pecuniary charge levied at the time of or by reason of imports or export of the product in question which, by changing the cost price, has on the free movement of goods the equivalent effect of a customs duty. This does not apply to an internal tax levied exclusively on national products subject to a contract and the purpose of which is to provide funds to assist national production. Such a tax could only infringe the provisions of Regulation No 359/67 relating to export refunds if it would appear to be a means of reducing the amount of such refunds.

4. The prohibition of all quantitative restrictions or measures having equivalent effect contained in Article 20 (2) of Regulation No 359/67 has among its objects the prevention of Member States from unilaterally adopting measures restricting export to third countries unless they are provided for in Regulations. The prohibition, under Article 23, of such a measure in the internal trade of the Community is designed to ensure the free movement of goods within the Community.

5. The prohibition of quantitative restrictions and measures having equivalent effect covers any total or partial prohibition on imports, exports or goods in transit and any encumbrance having the same effect.

In case 2/73

Reference to the Court under Article 177 of the EEC Treaty by the Pretore of Milan, by order dated 11 January 1973, for a preliminary ruling in proceedings pending before him for an injunction, between

Riseria Luigi Geddo,

and

Ente nazionale Risi,

on the interpretation of Articles 5 and 40 (3) of the EEC Treaty and of certain provisions of Regulation No 359/67/EEC of the Council of 25 July 1967, on the common organization of the market in rice,

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, C. Ó Dálaigh and A. J. Mackenzie Stuart (Rapporteur), Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarised as follows:

In 1970, the firm of Riseria Luigi Geddo, Borgovercelli, Italy, purchased a certain quantity of paddy rice. Over and above the normal price, the firm had to pay, under the heading of contract duty, Lire 177·206 to the Ente nazional Risi (National Rice Authority) at the rate of Lire 240 for each quintal of paddy rice purchased in accordance with the provisions of Articles 8 and 9 of Royal Decree No 123 of 2 October 1931. Articles 8 and 9, as amended by Royal Decree No 1183 of 11 August 1933, provide, *inter alia,* that:

On every contract for the sale of Italian paddy rice, the purchaser must at the time of declaration and in accordance with Article 8, pay a 'contract duty' to the Ente at the rate laid down by the Ente with the approval of the Ministry of Agriculture and Forestry, the rate of 'contact duty' being fixed before 15 August each year and, with certain exceptions, remaining in force throughout the marketing year. In 1967, the Ente which has legal personality in public law and which operates under Italian State control, became an intervention agency for implementation of the obligations laid down in EEC Regulation No 359/67. Its functions can be grouped under three headings:

1. Research and technical aid arising therefrom.
2. Publicity campaigns to increase production and consumption of Italian rice.
3. Intervention within the framework of the common organization of the market in rice.

Expenditure under the first two headings is met out of income from the 'contract duty', as well as the administrative costs under the third heading.

In its capacity as an intervention agency, the Ente levies the duty at the time of sale of the product.

Italy and France are the only rice-producing countries in the common market. In Italy, rice imports, in whatever form, are not subject to the contract duty. In France, the rice producer has to pay a levy of FF 10·40 per quintal.

There are a large number of fiscal and quasi-fiscal measures of this kind in the common market. They fall into two groups: in the first, they are imposed on the grower without the slightest possibility of their being passed on direct to the consumer while, in the second group, they fall on the purchaser. In this case there is usually provision for reimbursement on export.

In this case the firm of Riseria Luigi Geddo processed the paddy rice into an edible product and exported part of it to a Member State of the EEC and part to a third country.

In the belief that the payment to the Ente nazionale Risi was contrary to Community law, the Riseria applied to the Praetor of Milan on 9 January 1973 for an order for repayment of the duty paid.

On 11 January 1973, after receiving the application, the Praetor of Milan decided to suspend proceedings and directed a reference to be made to the Court of Justice of the European Communities, under Article 177 of the EEC Treaty, for a preliminary ruling on questions designed to establish:

1. Whether Article 40 (3) second subparagraph, of the Treaty of Rome,

taken together with Article 5 of the Treaty, constitutes a prohibition against Member States in general and the Italian State in particular permitting collection for the benefit of any agency (Ente) other than the State of a duty (or financial charge) consisting of a cash payment per quintal of paddy rice produced and sold in Italy (paddy rice being a raw material subject to the common organization covered by Regulation 359/67/EEC).

