Upon hearing the opinion of the Advocate-General;
Having regard to Articles 30, 31, 32, 33, 37 and 177 of the Treaty establishing the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice of the said Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

hereby rules:

1. **None of the provisions of the Treaty mentioned by the Tribunale Civile, Rome, implies the abrogation *ipso jure* on the date of the entry into force of the Treaty of the quantitative restrictions, discriminations or measures having equivalent effect which existed on that date, or requires the States to abolish them completely as from 1959;**
2. **The decision as to costs is a matter for the above-mentioned court.**

Hammes Donner Lecourt

Delvaux Trabucchi Strauß Monaco

Delivered in open court in Luxembourg on 4 February 1965.

A. Van Houtte — Registrar

Ch. L. Hammes — President

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 2 DECEMBER 1964[1]

Mr President,

Members of the Court,

References for preliminary rulings made to you by courts of the Member States can be classified into two quite distinct categories. In some you are questioned on the scope of particular provisions of Community regulations which only appear of interest to a few specialists. In others on the contrary, and for the solution of a dispute which appears ordinary enough, you are asked to interpret certain fundamental Articles of the Treaty of Rome.

The present case certainly falls into the

1 – Translated from the French.

second category. The refusal of an advocate in Milan to pay an electricity bill led you in your judgment of 15 July last to pronounce upon certain aspects of the right of establishment and of the system of State monopolies. Today the Tribunale Civile of Rome refers to you, with regard to the failure to perform a contract for the importation into France of 6 000 metric tons of petrol, four questions bearing on the interpretation of Articles 30 to 37 of the Treaty relating to quantitative restrictions and monopolies, questions which are put to you in relation to the system governing the importation into France of hydrocarbons.

It is enough to say that the legal scope and the practical importance of the judgment which you are to give go beyond the interests of the two parties to the action pending before the Italian court, and, if any doubt remained on that point, it would suffice to note that in addition to the Commission of the EEC, three of the Member States—Belgium, France and the Netherlands—have submitted their observations, which incidentally are not in agreement.

You know the facts which have been recalled in the course of the oral proceedings. The Société des Pétroles et Combustibles Liquides (Sopéco), a French company, made a contract in March 1959 with S.R.L. Albatros, the registered office of which is in Rome, for the importation into France of an annual quantity of 6 000 metric tons of refined petroleum in monthly deliveries of 400 to 600 metric tons. On 11 April 1959 the request for an import licence for 500 metric tons made by Sopéco was rejected by the French foreign exchange office for the reason that the company 'was not authorized to make bulk imports of petroleum products (Law of 30 March 1928)'. A refusal of an import licence constitutes in French law an administrative act which can be the object of an action for abuse of powers ('excès de pouvoir') before the administrative courts. Sopéco did not bring such an action but when sued before an Italian court by the seller, who asked for performance of the contract or its termination with damages for the loss incurred, it pleaded a fundamental mistake of law and *force majeure,* which latter, it said, amounted to a refusal which was a violation of the EEC Treaty. It requested that the file be sent to you for interpretation of the Treaty, and Albatros joined in that request. After various procedural steps (the action being struck off the list on 25 January 1962 and restored on 29 May 1963), the Tribunale Civile of Rome by order of 18 January 1964—which incidentally was not transmitted to you until four months later—referred to you under Article 177 of the EEC Treaty four questions which may be analysed as follows:

A. Must Article 30 of the Treaty, read together with Articles 3, 31, 32 and 35, be interpreted in the sense that it has, or has not, an effect abrogating the previous provisions in the French rules concerning the importation of petroleum, and in particular the Law of 30 March 1928?

B. Do Articles 31 and 32 of the Treaty, read together with Article 5, constitute sources of law overriding the Ordonnance of 24 September 1958 which, subsequently to the entry into force of the Treaty, supplemented and modified the Law of 30 March 1928?

C. If questions A and B receive a negative answer, did Article 33 of the Treaty render the French rules null and void?

D. Does Article 37, read together with Article 5, imply the gradual prohibition of any public monopolies operating in compliance with the French laws governing the importation of petroleum?

