However, the imposition of charges or fees which represent the costs of transportation or of other services connected with transit cannot be regarded as incompatible with freedom of transit as defined above, bearing in mind that it is necessary to take account not only of direct and specific services connected with the movement of goods but also of the more general benefits derived from the use of harbour waters or installations for the navigability and maintenance of which the public authorities are responsible.

2. The transit agreement between the EEC and Austria on the application of the rules on Community transit does not contain any specific commitment between the parties in relation to the tax treatment of goods in transit.

3. Article V of the General Agreement on Tariffs and Trade, which lays down the principle of freedom of transit through the territory of each contracting party for traffic in transit to or from the territory of other contracting parties cannot have direct effect in the framework of Community law and individuals may not rely upon it in order to challenge the imposition of a charge such as the loading and unloading charge on goods in transit to Austria. That in no way affects the Community's obligation to ensure that the provisions of GATT are observed in its relations with non-member States which are parties to GATT.

In Case 266/81

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

SOCIETÀ ITALIANA PER L'OLEODOTTO TRANSALPINO (SIOT), whose registered office is in Trieste,

and

MINISTERO DELLE FINANZE [Ministry of Finance], MINISTERO DELLA MARINA MERCANTILE [Ministry of Shipping], CIRCOSCRIZIONE DOGANALE DI TRIESTE [Trieste customs authority] AND ENTE AUTONOMO DEL PORTO DI TRIESTE [Trieste independent port authority],

and also in six other actions, joined thereto, which involve the same parties or some of them, in main actions, cross-appeals and interlocutory proceedings,

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, the effect of the provisions of GATT in the national legal order, the interpretation of Article V (3) of GATT, Articles 90 (1) and 113 (1) of the EEC Treaty and also of Regulations No 542/69 of the Council of 18 March 1969 and No 2813/72 of the Council of 21 November 1972 in relation to the revenue charge and the port charge provided for by Decree-Law No 47 of 28 February 1974, converted into Law No 117 of 16 April 1974, and on the rights of individuals in the event of those charges' being illegal,

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 European Economic Community may be summarized as follows:

I — Facts and written procedure

By Article 27 of Italian Law No 82 of 9 February 1963 (Gazzetta Ufficiale of 23. 2. 1963), a State charge (revenue charge) was imposed on the unloading of goods from abroad in the State's ports, roadsteads and wharves pending permanent or temporary importation and, by Articles 33, 34 and 35, a charge (port charge) was imposed on goods unloaded or loaded in specified ports, including Trieste.

By its judgment of 10 October 1973 in Case 34/73, *Variola* v *Amministrazione Italiana delle Finanze*, [1973] ECR 981 concerning an unloading charge, the Court held that a charge imposed exclusively on imported goods solely because they have been unloaded in national ports constitutes a charge having an effect equivalent to a customs duty and is incompatible with Community law.

Following that judgment, maritime charges and duties were reorganized by Article 2 of Decree-Law No 47 of 28 February 1974 laying down provisions on the unloading and loading charge on goods carried by air and by sea (Gazzetta Ufficiale of 13. 3. 1974), converted into Law No 117 of 16 April 1974 (Gazzetta Ufficiale of 4. 5. 1974).

The Commission, which had on 10 March 1971 instituted proceedings against Italy in connection with the unloading charge for failure to fulfil its obligations under Article 13 (2) of the EEC Treaty, withdrew its action before the Court, and the latter by order of 1 May 1974 (Official Journal 1974, C 69, p. 5) ordered the removal of the case (172/73) from the Register.

The first paragraph of Article 2 of Decree-Law No 47 of 1974, which became Law No 117 of 1974, provides that in all the State's ports, roadsteads and wharves a State charge (revenue charge) is payable on goods loaded and unloaded, calculated per tonne of goods.

According to the second paragraph of Article 2, there is to be no change in the port charge on goods loaded or unloaded in the ports referred to in Law No 82 of 1963.

According to the first part of the third paragraph of Article 2, the amount of the revenue charge is to be determined for each port by decree of the President of the Republic, regard being had to the nature of the goods and the average cost of providing the services. According to the second part of the third paragraph of Article 2, the rate of the port charge, also fixed by decree of the President of the Republic, is not to exceed double the maximum limit provided for the revenue charge; the same decree is to determine the allocation of the main revenues to the local autonomous port authorities and specific appropriations.

The two charges, payable at the same rate for all ports, with differences only in respect of the type of goods, were fixed by decree of the President of the Republic of 13 March 1974 (Gazzetta Ufficiale of 23. 4. 1974). That decree also provided for the allocation of the revenue from the port charge to the port authorities concerned.

In accordance with the laws and regulations applicable, the Trieste customs authority demanded from the Società Italiana per l'Oleodotto Transalpino [hereinafter referred to as "the Company"] a total sum of LIT 3 275 590 580 in respect of the revenue charge and the port charge relating to various quantities of crude oil, imported from countries which were not parties to GATT, discharged in the port of Trieste and transferred into the transalpine oil pipe-line for consignment to the Federal Republic of Germany and Austria between 23 April 1974 and 2 April 1975.

The Company challenged the levying of those charges, which it considers to be contrary to Community law, to GATT and to certain provisions of Italian national law, before the local court and later before the Corte d'Appello [Court of Appeal], Trieste. Not having succeeded either at first instance or on appeal, it appealed against judgments of

the Corte d'Appello , Trieste, of 15 April 1977, 16 April 1977 and 18 February 1978 to the Corte Suprema di Cassazione. Six other connected appeals in cassation were brought before that court by the Company and the Ente Autonomo del Porto di Trieste [hereinafter referred to as "Trieste Port Authority"]; those appeals, or some of them, also involved the Ministry of Finance, the Ministry of Shipping and the Trieste customs authority.

All seven appeals were joined and brought before the Combined Civil Divisions of the Corte Suprema di Cassazione.

Before that court, the Company challenged the legality of the charges, relying in particular upon their incompatibility with Community law and certain provisions of GATT.

In relation to Community law, the contested charges were alleged to be incompatible with Articles 12 and 13 of the EEC Treaty, the Community transit procedure introduced by Regulation No 542/69 of the Council of 18 March 1969 (Official Journal, English Special Edition 1969 (I), p. 125), the agreement between the EEC and the Republic of Austria on the application of the rules on Community transit, signed on 22 June 1972 and concluded on behalf of the Community by Regulation No 2813/72 of the Council of 21 November 1972 (Journal Officiel, L 294, p. 86) and, in relation to the port charges, with Article 113 (1) and Article 90 (1) of the EEC Treaty; in relation to GATT, the contested charges were alleged to be contrary to Article II (1) (b) and to the rules on freedom of transit laid down in Article V (3).

The Corte Suprema di Cassazione considered that, in order to enable it to decide as to the constitutionality of Law No 117 of 1974, it was necessary to establish first whether or not the international and Community provisions infringement of which was alleged enjoyed constitutional protection and, if such was the case, what was the precise content of the provisions thus adopted as a criterion for the assessment of constitutionality.

Referring to the "principles already established by the case-law of the Court of Justice", it considered that the charges in question did not constitute charges having an effect equivalent to customs duties, within the meaning of Articles 12 and 13 of the EEC Treaty, but constituted internal taxation, within the meaning of Article 95, of which, however, no infringement had been alleged.

On the same grounds, it considered that there was no incompatibility with Article II (1) (b) of GATT and stated that infringement of Article III (2) was not alleged.

The Corte Suprema di Cassazione further considered that the other submissions put forward by the Company raised problems of interpretation of Community law. Consequently it decided, by order of 21 May 1981, in application of Article 177 of the EEC Treaty, to stay the proceedings until the Court of Justice had given a preliminary ruling on the following questions:

(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, do the provisions of GATT fall 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 the fulfilment of the obligations laid down in GATT. 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 question, operates at the level of a mere international obligation and has not 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:

In the light of rules laid down in Article V (3) of GATT in relation to goods originating from countries which are not parties thereto but intended for the market in countries which are parties, is the national legislature prohibited, and if so, within what limits and under what conditions, from providing for the imposition of charges (such as the revenue charge on goods unloaded or loaded in all national sea ports and the port charge on goods unloaded or loaded in some only of those ports, referred to respectively in the first and second paragraphs of Article 2 of Decree Law No 47 of 28 February 1974, converted into a law by Law No 117 of 16 April 1974) both on domestic products or products treated as such and on imported products, on the occasion of the unloading or loading of those goods in sea ports of the country belonging to GATT, which charges are levied on the imported product even where, having originated in a country which is not a party to GATT, it is merely in transit through national territory and is

bound for the market of another country which is a party to GATT, and even where — particularly with regard to those of the said charges which are laid down for specified ports administered by independent authorities for which the charges are in part intended — the operations of unloading, loading and forwarding to the market for which the goods are finally intended are carried out exclusively by a commercial undertaking using plant and installations constructed, managed and maintained by that undertaking, without the provision of any direct and specific service by the port authority;

(D) Regardless of the replies to Questions A, B and C:

1. In the light of the principles on which the Community system is based regarding the proper role of competition and the common commercial policy, with particular reference to the rules laid down in Articles 90 (1) and 113 (1) of the Treaty respectively, and in relation to the specific provisions governing Community transit laid down by Regulations (EEC) No 542/69 of the Council of 18 March 1969 and No 2813/72 of the Council of 21 November 1972, is the national legislature prohibited, and if so within what limits, on what conditions and subject to what requirements, including those of a formal nature, regarding the origin of the goods and the transit procedure relating thereto, from providing for the imposition of charges (such as the revenue charge on goods unloaded or loaded in all the national sea ports and the port charge on goods unloaded or loaded in some only of those ports, referred to respectively in the first and second paragraphs of Article 2 of Decree Law No 47 of 28 February 1974, converted into a law by Law No 117 of 16 April 1974) both on domestic products or products treated as such and on imported products, on the occasion of the unloading or loading of the said goods in sea ports of the member country, which charges are levied on the imported product even where, having originated in a non-member country, it is merely in transit through national territory and is intended for the markets of the Federal Republic of Germany and of Austria, and even where — particularly with regard to those of the said charges which are laid down for specified ports administered by independent authorities, for which the charges are in part intended — the operations of unloading, loading and forwarding to the market for which they are finally intended are carried out exclusively by a commercial undertaking using installations and plant constructed, managed and maintained by that undertaking, without the provision of any direct or specific service by the port authority?

2. If the imposition of such charges is prohibited, has an individual a right of action before the national courts to recover the sums paid in respect thereof or to oppose the claim for payment made by the State?

The order of the Corte Suprema di Cassazione was lodged at the Court Registry on 6 October 1981.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 22 December 1981 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 15 January 1982 by the Government of the Federal Republic of Germany, represented by Martin Seidel, Ministerialrat at the Federal Ministry of Economic Affairs, and the Government of the Kingdom of the Netherlands, represented by F. Italianer, Secretary General in the Ministry of Foreign Affairs, on 18 January 1982 by the Government of the Kingdom of Denmark, represented by Laurids Mikaelsen, Legal Adviser in the Ministry of Foreign Affairs, and the Government of the United Kingdom, represented by R. N. Ricks, Assistant Treasury Solicitor, on 19 January 1982 by the Trieste Port Authority, represented by Arturo Marzano, of the Rome Bar, and Gaspare Pacia, of the Trieste Bar, 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 Giorgio d'Amato, Avvocato dello Stato, and by the Company, represented by Wilma Viscardini Dona, of the Padua Bar.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court considered, having regard to the written observations submitted to it, that additional information was required on several points. Consequently it requested the parties to the main action, the Member States or the Commission, as appropriate, to reply in writing before the opening of the oral procedure to certain questions and to provide certain supplementary information.

II — Written observations submitted to the Court

A — The jurisdiction of the Court to interpret GATT

The *Company* points out that the Court has on several occasions already interpreted provisions of GATT, if only in order to determine the validity of measures adopted by Community institutions. It has found that it has jurisdiction on two grounds: the jurisdiction of the Court is not limited by the first paragraph of Article 177 in relation to the grounds on which a Community measure may be invalid and, consequently, the Court may also examine submissions of invalidity based on provisions of international law, provided that they are binding on the Community; GATT is binding on the Community, which has been substituted for the Member States as regards the commitments which they have undertaken within the framework of GATT.