2. Whether, within the meaning of the provisions of Article 40, referred to under 1 above, taken together with the provisions of Regulation 359/67/EEC and of Article 5 of the Treaty, there are grounds for regarding the Italian operator as being discriminated against when (a) without being reimbursed when he does so, he exports to France (a Member Country) rice obtained from a certain quantity of paddy rice produced and bought in Italy and on which, in accordance with the law, he has been compelled to pay the duty refered to under 1 above and (b) on exporting the rice referred to in (a) above to Austria (a third country) he receives the same refunds (cf. Article 17 (2) of Regulation No 359/67/EEC) as the Community grants his competitors — German and Dutch, for example — who imported the raw material (paddy rice) from third countries without paying duty of any kind.

3. Whether in permitting the levying of the duty referred to under 1 above, on exports of rice produced and purchased in Italy without at the same time laying down a corresponding obligation to reimburse the duty at the time of export, the Community should be regarded as having committed a breach of the obligation placed upon it in subparagraph 3 of Article 40 (3) of the Treaty, taken in conjunction with the provisions of Regulation No 359/67 of the Council (cf. especially Articles 2, 4 and 14 and the twelfth recital in the Preamble).

4. (a) Whether the provisions contained in the second and third subparagraphs of Article 40 (3) of the Treaty are directly applicable within the legal systems of Member States and have created subjective rights, for individuals which the national courts have a duty to protect.

   (b) If the reply to the question in point 4 (a) is in the affirmative, it is desirable to establish the date on which these rights first arose: the date when Regulation No 19/64 entered into force (1 September 1964), or the date of the entry into force of Regulation No 359/67/EEC (1 September 1967).

5. Whether imposition of the duty referred to in 1) constitutes an infringement (a) of the principle that a Community product is accorded preference, as declared in the twelfth recital in the Preamble to Regulation 359 and (b) of the first indent of Article 20 (2) of the said Regulation which prohibits the levying of charges having equivalent effect to a customs export duty.

6. Whether the imposition of the duty referred to under 1 constitutes an infringement of Articles 20 (2), second indent and 23 (1), second indent of Regulation No 359/67/EEC, which prohibit the introduction of measures having equivalent effect to a quantitative restriction on exports.

7. Finally, whether imposition of the duty referred to under 1 constitutes an abuse of a dominant position, which is prohibited by Article 86 of the Treaty.

The applicant and the defendant in the main action, the Italian Republic and the Commission of the European Communities submitted written observations.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open oral procedure without any preparatory inquiry.

The oral observations of the applicant, the defendant, the Italian Republic and the Commission of the European Communities were made at the hearing on 29 May 1973.

The applicant in the main action was represented by Maître Ubertazzi and Maître Cappelli.

The defendant in the main action was represented by Maître Scapinelli, Maître Lanza and Maître Loesch.

The Italian Republic was represented by its agent, Maître Maresca, who was assisted by the State Advocate-General, Maître Zagari.

The Commission of the European Communities was represented by its legal adviser, Maître Toledano-Laredo.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The observations submitted to the Court may be summarized as follows:

A — Observations of the firm of Riseria Luigi Geddo

1. European organization of the market in rice and the free movement of goods in the single market (questions No 1, 2, 5 b and 6)

(a) The EEC Treaty did not merely extend the common market to agriculture; it envisaged 'improved standards' for this sector, i.e. the standards of he common organization of agricultural markets (Article 40). From the beginning, the Court has stressed this characteristic of the agriculture sector; in its judgment delivered in the Joined Cases 90 and 91/63 (EEC Commission v Grand Duchy of Luxembourg and the Kingdom of Belgium, Rec. 1964, p. 1235) the Court declared that the prohibition against obstruction of the free movement of goods is one of the indispensable conditions for the substitution 'not only of a common market for the different national markets but also of a common organization for the national organizations in agriculture'.

The common organization (set up in the rice sector by Regulation No 359 of 25 July 1967, OJ 31 July 1967, p. 1) constitutes this 'single market'. From a reading of Article 43 (3) (b), this term means that an 'European organization of the market must ensure conditions for trade within the Community similar to those existing in a national market'. Market unity implies in particular the free movement of goods.