One first point must be settled, namely, the admissibility of the request for inter-

pretation, which is expressly disputed by the French Government. By questions A and C, supposing that they can be understood as bearing on the point whether the previous French rules concerning petroleum imports are compatible with the Treaty, you are being asked to decide a possible conflict between Community law and French internal law, which is not within your jurisdiction. As to questions B and D, they lack relevance. The Ordonnance of 24 September 1958, which relates to petroleum classified as national, has not been invoked by the French authorities against Sopéco. Besides, the concept of progressive adjustment contained in Article 37 prevents that Article from having any relevance to a dispute arising at the beginning of 1959.

As guardians of the implementation of the Treaty of Rome, your function covers Article 177 itself as it does all the other provisions of that Treaty and it is for you, maintains the French Government, to define the limits within which it can apply. You must refuse to allow it to be used to evade other provisions of the Treaty, such as Articles 169 to 173 for instance, or to allow a national court to encroach on the jurisdiction of the courts of the other Member States.

You have often met with similar objections on the occasion of previous preliminary rulings which have been sought from you. They have led you in the first place to affirm your jurisdiction, so long as the questions relate to the interpretation of the Treaty or of a Community Regulation, even if you extract 'from a question imperfectly formulated by the national court those questions which alone pertain to interpretation of the Treaty', (Case 6/64, *Costa* v *E.N.E.L.*), and that is certainly not impossible here. On the other hand, within the framework of Article 177, you can neither apply the Treaty to a particular case nor give judgment on the validity of a measure of national law, but can only interpret the Articles of the Treaty 'having regard to the legal particulars set out by the court in the main action'. Finally, the considerations which may have led that court in its choice of questions, as well as the relevance which it attributes to such questions in the context of a case before it, are excluded from review by you (Case 26/62—*Van Gend en Loos* v *Nederlandse Administratie der Belastingen*).

These rules, which are certainly logical, do however raise certain problems which Mr Advocate-General Lagrange noted in his opinion in the Costa case. There is, on the one hand, the difficulty of tracing the boundary between interpretation and application of the Treaty, which is simultaneously the boundary of the respective jurisdictions of the Community Court and the national courts, the settlement of disputes over which has not been allotted to any court. On the other hand is it necessary to take to its final conclusion the principle whereby the Court does not have the task of assessing the considerations upon which the national court based its reference for a preliminary ruling, even if the question put is clearly without any relation to the dispute in the main action? Must the Court nevertheless give in such a case an abstract, theoretical interpretation unconnected with the settlement of a dispute, but which it would nonetheless be possible to raise for other purposes and which might create conflicts with national courts or authorities? Perhaps you will one day have to fix a limit to what might appear an abuse of procedure.

In the particular case before us, the Tribunale Civile of Rome has taken care to set out the reasons for which the interpretation of the Treaty appears to it necessary, namely whether, at the date on which the contract was concluded, the purchaser had reasonably to expect that the import licence requested would be refused on the basis of the earlier

law or whether on the contrary it could have expected to be granted one by reason of alterations in administrative regulations and practice which, *ex hypothesi,* the entry into force of the Treaty must bring about. It is to enable assessment of this 'subjective' aspect of the behaviour of the buyer (the adjective appears in the grounds of the order) that you are requested to interpret the Treaty.

This doubtless explains two remarks which the French Government put forward with great emphasis in the oral proceedings. The first is that, in all the cases submitted to you hitherto, the national courts were seeking clarification of the lawfulness, in the light of the Treaty of Rome, of their own law or an act of their government. It was thus natural that this Court, after interpreting the Treaty, should leave to those courts the task of drawing the consequences from such interpretation within the framework of their own jurisdiction and on the basis of the dispute which was before them. But here the interpretation of the Treaty will be applied by the Italian court to French legislation.

The French Government secondly doubts whether there is any legal connexion between the interpretation which you are to give and the solution of the dispute in the main action. It is a fact, if we have properly understood the order of the Italian court, that, whatever may be the positive or negative answer which you are to give to the questions asked, that court will always be free to draw from it the consequences it pleases as far as the subject matter of the main action is concerned, since it has the task of judging the subjective behaviour of the debtor.

