Community for the Member States in relation to the fulfilment of commitments arising out of GATT creates a situation in the Community legal order comparable to that in which an international agreement was originally concluded by the Community itself.

Within the framework of GATT substitution is in fact very widely accepted and practised, without having been formally set out.

In the Community's internal order, as a result of the substitution of the Community for the Member States, GATT must be treated, like all agreements concluded by the Community, as a measure of the institutions of the Community, within the meaning of subparagraph (b) of the first paragraph of Article 177 of the EEC Treaty. The internal effect of GATT cannot depend on the legal system of each of the Member States; it would be inconsistent and illogical to permit the provisions of GATT to have an effect in the Community differing according to the legal system of each of the Member States, when within GATT the Community acts as one unit and develops an important part of the common commercial policy, exercising the competence and powers which have been transferred to it under the Treaty.

Under those circumstances the existence, effect and scope of a Member State's obligation to comply with GATT have undoubtedly become questions of Community law, as a result of the substitution of the Community for the

Member States, those questions must necessarily fall within Article 177 of the EEC Treaty, since otherwise part of Community law would be deprived of the guarantee of uniform interpretation provided by the procedure for preliminary rulings.

(b) However, it is necessary to examine whether at the material time the Community had actually been substituted for the Member States in relation to the fulfilment of the commitments provided for in Article II (1) (b) of GATT.

That provision contains two obligations, one of which relates to ordinary customs duties and the other to all other duties or charges of any kind imposed on or in connexion with importation.

In relation to ordinary customs duties, the Community was substituted for the Member States in relation to the fulfilment of the commitments arising out of the binding for the products described in Schedule XL resulting from the Dillon Round, which was held during the transitional period; intended to enter into force at the end of that period, the Common Customs Tariff at that time constituted the common tariff with which the customs tariffs of the Member States were to be progressively aligned, within the limits and conditions provided for in the Treaty. In the Community's internal order, competence was shared; the result of this in the sphere of external relations was that the protocol of the Dillon Round was concluded by the Member States as well as by the Community.

The fact nevertheless remains that in the Community's internal order the Member States were subject, in relation to customs tariffs, to procedural and substantive rules which at international level had a counterpart in the negotiation and conclusion by the Community of the protocol of the Dillon Round.

The position is different in relation to the obligation laid down in Article II (1) (b) concerning other duties or charges imposed on or in conexion with importation.

The schedules of concessions of the Member States, that is to say the bound customs duties, were withdrawn and replaced by Schedule XL of the Community. The obligation concerning charges on importation other than ordinary customs duties is linked to the obligation concerning the latter to such an extent that the withdrawal of a concession (the "unbinding") necessarily results in the absence of any obligation concerning "other" charges; the obligation undertaken by the Community, in concluding the protocol of the Dillon Round and binding the customs duties in Schedule XL, might have been affected by charges on importation other than customs duties which the Member States could have imposed on the "bound" products. However, it is necessary to take into consideration the extent to which the common commercial policy had been developed at the material time, in order to assess how far the Community had been substituted for the Member States in relation to the acceptance and fulfilment of the commitments arising out of GATT; in that regard, it should be remembered that the protocol of the Dillon Round was concluded by the Member States as well as by the Community.

Moreover, within the Community the Member States were still able to use

charges on importation as an instrument in trade with non-member countries, except in relation to agricultural products. The Court held that the prohibition on the modification of duties in the Common Customs Tariff by the Member States by means of charges added to those duties applied only with effect from the introduction of the Common Customs Tariff on 1 July 1968; furthermore, that prohibition covered the introduction of new charges on imports or any increase in the level of charges which existed on that date.

(c) In the main action in Case 268/81, the duty for administrative services was still levied after the agreements of the Kennedy Round, which in relation to tariffs resulted in the early entry into force of the Common Customs Tariff on 1 July 1968. As a result a new situation arose in relation to the substitution of the Community for the Member States in the fulfilment of the commitments provided for in Article II (1) (b) of GATT concerning charges on importation other than customs duties.