(b) The introduction of a single market is necessarily accompanied by the elimination of obstacles to the movement of goods 'from one State to another'. But, in addition to obstacles affecting 'imports and exports between Member States', the Court has drawn attention to the existence of 'another, more important type of obstacle' commonly called 'acts capable of affecting trade between Member States' (Judgment 43/69, Rec. 1970, p. 136, given on the subject of Article 85 (1); See, on the same lines, Judgment 5/69 (Rec. 1969, p. 302) in the case of an agreement capable 'of exerting an influence direct or indirect, actual or potential on patterns of trade'. (See Judgment 40/70, Rec. 1971, p. 82, relating to trade marks).

The judgments cited bring out the difference between the common market and the classic type of customs union. In the latter case, States do no more than guarantee abolition of *customs* barriers (cf. Article 28/8 of GATT). 'In the common market, on the other hand, the door is also closed to every other means

of creating partitioning within the market'.

The contract duty payable to the Ente nazionale Risi constitutes an obstacle to trade between Member States and is therefore prohibited. In fact, it entails 'distortions of trade'. (See the opinion of the Advocate-General in case 31/69, Rec. 1970, p. 39).

A German or Belgian operator might tend to prefer rice from elsewhere, insofar as he has no charge whatever to pay on it.

(c) The EEC Treaty was expressly concerned with the removal of customs barriers because its main objective was a 'common' market not yet involving the creating of a single market: the latter means only 'movement towards Community law (and not the concrete reality)'. (See Judgment 78/70, Rec. 1971, p. 500). In the single market the debate on the free movement of goods is conducted in very much more radical terms that in the common market. In the single market, the *international movement* of goods is still of importance and obstacles to the free movement of goods at *any* point in the market, even within a Member State, acquire 'corresponding importance'.

The free movement of goods is in fact, a general principle of Cummunity law, which does more than prohibit new customs duties or taxes having equivalent effect. Confirmation of this is found in the first place in the sources of Community law (See the fourth recital in the Preamble to Regulation No 120/67 which refers to the need to standardize intervention measures on the market 'in order not to hamper the free movement of cereals within the Community', as well as the sixth recital in the Preamble to Regulation No 359/67 in which it is stated that removal of obstacles to the free movement of rice 'must enable surpluses in production areas to be offset against requirements in deficit areas'). Confirmation is also found in decided cases (Judgment 34/70, Rec. 1970, p. 1241: prohibition against putting a restrictive construction on the expression 'every holder' used in Regulation No 1028/68 (cereals); Judgment 11/70, Rec. 1970, p. 1136: the need to 'take appropriate steps to avoid deflections of trade').

The free movement of goods should not consist solely of 'free transit of goods from one State to another, but also of freedom of trade between producers and consumers within the single market'.

(d) The basic restrictions relating to the free movement of goods in the common market apply with appropriate adaptation in the single market: in essence, they amount to prohibition of any pecuniary charges, that is, 'special obligations imposed by a Member State so long as they have not been expressly authorized by Community law'.

Thus, bearing in mind that the single market has its own policy (which also covers prices), we see that Article 95 concerns indirect taxes or those of a general nature 'which affect all products circulating within a State in such a manner as to ensure that competition is not distorted to the detriment of one of them'. 'If this were not so, each State could set up local enclaves within the single market'. The judgment in cases 32 and 33/58 (Rec. 1959, p. 299) condems interference which distorts competition in the common market; this applies a *fortiori* in a single market.

These considerations apply with equal force to the trade in rice. 'The fact that there is a single market means that transfer of the product, even if not from one State to another, cannot be subject to payment of special pecuniary charges imposed by the Italian State outside Community provisions'.

In case 82/71, the Council, returning to the problem of milk-production centres in Italy and to European organization of this market, noted that 'the system in question can be described as a group of measures having equivalent effect to quantitative restrictions'.