These two remarks have the advantage of emphasizing the peculiarities of the case. I do not, however, think that they should lead you to refuse to accept that you have jurisdiction. The Community legal order and the national legal orders, it has often been stated, are two fields which cannot be confused. It is your task to interpret the Treaty; it is not only a power, it is an obligation for you once a reference has been made to you. To refuse to give this interpretation because it might risk leading in the main action to an encroachment by the court of one Member State on that of another Member State would amount to giving judgment on the respective jurisdictions of the two courts, which would clearly exceed your jurisdiction. Besides, if your interpretation of the Treaty, which is binding on the national court, does not deprive the latter of its liberty in drawing consequences from it as to the decision to be made in the action, in so far as that decision is linked to subjective assessments, that is not enough to destroy all legal connexion between the interpretation and the dispute. Furthermore, at this point we once more come up against the problem of the 'relevance' of the questions put, which you always refuse to examine.

I propose, then, that you reject the submission of inadmissibility put forward by the French Government and reply to the questions within the limits of your jurisdiction and within the framework of the actual dispute which arises, let us remember, from the failure to perform a contract concluded in March 1959.

1. In question A you are asked whether Article 30 of the Treaty, read together with Articles 3, 31, 32 and 35, is to be interpreted as having or not having an effect abrogating the previous provisions in the French regulations governing the importation of petroleum, and in particular the provisions of the Law of 30 March 1928, the Decree of 8 August 1935 and the Decree of 1 February 1950, in so far as these provisions might conflict with the abovementioned Articles of the Treaty.

The question, if we disregard the unsatisfactory nature of its wording,

amounts to the query whether the Article is 'self-executing'.

That Article, which opens Chapter 2 on the elimination of quantitative restrictions, is worded thus: 'Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States'. Articles follow which exclude respectively the introduction of new quantitative restrictions (Article 31) and the intensification of quotas (Article 32), the timetable for the gradual abolition of the latter being set out in Article 33. Finally, Article 37 relates to the adjustment of monopolies.

For the companies Albatros and Sopéco, Article 30 implies that, except for the quotas, the gradual elimination of which is expressly provided for in Article 32 and 33, all the other quantitative restrictions and all measures having equivalent effect must disappear on the day on which the Treaty entered into force. And among the measures referred to by that Article is every system which subjects imports to the previous grant by a government of special authorizations. You will recognize there the system of the French Law of 30 March 1928. And, arguing from your judgment in Case 26/62, which recognized that Article 12 of the Treaty, forbidding the introduction of new customs duties, was of a 'self-executing' nature, you are asked to recognize that Article 30 is of the same nature.

This proposition has the advantage, at least on the first point, of the authority of Mr Catalano's 'Manuel de Droit des Communautés Européennes' p. 276. However, I agree with the Commission that it cannot be upheld. First, it is impossible to place Article 30, which concerns the abolition of existing restrictions, on the same footing as Article 12, which forbids the introduction of new restrictions and which, as you have said, imposes a purely passive obligation 'not to act'. Secondly, and especially, the argument of the companies appears to go against the general spirit of the Treaty which envisages the *gradual* elimination of hindrances to free movement of persons, services and capital as well as of goods. This concept of time-limits and stages is expressed for quotas, for measures having equivalent effect to quotas, for quantitative restrictions on exports and the adjustment of monopolies, respectively in Articles 32, 33 (7), 34 and 37. Lastly, in Article 35 the Member States declare their readiness to abolish more rapidly than is provided for in the preceding Articles 'quantitative restrictions on imports', and not only their quotas; this excludes the obligation to abolish those restrictions immediately, whatever their nature might be. Besides, it would have been unrealistic on the part of the authors of the Treaty to impose the most severe and most rigid regulation on measures which are multiform and less well-known than the quotas for which consequently a transitional period was particularly necessary.