In fact, the Court is authorized to interpret the provisions of GATT because GATT forms an integral part of

Community law rather than because it is binding on the Community. The Community has been substituted for the Member States in respect of the obligations arising under GATT by virtue of the powers conferred upon it by Articles 111 and 113 of the EEC Treaty; therefore GATT has the same effects as an agreement concluded by the Community, which is in itself an act of the institutions within the meaning of subparagraph (b) of the first paragraph of Article 177.

Since the provisions of GATT are, being part of the Community legal order, Community provisions, the Court's jurisdiction to interpret them is not in doubt, whether it is a matter of examining the validity of measures adopted by institutions of the Community or of providing national courts with criteria to enable them to resolve any conflict between provisions of GATT and provisions of national law concerning relations between individuals.

The *Trieste Port Authority* takes the view that, regard being had to the transfer of powers effected by the EEC Treaty, the establishment of the customs union and the fact that the EEC has been substituted for the Member States with regard to relations relating to GATT, GATT has been accepted into and forms an integral part of the Community legal order; moreover, for over 20 years the Community has itself taken part in negotiations in the framework of GATT, the results of which are binding on all Member States.

GATT now applies as if it were an international treaty concluded by the Community; its scope and effect must necessarily be examined in the framework of and with exclusive reference to the Community legal order. That conclusion is made all the more clear by the fact that, as far as the individual Member States of the Community are concerned, the provisions of GATT have been superseded and integrated into the Community rules. The rules of GATT may not, on the basis of provisions of national law, have a different scope in each Member State; consequently, it is out of the question that the national courts should have jurisdiction definitively to interpret the provisions of GATT.

The national measures for the ratification and application of GATT do not constitute an instrument enabling the national court to give an interpretation, which may henceforth be given only at Community level. It follows from the case-law of the Court that, since so far as fulfilment of the commitments provided for by GATT is concerned the Community has been substituted for the Member States, the mandatory effect in law of those commitments must be determined by reference to the relevant provisions in the Community legal system and not by reference to those which previously gave effect thereto under the national legal systems.

To attribute to the national courts exclusive jurisdiction to interpret the provisions of GATT would amount to attributing to GATT, in particular with regard to relations with individuals, a different scope according to the interpretation adopted by the national courts in each of the Member States. The consequence of that would be that the provisions of GATT would be considered capable of conferring upon individuals rights protected by the Court only in the Italian legal system, and

individuals would be able to rely directly upon the provisions of GATT only against the Italian State but not against other Member States whose case-law has developed differently; that consequence would be wholly incompatible with the premise that the Community has been substituted for the individual Member States in relation to the application of GATT.

If the provisions of GATT were to be regarded as capable of direct and immediate application by reason only of their ratification, the Community, being subrogated to the powers and obligations of the individual Member States, would have different powers with regard to the Italian State than with regard to the other Member States; another unacceptable consequence would be that the Community regulations themselves, held to be valid by the judgments of the Court, would have to be declared invalid for Italian nationals because of their incompatibility with the rights arising, for those nationals, from the provisions of GATT.

The rules of GATT must be regarded as an integral part of the Community legal order; its interpretation, which must be uniform throughout the territory of the Community and independent of the individual national measures of adoption and incorporation, is reserved to the jurisdiction of the Court of Justice, regardless of the facts at issue and without there being any room for independent and possibly divergent assessments on the part of the national authorities of the various Member States.

The *Government of the Italian Republic* emphasizes that, according to the judgments of the Court, in so far as the Community has, by virtue of the EEC Treaty, assumed in the sphere of the application of GATT powers previously held by the Member States, it has been substituted for them in relation to the fulfilment of the commitments arising out of that agreement. Within the limits in which such substitution has in fact taken place and requires, for the purposes of the examinations of compatibility relating thereto, that the Court should have jurisdiction to interpret, by way of preliminary ruling, the provisions of GATT which have been the subject of such substitution, the need for uniform application of the law requires the recognition of the jurisdiction of the Court directly to interpret those provisions where they are directly relevant to the settlement of the dispute.

According to the *Government of the Kingdom of Denmark,* it does not follow from Article 234 of the EEC Treaty that agreements such as GATT, concluded before the entry into force of the Treaty, are necessarily part of Community law; according to a literal interpretation of Article 177, the Court's jurisdiction does not extend to the interpretation of the agreements referred to in Article 234.

Hitherto, the Court has considered GATT only in relation to objections raised against the validity of measures of Community law; therefore it has not yet dealt exhaustively with the legal status of GATT under Community law. In that regard, it must be remembered first that international agreements concluded by the Member States before the Treaty entered into force are not necessarily part of Community law but are capable,

where appropriate, of forming an integral part of it and of thereby having an effect on the validity of legal measures of the Community, and secondly, that agreements concluded by the Community itself under international law are part of Community law and may be interpreted by the Court, even where a national court has been asked to decide questions concerning their interpretation and application.

The Court's jurisdiction in matters of interpretation, as defined in Article 177 of the EEC Treaty, relates to Community law in its entirety. According to the case-law of the Court, the Community, which has been substituted for the Member States, is legally bound by the provisions of GATT.

There is scarcely any substantive reason militating in favour of the distinction drawn in the preliminary question; on the contrary, the need for uniformity in the law and the fact that the Community assumes responsibility towards non-member States for the implementation of GATT militate in favour of the argument that the Court has jurisdiction to interpret GATT, even if, as in this case, the validity of a Community measure is not called in question. Considerations relating to the common customs and commercial policy also support that argument.

From all these circumstances, in particular the fact that GATT relates to a sphere in which the Member States have progressively transferred powers to the Community, it seems justified to accept a special solution, which cannot be applied as such to other international agreements falling within the scope of Article 234.

The *Government of the Federal Republic of Germany* contends that the decisive factor is not the problem of the links between the Community and GATT, but the fact that the Court of Justice is asked to give a ruling on the actions of a Member State with regard to the rules of GATT; according to Article 177, apart from the interpretation of the Treaty and interpretation of the statutes of bodies established by a measure of the Council, the Court has jurisdiction to give preliminary rulings only on the validity and interpretation of measures adopted by the institutions of the Community. Thus it has no jurisdiction to give a ruling on the interpretation of provisions of GATT, in so far as they impose obligations only on the Member States.

The *Government of the Kingdom of the Netherlands* considers that 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 application 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, applies *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.

According to the *United Kingdom*, there is no doubt that the Court has jurisdiction under Article 177 to give preliminary rulings not only on whether Community measures are compatible with the provisions of international law which are binding on the Community but also on the meaning and effect in the Community's legal order of such provisions of international law as GATT, so that national courts may correctly and uniformly deal with such provisions in cases before them.

The *Commission* points out that Articles 228 (2) and 5 of the EEC Treaty impose an obligation on the Member States to respect the agreements concluded by the Community and assist in their implementation; that obligation cannot but be of a Community nature, in so far as its basis and its content are concerned.

Since the existence, effect and scope of a Member State's obligation to respect an agreement concluded by the Community are by their nature questions of Community law, they must necessarily fall within Article 177 of the EEC Treaty, even when they are raised before a national court without any question of the interpretation or validity of independent Community measures being raised at the same time. The opposite solution would deprive a substantial part of Community law of the guarantee of uniform interpretation provided by the procedure for preliminary rulings.

The substitution of the Community for the Member States in 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. GATT must therefore be treated as an act of the institutions of the Community within the meaning of subparagraph (b) of the first paragraph of Article 177. The internal effect of GATT may not 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 competences and powers which have been transferred to it under the Treaty.

B — The consequences of the substitution of the Community with regard to the commitments under GATT

The *Company* observes that, although hitherto the Court of Justice has refused to accept that GATT may confer upon Community citizens the right to rely upon its provisions in order to challenge a Community measure, that does not prevent the provisions of GATT from being relied upon before the courts in relation to incompatible provisions of national law.

Because they have been incorporated into the Community legal order, the provisions of GATT are Community provisions; they are in a position of primacy in relation to national rules, not as rules of GATT itself but as rules which are part of the Community legal order. That position of primacy does not result from the direct applicability of Community provisions, which is a necessary but not a sufficient condition, but from the autonomy of the Community legal order in relation to national legal orders, based on a division of powers which excludes any mutual interference.

The *Trieste Port Authority* refers to the judgments of the Court, whereby, in view of the scope and actual content of the agreement and of the rules to which it subjects the relations between the Contracting Parties, GATT is not capable of conferring on individuals the right to avail themselves of it before a court of law. The clear and unconditional content of a rule cannot remove the necessity to adopt an additional legislative measure; that applies *a fortiori* to provisions of international agreements, which are concluded in the framework of a legal order from which individuals are excluded as subjects and which are, in principle, intended to bind States, the only subjects of international law.

If the provisions of GATT were considered capable of conferring on individuals rights which may be protected by the courts, this would seriously affect the flexibility characteristic of the agreement and the possibility of derogation for which it provides, would involve a constant adaptation of national laws and would be incompatible with Article XXXV (1) of GATT and contrary to the practice of the Contracting States in relation to the elimination of infringements of GATT. That view is confirmed *a contrario* by the different criterion adopted in the framework of the Community legal order.

In Article 13 (2) of the EEC Treaty, the Contracting Parties considered it necessary, although they were already parties to GATT, to provide for the progressive abolition of charges having an effect equivalent to customs duties in their trade with each other and thus to lay down a rule which would have been superfluous if it had been possible to regard Article II of GATT already as directly applicable throughout the territory of the Community. If direct

effect had been attributed to the provisions of GATT, the provisions of the Treaty and several agricultural regulations on the prohibition of charges having an effect equivalent to customs duties would have been rendered superfluous.

The obligation on States to respect comitments undertaken at international level does not in itself confirm the direct effect of the provisions of GATT; that obligation is based on the principle of reciprocity, which clearly makes it impossible to attribute to GATT direct effect enabling individuals to avail themselves directly of its provisions before the national courts.

To provide individuals with a guarantee through the court that the international obligations entered into by the State or by the Community will be complied with amounts in the final analysis to depriving the State or the Community of contractual power in their relations with the other Contracting States.

The flexibility necessary in negotiations may be safeguarded only by accepting that the obligations entered into in the framework of GATT operate only in international relations.

To accept that the provisions of GATT are capable of conferring on individuals rights protected by the courts would not only be contrary to the principles laid down by the Court of Justice, but would also invalidate the well-established criterion whereby, although charges having an effect equivalent to customs duties have been prohibited in intra-Community trade since the end of the transitional period and, in relation to agricultural products, even those from non-member countries, since the date of the entry into force of the various regulations on the common organization of agricultural markets, such charges are, by way of contrast, applicable in relations with non-member countries in respect of non-agricultural products, until measures to the contrary have been adopted.

According to the *Government of the Italian Republic*, the view — accepted by the Court of Justice — that the provisions of GATT are not capable of creating rights and obligations for individuals is confirmed by the approach adopted by all the States which are parties to GATT and seems indisputable in particular in relation to Article V (3); that provision is contained in Part II of GATT, in relation to which the Contracting Parties stated, on signing the Geneva Protocol of Provisional Application of 30 October 1947, that it was to be applied only in so far as it was not inconsistent with their existing national legislation. That limitation is linked to the imprecise character of the provisions contained in Part II of GATT; more particularly, its wording shows that Article V has the effects of a programme and lacks the precision necessary to be applied by the courts.

The *Government of the Kingdom of Denmark* considers that the case-law of the Court must be confirmed: the grounds on which the Court held that GATT has no direct effect are clear and convincing.

According to its preamble, GATT is intended to apply on a basis of "reciprocal and mutual advantageous arrangements" and is characterized by the great flexibility of its provisions, particularly those concerning the possibility of derogation. The Contracting

Parties certainly did not originally intend to confer on GATT direct effect under national law. Within the framework defined by GATT, there is no judicial procedure for the settlement of disputes: disputes are settled by means of negotiations. The GATT "system of sanctions" was intended rather to maintain a balance between the reciprocal rights and obligations of the parties.