In the field of intra-Community trade, the system of import licences was (in Judgment 51 and 54/71, Rec. 1971, p. 1116) considered by the Court as being a measure having equivalent effect even if the certificate was issued automatically and free of charge. 'If similar principles are applied to the single market in rice it must be said that the interpolation of a "licence" or authorization solely for the transfer of rice by the growers, without making transfers of rice belonging to other producers or owners subject to it as well, infringes the principle of the free movement of goods; this is so even if the body responsible for authorization is compelled to grant it without charge'. (See Article 8 of the Royal Decree of 2 October 1931, No 1237, referred to in I above).

(e) In conclusion, 'it is evident that, since 1 September 1967 (when Regulation No 359/67 entered into force), the Ente Nazionale Risi was not in a position to impose the contract duty on purchases of paddy rice produced and marketed within Italian territory'. 'Ever since 1 September 1967, the result of this prohibition has been that individuals in the Community (including those who deal in paddy rice) have possessed subjective rights which the courts of every Member State must protect'.

2. *The prohibition of discrimination and its application to the contract duty (questions No 1, 2, 3 and 5a)*

(a) When the transition is made from the common market to the single market, the prohibition of discrimination based on nationality in Article 7 of the Treaty hardens considerably; in fact Article 40 (3) prohibits 'any discrimination between producers or consumers'.

The prohibition on discrimination implies that situations which are homogeneous in character must be treated in a unifrom manner.

(b) The prohibition set out in Article 40 (3) concerns the production, supply (movement) and processing of goods.

(c) The principle of non-discrimination benefits 'in equal measure all bound by the rule of Community law. From now on, therefore, its effect will no longer be confined to foreigners'. Thus, for example, according to Article 3 (2) of Regulation 364/67, the rules governing invitations to tender, issued by intervention agencies, are intended to ensure equal access and equal treatment for all persons concerned, irrespective of the place of their establishment in the Community. In general terms, if '. . . for any reason, a State judged it expedient to comply with the Community system only as far as the other nationals of the Community were concerned and not in respect of its own, it would be infringing the prohibition on discrimination in the same way as if it did the opposite'.

(d) The legislation relating to the contract duty is in several respects an infringement of the prohibition on discrimination. To begin with, it is solely concerned with the production and sale of nationally produced paddy rice, to the exclusion of rice imported from third countries or Member Countries, and it entails an obligation to declare a purchase within a given time, an obligation to use a special certificate for transport and, finally, an obligation to pay the 'contract duty' (Which at the moment amounts to Lire 240 per quintal of paddy rice, or Lire 400 per quintal of white rice).

'By imposing a ban on all discrimination, Article 40 (3) is also intended to prohibit the movement of certain goods being subjected to pecuniary changes or restrictions of any kind to which the movement of other, comparable goods is not subject', (as in the case of paddy rice not produced in Italy).

(e) Proceeding to question 4, the firm of Riseria Luigi Geddo submits that the answer to the first part, (a), should be in the affirmative: the prohibition in

subparagraphs 2 and 3 of Article 40 (3) is quite clear and precise, is not subject to any conditions and lies outside the discretionary powers of Member States.

As for the date (question 4 (b), this must be 1 September 1967, that is the date when a single market for rice entered into force (Regulation No 359/67).

The contract duty has moreover a discriminatory effect on the price of rice. In the rice market, price regulation plays a fundamental rôle. The tenth recital in the Preamble to Regulation 359/67 declares that 'creation of a single Community market for rice involves a *single price system*'. Against this, one can deduce from Judgment 5/71 (Rec. 1971, p. 975) that, in the view of the Court, 'the principle of non-discrimination could equally apply in the field of the free development of prices in the agricultural market'.

'The contract duty introduces a cost factor into Italian rice production which causes the price of the product to vary from the price laid down for the Community'. The duty also infringes the provision in the third subparagraph of Article 40 (3), that the common price policy must be 'based on common criteria and uniform methods of calculation'.

But the contract duty 'was never taken into account' in the calculation of the target price, the threshold price and consequently the amount of the levies.

Finally, the 'duty' in question constitutes discrimination in the field of competition both within the Community and on the world market. The principle of free competition also applies to the common agricultural market. In the rice sector, both Regulation No 16/64 and the eighteenth recital in the Preamble to Regulation No 359/67 refer to Article 110 of the Treaty in which 'the increase in the competitive strength of undertakings in Member States' is expressly mentioned. The sixth recital in the Preamble to Regulation No 359/67 includes as one of the objects of the system 'that the forces of supply and demand may have free play'.