In the sphere of external relations, the commitments regarding tariffs were negotiated and accepted by the Community alone. The tariff protocol of the Kennedy Round was, admittedly, concluded by both the Community and the Member States; but it was so concluded by each within the limits of its own jurisdiction. For the Member States, it was a matter exclusively of the withdrawal of the former concessions on products falling within the ECSC Treaty and the determination of a single common schedule (XL (A)) for those products.

The situation also changed within the Community: after the Dillon Round, according to the provisions of the Treaty themselves, no proper common customs tariff yet existed during the transitional period and, although the Member States were obliged progressively to align their tariffs with the common tariff, within the limits and conditions provided for by the Treaty, they retained some room for manoeuvre; on the other hand, after the Kennedy Round, the bound duties which had been negotiated were reproduced in the Common Customs Tariff, which was fully to enter into force on 1 July 1968, and from that date all powers in relation to tariffs were fully and wholly exercised by the Community.

The existence, effect and scope of Article II (1) (b) of GATT in relation to charges on importation other than customs duties therefore became questions of Community law as from 1 July 1968.

(d) The following reply should be given to the first question put to the Court:

In Cases 267/81 and 269/81:

Before 1 July 1968, the date of the introduction of the Commom Customs Tariff, the Community had not been substituted for the Member States with regard to the fulfilment of the comitments arising out of Article II (1) (b) of GATT concerning the duties and charges other than customs duties imposed on or in connexion with the importation of industrial products. The legal effect of those commitments is not to be assessed with regard to the relevant provisions of the Community legal order;

consequently, their interpretation does not fall within the Court of Justice's jurisdiction to give a preliminary ruling.

In Case 268/81:

In relation to duties and charges other than customs duties imposed on or in connexion with the importation of industrial products, the Community was substituted for the Member States with regard to the fulfilment of commitments arising out of Article II (1) (b) of GATT only with effect from the introduction of the Common Customs Tariff. It is only from that date that the legal effect of those commitments must be assessed with regard to the relevant provisions of the Community legal order and that their interpretation falls within the jurisdiction to give a preliminary ruling laid down in Article 117 of the EEC Treaty.

Second question (Case 268/81)

(a) Since at the material time in Cases 267/81 and 269/81 the Community had not yet been substituted for the Member States with regard to the fulfilment of the commitments arising out of GATT concerning charges on importation other than customs duties, it is unnecessary to express a view in those two cases on the second and third questions put by the Corte Suprema di Cassazione.

(b) In Case 268/81, the second question requires an answer only in relation to the period subsequent to 1 July 1968.

It is necessary to approach with great caution the problem of the direct effect of international agreements concluded by the Community and agreements such as GATT, for the purpose of whose implementation the Community has been substituted for the Member States; that caution is based, on the one hand, on the nature and objectives of such agreements, which differ from those of the EEC Treaty, and, on the other, on the need to maintain a proper balance of advantages and disadvantages between the parties to agreements such as GATT, which are based on reciprocity.

In interpreting a provision of GATT, the court of one Contracting Party might be induced to give to it a wider scope than that which the Contracting Parties attribute or might be induced to attribute thereto; judicial interpretation relates to a subject which the signatories of GATT left to subsequent bilateral or multilateral negotiations or to questions capable of being settled by a procedure for the settlement of disputes, which also includes negotiation.

In relation to "charges on importation other than ordinary customs duties", Article II (1) (b) of GATT must be considered in conjunction with Article III — a matter which raises difficulties of delimitation similar to those which arise in the delimitation of Article 12 et seq. and Article 95 et seq. of the EEC Treaty — and also with Article VIII.