All this leads me to think that Article 30, just as Article 3, to which question A also refers, is a provision of a general nature, which is given specific form and developed by Articles 31 to 37. It applies to circumstances and within limits determined by those Articles. It could not be considered 'self-executing' except in so far as it introduces certain Articles which are so themselves, such as Article 31, 32 or 37, which we shall meet again later. But it seems to me a bad system to attribute a 'self-executing' character to a general principle by mere reference to other Articles which state precise and positive rules. Thus I think that Article 30 does not in itself have any direct effect on provisions of national law which are older than the Treaty and in particular on the French regulation contained in the Law of 30 March 1928 and the Decrees of 8 August 1935 and 1 February 1950.

Question A thus calls for a negative answer.

2. Having reached this point in the discussion, I do not feel it possible to examine the subsequent questions one after the other and in the order in which they are put to you. Question B covers the effects of Articles 31 and 32 on the rules introduced subsequent to the Treaty; question C relates to the consequences of Article 33, which provides for the progressive elimination of quotas in the French petroleum import system; question D finally poses the problem of the progressive prohibition of public monopolies. But, on the relations between these different Articles, on their combination, their exclusive or cumulative application, the most varied arguments have been put forward in the written procedure and repeated at the oral proceedings. In the opinion of the French Government and, subject to certain qualifications, of the Commission, only Article 37 is applicable to a system such as the French one. The Belgian Government, on the other hand, doubts whether such a complex body of rules comes within the situations described in Article 37 (1). As for the Netherlands Government, it forcibly declares that there is no clear distinction in Chapter 2 between the quantitative restrictions on imports, measures having equivalent effect and the system of 'State trading' or of monopolies; that all the provisions of that Chapter concern all three types of measure, which are not governed each by its own separate rules.

In order to take up a position on these different points and then to reply to the questions asked, we must thus consider logically first whether Article 37 envisages rules such as those applied in France to the import of petroleum when the Treaty entered into force and, if so, whether that Article must or must not be combined with those preceding Articles to which the Tribunale Civile of Rome refers.

Article 37 (1) determines the field of application of the system of rules which is developed in the following paragraphs. It relates to those State monopolies which have a commercial character, to monopolies delegated by the State to others and to 'any body through which a Member State, in law or in fact, directly or indirectly supervises, determines or appreciably influences imports or exports between Member States'. It imposes on these latter an obligation to 'adjust' them progressively so that when the transitional period has ended no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States. This Article includes a 'standstill' clause the scope of which you have defined and which you recognized by your judgment of 15 July last (Case 6/64, *Costa* v *E.N.E.L.*) as having a 'self-executing' character. It provides for a timetable for the measures referred to in paragraph (1) and requires the Commission to make, with effect from the first stage, recommendations as to the manner in which and the timetable according to which the adjustment shall be carried out.

The existence of a special system for monopolies and like organizations may, I think, be explained by two reasons, one political and the other technical. The fact that the importation of certain products happened to be placed at the time of negotiation of the Treaty under a system of commercial monopoly suffices to show that the States concerned attached to those products an importance such that they intended to remove them from the free play of the market in all its aspects, a free play which was the principle of their private commerce, even if it was to a great extent restricted by quotas. The regulation of imports by monopoly belonged to the field of general policy and extended far beyond economic or financial policy. It was thus in vain—and in any case impossible in fact—to require of

them the immediate and the thoroughgoing abolition of these monopolies.

But above all, the mechanism of the preceding Articles of Chapter 2 appeared ill-adapted to achieving the aims of the Treaty in the case of the monopolies. If the State, the monopoly holder, desires to import smaller quantities than would the market if there were freedom of trade, that limitation could be obtained by other methods than that of quotas. Once a quota is open in the field of private commerce, the importer will make use of the power given him according to the marketing possibilities in the domestic market. The State monopoly-holder will, in importing the product subject to quotas, be actuated by the very considerations which led it to institute the monopoly and not by the real needs of the market. All the more so, since, in controlling imports, the action of the monopoly appears through an effect on prices and sometimes on wholesale and retail trade.

But, although the system is different, monopolies cannot, at least in the end, escape from conforming to the principles which underlie the Treaty and to which Chapter 2 gives concrete expression. At the end of the transitional period, they will need to have been adjusted in such a way that they do not involve any discrimination between nationals of Member States. That means that, even if the institution of monopoly does not necessarily have to disappear, its functioning will be greatly modified.

