

tection technique under Regulation No 136/66 is different from systems based exclusively on the application of customs duties both in its aim and in the means which it employs.

3. The Protocol on goods originating in and coming from certain countries and enjoying special treatment when imported into a Member State, annexed to the EEC Treaty, has the purpose of preserving existing patterns of trade between certain Member States and certain third countries. After the entry into force of Regulation No 136/66 on the establishment of a common organization of the market in oils and fats the objective of Protocol I. 7 can however be achieved as regards the importation of olive oil by means which are in conformity with the new situation created by

the said regulation and compatible with the principles underlying the common organization of the market in oils and fats.

Whilst not excluding any steps taken by the Member State holding the rights reserved under Protocol I.7, such an adaptation could only be the task of the Community institutions competent to implement the common agricultural policy and to regulate the Community's relationship with third countries. Since the silence of Regulation No 136/66 on this point has created an equivocal situation, a failure to fulfil its obligations cannot be alleged against a Member State which has excluded from the application of the levy introduced by the said regulation imports of olive oil which have previously benefited from the preference under Protocol I. 7.

In Case 26/69

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Georges Le Tallec, acting as Agent, with an address for service in Luxembourg at the offices of its Legal Adviser, Émile Reuter, 4 boulevard Royal,

applicant,

v

FRENCH REPUBLIC, represented by Renaud Sivan, Ambassador Extraordinary and Plenipotentiary and Guy de Lacharrière, Minister Plenipotentiary, Director of Legal Services at the Ministry for Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the Embassy of the French Republic,

defendant,

Application for a declaration that the French Republic has failed to fulfil its obligations under Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats by exempting from payment of the levy, within the limit of a quota fixed annually, imports of olive oil originating in and coming from Tunisia,

THE COURT

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

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of the facts

Article 13 (1) of Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats (OJ No 172 of 30.9.1966, p. 3025; OJ 1965–1966, (English Special Edition November 1972), p. 221) provides that if the threshold price is higher than the cif price, a levy equal to the difference between these two prices shall be charged on imports of unrefined olive oil from third countries.

Under Article 14 (1) of that regulation a levy is also charged on imports of refined olive oil from third countries.

By a notice published in the *Journal Officiel* of the French Republic of 8 December 1966, the French Government excluded the application of the said levies to unrefined, purified or refined olive oil in particular, originating in and coming from Tunisia, within the limit of the proportion remaining available of the tariff quotas open to that country in respect of the year 1966 or the financial year 1966/67.

This notice also drew attention to the fact that products imported from Tunisia under the provisions of the preferential customs

arrangements in force between France and that country could not benefit from the provisions on free movement within the Community.

An inter-ministerial decree published in the *Journal Officiel* of the French Republic on 19 January 1967 fixed the tariff quota for olive oil from Tunisia, subject to zero duty, at 20 000 metric tonnes for the year 1967.

Under the provisions of a further notice published in the *Journal Officiel* of the French Republic on 2 June 1967 the levies under Regulation No 136/66/EEC were not applicable to imports of olive oil originating in and coming from Tunisia within the limit of the tariff quota for 1967 opened by the inter-ministerial decree of January 1967.

Considering that the importation free of levies of olive oil originating in and coming from Tunisia took place in breach of Articles 13 (1) and 14 (1) of Regulation No 136/66/EEC, the Commission of the European Communities, by letter of 1 August 1967 addressed to the Minister for Foreign Affairs of the French Republic, requested the French Government pursuant to Article 169 of the Treaty to forward its observations.

By further notice published in the *Journal*

Officiel of the French Republic on 12 January 1968 importers were notified that within the limit of the quota of 20 000 metric tonnes for the year 1968 the levies under Regulation No 136/66/EEC were not applicable to imports of olive oil originating in and coming from Tunisia.

Since the Commission did not consider the observations submitted to it by the French Government on 3 November 1967 to be satisfactory it delivered an opinion on 3 May 1968 under Article 169 of the Treaty in which on the one hand it gave reasons for the finding of a failure on the part of the French Republic to meet the obligations imposed upon it under Articles 13 (1) and 14 (1) of Regulation No 136/66/EEC, and on the other hand called on the French Republic to take such measures as were necessary to remedy this failure within a period of one month, such period being subject to extension to meet possible needs arising from parliamentary procedures.

A fresh notice to importers of olive oil from Tunisia renewing for 1969 the measures in force for 1968 having appeared in the *Journal Officiel* of the French Republic on 31 January 1969, the Commission by an application lodged on 14 June 1969 has brought before the Court the failures under Regulation No 136/66/EEC of which it is complaining to the French Republic.

II — Procedure

The written procedure followed the normal course.

On the report of the Judge-Rapporteur and after hearing the views of the Advocate-General, the Court decided to proceed without a preparatory inquiry.

Nevertheless the parties replied in writing within the prescribed time-limits to the questions put to them by the Court.

They submitted their observations at the hearing on 20 January 1970.

The Advocate-General delivered his opinion at the hearing on 17 February 1970.

III — Conclusions of the parties

The *Commission* claims that the Court should:

— declare that, by excluding from the application of the levy within the limit of a quota fixed annually imports of olive oil originating in and coming from Tunisia, the French Republic has failed to fulfil the obligation imposed under Article 13 (1) and 14 (1) of Regulation No 136/66 EEC;

— order the defendant to pay the costs.