There is apparently no well-established interpretation, accepted by the Contracting Parties, of Articles VIII and II. In order to ascertain their scope, it is not possible to have recourse to a criterion as decisive as that developed by the Court of Justice in relation to the related concept of a "charge having an effect equivalent to a customs duty", that is to say the objective of establishing a single market.

The second question put to the Court in Case 268/81 should be answered as follows:

So far as duties and charges on importation other than customs duties are concerned, Article II (1) (b) of GATT is not a provision with which an individual may enforce compliance by a Member State in the courts by virtue of Community law.

Third question (Case 268/81)

(a) It follows from the actual text of Article II (1) (b) of GATT that the obligation regarding charges on importation other than customs duties concerns only products in relation to which a Contracting Party has accepted the obligation regarding customs duties, in other words, "bound" products.

That provision sets out the objective of GATT: the object of the sentence concerning other charges on importation is to prevent a Contracting Party from introducing such charges so as to reduce the value of the concessions set out in its schedule; the second paragraph of Article 4 of Law No 330 introducing the duty for administrative services shows that that was indeed the idea of the Italian legislature.

GATT does not contain any implied obligation not to introduce new customs duties or new charges on importation, in addition to the express obligation not to increase customs duties on the products bound by a Contracting Party's schedule.

Articles V and VIII tend rather to contradict the idea of a "standstill": they permit the introduction of certain charges, provided that they are "reasonable" (Article V (4)) or "limited in amount to the approximate cost of services rendered" (Article VIII (1)).

Moreover, "binding" in no way implies that the tariff concessions may no longer by withdrawn; on the contrary, they may be withdrawn in the framework of negotiations held on the basis of Article XXVIII or Article XXIV (6) of GATT.

The preamble also fails to support the argument of a "standstill": it reveals that the objective of GATT is not the elimination of customs tariffs and other trade barriers but their reduction "on a reciprocal and mutually advantageous basis".

(b) The date to be taken into consideration in order to determine the date from which a party to GATT is under an obligation not to impose on imports duties or charges "in excess of those imposed on the date of this Agreement" is as a general rule that of the protocol concerning the new concession. That follows from the actual terms of Article 5 (a) of the protocol of the Dillon Round and from the normal practice in relation to GATT.

With regard to the special case of the withdrawal of the concessions of the Member States — which the establishment of a customs union such as the EEC involved — and the offer of concessions by the Community, it was agreed in the Dillon Round that the date applicable for each product which was covered by a concession described in the Community schedule was to be, on importation into one of the Member States, the date of the instrument by which the product, if it appeared in Part

1 of a schedule applicable on 1 September 1960 to that Contracting Party, was for the first time included in the schedule, provided that it had always been covered by an actual concession since the entry into force of the concession provided for in the said instrument and, in all other cases, the date of the protocol of the Dillon Round.

The agreement concluded in the Dillon Round was not expressly renewed in the framework of the Kennedy Round, probably because a special clause was no longer regarded as necessary in relation to the obligations of the Community. The general clause in the protocol of the Kennedy Round provides that: "In each case in which paragraph 1 (b) and (c) of Article II of the General Agreement refers to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in a schedule annexed to this protocol shall be the date of this protocol, but without prejudice to any obligations in effect on that date."

(c) In Case 268/81 the following answer should be given to the third question:

In relation to duties and charges on importation other than customs duties, Article II (1) (b) of GATT covers only the products included in the schedules referred to in Article II. The date which must be used as a reference in order to determine the level of those duties and charges is that of the protocol introducing the new concession. Having regard to the commitments undertaken by the Community on conclusion of the Dillon Round and the Kennedy Round, for the products in Schedule XL (EEC) which already appeared in a Member State's schedule and for imports into that Member State, the date which must be used as a reference is that of the protocol whereby those products were included in that Member State's schedule for the first time.