After these general remarks, does a scheme like the French system governing the importation of petroleum come within Article 37 of the Treaty? The explanations already devoted to this system will allow us to keep to essentials, by restricting us in time to the date at which the action giving rise to the reference to you was brought before the Tribunale Civile of Rome.

The Law of 30 March 1928 subjects the import of crude oil, its derivatives and residues to the control of the State and to the possession of a special authorization issued by decree. The system varies on certain points according to whether the authorization granted bears on one or other of these two categories of product, and it may be pointed out in passing that the contract made between the companies Albatros and Sopéco concerned the importation, not of crude oil, but of petrol. In every case, the decree determines the duration of the authorization within the limits of a maximum fixed by law. It also fixes the amount of the imports authorized. With regard to finished products, this amount is 'provisionally unlimited' for all products other than petrol and lubricants, in respect of which the tonnage is precisely fixed by the authorization decrees. With regard to crude oil, the amount authorized is fixed in such a way as to permit the treatment and the delivery to the consumer of a given tonnage of petrols and lubricants. It is quite clearly a matter of encouraging refining. The tonnages authorized can, within the limits of a certain percentage, be increased or decreased by the State, during the currency of the authorization, but always by a general measure and in the same proportion.

These authorizations which are special and limited in time also impose a certain number of obligations on the importers. The latter, who must be French or, if they are companies, have French managements, must, in particular, periodically supply detailed information on their activities and obtain prior approval of all their important operations arising therefrom; they must have storage and delivery facilities according to their needs and build up reserve stocks; they must, in case of necessity, supply the public services as a priority; the State can compel them where necessary to carry out contracts described as 'in the national interest' in proportion to their import rights. As for the importers of crude oil, they must, in addition, if they also hold an authoriza-

tion for the import of finished products, refine in their factories 90% of the product which they deliver on the internal market.

Apart from some changes in the duration of the authorizations, the system created by the Law of 1928 had not undergone any modifications either in its principle or in its application up to the entry into force of the Treaty. Shortly afterwards came an Ordonnance of 24 September 1958 which is the reason for question B and to which I shall return. Then came various provisions which Sopéco analysed in its pleadings: the Decree of 16 October 1961, extending to products of national origin a system based on that for imported products; decrees of 27 February 1963 concerning the importation of crude oil. These decrees are irrelevant here, for, being subsequent to the refusal of a licence to the Sopéco company, they were not considered by the Italian court among the provisions in the light of which you were asked to interpret the Treaty. And, in addition, the decrees of 27 February 1963 exclusively concern the import of crude oil, whereas the transactions envisaged by the company related to the import of petrol.

Does Article 37 apply to a system as complex as that which we have just analysed? To decide this, and since this is a matter of Community law, I shall leave on one side the indications, which anyway are contradictory, given in the written procedure as to the intentions of the authors of the Law of 1928. For the same reason I shall ignore the judgment of the French Conseil d'Etat of 19 June last. If it is necessary to interpret the meaning and scope of an Article of the Treaty, you alone are competent to do so, subject to the provisions of Article 177 (2).

Article 37 relates to widely varying situations: not only State monopolies but also monopolies delegated by the State to others and finally any body through which a State directly or indirectly supervises, determines or appreciably influences imports or exports between the Member States; in other words, not only cases in which the State reserves to itself the exclusive right to manage a product, but also those in which it transfers that exclusive right to a representative which it appoints, a concessionaire for example, and finally—a situation at once vaguer and more comprehensive—cases in which it exercises a control, some guidance, an appreciable influence on imports or exports between Member States.

The existence of several importers who are in competition between themselves prevents one from being able to describe the French system as a State monopoly proper or even delegated. It seems to me, on the contrary, that it constitutes one of those types of control of imports covered by Article 37 (1) of the Treaty. It appears indisputable, however fragmentary may be the indications available on the negotiations leading to the Treaty of Rome, that the French system was considered at the time as coming within the scope of Article 37. The Commission, after having reserved its decision, plainly took that view and on 24 July 1963 sent a recommendation to the French Government based on that Article. This argument, finally, is followed by Mr Catalano ('Manuel de Droit des Communautés Européennes' [cit. supra], p. 278) and by Mr Karl Schilling in a study on the EEC Treaty and national commercial monopolies ('Sociaal Economische Wetgeving' December 1960 pp. 214-218). And I should add, in reply to an observation made by the Belgian Government, that the complex character of that body of rules in no way prevents its being included in the category specified in the second paragraph of Article 37 (1); indeed the reverse is true.