The decisive factor is that the objectives pursued by GATT are clearly narrower in scope than those of the treaties establishing the Communities. Therefore it is of no importance that certain provisions of GATT, considered in isolation and upon immediate reading, may appear to fulfil the conditions for direct applicability which are traditionally laid down by the Court in relation to the internal rules of Community law.

The Contracting Parties may choose to confer upon a treaty direct effect under national law, even if that was not intended at the outset, even if the other Contracting Parties do not confer that effect upon it and even if, having regard to its general scheme and its formulation, the agreement may seem ill-fitted to have direct effect. However, such a decision would emanate from the competent political authorities, thus in the case of the Community, from the Council; it would hardly be reasonable for the legal status of GATT to be altered by a judgment of the Court of Justice, which the Danish courts would be obliged to follow.

The need for the uniform application of Community law would not really be prejudiced by the fact that, in accordance with national law, the courts of the Member States might apply the rules of GATT in cases in which they were relied upon in order to challenge a national legal measure; however, it seems necessary, in that regard, that the Court of Justice should be able, when reference is made do it under the procedure laid down in Article 177, to provide the national court with the necessary guidance concerning the interpretation of the rules in 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, these 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, in particular in its judgment of 12 December 1972 in Joined Cases 21 to 24/72 (*International Fruit* v *Produktschap voor Groenten en Fruit* [1972] ECR 1219), 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* refers to the case-law of the Court and considers that it is necessary to approach with great caution the problem of the direct effect of international 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 to it; 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.

C — The assessment of the contested charges by reference to Article V (3) of GATT

The *Company* emphasizes that Article V (3) of GATT is a precise and complete provision which establishes unconditional obligations and leaves no room for discretion; by its nature, it is therefore capable of having direct effect with regard to individuals and may be relied upon in order to challenge national provisions imposing charges, not justified by any consideration, on goods in transit intended for the market of a country which is a party to GATT. Since GATT no longer applies between the Member States of the EEC but only between the EEC and non-member countries which are parties to GATT, it could certainly be contended that Article V (3) may be relied upon in this case only in respect of the goods intended for the Austrian market and not in respect of those which are intended for the German market.

The *Trieste Port Authority* contends that, since GATT cannot confer on individuals the right to avail themselves of it before a court, the question of the

compatibility of the contested charges with Article V (3) is of no interest in the main action.

Article V of GATT is only the expression of an objective in the nature of a programme; in any event, it does not in itself exclude the power of each Contracting Party to adopt legislation which is inconsistent therewith; Article V (3) cannot be understood in isolation from the set of provisions in which it is included.

It is essential to bear in mind that Part II of GATT and, consequently, Article V are in principle applicable, by virtue of the Geneva and Annecy Protocols of Provisional Application of 30 October 1947 and 10 October 1949 respectively, only "to the fullest extent not inconsistent with the existing legislation" at the date of those protocols; even in the framework of the Community legal order, the revenue charge on unloading might in any event lawfully continue to be applied to non-agricultural products imported from non-member countries, in accordance with the principle originally laid down in Article 27 of Law No 82 of 1963.

Furthermore, Article V (3) of GATT lays down rules relating to "customs duties and . . . all transit duties or other charges imposed in respect of transit"; it is therefore not concerned with and is not applicable to a general system of internal taxation, such as that concerned in this case, under which a charge is levied on unloading or loading — that is, without discrimination — without reference to any customs transaction and even where the unloading or loading involves domestic goods.

The *Government of the Italian Republic* considers that the purpose of Article V (3) of GATT is to prevent goods which are merely in transit through one country to another from being subject merely on that account in the country crossed to a separate system of taxation by virtue of their particular position, which is less favourable than that applicable to goods in circulation in the same country; it certainly does not require that goods in transit should be exempt from payments to which the transportation of domestic goods is normally subject. The event which gives rise to the application of the contested charges, which are part of a system of internal taxation, is the actual unloading or loading of any goods, domestic or foreign, whatever their place of origin or destination; they are also charged on movement of domestic goods coming from and bound for the national territory. By their nature the contested charges therefore have no connection with types of taxation presupposing a specific destination or customs condition in respect of the goods; they are not applied by reference to and because of the transit of the goods through national territory, which does not in any way constitute the cause or the condition of the corresponding obligation, which arises at the time of the movement of the goods within the port, whether it is prior or subsequent to such transit.

Furthermore, the reason for the taxation relates to the expenses arising out of the general organization of the port structures, of which users in any event and inevitably avail themselves, quite apart from any specific and individual service.

The rules contained in GATT concerning transit are therefore in no way affected by a national fiscal provision which does not apply to transit as such and does not apply to goods in transit treatment different from that of domestic goods which are in circulation within the territory or foreign goods intended for importation or even domestic goods intended for exportation.

According to the *Government of the Federal Republic of Germany*, the collection of a charge which does not constitute the consideration for any service on crude oil unloaded in the port of Trieste and intended for the German market constitutes a clear infringement of Article V (3) of GATT; however, the Court's jurisdiction in matters of interpretation does not extend to such a ruling.

The *Commission* takes the view that a distinction should be drawn according to whether the goods affected by the contested charges are transported to a non-member country or to a country which is a member of the EEC; Article V of GATT may not be applied in relation to Community trade, since the EEC Treaty has replaced GATT in that sphere. A Member State may not rely upon Article V of GATT as against another Member State and a Contracting Party may not rely upon that provision in respect of trade between two Member States.

The text of Article V (3) of GATT itself prevents it from being relied upon by an individual.

In the alternative, it should be pointed out that Article V (3) exempts the traffic in question from customs duties and from all transit duties or other charges imposed in respect of transit. The expression "transit duties" clearly means charges imposed specifically and exclusively by reason of transit; the phrase "all . . . other charges imposed in respect of transit" seems from the text to relate to taxation the chargeable event of which is transit.

The wording of paragraphs (3), (4) and (5) of Article V shows that the obligations of the Contracting Parties are situated in the sphere of customs and administrative procedures; the taxation referred to in Article V is linked to the specific customs and administrative procedures connected with transit, so that taxation which has only an incidental connection with transit does not fall within that provision.

Article V (3) cannot be interpreted as meaning that goods in transit should be exempt from internal taxes applied to domestic goods and should enjoy more favourable treatment than the national treatment imposed by Article III (2) and (4) with regard to internal taxes; national treatment in fact constitutes the highest standard for GATT.

D — Compatibility of the contested charges with Community law

The *Government of the Federal Republic of Germany* takes the view that, in the interests of thorough clarification of the legal postition, the Court should not limit its examination to the provision cited, doubtless only by way of example, by the Corte Suprema di Cassazione, but should include in it the provisions of the EEC Treaty on the free movement of goods; it should in particular investigate whether Article 34 includes a prohibition

of the imposition of taxation on goods in transit or, at least, an obligation to relieve them of such taxation once they are exported to other Member States.

Conduct which infringes the provisions of GATT is also contrary to the provisions of the EEC Treaty on the free movement of goods; the obligations which the Member States have undertaken in the framework of the EEC may not be less than those imposed by GATT.

The fact that the Corte Suprema di Cassazione asks the Court generally about the possible conditions and limits which are imposed by Community law on the export arrangements in question enables it to give a different and wider meaning to the questions which have been put to it.

Common commercial policy (Article 113)

The *Company* considers that, although freedom of transit is not expressly provided for by the EEC Treaty, it follows by implication from the general principles of the common market. In particular, the rule that there should be competitive equality within each Member State prevents the countries across which goods from a Member State or a non-member country must pass in order to reach the country of destination from imposing on those goods any charges whatever, even taxation described as international. The application of internal taxation to products from other Member States or to products imported from non-member countries which are not in competition with domestic products because they are intended to be put on the market in another Member State — which is precisely the case with products in transit — is incompatible with free movement or with competitive equality.

The Community transit procedure does not seek simply to make it unnecessary in each country crossed to carry out formalities for importation on entry and for exportation on exit; it has a far more important objective, namely to avoid the collection of internal taxation on importation and the refund of such taxation on exportation.

The product in transit is not in fact an imported product; by definition, the product in transit is not brought on to the national territory for consumption, but is only in passage across that territory.

A charge on goods in transit has the effect of a customs duty even if it is a form of internal taxation.

That clearly applies to taxation which is of general scope and is not connected with specific services from which products in transit also benefit. In relation to taxation having a direct connection with particular services, it is essential that the services which constitute the reason for such taxation should actually be provided. According to the findings of the Corte Suprema di Cassazione, that is not so in this case. There is therefore no reason for the charges; where they are nevertheless applied to products in transit their effects are analogous to those of customs duties, since they raise the price of goods without any advantage corresponding to such increase.

The contested charges are imposed on products from non-member countries

and their effect is to distort the uniformity of the level of external protection; they are therefore incompatible with the requirements of the common commercial policy, which according to Article 113 (1) of the EEC Treaty is based on uniform principles and to which the introduction of the Common Customs Tariff gave specific application.

According to the *Trieste Port Authority*, the contested charges are part of a general system of internal taxation, instituted in the exercise of the inherent and exclusive fiscal sovereignty of the national legislature and payable not by reason or on the occasion of importation, but because of the fact of the unloading or loading of goods.

At present, in the absence of Community measures for the harmonization of unloading charges, the obligation to base the common commercial policy on "uniform principles" may not be regarded as precluding the system of taxation in question in the main action, particularly since that obligation was emphasized in Article 113 (1) of the EEC Treaty by reference to questions unrelated to internal taxation. Even if it may be considered that the contested system of taxation has some effect on the common commercial policy, it is in any event a question falling within the competence and the initiative of the Community institutions, since individuals may not avail themselves directly of Article 113 (1) of the Treaty.

The conditions of fact which would make it possible to establish a true common commercial policy have not yet been brought about, since the coordination of trade relations with third countries, provided for in Article 111 (1) of the Treaty, has been only partial, and the Court has itself referred to the fact that at the end of the transitional period the Community commercial policy was not fully achieved.

The powers of the Community are not sufficient by themselves to achieve common rules with regard to commercial policy; they must in addition be exercised. The content of those rules must first be fixed by the Community institutions and, as long as no Community measure has been adopted, the Member States must be empowered to retain national measures. The Court has itself held that it is in each case a matter for the Commission or the Council to assess the need for eliminating national disparities in the fields of taxation and commerce affecting trade with non-member countries and that the reduction or elimination of existing charges on goods imported directly from non-member countries is a matter for the institutions of the Community; therefore there can be no question of incompatibility with Article 113 (1) where, as in this case, the subject of discussion is a general system of internal taxation falling within the exclusive competence of the national legislature.

The *Government of the Italian Republic* considers that the contested taxation cannot, by reason of its very nature and having regard to the purpose laid down in Article 110 of the Treaty, affect the common commercial policy.

It does not in any way impede the powers of the Community institutions and, having regard to the fact that the common commercial policy is necessarily

based on specific provisions, it is not contrary to any Community provision in force.

The charges referred to in Article 2 of Decree Law No 47 of 1974 are part of a general system of internal taxation, which is connected with the management expenses of port installations and affects every operation for the unloading and loading of all goods, without any discrimination connected with their condition or their destination for customs purposes.

The contested charges do not constitute protectionist measures and do not fall within the category of customs duties. They do not lay down any special conditions which discriminate against undertakings of one Member State in relation to similar national undertakings, since they are applied in an equal and uniform manner, in relation to the port movements of the various goods, to every user of national ports, whether Italian or foreign, public or private.

With regard to port movements relating to crude oil from non-member countries, it should be stated that Italy is itself a country which imports oil and that its imports are not exempt from the contested revenue and port charges; furthermore, the incidence of those charges is minimal (0.1%, for the revenue charge, and 0.18%, for the port charge, in relation to the average cost of oil at the material time).