III — Oral procedure

At the sittings on 27 and 28 October 1982 oral argument was presented and questions asked by the Court were answered by the following: Guido Scarpa, for Petrolifera; Ivo van Bael of the Brussels Bar, for Michelin; Mr Laporta, for the Government of the Italian Republic; Alexandre Carnelutti, Secretary of Foreign Affairs in the Ministry of External Relations, for the Government of the French Republic; and Mr Olmi, for the Commission.

Michelin, which had not submitted any written observations, claimed that the main action raised exclusively questions of Italian law; it was therefore unnecessary to answer the second and third questions referred to the Court by the Corte Suprema di Cassazione.

It claimed that this case concerned a conflict between GATT and a national Law rather than between GATT and a Community measure. The argument that the determination of the compatibility of the contested charge with GATT was governed by Italian law in relation to imports effected before 1 July 1968 and by Community law in relation to imports effected after that date could not be

accepted, because of the special nature of the charge to which the dispute related. The duty for administrative services had been found by the Court itself to be a charge having an effect equivalent to a customs duty; in this case that charge was levied on imports from non-member countries. It followed from the judgment in *Diamantarbeiders* v *Indiamex* that the effect of the entry into force of the Common Customs Tariff was solely to prohibit the Member States as from 1 July 1968 from introducing unilaterally any new charges and from raising unilaterally the level of charges in force; the charges in existence on 1 July 1968 could lawfully be levied on imports from non-member countries as long as the Community authorities had not decided otherwise. The nature of the contested charge and its status under Community law had remained unchanged throughout the period in which it had been in force. The question of the charge's compatibility with GATT was therefore governed exclusively by Italian law both before and after 1 July 1968.

In addition, the dispute in the main action did not involve any Community interest and an examination at Community level of the substantive questions raised by the dispute would amount to interference in an area falling within national jurisdiction.

The Advocate General delivered his opinion at the sitting on 14 December 1982.

Decision

1 By three orders dated 21 May 1981, which were received at the Court on 6 October 1981, the Corte Suprema di Cassazione [Supreme Court of Cassation] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions concerning:

On the one hand, the interpretation of Article 177 of the EEC Treaty;

On the other hand, the effect within the Community of the General Agreement on Tariffs and Trade (GATT) of 30 October 1947 and of the Tariff Protocols concluded in the framework of GATT by the Community on 16 July 1962 and 30 June 1967 (hereinafter referred to as "the Tariff Protocols"), and also the interpretation of the preamble to GATT and of Articles II, III, VI and VIII thereof, in conjunction with the Tariff Protocols.

The Corte Suprema di Cassazione submitted the questions in order to enable it to determine the compatibility with those provisions of the imposition of the *ad valorem* duty of 0.5% for administrative services introduced by Law No 330 of 15 June 1950 (hereinafter referred to as "the duty for administrative services").

2 Those questions arose in the course of disputes between various importers and the Amministrazione delle Finanze dello Stato [State Finance Administration, hereinafter referred to as "the Administration"], concerning the levying of the duty for administrative services on various goods imported from non-member countries which are parties to GATT. It appears from the orders for reference that the contested charges were levied between 1964 and 1967 in Case 267/81, between 1965 and 1971 in Case 268/81 and between October and December 1963 in Case 269/81. At first instance and on appeal, the importers obtained an order against the Administration for the refund of the duty paid. The Administration then lodged appeals in cassation before the Corte Suprema di Cassazione

Background to the dispute

3 It should be noted that Italy acceded to GATT by the Annecy Protocol of 10 October 1949, which was brought into force by the Law of 5 April 1950. The tariff concessions granted by Italy at that time are contained in Schedule XXVII, annexed to GATT. The schedule was renegotiated during several tariff conferences which took place between 1950 and 1960.

4 At the end of the "Dillon Round", which took place from 1960 to 1961 and in which the Community took part for the first time, Schedule XL (EEC) was drawn up to replace the earlier schedules of concessions of the Member States, including Italy's Schedule XXVII. The protocol containing the results of those negotiations was concluded jointly by the Community and the Member States on 16 July 1962. It appears that that protocol was not published in the Official Journal of the Communities.