If this first point does not seem to me to raise any serious difficulty, the

question of the relations between that Article and those which precede it is certainly more difficult. Two situations are involved. Either we analyse the system covered by Article 37 into its constituent parts and apply directly to each of the elements which comprise the monopoly the rules of the preceding Articles under the conditions determined by those Articles, conditions as to the timetable for example or the possibility of the Commission's setting out certain rules by way of directives, or else we consider that Article 37 is only directly applicable to the case of monopolies and like organizations; which is not to say that the application of the rules contained in the preceding Articles is entirely excluded, but that these Articles are applicable through Article 37 in so far as the latter refers to them.

It is not without some hesitation that I propose in the end that you should adopt this second argument which was advocated before you by the Commission. It appears all the more logical if one examines the wording of the various paragraphs of Article 37, which I have analysed briefly above and which I apologize for returning to again. I shall note the following points:

Article 37 (1) first imposes on Member State monopoly-holders the obligation to adjust their monopolies. This adjustment is to be gradual: it involves a time-limit, the end of the transitional period. It fixes a result to be attained: on that date all discrimination between nationals of the Member States as regards conditions concerning the supply or marketing of goods must have disappeared. Nothing is more general than the term discrimination which, placed next to 'conditions under which goods are procured and marketed', includes in particular but not exclusively the various forms of quantitative restrictions on imports and exports. Nothing, however, indicates that the progressive nature of this adjustment does not apply to all measures of a discriminatory character. It is necessary to prevent the ending of all discrimination by the end of the transitional period being rendered more difficult by the action of the State after the entry into force of the Treaty. You have held that the standstill clause constituted by Article 37 (2) which is designed to ward off that danger and which is a self-executing provision is extremely general in character. It extends even beyond Chapter 2 on the elimination of quantitative restrictions since it also seeks to prevent disguised continuance of customs duties. It is therefore self-sufficient and seems to me to exclude, in the field of monopolies, recourse to any other standstill clause in the preceding Articles, the field of application of which is covered by it.

Although the time-limit for the ending of the discrimination is given in paragraph (1) its timetable remains to be fixed and its supervision to be secured. Paragraphs (3) and (6) also provide respectively that the timetable of adjustment shall be *harmonized* with the abolition of quantitative restrictions provided for by Articles 30 et seq., and that, with effect from the first stage, the Commission shall make *recommendations* to the Member States on the manner of doing this. What is striking here is the flexibility—not to say the vagueness—of the machinery provided. No precise date is given; but, if the time-limit for adjustment leaves room for discretion, it is nonetheless limited. In particular, I think, as does the Belgian Government, that the progressive nature of the adjustments prevents the Member State from postponing these to the end of the transitional period, from arbitrarily delaying them; it obliges the State to establish its rate of progress so as to take account of the timetable of the Treaty, but not to keep literally to it. As for the Commission, which is responsible for supervising the action taken by the State, its means appear limited, since, if it takes action with effect from the first stage, it is only

to make recommendations, a lesser power than that which it has under Article 33 (7) for the purpose of abolishing measures having an effect equivalent to quotas. The Commission has remarked on this matter in its oral observations that Article 37 also concerns this latter question and that there would result from the concurrent application of Article 33 on this point an unacceptable conflict between the provisions: there would be a contradiction between the concepts of gradual abolition and progressive adjustment contained respectively in these two Articles, between the compulsory plan and the free choice of action by the Member State, between the compulsory directives and the mere recommendation.