The *Commission* points out that there are two aspects to the question whether the contested charges are incompatible with Article 113 of the Treaty: that of jurisdiction and that of a possible substantive infringement of a measure of common commercial policy.

If the charges in question were to be defined as measures of commercial policy, they would conflict with the existence of the Community's jurisdiction in that sphere; that jurisdiction is exclusive and, from the end of the transitional period, national measures of commercial policy may be maintained only by virtue of specific authorization from the Community.

In the framework of these proceedings, it is not necessary to define the charges in question with regard to Community law. So far as "measures of commercial policy" within the meaning of Community law are concerned, they should be evaluated essentially according to their special character as an instrument for the regulation of international trade, regard being had to the link established by the Treaty between the abolition of trade barriers between Member States and the implementation of a common commercial policy. In any event, in view of the criterion that such measures have the character of instruments and the objective pursued, charges such as those in question in the main action are not, in the light of the case-law of the Court, part of commercial policy.

However, without actually having the character of an instrument for regulating international trade, a national measure may harm the proper working of the system of the common commercial policy or jeopardize the achievement of its objectives. In that regard, it should be stated that charges such as the contested charges fall within the category of the taxation referred to in Article 95 et seq. of the Treaty, whose unilateral introduction after the Common Customs

Tariff has been introduced is not prohibited. Moreover, they are not discriminatory in character and no provision of the general rules on the common commercial policy contains any express prohibition such as those appearing in Article 95 et seq. Therefore, charges such as revenue and port charges on unloading and loading are not prohibited by the rules n the common commercial policy.

In the framework of this dispute it is not possible to give a satisfactory reply to the question whether such charges are incompatible with the rules on the common commercial policy inasmuch as they harm its proper functioning or jeopardize the achievement of its objectives. In order to determine whether those charges are incompatible with the common commercial policy and whether the Member State is obliged to eliminate them, it is first necessary to assess a whole range of factors in the nature of economic and commerical policy. Since such charges do not appear to be incompatible with the functioning of the common market, it is difficult to imagine that they may constitute an obstacle for commercial policy with regard to non-member countries.

The Community transit procedure (Regulations Nos 542/69 and 222/77)

The *Company* considers that Regulation No 542/69, since replaced by Council Regulation No 222/77 of 13 December 1976 on Community transit (Official Journal 1977, L 38, p. 1), merely confirms by implication the principle of freedom of transit arising out of the general principles of the EEC Treaty. It is limited, it is true, to determining the formal aspects of the procedure, without laying down any substantive rules relating thereto; however, it is clear that a purely "documentary" transit procedure of that kind would have no *raison d'être* if it had no fiscal effects.

The *Trieste Port Authority* states that, according to Article 12 (1) of Regulation No 542/69 (and of Regulation No 222/77), any goods which are to be carried under the procedure for external Community transit must be covered, in accordance with the conditions laid down in the regulation, by a T 1 declaration; that is not the case with the petroleum products in question in the main action.

In any event, it must be remembered that the rules on Community transit do not concern or in any way alter the treatment of goods for customs and tax purposes and have no effect on the obligation to pay any duties and other taxes which may be chargeable. They concern only the formalities and procedures laid down, in particular for statistical purposes, for the movement of goods between two points situated in the Community; they contain only provisions of a procedural nature.

The *Government of the Italian Republic* also considers that the Community transit procedure has no effect on the substantive problems relating to taxation, since it is intended exclusively to simplify customs procedures and formalities. The fact that Article 46 of Regulation No 542/69 (and of Regulation No 222/77), provides that the Community transit

procedure is not compulsory for the carriage of goods by pipe-line confirms that the rules in question merely have a procedural character.

The *Commission* also states that the rules on the Community transit procedure relate only to customs formalities and do not concern the charges or duties which may be levied on goods in transit. In relation to national taxation applying to goods, reference should be made to other provisions of Community law, in particular to Articles 12 et seq., 95 et seq. and, for goods imported from non-member countries, to the provisions on the Common Customs Tariff and the common commercial policy.

Rules on competition (Article 90)

The *Company* states that, within certain limits and for certain services, there is competition between the Trieste Port Authority, a public undertaking, and itself, a private undertaking; the public undertaking receives State aids for the performance of its tasks and even for services which it does not provide (in particular for the unloading of crude oil); the private undertaking, the Company, relies exclusively on private finance and is even obliged to finance State aids granted to the public undertaking by paying for services which have not been received and which it provides itself.

State aids granted to a public undertaking entrusted with port services are not by law incompatible with the Treaty. However, Article 90 (2) limits them by stating that "The development of trade must not be affected to such an extent as would be contrary to the interests of the Community"; the limits of the exception are exceeded by the imposition of the cost of such aids equally on private undertakings which have a similar purpose and operate in the sector of trade which is seriously affected thereby. Distortion of competition incompatible with Article 90 (2) is thus created.

In this case, it is not the State aid as such which is challenged, but the way in which it is financed.

The *Trieste Port Authority* criticizes the Company's arguments as being erroneously based on the connection which it alleges between the cost of management of the port and certain specific services from which the users benefit. In reality the cost of management refers not to individual operations but to all the many different activities necessary for the construction, development, management and upkeep of the port installations and also to the organization of the offices and technical and administrative services. The contested charges do not constitute the consideration for services rendered; they are of a fiscal nature and are payable, regardless of the ownership of the installations used, simply by reason of the unloading and loading of goods.

The uniform and non-discriminatory system, to which all users of the port are subject, rules out any difference in treatment, particularly as the amount of the revenue charge depends exclusively on the volume of goods unloaded or loaded by each undertaking.

In any case, the condition for the applicability of Article 90 (1) of the EEC

Treaty is absent in this case; that provision refers to rules on competition to be complied with in the "trade between Member States", whereas the main action relates to petroleum products coming from Libya and the Middle East and bound for Germany and Austria; furthermore, the public port authority is in no way in competition with the Company. The public port authority carries out the public service of managing the port installations and services, using for that purpose defined by public law the resources which it obtains from port charges; the Company does not and cannot offer to other users of the port any services in respect of which it might be regarded as being in competition with the public port authority, which has no commercial activities and does not operate for profit.

The *Government of the Italian Republic* states that the question put by the Corte Suprema di Cassazione is not of a specific nature, inasmuch as it does not state which Treaty rules governing public undertakings are infringed by Article 2 of Decree Law No 47 of 1974. In any event, the contested taxation does not concern trade between Member States and does not place certain undertakings at an advantage.

The *Commission* observes that the question on Article 90 concerns only the port charge; furthermore, Article 90 refers to other provisions of the Treaty and it is difficult to determine those which are relevant, in connection with Article 90, in the main action.

Undertakings using their own installations are in effect penalized, inasmuch as they pay the charge without benefiting from certain services, whereas undertakings which do not have their own installations pay for services actually rendered. However, the "favoured" undertakings do not receive any aid financed by State resources and any possible discrimination takes the form of the taxation of undertakings not benefiting from certain services but does not have the character of an aid for those benefiting from them.

It is not incompatible with the rules on competition in the EEC Treaty, in particular with Article 90, for a Member State to provide for taxation on goods, without any distinction as to destination, origin or place of consignment, on the occasion of their loading or unloading in specified ports managed by autonomous public undertakings, for which the proceeds from the taxation are in part intended, even when the loading or unloading operations are performed by the undertaking using its own installations, without the performance of any direct and specific service by the public port authority.

The transit arrangements with Austria

The *Company* considers that Regulation No 542/69, replaced by Regulation No 222/77, concerns both the external and the internal Community transit procedure and lays down the principle of freedom of transit for Community products and for products from non-member countries.

The *Trieste Port Authority* states that the Agreement between the EEC and the Republic of Austria on the application of the rules on Community transit, concluded by Regulation No 2813/72, provides in Article 1 that it concerns "the movement of goods between two points

situated in the Community, across Austrian territory"; it therefore does not apply to products imported from non-member countries destined for Austria. Where the agreement refers to goods destined for Austria (Article 6 (2)), it refers to goods to be sent on to another Member State of the EEC.

In any case, the Community transit procedure has a purely procedural character.

The *Commission* observes that, although Article 18 of the Agreement of 22 July 1972 between the EEC and the Republic of Austria, concluded by Regulation No 2836/72 of the Council of 19 December 1972 (Official Journal, English Special Edition 1972 (L 300), p. 3), prohibits any measure or practice of an internal fiscal nature establishing discrimination, it concerns only products originating in and not products destined for the territory of the other party.

The legal rights of individuals

The *Company* takes the view that both the prohibition, arising out of the application of Article 113 (1) of the EEC Treaty in conjunction with the Common Customs Tariff, on the application to products from non-member countries of charges having an effect equivalent to customs duties and the prohibition, arising out of the combined provisions of Article 90 (1) and (2) of the EEC Treaty, on the grant to public undertakings of aid together with methods of financing distorting the Common Customs Tariff give rise to personal rights for individuals which national courts are bound to protect. Individuals enjoy a right of action before the national court to claim repayment of the pecuniary charges imposed by a Member State by reason of the unloading of goods in one of its ports and intended, even if only in part, to subsidize a public port authority or to contest the State's demand for payment of those charges.

The *Government of the Italian Republic* considers that the question does not concern the Community legal order but must be resolved by reference to national law; in any event, the Community provisions relied upon do not have direct effect.

The *Commission* points out that according to the case-law of the Court Article 90 (2) is not at present capable of creating individual rights which the national courts must protect.

III — Replies to the supplementary information requested by the Court

A — The nature of the disputed charges and the appropriation of their proceeds

"The Italian Government is requested to give more precise information regarding the nature of the disputed charges, distinguishing between the 'revenue' charge and the 'port' charge. In particular, the Court wishes to be given fuller information concerning the appropriation of the proceeds of both those charges."

The *Trieste Port Authority* points out that the basis of both the revenue charge and the port charge is constituted exclusively by the carrying out of the unloading or loading operation. The two charges are different, inasmuch as the revenue charge is general and applies in all ports, roadsteads and wharves and its proceeds go entirely to be State Treasury, whereas the port charge is of a special nature and applies only in certain ports and its proceeds go almost entirely to the autonomous ports.

Since the basis of the charges is exclusively the carrying out of unloading or loading, whatever the destination of the goods for customs purposes (importation, exportation, transit and the like) and they are imposed without distinction on domestic and imported products, they have no relation to customs duties or charges having equivalent effect. The fact that the unloading or loading may precede the importation, exportation or transit is irrelevant.

The *Government of the Italian Republic* states that under the port system of every Member State of the Community there are, in addition to particular fees or expenses corresponding to specific services, duties and charges justified by the general advantages resulting from the port structure as a whole; those charges have various titles and are basically proportionate to the tonnage of the ship entering the port or to the tonnage of goods loaded and unloaded.

Under the Italian system, the loading and unloading charge provided for in Article 2 of Decree Law No 47 of 1974 is characterized by its complex structure in certain ports: the revenue charge provided for in the first paragraph of Article 2 is applied in every port; The port charge provided for in the second paragraph of Article 2 applies only in the most important ports, which are capable of offering more extensive services (including Trieste).

The basis of both the revenue charge and the port charge is the unloading or loading of goods and the charge is calculated on the basis of the tonnage of those goods.

The charges are collected by the State; the part of the port charge which exceeds the rates fixed by Law No 82 of 1963 is handed over by the State to the body which administers the port, in order to contribute to its financial stability, the construction of new port installations and an increase in the capacity of existing plant and installations.

B — Description of the disputed charges as "internal taxes"

> "The Italian Government and the Trieste Port Authority describe the disputed charges as 'internal' taxes. Those parties are requested to explain how they justify that description in the case of goods in transit which, as such, are not intended to be released for consumption within the State through which they are being transported."

The *Trieste Port Authority* emphasizes the fact that the basis of the disputed charges is the unloading or loading of goods in the port, regardless of their ultimate destination. Goods to be imported are in addition subject to import duty or some other equivalent

taxation; on the other hand, no further taxation is imposed on goods unloaded and in transit by reason of their being in transit.