In Case 30/59 the Advocate-General said that 'the rules of competition can only arise from adaptation of each national industry to natural conditions', (Rec. 1961, p. 76). There can therefore be no doubt about the necessity of prohibiting measures taken with a view to 'artificially' maintaining cost and price differences (SEE Olmi, in the EEC Commentario of Quadri, Monaco, Trabucchi, p. 278 et seq.). The contract duty causes a reduction in the competitiveness of Italian processing firms when compared with their competitors in the common market. Moreover, it distorts competition, to the detriment of rice and in favour of, for example, food pastes. It seems logical to maintain that Article 40 (3) also prohibits this kind of discrimination (between two different sectors and not solely in the same sector).

The rice-growing industrialists of Italy have their own ricemills, which are situated in production areas very far from the seaports. On the other hand, German and Dutch producers have industries which are near ports and they can therefore import rice from third countries. This makes it necessary for the Italian operator to confine his purchases almost wholly to rice produced in Italy. But it is those very people who use Italian rice who are hit by the contract duty, although it does not affect the other operators, who use rice derived from another source.

Even though the contract duty is an indirect tax, it is not refunded at the time of export and, because of this, Italian operators who export to Germany, for example, find themselves in an inferior position to German operators who do not have to pay the contract duty on paddy rice imported from a third country.

There is even greater distortion of competition in the case of exports to third countries. Article 17 (2) of Regulation No 359/67 lays down that

the export refund shall be 'the same for the whole Community'. When it is recalled that the great majority of deliveries to third countries are effected by public agencies and can be based on an extremely small difference in price, it brings home the seriousness of the discrimination which Italian exporters have to suffer in contrast to their competitors in the Community.

An affirmative reply must therefore be given to the second question submitted for a preliminary ruling.

In prohibiting all discrimination, the rule in Article 40 (3) allows no exceptions, even on a fiscal matter, and even though, as such, it is within the residual sovereignty of Member States.

The contract duty would be illegal even if it were applied to rice products without regard to their origin, because it would alter the system of price-formation for the Italian processing industry, would form an isolated enclave in the single market and, in terms of competition, would place Italian undertakings at a disadvantage compared with other undertakings in the Community.

3. The prohibition of taxes and measures having equivalent effect in the marketing of rice (questions 5 and 6)

Questions 5 and 6 concern the contract duty as applied to exported goods. In Regulation No 16/64, the general levy replaced *all* the various national measures. It consequently prohibited the collection of *special taxes,* such as the contract duty, which fell exclusively on a given product.

When applied to exported rice, the contract duty constitutes a charge having equivalent effect. It is moreover a measure having equivalent effect to a quantitative restriction insofar as it destroys the uniformity of interventions in the rice sector required by the fifth recital in the Preamble to, and Articles 20 and 23 of, Regulation No 359/67.

4. Submissions — the inapplicability of Italian law to the contract duty

(a) While, so long as the common market is not yet completely integrated, national rules can subsist in a single market set up by a European organization of the market, 'the stage of mere coordination of the national market organizations has long since passed' (so far as rice is concerned, see Regulation No 359/67, Submissions 34/70, Rec. 1970, p. 1246), i.e. 'from now on all measures relate to the Community' (Submissions 35/71, Rec. 1971, p. 1100). In other words, 'any concurrent exercise of power by Member States is excluded'.

All this applies equally to the market in the rice sector.

The Member States have not retained any legislative power in the field governed by a common organization in the rice sector.

(b) The inevitable outcome is the inapplicability of 'pecuniary charges and restrictions on the free movement of rice such as the discriminatory measures introduced into the law of the Italian State after setting up the Ente Nazionale Risi'. It is not a question of incompatibility of content but of an act *ultra vires.*

The Italian State seems itself to have realized the changed situation since 1968. In fact the Italian Government placed a draft law, No 4947 of 2 March 1968 before Parliament for restructuring the Ente Nazionale Risi, reducing its powers and (in Article 8) abolishing the contract duty.