All this leads me in the end to think that, with regard to State monopolies or organizations which the Treaty subjects to the same rules, only Article 37 is applicable *ipso jure* and that the preceding provisions of the same chapter are only applicable in the same way in so far as Article 37 refers to them and subject to the adjustments which it applies to them. Does this, as has been said, amount to derogating from the basic principles of the Treaty? Certainly not, for it is not a matter of denying that the monopolies are subject to aims which are those of the Treaty, but simply of recognizing that the Treaty employs in their regard particular methods and a particular timetable in order to attain its purposes. Is it necessary to add finally that the system which gave rise to the present request for interpretation is not the only one which falls within the scope of Article 37? Nineteen of them, of fairly varied types, have been enumerated in the six countries of the Community, and the Commission, in the recommendations which it has had occasion to make concerning them, has always followed the same line of action and maintained the argument which it has employed in the present case and which I have finally come to adopt.

3. It is necessary now, in the light of these observations, to return to the three last questions asked and to try to answer them in so far as their occasionally rather obscure wording permits.

Question B is worded thus: must Articles 31 and 32 of the Treaty, read together with Article 5, be interpreted as constituting or not a source of rules overriding the Ordonnance of 24 September 1958, supplementing and modifying the text of the Law of 30 March 1928 and promulgated by the French Government after the Treaty entered into force?

Leaving aside Article 5, which has simply the value of a general principle, the two Articles referred to impose a 'standstill' rule prohibiting Member States either from introducing new quantitative restrictions and measures having equivalent effect or from making more restrictive the quotas and measures having equivalent affect existing on 1 January 1958. They are, without doubt, 'self-executing'. The question asked thus really seeks from you a declaration saying whether the Ordonnance of 1958 involves measures more restrictive than those contained in the previous French legislation; but it will be very difficult for you to make the reply as precise as is expected.

This is so not only because, if it is admitted, as I have proposed, that Article 37 alone is applicable in the matter of monopolies, one is necessarily led to deny all relationship between Articles 31 and 32 and the Ordonnance of 1958. In fact, since Article 37 contains its own standstill clause, it is not unreasonable, in replying to the question asked, to reposition the latter in a more exact legal framework and to base it, not on Articles 31 and 32, but on Article 37 (2). The field covered by that paragraph which you have already had to interpret is the widest possible and I

can but refer on this point to your judgment in the Costa case.

But in fact the main difficulty does not lie there. What the parties have especially canvassed is whether the Ordonnance of 1958 did or did not introduce new restrictions into the functioning of the French system governing petroleum imports and the debate has taken place round Article 2. The French Government denies that this Article contains any new restriction whatever. Sopéco maintains the opposite view, asserting that for the first time, as a result of this Ordonnance, it is only at the expiry of the maximum period of the current authorizations that new firms can be allowed to import petroleum products. I will content myself by remarking that this assertion by the company does not agree with the description, which it gives itself, of the previous system, that Article 2, on which it bases its argument, does not perhaps have the meaning which it assigns to it, but above all that this discussion bears, not upon interpretation of the Treaty, but upon the interpretation of the *French* law, which is not within your jurisdiction.

Question B must therefore be answered in general terms to the effect that Article 37 (2) of the Treaty—and not Articles 31 and 32—prohibits the introduction into a law of the type such as that governing the importation of petroleum into France of any measure capable of increasing the restrictions and discriminations which it contained when the Treaty entered into force.

4. By question C the Italian court asks whether, if the preceding questions should be answered by you in the negative, Article 33 of the Treaty, combined with Article 5, must be interpreted to mean that the French system for making rules of law which results from the whole of the said provisions of the national law, is or is not liable to be rendered void at a later date in view of the date of entry into force of the Treaty. That at least is the translation which I think I can give on my own responsibility of the question which is put to you.

To reply to it, it is necessary first to interpret the question itself and on this point I admit to finding myself in difficulty. It will be noticed that it appears as subordinate to the previous questions. It refers to Article 33 of the Treaty, which contains two series of quite distinct provisions, some relating to the machinery for increasing the quotas and others to the measures having equivalent effect to quotas, concerning which the procedure and timetable for abolition must be determined by the directives of the Commission. And you are asked whether this Article must lead to all the French regulations, which have a scope quite different from that of the restrictive measures mentioned in Article 33, becoming liable to be rendered void at a later date or being 'subsequently rendered void', expressions the meaning of which needs to be stated with greater precision.