The description of the disputed charges as internal taxes, even when the goods unloaded are in transit, is justified by the obvious fact that the transit is wholly irrelevant to the basis on which they are imposed.

The *Government of the Italian Republic* points out that the Corte Suprema di Cassazione has established that the disputed charges are part of a general system of internal taxation and that there is no special circumstance such as to confer on internal taxation the nature and functions of a charge having an effect equivalent to a customs duty.

The disputed charges in fact have no connection with charges which presuppose a particular destination or special situation of the goods for customs purposes; their application is based on the fact of the unloading or loading in ports of any goods, domestic or foreign, whatever the place of consignment or destination, without any element of discrimination; they are independent of the crossing of a frontier and do not constitute measures which are restrictive or otherwise protectionist. Italy is a country which imports oil and its imports are not exempt from the revenue and port charges on unloading provided for in Decree Law No 47 of 1974.

The charges in question are related to the use of the port for commercial purposes (unloading and loading of goods) and are not influenced by the preceding or subsequent stage of transportation or distribution.

The amounts of the charges are connected with the costs arising out of the general organization of the port structures, installations, offices and services, of which all users of the port necessarily take advantage, in addition to any specific and individual service which may be provided.

C — *The imposition of charges similar to the disputed charges in other ports in the Community*

"The Commission and the various governments taking part in the proceedings are requested to say whether charges similar to those at issue are levied in other ports in the Community which have a considerable amount of transit traffic."

The *Trieste Port Authority* provides the following information:

(a) In Belgium, in the ports of Ghent and Zeebrugge, charges are imposed on ships, calculated on the basis of the net registered tonnage, and on goods loaded or unloaded.

(b) In the Danish ports an anchorage charge is levied, calculated on the basis of the net registered tonnage of the ship, and a charge on cargo, calculated on the basis of the tonnage of the goods and varying according to five groups of categories of goods.

(c) In the French ports, a charge is levied on the net registered tonnage of the ship, with variable rates according to the port, a berthing charge is levied on ships and a charge is levied on goods loaded, unloaded or trans-shipped.

(d) The German ports levy on ships a general port charge for the use of ports, calculated on the basis of the gross

registered tonage of ships, the navigation zone and the type of cargo. That general port charge includes a charge on tonnage in the port of Hamburg, based in general on the gross registered tonnage, the demurrage charge and the wharfage (not levied in the ports of Hamburg and Kiel), also calculated on the basis of the tonnage of the goods loaded or unloaded.

(e) In the United Kingdom, the main duties and charges on shipping are lighthouse dues, the charge for maintaining the channel entrances between the high sea and the quays and anchorage dues, which are related to the use of the stretch of water situated in front of the quay and of the part of the jetty occupied by the ship within the harbour area.

(f) In Ireland, there is a tonnage charge, calculated on the basis of the gross or net registered tonnage of ships and the tonnage of the cargo transported in unmeasured space (for example the bridge cargo), and a charge on goods loaded, unloaded or trans-shipped within a port.

(g) In the Netherlands, wharfage is charged, calculated for all ships transporting goods by sea on the basis of the gross registered tonnage of the ship or the tonnage of the goods loaded or unloaded, and also wharfage for the exclusive occupation by the ship of a mooring post.

It is clear from a study carried out by the Chambre Syndicale des Transports Pétroliers [Committee on the Transport of Petroleum], Marseilles, concerning the situation on 1 April 1980, that the port of Trieste is by far the most economical European port in relation to the charges imposed on the unloading of petroleum products.

The *Government of the Italian Republic*, referring to the same study, emphasizes that, compared with the other ports in the Community in which the conditions for the transport of crude oil are similar, namely Marseilles (Fos-sur-Mer) and Rotterdam, Trieste may claim the lowest costs for the use of port installations, both in relation to the consideration for specific services and in relation to the charges justified by the general advantages offered by the port and the port administration.

The entire proceeds of port charges collected at Fos-sur-Mer and Rotterdam go to the respective public port authorities, whereas the Trieste Port Authority receives only part of the amount of the disputed charges.

The amount of those charges has remained unchanged at Trieste since 1980, whereas it has risen in the other ports.

The port of Trieste is also more economical for traffic in oil than the ports of Le Havre, Donges, Verdon and Sète, which moreover do not have any pipe-lines.

At the port of Trieste the "fees" for the actual unloading of the oil by pump are in fact levied and collected by the Company.

The *Government of the Federal Republic of Germany* states that in the Federal Republic no charges are levied similar to the disputed charges, that it has received no complaints concerning the levying of similar charges by Member States other than Italy and that the embassies of the Federal Republic have indicated that

there are no such transit charges in the countries in which they are established.

The *Government of the French Republic* states that the French system of port charges and fees for the use of equipment is governed by the Code des Ports Maritimes [Code on Maritime Ports], and collection is carried out "as in relation to customs duties".

For commercial shipping port charges include a charge on the ship and, where appropriate a berthing charge, a charge on goods and a charge on passengers; national case-law regards these charges, levied for the exclusive benefit of the public organizations or authorities which participate in financing the operation of the port, as fees for "services rendered", except for the charge on passengers, 25 % of which goes to the State, and which is in the nature of a revenue charge. The rates of port charges vary according to the port; in addition, in each port certain reductions in the charge on goods may be granted.

Although the charge on goods is in principle payable on all "goods unloaded, loaded or trans-shipped", the ports may provide for reductions for goods in transit. Furthermore, the fact that the ports are able to vary the rates according to the port zone where handling is carried out makes it possible to meet the need to link the taxation to the service actually rendered to the undertaking concerned.

The *United Kingdom* states that harbour authorities in the United Kingdom have powers contained in the statutes under which they are constituted or under Section 26 of the Harbours Act 1964 to levy goods dues. Such dues, together with ship and passenger dues, contribute to the income of the harbour and enable the harbour authorities to fulfil their duties of managing, maintaining and improving the harbour facilities; although it is impossible to obtain absolute correspondence, the dues are designed to cover the cost of providing, maintaining and improving those facilities. Ship dues are normally related to ship tonnage; goods dues are normally related to the tonnage of goods or in some cases to the number of units. They roughly approximate to the use made of the harbour installations.

The power to make such charges is subject to the control of the Secretary of State; he may, upon request, give a direction disallowing or reducing the charge concerned.

The dues are levied without distinction on outward and inward traffic and on overseas and coastal traffic; there are no particular rules for transit traffic.

According to the *Government of the Kingdom of the Netherlands,* no charge similar to those which are in issue in the main action is levied in the ports in the Netherlands.

The *Commission* states that, on being consulted by it, the Federal Republic of Germany, Belgium, the Netherlands, the United Kingdom, Ireland, France and Greece indicated that in their ports no charge was levied on goods in transit.

D — Position in relation to GATT

"Have the facts mentioned in the questions submitted by the Corte Suprema di Cassazione already been dealt with within the framework of GATT?"

The *Company* observes that within the framework of GATT only the Contracting Parties are authorized to rely upon infringement of GATT.

The *Government of the Italian Republic* states that it does not seem that the facts at issue in the main action have been dealt with within the framework of GATT.

The *Government of the Federal Republic of Germany* confirms that hitherto the interpretation of Article V (3) has never officially been dealt with within the framework of GATT.

According to the information at the disposal of the *Commission*, this kind of question has never been dealt with within the framework of GATT.

E — The remedies which might be provided by Community law

"The Government of the Federal Republic of Germany has stated that it regards the levying of a revenue charge on oil which is in transit through one State and bound for the market in another State as constituting an infringement of Article V (3) of GATT. Does the German Government consider that Community law might provide a means of remedying the alleged infringement?"

Because this question and the following question are connected, the *Government of the Federal Republic of Germany* gives a single reply to both questions.

The port charge is contrary to Article V (3) of GATT. That provision does not prohibit only charges levied specifically and exclusively on goods in transit. In relation to customs duties, it prohibits not only customs duties on transit but also customs duties which divide the transit operation, for example into importation and exportation, in order to provide a basis for taxation; it covers generally both taxation levied by reason only of transit and taxation which is charged on goods in transit on the occasion of transit but is also charged on other goods for another reason, such as importation.

In this regard it is necessary to apply the method of interpretation used by the Court in its well-established case-law, in particular in connection with the concept of a charge having an effect equivalent to a customs duty on imports within the meaning of Articles 9 and 12 of the EEC Treaty.

An interpretation limiting the prohibition of charges to actual transit charges alone is contradicted by the general scheme of Article V (3): that provision lays down exceptions where services have been rendered; since traffic in transit is not the only activity capable of giving rise to the provision of services, the generic exclusion of charges corresponding to the cost of services rendered from the prohibition on charges shows that the prohibition must necessarily extend to all charges which may be levied on the occasion of transit and not only to actual transit charges.

It follows from its title and from paragraph (2) thereof that the object of Article V of GATT is to ensure freedom of transit; the prohibition in principle set out in Article V (3) can contribute to the achievement of that objective only if it covers not only actual transit charges, but also any charges on goods on the occasion of transit, since such charges always constitute a barrier to freedom of transit.

The port charges in issue in the main action are not "internal taxes" within the meaning of Article III of GATT, since they are not charged on domestic products and the imported products in question without distinction. In fact, Italian products and products imported into Italy are not affected where they are transported by road or by rail and thus do not pass through an Italian port or airport. In this context there can be no question of a "system of taxation".

Article III (1) and (2) of GATT pursue an objective which is totally different from that of Article V. Article III concerns taxes which are imposed on products by reason of their being marketed in the State concerned; the fiscal measures are in that case limited by the obligation to ensure competitive neutrality, which is clearly not necessary for goods in transit. Article V on the other hand does not relate to the marketing of products but to traffic and thus to movements of goods. In relation to Article III, Article V (3) constitutes a special provision which exempts goods in transit from any customs duties on the ground that, unlike other goods, they do not reach the internal market of the country through which they pass; the same applies to any other internal taxation of a general nature.

The provision applicable to the disputed charges is not Article III but only Article V of GATT.

In short, the legitimacy of the disputed port charges depends on whether or not they constitute consideration for services rendered by a public authority; according to the findings of the Corte Suprema di Cassazione, the reply to that question is negative. The disputed charges are therefore incompatible with Article V (3) of GATT.

The obligations imposed on Member States by virtue of the EEC Treaty are at least equivalent to the obligations undertaken by the parties to GATT: the EEC Treaty could not reduce the obligations already imposed on Member States by GATT.

It is clear from Article 9 (2) that the provisions of the EEC Treaty on intra-Community trade are not applicable to the disputed port charges, which are levied on the unloading of goods from non-member countries; however, in so far as they relate to goods intended to be transported by way of transit to other Member States, the provisions on the free movement of goods should be taken into consideration, even though they are not directly applicable. The prohibition on the taxation of goods from a non-member country which are in transit is indeed not expressly provided for in Articles 9 et seq. and 30 et seq. of the EEC Treaty. The free transit of goods within the Community is ensured by the reference to "prohibitions ... on ... goods in transit" in the first sentence of Article 36 of the EEC Treaty; for transit concerning a non-member country and two or more Member States, the prohibition on the collection of transit charges follows from an application by

analogy of Article 12 et seq., particularly Article 16, and Article 30 et seq., particularly Article 34, of the EEC Treaty.

The freedom of transit guaranteed by the EEC Treaty must have a scope which is at least equal to the freedom of transit introduced by GATT, particularly in Article V (3); since the disputed port charges are contrary to Article V (3) of GATT, they are also contrary to Article 34 of the EEC Treaty. According to the well-established case-law of the Court, individuals may rely upon that provision before a national court.

F — General system of freedom of trade within the common market

"The parties are requested to give their detailed views on the question raised in the German Government's observations regarding the compatibility of revenue charges levied on goods in transit with the general system of freedom of trade within the common market. In particular, the parties are invited to answer the question whether certain provisions of the EEC Treaty, such as Article 16 or Article 34, are applicable for the purpose of determining what revenue treatment is to be accorded to transit traffic; if not, the parties are invited to state whether they consider that the provisions of Article V (3) of GATT might be applicable within the framework of Community law and, if so, whether those provisions, applied in that framework, may be relied upon by individuals in legal proceedings".