5. Article 86 of the Treaty and the contract duty (question 7)

According to the Treaty of Rome, occupation of a dominant position within the common market or in a substantial party if it does not in itself constitute an abuse prohibited by Article 86. On the other hand, it could be an

abuse if this dominant position were maintained or reinforced, by funds provided by a tax levied for this purpose.

B — Observations of the Ente Nazionale Risi, the Italian Government and the Commission of the European Communities

On the first and second questions

The *Ente* points out that neither the rules cited from the Treaty nor Community regulations on the question of a common organization of the market in rice contain any provisions relating to purely internal taxes or charges; nor, *a fortiori,* do they contain anything which compels Member States to abolish them. Regulation No 359/67/EEC refers solely to the price of the product in the context of intra-Community trade, quite independently of its cost within a Member State.

In the Ente's view, the contract duty is an entirely internal one, similar to innumerable other internal taxes, or charges of a general nature or levied on things connected with specific professions or undertakings.

The Ente recalls the judgment of the Court in Case 7 and 9/54 *Groupement des industries sidérurgiques luxembourgeoises v Haute Autorité* Rec. 1956, p. 100, which declared: 'The fixing of maximum prices does not prevent products from being subjected to duties, taxes or any other general charge either on consumption or at some stage of distribution'.

Articles 95 and 96 of the Treaty expressly allow and recognize the imposition of such charges and their non-payment on export.

There is no discrimination against Italian rice-producers because every purchaser of Italian rice must pay the contract duty. Moreover, an Italian is free to acquire his rice from another country, and, consequently, avoid paying the contract duty.

The imposition of the contract duty has no effect, direct or indirect, on the only intervention price, which is the only price guaranteed under Community rules.

The *Italian Government* adds that the refund at the time of export which is confined to Member States, in practice compensates exactly for the difference between the price of Italian rice sold cif country of destination and the world market price in that country, as the regular flow of Italian rice exports confirms.

On the other hand, the *Commission* believes that the Italian operator who does not receive a repayment of contract duty at the time of export can regard himself as a victim of discrimination compared with other Community operators who are not subject to the duty. Discrimination can be found on the markets of other Member States as well as on those of third states. The Commission also emphasizes that a charge of this kind can prejudice the objectives and the functioning of the common organization of the market, especially its price system and the functioning of the EAGGF (European Agricutural Guidance and Guarantee Fund). All the same, it accepts that Article 96 allows Member States to make lower refunds, or none at all, and that this makes discrimination inevitable. It accordingly takes the view that, in the present state of affairs, the collection of a duty of this kind is not prohibited.

On the third question

The *Ente* points out that the twelfth recital mentioned by the Praetor is exclusively concerned with inward processing traffic and confirms the need to ensure that basic Community products should not be placed at a disadvantage by a system of refunds encouraging industry to import its raw materials from third countries in order to re-export them and profit from a Community refund; the recital therefore

has no relevance to the contract duty. The Ente comments that during the rice-growing seasons from 1967/1968 to 1971/1972, imports of paddy rice into Italy ranged from a minimum of 500 to 150 000 quintals, while exports varied from about 1½ to 5½ million quintals, about a quarter of which were distributed within Member States of the Community.

The *Italian Government* maintains that the 'contract duty' corresponds to benefits available to rice-growers and rice-producers alike and that, consequently, the question of reimbursement cannot arise. In its view, if one takes into account that the regulation of market prices is guided by the price in the region with a surplus, which price includes the 'contract duty', it does not seem possible to establish an infringement of the principle of Community preference.

The *Commission* adds that, even if the non-repayment of the contract duty at the time of export reduces competitiveness, such reimbursement is not a legal obligation on Member States.

On the fourth question

The *Ente* points out that Article 40 is an outline provision and lays down certain principles, the implementation of which is to be completed by special regulations; it seems impossible therefore to regard those principles as directly applicable.

The *Italian Government* believes that the provisions of Article 40 are intended for the Institutions of the Community. If, on the other hand, those provisions were directly applicable, it would follow that the rights which they confer arose on the date when the Treaty entered into force.

The *Commission* takes the view that if the Community Institutions had infringed the provisions of Article 40, this could be the subject of actions by individuals before national courts.