5 There were fresh tariff negotiations on Schedule XL (EEC) during the "Kennedy Round", which took place between 1964 and 1967 and the results of which, contained in the Geneva Protocol of 30 June 1967, were ratified by a decision of the Council of 27 November 1967 (Official Journal, English Special Edition, Second Series, I. External Relations (2), p. 228). The success of those negotiations made it possible to introduce the Common Customs Tariff on 1 July 1968, that is to say earlier than was planned.

6 It is clear from the foregoing that the duty for administrative services was introduced at a time when Italy had already acceded to GATT and bound a number of customs duties in the framework of the original version of Schedule XXVII, but before the negotiation by the Community of the first Tariff Protocols and before the introduction of the Common Customs Tariff.

7 Pursuant to the power conferred upon it by Article 13 (2) of the EEC Treaty, the Commission addressed to Italy on 22 December 1967 Directive 68/31 fixing a timetable for the abolition of the duty for administrative services charged on the importation of goods from other Member States (Journal Officiel, L 12, p. 8). According to that directive, the duty in question should have been abolished in relation to trade within the Community by 1 July 1968.

8 Since Italy had not implemented that directive, the Commission brought an action under Article 169 of the EEC Treaty and the Court, by judgment of 18 November 1970 in Case 8/70 ([1970] ECR 961), held that Italy had failed to fulfil its obligations under Article 13 of the Treaty and under Directive 68/31. The same finding was repeated shortly afterwards, in the preliminary ruling of 17 December 1970 in Case 33/70, *SACE* v *Ministry of Finance of the Italian Republic*, [1970] ECR 1213.

9 The duty for administrative services was abolished by Law No 447 of 24 June 1971. That Law took effect retroactively as from 1 July 1968 for imports from other Member States of the Community. Thus it appears that the duty was imposed on imports from non-member countries until it was abolished by the aforesaid Law.

10 It follows from the foregoing that the contested charges in Case 267/81 existed at the time of the Tariff Protocol of 16 July 1962 and were still in existence at the time of the Tariff Protocol of 30 June 1967, but pre-dated the introduction of the Common Customs Tariff. The contested charges in Case 268/81 covered a period which extended from the time of the Tariff Protocol of 16 July 1962 to the period following the introduction of the Common Customs Tariff and which included the period of the Tariff

Protocol of 30 June 1967. Finally, the contested charges in Case 268/81 were wholly confined to the period of the Tariff Protocol of 16 July 1962.

11 It is clear from the orders for reference that the Administration in substance contended that because the duty for administrative services was introduced before the Community Schedule, XL (EEC), its imposition could not be regarded as an increase in customs duties, contrary to Article II of GATT. In order to resolve that dispute, the Corte Suprema di Cassazione referred to the Court for a preliminary ruling three questions, which are identical in all three cases. They are worded as follows:

(A) As a preliminary point: Since the Community has been substituted for the Member States with regard to the fulfilment of the obligations laid down in GATT and since it negotiated the concessions and bindings made within the framework thereof before 1 July 1968, do the provisions of GATT and the schedules thus negotiated fall (and if so, since when and subject to what limitations) within the measures on the interpretation of which the Court of Justice has jurisdiction to give a preliminary ruling under Article 177 of the Treaty, even where the national court is requested to apply them or to interpret them with reference to relations between parties for purposes other than that of determining whether or not a Community measure is valid?