The *Company* confirms its view that the general system of freedom of trade within the common market, which follows from all the provisions of the Treaty, is identical to a principle requiring, in the physical sense, freedom of trade and, in the economic sense, competitive equality of goods in each territory. The principle of free movement, conceived as a principle of competitive equality, by its nature implies that goods from the Community or in free circulation may not be subject in the countries through which they pass to any charge which is not simply the consideration for the services rendered; otherwise, those goods would be at a competitive disadvantage with regard to products originating in the country of destination.

To goods coming from non-member countries which are not put into free circulation in the Community the principle of competitive uniformity, not competitive equality, applies. Their competitive position may be altered or made more disadvantageous, with regard to that of Community products, according to the level of protection afforded to the latter; that level of protection should, however, be uniform and that is ensured by the Common Customs Tariff. The principle of competitive uniformity, which is applicable to products coming from non-member countries, by its nature implies that goods in transit in one Member State intended for another Member State may not be subject in the country through which they pass to any charge which does not constitute simply the consideration for services rendered; otherwise, in the country of destination

the competitive position of those goods would be even more disadvantageous and would in any event be different from that in which the Community intended to place them and which is determined by the Common Customs Tariff.

Articles 16 and 34 of the EEC Treaty may not, merely because they refer to the concept of "exports", be interpreted as not applying to goods in transit. That interpretation would lead to the absurd result that goods in transit could be subject not only to the internal taxes of the various Member States but also to customs duties *sensu stricto*, since the EEC Treaty does not lay down any specific prohibition in that regard. Moreover, Article 36 of the Treaty, which provides for derogations from Articles 30 to 34, also refers to transit; since Articles 30 and 34 respectively prohibit quantitative restrictions on imports and exports, as well as measures having equivalent effect, the derogation provided for in Article 36 would have no meaning if transit were not by implication covered by those provisions.

Moreover, the word "transit" may be understood in a purely physical sense, and not as a technical concept for customs purposes; goods in transit may therefore be regarded as "imported" when they enter a country through which they pass and as "exported" leave it. That interpretation seems compatible with the principle laid down in Article 3 (a) of the Treaty, of which Articles 16 and 34 constitute a specific application.

By that interpretation, an internal tax levied on goods in transit indisputably constitutes a charge having an effect equivalent to a customs duty on exports, contrary to Article 16, Article 12 or, more generally, Article 9 of the EEC Treaty. An internal tax applied to products in transit is not incompatible with the prohibition of charges having an effect equivalent to customs duties on imports, since the imported products are subject to internal taxes, but becomes a charge having an effect equivalent to a customs duty on exports if it is not refunded when the products in question leave the country through which they pass.

In any case, the levying of internal taxes on goods in transit constitutes, at the very least, an infringement of Article 34 of the Treaty; the application of internal taxes to goods which are not intended for the national market certainly constitutes an obstacle to transit and therefore falls within the prohibition referred to in Article 34, resulting from the combined provisions of that article and Article 36.

Admittedly, the provisions of the EEC Treaty in question apply only to products originating in the Member States and to those from non-member countries which are in free circulation within the Community; the crude oil unloaded by the Company is not technically speaking in free circulation, even if the situation is in fact identical, since for crude oil the Common Customs Tariff provides a duty equal to nil. With regard to the customs procedure, the crude oil unloaded at Trieste to be sent on to Germany and Austria is subject to the system of customs storage. Since the crude oil put into the transalpine pipeline is not technically speaking in free circulation, the contested unloading charges constitute an infringement of the Common Customs Tariff far more than an infringement of the rules on freedom of trade. The prohibition of the imposition of charges having an effect

equivalent to customs duties on exports to another Member State of products put into free circulation is justified by the aim of not altering the Common Customs Tariff and thus the uniform level of protection desired by the Community.

The provisions of GATT are no longer applicable in the relations between Member States of the EEC. The EEC Treaty therefore necessarily contains, even if only by implication, rules analogous to those of Article V (3) of GATT; indeed, its rules on freedom of transit, in its widest meaning, must not fall short of those contained in GATT.

Article V (3) of GATT remains applicable in the relations between Member States and non-member countries; limited to products in transit from or to a non-member country which is party to GATT, it may be relied upon by individuals before the national court.

The statement that Article V (3) of GATT prohibits only charges on transit as such and not charges of which the *raison d'être* is the fact of unloading is contradicted by the following considerations:

Article V (3) defines in detail the exceptions to the prohibition of any charges imposed in respect of transit; internal taxes do not appear among those exceptions.

Some of the exceptions concern charges not for actual transit as such but for transport or services rendered.

Article V (1) defines transit as passage across the territory of a Contracting Party which is only a portion of a complete journey beginning and terminating beyond the frontiers of the Contracting Party across whose territory it takes place, with or without transshipment, warehousing, breaking bulk or change in the mode of transport.

The obligations contained in Article V (3) and (4) necessarily refer only to taxes which are compatible with the prohibition contained in paragraph (3).

It is in no way paradoxical that products in transit, since they are exempt from internal taxes, enjoy more favourable treatment than the national treatment provided for in Article III of GATT; on the contrary, it would be paradoxical for internal taxes to be levied on products wholly foreign to the market of the State which applies such taxes.

The *Trieste Port Authority* considers that the main action does not raise the problem of the treatment for revenue purposes of goods in transit, since the disputed unloading charges do not concern transit but the port operation of unloading or loading.

The *Government of the Italian Republic* considers that the disputed charges do not affect the system of trade and free movement within the common market.

The charges in question are paid by all users of the port for the advantages which they derive from the organization and working of the port structure as a whole, on the basis of the average cost of the provision of all its services; they do not constitute, by reason of their general character, indirect protection of domestic products or a form of taxation

of imports or exports. All port movements of goods, whatever their origin and destination for customs purposes, including domestic products moving within the country, are subject to the charges in question; competitive neutrality is therefore absolutely respected from the point of view of taxation in accordance with the basic principle of non-discrimination.

The EEC Treaty has replaced GATT in all the areas which it governs as the source of rights and obligations of States within the Community; the provisions of GATT therefore may be relied upon to define the relations between Member States of the Community. Moreover, the objectives pursued by GATT are different from and much more limited than those laid down in the EEC Treaty; GATT, which is of a flexible nature, is based on the fundamental principle of reciprocity and balance. Direct effect in the framework of Community law cannot be attributed to GATT without an alteration of its legal scope, a failure to appreciate its contents and objectives and a denial of the essential character of the condition of reciprocity.

The *United Kingdom* observes that in an examination of transit traffic a distinction must be drawn: goods which do not satisfy the conditions laid down in Articles 9 and 10 of the EEC Treaty are "non-Community goods" and are subject to the provisions of the Treaty on the common commercial policy and to the international obligations of Member States and of the Community; the goods which satisfy the conditions laid down in Articles 9 and 10 of the Treaty are "Community goods", which are therefore subject to the provisions of the Treaty on free movement of goods; Articles 13 and 16 as well as Article 95 may be relevant to the levying of revenue charges on such transit traffic, whereas Articles 30 and 34 are less relevant.

The *Commission* confirms that it shares the opinion expressed by the Corte Suprema di Cassazione that the disputed charges do not constitute charges having an effect equivalent to customs duties on imports within the meaning of Article 13 of the EEC Treaty; nor may they be regarded as charges having an effect equivalent to customs duties on exports within the meaning of Article 16. Article 34, which concerns quantitative restrictions and measures having equivalent effect and not pecuniary charges, is not applicable in this case.

Article V (3) of GATT does not prohibit charges such as the disputed charges; if that were not so, it would be necessary in that light to examine Article 16 of the EEC Treaty. Article V (3) of GATT may not be applied in the framework of Community law.

The question whether Article V (3) of GATT may be relied upon in the framework of Community law does not arise; it would, however, be permissible for an individual, relying upon a provision of Community law which has direct effect, to refer to GATT as a means of interpretation of Community law.

G — The Communtiy's responsibility towards the Republic of Austria in the framework of GATT and the free-trade agreement

"The parties are asked to answer the question raised in the Danish

Government's observations as to whether the Community, which has progressively taken upon itself the functions relating to customs and trade policy, has assumed any responsibility towards non-member States, and in particular towards Austria, regarding compliance by the Member States with the rules of GATT. In that connection, the Court wishes to know the parties' views on the question whether revenue charges levied on goods in transit bound for Austria may possibly be described as charges having an effect equivalent to a customs duty on exports within the meaning of the free-trade agreement concluded with that country."

The *Company* takes the view that, since the Community as such has assumed the obligations under GATT, it has bound the Member States in accordance with Article 228 (2) of the the Treaty; the Member States may not unilaterally disregard their obligations without infringing Article 228 and without engaging the responsibility of the Community towards the other Contracting Parties of GATT.

The Free-Trade Agreement between the EEC and the Republic of Austria is not applicable in this case: Article 2 provides that it applies only to products originating in the Community or Austria.

On the other hand, Article V (3) of GATT is applicable: the preamble to the Agreement between the EEC and Austria expressly states that the parties are not exempted from the obligations which are incumbent upon them under other international agreements.

The *Trieste Port Authority* points out once again that the disputed revenue and port unloading charges do not in any way relate to transit.

The *Government of the Italian Republic* does not dispute that the Community has, in so far as it has taken over the powers of the Member States in the framework of the application of GATT, been substituted for them in relation to the fulfilment of the commitments contained in GATT towards non-member countries; but it should be borne in mind in this case that the disputed charges cannot be regarded as charges having an effect equivalent to customs duties.

The *Government of the Federal Republic of Germany* considers that, in the framework of the Common Commercial Policy, the Community has a certain responsibility towards non-member countries with regard to compliance with the rules of GATT. When a Member State does not fulfil the obligations imposed upon it by virtue of GATT in its relations with a non-member country, the non-member country concerned may adopt sanctions; as a result of the establishment of a common commercial policy, those sanctions will affect not only the Member State in question but the whole of the Community. The Community therefore has an interest in ensuring that the Member States comply with the rules of GATT.

The provisions of the Free-Trade Agreement between the EEC and Austria must be interpreted independetly, even where they correspond word for word with provisions of the Treaty. However, the prohibition of charges having an effect equivalent to customs duties, laid down in Article 12 et seq. of the EEC

Treaty and in Article 7 of the Agreement between the EEC and Austria should be given the same interpretation in the two treaties, since such charges directly affect the movement of goods and the two agreements have to this extent the same objective.

The *United Kingdom* considers that the Community does indeed have responsibility towards non-member countries regarding fulfilment of the obligations assumed by it in the exercise of its power under Article 113 of the EEC Treaty, including the rules of GATT.

The Agreement between the EEC and Austria applies only to products orginating in the Community or Austria and is therefore not directly relevant to the issues in the main action.

The *Commission*, whilst not agreeing with the arguments of the Danish Government in every respect, supports its opinion that, from the moment when the Community was substituted for the Member States with regard to the fulfilment of the commitments arising out of GATT, it assumed a responsibility, in particular towards Austria, in relation to compliance with the rules of GATT by the Member States.

In relation to the interpretation of Article 7 of the Free-Trade Agreement between the EEC and Austria, even if, contrary to all expectations, Article 16 of the EEC Treaty may be interpreted as prohibiting the disputed charges, it should be stated that the similarity in wording cannot be enough to transpose to the provisions of the free-trade agreement the interpretation given to Article 16 governing intra-Community trade; moreover, the free-trade agreement may not be given an interpretation which would lead to a system of trade less favourable than that arising out of GATT; thus, the question where the proper interpretation of Article 7 of the free-trade agreement must be situated within that margin depends in the final analysis on an assessment of the extent to which the objectives and scheme of the agreement are comparable to the objectives and scheme of the EEC Treaty, on which the interpretation of Article 16 is based.