On the fifth and sixth questions

The *Ente* points out that the 'contract duty' cannot be regarded as a tax or measure having equivalent effect to a customs duty, or a quantitative restriction on exports. It quotes the definition of such a charge in Judgment 2 and 3/62, *Commission v Luxembourg and Belgium,* Rec. 1962, p. 827, and Cases 24/68 and 84/71.

It cannot be an obstacle to exports because the target price was fixed by the Community on a basis which takes full account of any charge imposed on the various operators in the two rice-producing countries, Italy and France.

The *Italian Government* comments that as they concern a charge on purchase and sale of paddy rice carried out on national territory, the two questions must be answered in the negative.

The *Commission* shares this view.

On the last question

The *Ente,* the *Italian Government* and the *Commission* express the same opinion: in the circumstances of this case there is nothing in the case law of the Court which calls for the application of Article 86 (5).

Grounds of judgment

1 By order dated 11 January 1973, received at the Registry of the Court on 16 January 1973, the Praetor of Milan referred, under Article 177 of the EEC

Treaty, several questions on the interpretation of Article 5, paragraphs 2 and 3 of Article 40 (3) and Article 86 of the Treaty together with certain provisions of Regulation No 359/67/EEC of the Council of 25 July, on the common organization of the market in rice (OJ 31 July 1967, No 174).

These questions were put concerning a pecuniary charge, called a contract duty, levied on the purchaser of paddy rice of domestic origin in order to finance the activities of a national rice authority.

On the first six questions

2 The first question asks whether the second subparagraph of Article 40 (3) of the Treaty, taken in conjunction with Article 5, prohibits a Member State from authorizing the imposition of a duty on the purchase of paddy rice produced in that State for the benefit of an organization other than the State.

The second question asks whether the fact that a levy of this kind is not repaid at the time of export to a Member country or a third country constitutes discrimination within the meaning of the same rule in Article 40, taken together with the provisions of Regulation No 359/67 and of Article 5 of the Treaty.

The third question asks whether, in authorizing such a levy, without at the same time providing for the obligation to repay it on export, the Community itself has failed to comply with the obligations placed on it by the third subparagraph of Article 40 (3), taken together with the provisions of Regulation No 359/67/EEC.

The fourth question asks whether the provisions of the second and third subparagraphs of Article 40 (3) are directly applicable within the legal systems of Member States and whether they have created subjective rights for individuals which national courts must protect, and, if the answer is in the affirmative, whether these rights arose from the date of entry into force of Regulation No 16/64 or of Regulation No 359/67.

The first part of the fifth question, asks whether the levying of such a duty infringes the principle of the preference to be granted to Community products, as laid down in the twelfth recital in the Preamble to Regulation No 359/67; the second part of the fifth question and also the sixth question asks whether a levy of this kind can constitute a charge having equivalent effect to a customs duty or a measure having equivalent effect to a quantitative restriction as prohibited by Regulation No 359/67.

3 Before replying to these questions, it is necessary to consider the provisions cited in their context within the Treaty.

Article 40 of the Treaty forms part of the special provisions for the functioning and development of the common market for agricultural products contained in Article 38.

To attain the objectives defined in Article 39, Article 40 (2) provides for the establishment of a common organization of agricultural markets which takes one of the following three forms: common rules on competition, compulsory coordination of the various national market organizations, or a European market organization.

Article 40 (3) provides that the common organization established in accordance with Article 40 (2) may include all measures required to attain the objectives set out in Article 39, including regulation of prices, but specifies that the common organization must exclude any discrimination between producers or consumers within the Community, and that any common price policy shall be based on common criteria and uniform methods of calculation.

Under the terms of Article 43, the Commission is required to submit proposals for implementing the common agricultural policy, including the replacement of the national organizations, and the Council is empowered to carry out these proposals by making regulations, issuing directives, or taking decisions.

By Regulation No 16/64/EEC of 5 February 1964 (OJ 34 of 27 February 1964, p. 574/64) the Council ensured the gradual establishment of an organization of the market in rice.

For producer Member States the main features of this organization of the market were the annual fixing of target prices and the fixing, on the basis of the target price, of an intervention price at which the competent agencies are obliged to buy in the paddy rice offered to them; it also means the annual fixing of a common threshold price to be determined for the first year on the basis of the price recorded on the world market and to which the price of imported products must be equated by means of a variable levy.