(B) If the foregoing question is answered in the affirmative: What, if any, are the effects which follow, within the legal order of the Community and within those of the Member States, from the fact that the Community has been substituted for the Member States with regard to fulfilment of the obligations laid down in GATT and that it negotiated the new common schedule, XL (EEC)? If those effects occur at different times, what is their sequence? In particular, for the purpose of deducing therefrom a basis for the interpretation or a rule for the application of later national provisions which conflict with the provisions of GATT, is the national court obliged to take the view, having regard to the attribution of jurisdiction under Article 177 of the Treaty, that GATT, with specific reference to the provisions referred to in the following questions, operates at the level of a mere international obligation and has no direct effect internally, or else that it does have such effect with

regard to relations between parties, and, if the latter is the case, has GATT the same status as, or greater status than, the conflicting national provisions?

(C) If an affirmative reply is given to Question (A) and whatever the reply to Question (B), with a view to providing the national court with guidelines relevant to the interpretation of the national provisions:

(1) Does GATT — and in particular the preamble (now Article 1 (2)) in conjunction with Articles II (now III) (1) (b) and (2), III (now IV) (2), VI and VIII — prohibit the introduction for any product, whether or not included in the schedules referred to in Article II (now III), of new customs duties or other duties or charges of any kind imposed on or in connexion with importation?

(2) In the case of the products included in the schedule of concessions granted by a State after its accession to GATT — and in particular, with regard to those States which are also members of the European Economic Community, in the case of goods included in Schedule XL (EEC) drawn up on conclusion of, first, the Dillon Round and, secondly, the Kennedy Round — is the time which must be used as a reference to determine the level of the duties and other charges on imports covered by the prohibition on increases laid down in Article II (now III) (1) (b) of GATT the date of accession to GATT or the date of the protocol introducing the new concession?

Consequences of the substitution of the Community for the Member States in relation to commitments under GATT (Question (A))

12 The Corte Suprema di Cassazione refers first to the case-law of the Court of Justice on the substitution of the Community for the Member States in relation to the fulfilment of the commitments under GATT and on the Court's jurisdiction under Article 177 of the Treaty to interpret the provisions of agreements binding the Community (in that regard it mentions in particular the judgments of 12 December 1972 in Joined Cases 21 to 24/72, *International Fruit Company* v *Produktschap voor Groenten en Fruit,* [1972] ECR 1219, of 24 October 1973 in Case 9/73, *Schlüter* v *Hauptzollamt Lörrach* [1973] ECR 1135, of 30 April 1974 in Case 181/73, *Haegeman* v *Belgian State,* [1974] ECR 449, and 11 November 1975 in Case 38/75,

Nederlandse Spoorwegen v *Inspecteur der Invoerrechten en Accijnzen*, [1975] ECR 1439). It then raises the question whether the relevant provisions of GATT and of the Tariff Protocols concluded by the Community are covered by the jurisdiction to give preliminary rulings conferred upon the Court by Article 177, even where the national court is requested to apply them with reference to relations between individuals for purposes other than that of determining whether a Community measure is valid.

13 In addition, the Corte Suprema di Cassazione asks from what date and within what limits that substitution took place, regard being had to the fact that the Community negotiated tariff concessions and made bindings within the framework of GATT before 1 July 1968, the date of the introduction of the Common Customs Tariff.

14 As the Court had occasion to stress in the judgments cited, it is important that the provisions of GATT should, like the provisions of all other agreements binding the Community, receive uniform application throughout the Community. Any difference in the interpretation and application of provisions binding the Community as regards non-member countries would not only jeopardize the unity of the commercial policy, which according to Article 113 of the Treaty must be based on uniform principles, but also create distortions in trade within the Community, as a result of differences in the manner in which the agreements in force between the Community and non-member countries were applied in the various Member States.

15 It follows that the jurisdiction conferred upon the Court in order to ensure the uniform interpretation of Community law must include a determination of the scope and effect of the rules of GATT within the Community and also of the effect of the tariff protocols concluded in the framework of GATT. In that regard it does not matter whether the national court is required to assess the validity of Community measures or the compatibility of national legislative provisions with the commitments binding the Community.

16 Because both the facts relating to these cases and the measures adopted by the Community evidencing its participation in the system of GATT were spread over some time, special problems arise in relation to the application *ratione temporis* of the principles established above.