H — Interpretation of Article 1 of the Agreement between the EEC and Austria on transit

> "In Part 4 of its obersvations on the fourth question, the Trieste Port Authority refers to the transit agreement concluded with Austria pursuant to Regulation No 2813/72 of the Council. It notes that that agreement, by virtue of the terms of Article 1 thereof, concerns only 'goods moving between two points situated within the Community, through Austrian territory'. The Court requests the parties, and in particular the Italian Government and the Commission, also to give their views on the scope of the second paragraph of Article 1 of that agreement, by virtue of which the rules relating to Community transit 'may also apply to any other carriage of goods passing through the territory of the Community as well as through that of Austria'."

The *Company* considers that the second paragraph of Article 1 of the transit agreement concluded with Austria must, in the light of the other provisions of

that agreement, be interpreted as meaning that the transit procedure for which it provides may also apply to goods coming from or bound for Austria which cross the territory of the Community.

According to the *Trieste Port Authority*, the Community transit procedure does not concern and does not alter the revenue treatment accorded to the goods; moreover, the Company is not availing itself of the Community transit procedure and the main action does not concern charges in respect of transit.

The *Government of the Italian Republic* states that petroleum products unloaded in the port of Trieste are declared for customs purposes under the rules on placement in storage and then removed from storage to be taken to the countries of destination; in particular, in relation to transport to Austria, the Company does not have recourse to the Community transit procedure but to the procedure of consigning foreign goods with a "bolletta di cauzione", which is provided for by the national rules.

The *Government of the Federal Republic of Germany* considers that the second paragraph of Article 1 of the Agreement between the EEC and Austria on Community transit may apply to the transit of goods:

From the Community or, after transit through the Community, from a non-member country to Austria;

From Austria to the Community or, after transit through the Community, to a non-member country;

Between a Member State and a non-member country, after transit through Austria, where appropriate after trans-shipment.

In the first case, the rules on Community transit may optionally also be applied to the transport of goods from a non-member country to Austria after transit through Italy (Trieste).

The *Commission* states that under the first paragraph of Article 1 of the Agreement between the EEC and Austria, the Community transit procedure is in principle compulsory for the crossing of Austrian territory, where the goods enter that territory in the course of transport carried out between two points situated in the Community; such transport may be carried out directly, either with trans-shipment in Austria or re-consignment, where appropriate after storage in a bonded warehouse in Austria.

Under the second paragraph of Article 1 of the agreement, the operator has the option of using the Community transit procedure where the transport over Austrian territory does not involve two points situated within the Community. That applies to the transport of goods from the Community or a non-member country to Austria, the transport of goods from Austria to the Community or a non-member country, the transport of goods between the Community and a non-member country with passage over Austrian territory, with or without trans-shipment on that territory.

I — The attitude of the Austrian Government

"The Court requests the Commission to provide it with such information as it may have at its disposal regarding the attitude of the Austrian Government on the questions raised by the Corte Suprema di Cassazione, following the publication of those questions

in the Official Journal of the European Communities (C 280, of 31 October 1981, p. 4)."

The *Government of the Federal Republic of Germany* refers to a memorandum from the Austrian Government dated 9 June 1982 and a letter from the Austrian Embassy to the Federal Republic dated 8 July 1982. Those documents indicate the economic impact of the disputed charges on Austrian imports of crude oil through Italy (a charge of about ÖS 150 million from 1974 to the end of 1981; from 1 January 1982, an annual charge of about ÖS 30 million, since the amount of the charges was doubled by Italian Law No 692 of 1 December 1981) and set out the grounds on which the contested charges are, in the opinion of the Austrian Government, incompatible with Article V (3) of GATT.

The *Commission* observes that Austria has not approached it in relation to the questions at issue; however, it is aware that Austria considers the port charges to be contrary to GATT.

IV — Oral procedure

At the sittings on 27 and 28 October 1982 oral argument was presented and questions put by the Court were answered by the following: Viscardini Dona, assisted by Mauro Azzarita, General Manager, for the Company, the appellant in the main action; Mr Pacia, for the Trieste Port Authority; Mr d'Amato, 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; Mr Seidel, for the Government of the Federal Republic of Germany; and Mr Olmi, for the Commission of the European Communities.

The *Government of the French Republic*, which had not submitted written observations, pointed out that the Court of Justice, according to its case-law, has jurisdiction to interpret an international agreement on two conditions: the Community must be bound by the relevant provision of the agreement and that provision must be capable of conferring rights on individuals. With regard to the first condition, it should be noted that the Community had no jurisdiction in the field of application of GATT until 1 July 1968 and that, even after that date, although jurisdiction in revenue matters was circumscribed and limited by Community rules, it was not transferred from the Member States to the Community; as to the second condition, it should be recognized that neither Article II nor Article V (3) of GATT is capable of conferring on citizens in the Community the right to rely upon it before the courts.

By way of a subsidiary point, it appears that the charges in question in the main action constitute internal taxation and that Article V (3) of GATT permits their imposition on goods in transit; to interpret Article V (3) of GATT as conferring extra-territorial status in revenue matters on goods in transit would be incompatible with the principle of national treatment on which GATT is

founded; Article V (4) and (5) confirm that GATT does not prevent the imposition of internal taxation provided that it is fair, that transit does not constitute the chargeable event and that the taxation is imposed on grounds of public interest, in particular payment for services rendered.

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

Decision

1 By an order dated 21 May 1981, which was received at the Court Registry 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 four questions concerning:

On the one hand, the interpretation of Articles 90, 113 and 117 of the EEC Treaty, of Regulation No 542/69 of the Council of 18 March 1969 on Community transit (Official Journal, English Special Edition 1969 (I), p.125) and of Regulation No 2813/72 of the Council of 21 November 1972 on the conclusion of an agreement between the European Economic Community and the Republic of Austria on the application of the rules on Community transit (Journal Officiel L 294, p. 86); and

On the other hand, the effect within the Community of the General Agreement on Tariffs and Trade (GATT) of 30 October 1947 and the interpretation of Article V of GATT on freedom of transit.

The Corte Suprema di Cassazione put the questions in order to enable it to determine the compatibility with Community law and, if necessary, with the rules of GATT of the application of charges on unloading and loading of goods imposed by virtue of Decree-Law No 47 of 28 February 1974, converted into Law No 117 of 16 April 1974 (hereinafter referred to as "Decree-Law No 47"), to oil carried by the transalpine oil pipe-line to the Federal Republic of Germany and the Republic of Austria.

2 It appears from the file that those questions arose in connection with a number of disputes between, on the one hand, Società Italiana per l'Oleodotto Transalpino [hereinafter to as "the Company"], a company governed by Italian law which was responsible for the construction and operation of the section of the transalpine oil pipe-line in Italian territory

between Trieste and the Austrian border, and, on the other hand, Ministero delle Finanze [Ministry of Finance], Ministero delle Marina Mercantile [Ministry of Shipping], Circoscirzione doganale di Trieste [Trieste Customs Authority] and Ente Autonomo del Porto di Trieste [Trieste Independent Port Authority] in relation to the levying of the contested charges on crude oil discharged into the Company's installations for consignment to refineries in the Federal Republic of Germany and the Republic of Austria.

Background to the dispute

3 It should be pointed out that before the application of the Decree-Law to which the dispute relates Italy imposed under Law No 82 of 9 February 1963 an unloading charge on imported goods and a charge known as a "port charge" on goods loaded and unloaded, regardless of their origin or their destination, in specified ports, including the port of Trieste. The first of those charges was not applicable to oil discharged by the Company, because it was not intended for importation; as to the second charge, the Law contained an express exemption in favour of goods in transit in the port of Trieste.

4 In its preliminary ruling of 10 October 1973 in Case 34/73, *Variola* v *Amministrazione Italiana delle Finanze*, [1973] ECR 981, the Court held that a charge such as the first-mentioned, imposed specifically on imported products, was to be regarded as a charge having an effect equivalent to a customs duty and accordingly was incompatible with Community law. At the same time, the Commission had lodged an application in connection with the unloading charge for a declaration that Italy had failed to fulfil its obligations as a Member State, which was entered in the Court Register under No 172/73 (Official Journal 1973, C 99, p. 4). As a result of the judgment cited, Italy amended its legislation by Decree-Law No 47. The unloading charge was replaced by a State charge on unloading and loading, hereinafter referred to as the 'revenue charge', which applied regardless of the origin or destination of the goods. The Commission considered that, as a result of that change in the contested charge, the failure to fulfil obligations under Community law no longer existed and consequently it withdrew its application (Official Journal 1974, C 69, p. 5). The port charge remained in force in accordance with the provisions of the Law of 1963, apart from the abolition of the exception previously provided for in favour of transit through the port of Trieste.

5 As from the application of Decree-Law No 47, the Italian tax authority required the payment of the two charges — the revenue charge and the port charge — in respect of crude oil discharged into the Company's installations and transmitted through the transalpine oil pipe-line. The Company brought several actions challenging those charges before the Tribunale [District Court], Trieste, in relation to periods during 1974 and 1975. It subsequently paid the charges without prejudice, pending the outcome of those actions. The applications were dismissed by the Tribunale, Trieste, and the Company lodged appeals before the Corte d'Appello [Court of Appeal], Trieste, which in turn dismissed the appeals in successive judgments. After those judgments, several appeals in cassation were brought before the Corte Suprema di Cassazione.

6 According to the order making the reference, the Company put forward, in addition to certain submissions based on national law, various submissions based on the one hand on Community law and on the other hand on GATT. It argued that the contested charges:

(1) Should be considered not as internal taxation but as charges having an effect equivalent to customs duties, contrary to Articles 12 and 13 of the EEC Treaty;

(2) Were incompatible with the rules on freedom of transit provided for in Article V of GATT;

(3) Were incompatible with the Community transit procedure as defined by Regulation No 542/69 and with the transit agreement concluded by the Community with Austria, which was given effect by Regulation No 2813/72;

(4) Interfered with the Community's commercial policy and therefore infringed Article 113 of the EEC Treaty;

(5) Gave rise to serious distortions of competition, contrary to Article 90 (1) of the EEC Treaty, inasmuch as they secured financial advantages for public port services, the burden of which was borne by a private undertaking authorized to operate and use its own services for similar unloading operations.

7 The Corte Suprema di Cassazione, considering that the charges in question were taxes levied on goods loaded and unloaded and were imposed on all

such goods, regardless of their origin or their destination, took the view that the contested charges were not import levies but internal taxation within the meaning of Article 95 of the Treaty and Article III of GATT.

8 On the basis of those considerations, the Corte Suprema di Cassazione took the view that problems of interpretation arose under Community law in relation to the regulation on Community transit, the transit agreement with Austria, the rules on the common commercial policy laid down in Article 113, and the rules on competition contained in Article 90 of the Treaty.

9 It also considers that a question arises in relation to the alleged incompatibility of the contested charges with Article V of GATT on freedom of transit. Since the Corte Suprema di Cassazione and the Court of Justice had expressed different views in their decisions with regard to the internal effects of GATT, as is shown by 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 1983 in Case 9/73, *Schlüter* v *Hauptzollamt Lörrach*, [1973] ECR 1135, and of 11 November 1975 in Case 38/75 *Nederlandse Spoorwegen* v *Inspecteur der Invoerrechten en Accijnzen*, [1975] ECR 1439, it believes that it is now necessary to reconsider the problem, having regard to the fact that the Community has been substituted for the Member States in relation to commitments under GATT, as has been affirmed by the Court of Justice in the judgments cited.