Regulation No 359/67 of 25 July 1967, which replaced this legislation, provides for a single target price for husked rice on which two intervention prices, one for Arles, the other for Vercelli, are fixed for rice in the husk.

Apart from this single price system, the Regulation provides for the charging of a standard levy on imports from third countries and for payment of a standard refund on exports to those countries.

Articles 20 (2) and 23 of the said Regulation prohibit the levying of any customs duty or charge having equivalent effect and the application of any quantitative restriction or measure having equivalent effect on exports to a third country or on trade within the Community.

4 In the context of the rice market, therefore, Article 40 was implemented by Regulation No 359/67 which, in accordance with Article 189 of the Treaty, was directly enforceable by the national courts.

In providing that Member States shall take all appropriate measures to ensure that their obligations are carried out and shall abstain from any measure liable to jeopardize the attainment of the objectives of the Treaty, Article 5 imposes a general obligation on Member States, the actual significance of which depends, in each particular case, on the provisions of the Treaty or on the rules laid down within its general framework.

In the rice sector, the only provisions of the Regulation which prohibit national measures are those contained in Articles 20 (2) and 23.

5 The prohibition on the levying of any customs duty or charge having equivalent effect, contained in Article 20 (2) of the said Regulation, covers any charge levied at the time of or by reason of import or export to a third country.

The prohibition on the levying of a customs duty or charge having equivalent effect in trade within the Community, contained in Article 23 of the said Regulation, covers any charge levied at the time of or by reason of import or export of the product in question which, by changing its cost price, produces the same restrictive effect as a customs duty on the free movement of goods.

This prohibition covers any pecuniary charge affecting goods by reason of their crossing the frontier.

6 Such does not appear to apply in the case of an internal tax affecting domestic products alone on completion of a contract covering them and designed to build up a fund to promote national production.

Nor, on the other hand, could such a tax be contrary to the provisions of the Regulation providing for export refunds unless it appeared to be a method of reducing the amount of such refunds.

Finally, if such a tax can come simultaneously within the ambit of the provisions concerning aids, internal taxes and Articles 5, 40 (3) and 98 of the Treaty, it is for the Commission to ensure, with a diligence which reflects the fact that individuals have no immediate redress, that those provisions are observed.

7 The ban on any quantitative restriction or measure having equivalent effect in Article 20 (2) of the said Regulation has among its objects to prevent Member States from taking unilateral measures to limit exports to third countries unless otherwise permitted by the Regulations.

The prohibition of such a measure as between members of the Community in Article 23 is intended to ensure the free movement of goods within the Community.

The prohibition on quantitative restrictions covers measures which amount to a total or partial restraint of, according to the circumstances, imports, exports or goods in transit.

Measures having equivalent effect not only take the form of restraint described; whatever the description or technique employed, they can also consist of encumbrances having the same effect.

This does not appear to apply in the case of a pecuniary charge such as that referred to by the national court.

On the last question

8 This question asks whether the imposition of such a levy could constitute an abuse of a dominant position within the meaning of Article 86 of the Treaty.

9 Article 86 of the Treaty does not apply to a charge for the purpose of financing national aids.

On costs

10 The costs incurred by the Government of the Italian Republic and the Commission of the European Communities, who submitted their observations

to the Court, are not recoverable, and as, these proceedings are, insofar as the parties to the main action are concerned, a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon reading the report of the Judge-Rapporteur;
Upon hearing the oral observations of the applicant and the defendant in the main action, the Government of the Italian Republic 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 40, 86 and 177;
Having regard to Regulation No 359/67 of the Council of 25 July 1967;
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 Praetore of Milan, under an order of that court dated 11 January 1973, hereby rules:

1. **An internal tax which is imposed on national products alone on completion of contracts to which they are subject and which is designed to provide funds to aid national production does not constitute a charge having equivalent effect to a customs export duty.**
2. **Such a tax can only be contrary to the provisions of Regulation No 359/67/EEC of the Council of 25 July 1967, concerning export refunds if it appeared to be a method of reducing the amount of such refunds.**

Lecourt Monaco Pescatore
Donner Mertens de Wilmars
Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 12 July 1973.

A. Van Houtte — Registrar
R. Lecourt — President