17 In that connexion it should be pointed out first, as the Court stated in its judgment of 12 December 1972 in the *International Fruit* case, cited above, that the substitution of the Community for the Member States in relation to commitments under GATT took place on 1 July 1968, following the introduction of the Common Customs Tariff. It was at that time that the Community, in advance of the time fixed for the end of the transitional period, assumed its full powers in relation to the sphere covered by GATT.

18 On the other hand, in relation to the matters governed by the Tariff Protocols, including the concessions and bindings agreed in the framework of Schedule XL (EEC) which forms an integral part of those protocols, the effect of the conclusion of those agreements was, by virtue of Article 228 of the Treaty, to bind the Member States in the same way as the Community itself. For the reasons stated above, and subject to the considerations set out below concerning the internal effect of the protocols, it is in any event important that they should be interpreted and applied in the same way throughout the Community.

19 The answer to be given to the question submitted is therefore that, since as regards the fulfilment of the commitments laid down in GATT the Community has been substituted for the Member States with effect from 1 July 1968, the date on which the Common Customs Tariff was brought into force, the provisions af GATT have since that date been amongst those which the Court of Justice has jurisdiction, by virtue of Article 177 of the EEC Treaty, to interpret by way of a preliminary ruling, regardless of the purpose of such interpretation. With regard to the period prior to that date, such interpretation is a matter exclusively for the courts of the Member States.

20 The Tariff Protocols of 16 July 1962 and 30 June 1967 are acts of the institutions of the Community within the meaning of subparagraph (b) of the first paragraph of Article 177 of the Treaty and as such fall within the jurisdiction to give preliminary rulings conferred upon the Court of Justice.

The effect within the Community of GATT and the protocols concluded within the framework thereof (Question B)

21 Next, the Corte Suprema di Cassazione seeks clarification on the effects which follow within the legal orders of the Community and the Member States from the fact that the Community has been substituted for the Member States in relation to the fulfilment of the commitments provided for by GATT. It wishes to know in particular whether GATT, in conjunction with the Tariff Protocols by which the new tariff schedule, XL (EEC), was introduced, has effect within the legal orders of both the Community and the Member States.

22 If the effects within the Community of the rules of GATT and of the Tariff Protocols should occur at different times, the Corte Suprema di Cassazione also wishes to know their sequence.

23 In its judgments of 12 December 1972 and 24 October 1973, *International Fruit Company* and *Schlüter,* cited above, the Court answered in the negative questions concerning the direct applicability of two provisions of GATT, namely Article XI on the elimination of quantitative restrictions and Article II on the effect of schedules of concessions. The Court reached that conclusion on the basis of considerations concerning the general scheme of GATT, namely that it was based on the principle of negotiations undertaken on a reciprocal and mutually advantageous basis and was characterized by the great flexibility of its provisions, in particular those concerning the possibilities of derogation, the measures which might be taken in cases of exceptional difficulty and the settlement of differences between the contracting parties. The same considerations apply to the articles cited by the Corte Suprema di Cassazione.

24 So far as the Tariff Protocols concluded in the framework of GATT are concerned, it should be noted that those protocols are characterized by the fact that they refer, in the tariff schedules annexed thereto, to the customs tariffs of the parties concerned. Therefore those protocols can, by virtue of their general scheme and also of that of GATT, be effective only through the intermediary of the customs tariff of the contracting parties and thus, in this case, through the intermediary of the Common Customs Tariff.

25 However, a special situation existed at the time when the contested charges were levied inasmuch as those charges were for the most part levied before the introduction of the Common Customs Tariff on 1 July 1968. It is therefore necessary to consider separately the periods before and after 1 July 1968.