10 In order to resolve those problems, the Corte Suprema di Cassazione has formulated four questions for a preliminary ruling. 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, do the provisions of GATT fall 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 the fulfilment of the obligations laid down in GATT. 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 question, operates provisions referred to in the following question, 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:

In the light of the rules laid down in Article V (3) of GATT in relation to goods originating from countries which are not parties thereto but intended for the market in countries which are parties, is the national legislature prohibited, and if so, within what limits and under what conditions, from providing for the imposition of charges (such as the revenue charge on goods unloaded or loaded in all national sea ports and the port charge on goods unloaded or loaded in some only of those ports, referred to respectively in the first and second paragraphs of Article 2 of Decree-Law No 47 of 28 February 1974, converted into a law by Law No 117 of 16 April 1974) both on domestic products or products treated as such and on imported products, on the occasion of the unloading or loading of those goods in sea ports of the country belonging to GATT, which charges are levied on the imported product even where, having originated in a country which is not a party to GATT, it is merely in transit through national territory and is bound for the market of another country which is a party to GATT, and even where — particularly with regard to those of the said charges which are laid down for specified ports administered by autonomous authorities

for which the charges are in part intended — the operations of unloading, loading and forwarding to the market for which the goods are finally intended are carried out exclusively by a commercial undertaking using plant and installations constructed, managed and maintained by that undertaking, without the provision of any direct and specific service by the port authority?

(D) Regardless of the replies to Questions A, B and C:

1. In the light of the principles on which Community system is based regarding the proper role of competition and the common commercial policy, with particular reference to the rules laid down in Articles 90 (1) and 113 (1) of the Treaty respectively, and in relation to the specific provisions governing Community transit laid down by Regulations (EEC) No 542/69 of the Council of 18 March 1969 and No 2813/72 of the Council of 21 November 1972, is the national legislature prohibited, and if so within what limits, on what conditions and subject to what requirements, including those of a formal nature, regarding the origin of the goods and the transit procedure relating thereto, from providing for the imposition of charges (such as the revenue charge on goods unloaded or loaded in all the national sea ports and the port charge on goods unloaded or loaded in some only of those ports, referred to respectively in the first and second paragraphs of Article 2 of Decree-Law No 47 of 28 February 1974, converted into a law by Law No 117 of 16 April 1974) both on domestic products or products treated as such and on imported products, on the occasion of the unloading or loading of the said goods in sea ports of the member country, which charges are levied on the imported product even where, having originated in a non-member country, it is merely in transit through national territory and is intended for the markets of the Federal Republic of Germany and of Austria, and even where — particularly with regard to those of the said charges which are laid down for specified ports administered by autonomous authorities, for which the charges are in part intended — the operations of unloading, loading and forwarding to the market for which they are finally intended are carried out exclusively by a commercial undertaking using installations and plant

constructed, managed and maintained by that undertaking, without the provision of any direct or specific service by the port authority?

2. If the imposition of such charges is prohibited, has an individual a right of action before the national courts to recover the sums paid in respect thereof or to oppose the claim for payment made by the State?

11 As the EEC Treaty does not expressly lay down the rules on goods in transit, the Corte Suprema di Cassazione has directed itself in the first place to the effect and the interpretation of GATT, which unlike Community law contains, in Article V, express provisions on that subject. It is only by way of a secondary consideration that the Corte Suprema di Cassazione raises questions on aspects of Community law which in its opinion might have a bearing on the problem, namely Article 113 on the common commercial policy, Article 90 on the competition rules applicable to public undertakings, the rules on Community transit and the transit agreement with Austria.

12 In relation to the application of Article V of GATT, it should be noted that, according to Article XXIV (8) thereof, the Community must be regarded as a single customs territory because according to Article 9 of the EEC Treaty it is based on the principle of a customs union. It follows from that that the rules contained in GATT govern only the Community's relations with the other contracting parties and cannot be applied within the Community itself.

13 For that reason the Court considers it advisable in the first place to determine the rules governing goods in transit under Community law alone. Consequently it will examine first the fourth question (D) in conjunction with the third question (C), distinguishing the rules relating to goods in transit to a Member State, in this case the Federal Republic of Germany, from those applicable to goods in transit to a non-member country, namely Austria.

The rules governing transit within the Community

14 By *Question (D)*, the Corte Suprema di Cassazione asks whether the application to goods in transit of charges imposed by reason of loading or

unloading on all goods without distinction, regardless of their origin or destination, is compatible with the principles on which the Community legal order is based and in particular with Regulation No 542/69 on Community transit, where the operations of unloading, loading and forwarding to the market for which they are finally intended are carried out exclusively by a commercial undertaking using installations and plant constructed, managed and maintained by that undertaking, without the provision of any direct or specific service by a public port authority.

15 By *Question (C),* the Corte Suprema di Cassazione asks whether such charges are compatible with Article V (3) of GATT.

16 The Customs Union established by Part Two, Title I, Chapter 1 of the EEC Treaty necessarily implies that the free movement of goods between Member States should be ensured. That freedom could not itself be complete if it were possible for the Member States to impede or interfere in any way with the movement of goods in transit. It is therefore necessary, as a consequence of the Customs Union and in the mutual interest of the Member States, to acknowledge the existence of a general principle of freedom of transit of goods within the Community. That principle is, moreover, confirmed by the reference to "transit" in Article 36 of the Treaty.

17 In that regard it must be noted that the same general principle of freedom was the inspiration behind Regulation No 542/69 on Community transit and also Council Regulation No 222/77 of 13 December 1976 (Official Journal 1977, L 38, p. 1), by which it was replaced; those regulations set out various administrative measures intended to facilitate Community transit. Indeed, the preambles to the two regulations link the measures taken in order to facilitate transit with the existence of the Customs Union, with the unity of the customs territory and with the need for complete freedom of movement of goods within the Community.

18 Moreover, it is necessary to stress, as the Court did in its judgment of 13 December 1973 in Joined Cases 37 and 38/73, *Sociaal Fonds voor de Diamantarbeiders* v *N.V. Indiamex and Association de fait De Belder,* [1973]

ECR 1609, that, although the prohibition of charges having an effect equivalent to customs duties appears only in Section 1 of the chapter of the Treaty relating to the Customs Union (Articles 12 to 17), which relates to products in free circulation in the Member States, and not in Section 2 of the same chapter (Articles 18 to 29), which concerns products imported directly from a non-member country, that does not mean that such charges may be introduced or maintained in relation to those products. As was also pointed out in the judgment cited, the establishment of the Common Customs Tariff is intended to achieve an equalization of customs charges levied at the frontiers of the Community on products imported from non-member countries, in order to avoid any deflexion of trade in relations with those countries and any distortion of free internal circulation or of competitive conditions. For the same reasons, the fact that the same provisions do not contain any express prohibition of transit charges cannot mean that such charges may be introduced or maintained by the Member States, since the very principle on which they are based is incompatible with a customs union and *a fortiori* with the principle of the free movement of goods, which is the very foundation of the common market.

19 It must therefore be accepted that the Member States would contravene the principle of freedom of transit within the Community if they were to apply to goods in transit through their territory transit duties or other charges imposed in respect of transit.

20 However, the impostition of charges which represent the costs of transportation or of other services connected with transit cannot be regarded as incompatible with freedom of transit as defined above.

21 In that regard it should be noted that such services are not to be limited to those directly and specifically connected with the movement of goods, as indicated in the questions submitted by the Corte Suprema di Cassazione. Charges based on the more general benefits derived from the use of harbour waters or installations for the navigability and maintenance of which the public authorities are responsible must also be regarded as representing costs of transportation.

22 Finally, it may be stated that, as far as the fiscal regime governing goods in transit is concerned, the principles derived from Community law substantially coincide with the rules derived from international conventional practice in that matter.

23 The answer to the question submitted should therefore be that the existence within the Community of a customs union characterized by the free movement of goods implies freedom of transit within the Community. That freedom of transit means that a Member State may not apply to goods in its territory in transit to or from another Member State transit duties or other charges imposed in respect of transit. However, the imposition of charges or fees which represent the costs of transportation or of other services connected with transit cannot be regarded as incompatible with freedom of transit as defined above, bearing in mind that it is necessary to take account not only of direct and specific services connected with the movement of goods but also of the more general benefits derived from the use of harbour waters or installations for the navigability and maintenance of which the public authorities are responsible.

24 It is for the national court, having regard to all the circumstances of the case, to determine the compatibility of the contested charges with freedom of transit as defined above.

25 In view of the considerations set out above, the question submitted in relation to Article 90 (1) has no purpose.

Rules governing transit in relations with Austria

26 Questions (C) and (D), in so far as they relate to the rules applicable to oil in transit in Austria, in substance concern the interpretation of the Community rules establishing a common commercial policy, as contemplated by Article 113 of the Treaty. *Question (D)* asks whether the imposition of the charges described above is compatible with Article 113 and with the transit agreement concluded by the Community with Austria, which forms the subject-matter of Regulation No 2813/72, adopted on the basis of

Article 113. Consequently, *Question (C)* must be understood as asking also whether the application of the contested charges to oil intended for consignment to Austria is compatible with Article V (3) of GATT, in view of the fact that the Community is bound, as regards Austria, by the provisions of GATT.

27 It should be observed in that regard that the transit agreement concluded with Austria does not contain any specific commitment between the parties in relation to the tax treatment of goods in transit. Therefore the only provision to be taken into account is Article V of GATT, paragraph (2) of which provides that: "There shall be freedom of transit through the territory of each contracting party ... for traffic in transit to or from the territory of other contracting parties". According to Article V (3), to which the Corte Suprema di Cassazione referred, the imposition between the contracting parties of all customs duties, transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered, is prohibited.

28 Since that provision cannot have direct effect in the framework of Community law for the reasons which were stated by the Court in its judgment of 12 December 1972 in Joined Cases 21 to 24/72, *International Fruit Company* v *Produktschap voor Groenten en Fruit*, [1972] ECR 1219, and which are still valid, individuals may not rely upon it in order to challenge the imposition of a charge such as the loading and unloading charge on goods in transit to Austria. That in no way affects the Community's obligation to ensure that the provisions of GATT are observed in its relations with non-member States which are parties to GATT.

29 As regards Article 113 of the Treaty, although that provision confers upon the Community powers which enable it to take any appropriate measure concerning the common commercial policy, it nevertheless does not in itself contain any legal criterion which is sufficiently precise to enable an assessment of the contested transit rules to be made.

30 The answer to the question submitted should therefore be that there is no rule which may be relied upon by individuals in order to challenge the application to goods in transit to Austria of a charge such as the contested loading and unloading charges.

31 It is therefore clear that, since Article V of GATT does not apply to transit within the Community and since that provision does not have direct effect in relation to transit to Austria, Questions (A) and (B) have no purpose.

Costs

32 The costs incurred by the Governments of the Federal Republic of Germany, the French Republic, the Italian Republic, the Kingdom of Denmark, the Kingdom of the Netherlands, 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 order of 21 May 1981, hereby rules:

1. **The existence within the Community of a customs union, characterized by the free movement of goods implies freedom of transit within the Community. That freedom of transit means that a Member State may not apply to goods in its territory in transit to or from another Member State transit duties or other charges imposed in respect of transit.**

   However, the imposition of charges or fees which represent the costs of transportation or of other services connected with transit cannot be regarded as incompatible with freedom of transit, as defined above, bearing in mind that it is necessary to take account not only of direct or specific services connected with the movement of goods but also of the more general benefits derived from the use of harbour waters or

installations for the navigability and maintenance of which the public authorities are responsible.

2. **There is no rule which may be relied upon by individuals in order to challenge the application to goods in transit to the Republic of Austria of a charge such as the loading or unloading charge levied in Italy by virtue of Decree-Law No 47 of 28 February 1974, converted into Law No 117 of 16 April 1974.**

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

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 14 DECEMBER 1982 [1]

Mr President,
Members of the Court,

A number of proceedings are at present pending before the Italian Corte Suprema di Cassazione [Supreme Court of Cassation] concerning the legality of the imposition of certain charges on crude oil which is imported from non-member countries which are not parties to GATT, discharged in the port of Trieste and pumped through the transalpine oil pipe-line operated by Società Italiana per l'Oleodotto Transalpino, a company governed by private law [hereinafter referred to as "SIOT"], in part to the Federal Republic of Germany and in part to Austria.

So far as the details of the complicated facts of the case are concerned, I refer to the Report for the Hearing. For an understanding of the questions submitted to the Court it is necessary at this stage merely to give the following brief summary.

Under Italian Law No 82 of 9 February 1963 a State unloading charge was payable in all Italian ports on goods

1 — Translated from the German.