The parties appear to link this question to the fact that as from 1 January 1959 France opened for all petroleum products a global quota (called 'Common Market') for the imports from Member States, which was available only to those who were already holders of special authorizations. This quota did not fall within the provisions of Article 33 (1) since it did not amount to the conversion of previous bilateral quotas open to other Member States. This is probably true but I do not see any direct relation between that fact and the question, at least in the form in which it is put.

Perhaps it must be understood as implying that Article 33 imposes, with regard to the increase in the import quotas for petroleum products, an obligation subject to its own rules and distinct from that of adjustment of the monopoly laid down in Article 37.

It is first of all doubtful whether Article 33, in view of the provisions which it contains, is 'self-executing', but above

all the interpretation which I have proposed regarding the scope of Article 37 prevents the Article referred to by the Italian court from being able to have any effect whatever on the 'nullity' of a previous system of monopoly. It is to that, in my opinion, that the reply must be limited.

5. Finally, you are asked by question D whether Article 37, still taken together with Article 5, must be interpreted as implying the progressive prohibition (or abolition) of any public monopolies operating on the same basis as does the French system governing petroleum imports. I shall here make a remark as to the wording. Article 37 (1), to which the question refers, does not speak of prohibition or abolition, even progressive, of monopolies but of adjustment of them, and on the meaning of that expression I have already given my views. But I do not think that there is any necessity for you to give a detailed reply to the question put and to indicate wherein and how this adjustment must be realised. Not, as has been said, because on the date on which the dispute arose, the transitional period having scarcely begun, Article 37 could not assist in the settlement of the dispute. But it follows clearly from that Article itself that the obligation to adjust which it imposes is made the responsibility of the Member State monopoly-holder which undertakes that responsibility under the supervision of the Commission. Article 37 sets out an obligation to produce a result which the Member State undertakes and which can only be given specific form by the measures which that State may take.

Subject to Article 37 (2) which, being a 'standstill' clause, is by definition outside the question asked, Article 37 is therefore not of a 'self-executing' nature. With regard to certain Articles of the Treaty the interpretation of which was requested of you in the Costa case and which had the same features, you simply replied that an Article of the Treaty which does not give rise to a right to an interested party cannot open the way to any action based on Article 177 in which a finding is sought in the sense of Articles 169 and 170. Here the reasons which have led the Italian court to put questions to you call for a somewhat different answer. You must merely reply that Article 37 implies a progressive adjustment but that the carrying out of this adjustment falls to the Member State under the supervision of the Commission. For you would certainly have jurisdiction to give a decision on the basis of Articles 169 and 170 on the failure of that State to fulfil the obligations which fall upon it under Article 37, but it is not for you to say, on the other hand, within the framework of the question put, how, in what manner and according to what timetable the adjustment provided for by the Treaty must be achieved.

I am fully aware that the observations which I have put forward do not exhaust the difficulties which the monopoly system raises with regard to the Treaty of Rome. I think also that the limited nature of the answers which I propose to give to the questions asked may disappoint those who, with regard to the present case, thought they could settle as from today the present and future fate of monopolies. But if, by means of Article 177, the Court makes its own contribution to the definition of Community law, it is acting in a judicial capacity, that is to say, only to assist in resolving a particular dispute and within the framework of the questions put to it. That is the limit upon its action, but that limit has as its counterpart the authority of the solutions it outlines when it 'states the law'.

To sum up, I am of the opinion that the questions should be answered as follows:

— Question A: Article 30 of the Treaty is not 'self-executing';

— Question B: Articles 31 and 32 are not applicable to the monopolies and bodies referred to in Article 37 (1), among which must be included a system of the same nature as that which prompted the question;

(Article 37 (2), which you have already interpreted in *Costa* v *E.N.E.L.*, is directly applicable to this system);

— Question C: the Article referred to does not apply to such a system;

— Question D: Article 37 of the Treaty involves the progressive adjustment of national monopolies for the purposes laid down in that Article. This adjustment is the responsibility of the Member States under the supervision of the Commission.

Finally, I am of the opinion that the question of costs is a matter for the Tribunale Civile of Rome.