26 Since direct effect cannot be attributed to the Tariff Protocols in question or to the provisions of GATT which determine the effect of the Protocols, the question of the legality of the imposition of the duty for administrative services must, in respect of the period after 1 July 1968, be considered exclusively in the light of the Common Customs Tariff. In that regard it suffices to refer to the judgment of 13 December 1973 in Joined Cases 37 and 38/73, *Diamantarbeiders* v *Indiamex*, [1973] ECR 1609, from which it follows that the Member States are prohibited, by virtue of the provisions of the Treaty on the Customs Union (Articles 18 to 29) and on the common commercial policy (Article 113), from altering the level of the charge imposed under the Common Customs Tariff. Therefore a Member State may not unilaterally raise the level of the Common Customs Tariff by the imposition of additional national duties or charges.

27 However, as is clear from the same judgment, the charges which were already in existence at the date of the entry into force of the Common Customs Tariff could not, in particular on grounds of legal certainty, be regarded as inapplicable except by virtue of special provisions adopted by the Community.

28 Since no such provision has been adopted in relation to the disputed duty in so far as it applies to the importation of goods from non-member countries, it must be concluded that that duty could lawfully be charged during the period following the entry into force of the Common Customs Tariff until the repeal of Law No 330.

29 In order to determine the legal position prior to the introduction of the Common Customs Tariff, it is necessary to consider the nature and effect of the Tariff Protocols by which Schedule XL (EEC) was substituted for the earlier national schedules of the Member States.

30 At that time, the Member States were engaged in the process of bringing their national tariffs into line with the Common Customs Tariff, in

accordance with Articles 23 to 26 of the Treaty. It follows from that that both the Common Customs Tariff itself and the concessions and bindings contained in the Tariff Protocols negotiated at that time did not constitute a definite obligation for the Member States, but represented rather an objective by reference to which they were to direct their measures of alignment.

31 The answer to the question submitted should therefore be that, in relation to the period before 1 July 1968, the Tariff Protocols of 16 July 1962 and 30 June 1967 did not protect individuals against the imposition by a Member State of a charge on products imported from non-member countries and that, in relation to the period after 1 July 1968, no provision of Community law prevented the imposition on the same products of a charge such as the duty for administrative services, in so far as it was already in existence on that date.

32 In view of the replies given to the first two questions, Question (C) does not arise.

Costs

33 The costs incurred by the Governments of the French Republic, the Italian Republic, the Kingdom of the Netherlands and the United Kingdom and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main actions are concerned, in the nature of a step in the actions pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT,

in answer to the questions submitted to it by the Corte Suprema di Cassazione by orders of 21 May 1981, hereby rules:

1. **Since the Community has been substituted for the Member States in relation to the fulfilment of the commitments laid down by the**

General Agreement on Tariffs and Trade with effect from 1 July 1968, the date on which the Common Customs Tariff was brought into force, the provisions of that agreement have since that date been amongst those which the Court of Justice has jurisdiction, by virtue of Article 177 of the EEC Treaty, to interpret by way of a preliminary ruling, regardless of the purpose of such interpretation. With regard to the period prior to that date, such interpretation is a matter exclusively for the courts of the Member States.

2. The Tariff Protocols of 16 July and 30 June 1967 are acts of the institutions of the Community within the meaning of subparagraph (b) of the first paragraph of Article 177 of the EEC Treaty and as such fall within the jurisdiction to give preliminary rulings conferred upon the Court of Justice.

3. In relation to the period before 1 July 1968, the Tariff Protocols of 16 July 1962 and 30 June 1967 did not protect individuals against the imposition by a Member State of a charge on products imported from non-member countries. In relation to the period after 1 July 1968, no provision of Community law prevented the imposition on the same products of a charge such as the duty for administrative services provided for by Law No 330 of 15 June 1950, in so far as it was already in existence on that date.

Mertens de Wilmars Pescatore O'Keeffe Everling

Mackenzie Stuart Bosco Due Bahlmann Galmot

Delivered in open court in Luxembourg on 16 March 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President