The *French Republic* contends that the Court should:

— reject the Commission's application and declare that the French Republic has not failed to fulfil its obligations under the EEC Treaty;

— order the applicant to pay the costs.

IV — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

A — *The alleged failure*

The *Commission* is of the opinion that the action of the French Republic in excluding from the levies instituted by Regulation No 136/66/EEC, within the limit of a quota fixed annually, imports of olive oil originating in and coming from Tunisia amounts to a failure to fulfil the obligations imposed upon it by the said regulation.

The *French Republic* denies that the facts set out by the Commission constitute a failure to fulfil its obligations.

B — *The applicability of Protocol I.7 annexed to the EEC Treaty to the levies under Regulation No 136/66/EEC*

The *Commission* argues that the French Republic is wrong in thinking that it can justify its refusal to apply to imports of olive oil from Tunisia the levies provided for under Regulation No 136/66/EEC by recourse to Protocol I.7 relating to goods originating in and coming from certain

countries and enjoying special treatment when imported into a Member State.

Under this Protocol which, it is claimed, does not in any event confer upon third countries the right to retain a system of preferential treatment and which amounts to no more than a facility granted to the Member State concerned, the application of the EEC Treaty requires no alteration in the customs treatment applicable at the time of the entry into force of the Treaty, in particular as regards imports into France of goods originating in an adjoining country from Tunisia.

In the Commission's view the Protocol's sole purpose is to relieve Member States concerned, including France, of the obligation to bring the customs duties which they apply to certain third countries into line with the Common Customs Tariff. Since the levies instituted by the agricultural market arrangements are not customs duties they therefore fall outside the range of this Protocol.

The view that Protocol I.7 is not applicable to the levies is justified by the following arguments:

(a) Any exempting provision must be strictly interpreted and applied; a restrictive interpretation of the Protocol is particularly called for where there exists a single market, which is the case with olive oil;

(b) The definition given by the Customs Cooperation Council to the concept of 'customs treatment' has no mandatory effect; it has moreover been further developed and permits of no definite conclusion. GATT practice confirms the thesis under which the 'customs treatment' concerns only customs duty and not other charges.

For the purpose of applying the EEC Treaty and Protocol I.7 one cannot give to the term 'customs treatment' the scope which the French Republic contends that it has; it certainly does not include 'all the elements of the system of imports known at the time when the Treaty was negotiated'; it is for example evident that it does not include quantitative restrictions.

It follows particularly from the Implementing Convention on the Association of the Overseas Countries and Territories with

the Community, annexed to the EEC Treaty, that the concept of 'customs treatment' refers only to the customs duties and excludes even charges having equivalent effect. Protocol I.7 does not confer any wider meaning on that concept; nothing would justify giving third countries listed in this Protocol, in whose favour the Treaty contains only a simple declaration of intent as regards an ultimate association, more favourable treatment than that given to the overseas countries and territories for whom the Treaty had already instituted a genuine association.

(c) Any measure adopted by the Community for putting into operation the common agricultural policy must be looked at in the light of its function and of its specific purpose within the framework of that policy. The levies fit into it as elements of a common price system in the common agricultural policy and thus become essential instruments thereof:

— the levies *vis-à-vis* third countries are determined by reference to a 'political' price (as a general rule the threshold price, based on the target price) fixed in line with the objectives of the Common Market, in particular that of assuring a fair standard of living to procedure without neglecting the need to ensure that supplies reach consumers at reasonable prices. (Article 39 (1));

— as a flexible protective measure, liable to variation in accordance with the vagaries of market conditions, the levy constitutes a 'common machinery for stabilizing imports' within the meaning of Article 40 (3); it fulfils a market-regulating function, avoiding massive imports at a price lower than that in force within the Community;

— the 'political' price of agricultural products applies to the whole Community; it is the consequence of the need for a single Community market similar to that of a national market in which goods move freely (Article 43 (3) (b));

— a corollary of this principle is the exclusion expressly laid down in Article 40 (3)

of any discrimination between producers and consumers within the Community;

— Under Article 11 of Regulation No 130/66/EEC on the financing of the common agricultural policy, each Member State is bound to make to the European Agricultural Guidance and Guarantee Fund a contribution equal to 90% of the total amount of the levies in relation to third countries collected by Member States, the remainder of the Fund's expenses being covered by contributions calculated on the basis of a fixed scale.

(d) It is by reason of this specific function of the system of levies—which is moreover established by the Court's case-law—that during the transitional period the application of levies becomes necessary even in trade between Member States notwithstanding the reduction of customs duties provided for by the Treaty for as long as price differences remain. There is thus all the more reason to apply them to third countries which do not participate in the common agricultural policy, whatever the tariff treatment which they enjoy.

(e) The levies, which are essential elements of the common agricultural policy, require a non-discriminatory application. Any unjustified derogation from the system of levies can only hinder the realization of the common agricultural policy. That is why only the Community is in a position to judge whether and under what conditions exemptions may be granted.

(f) The existence of this very clear principle is moreover confirmed by the attitude of the Community and of the Member States on previous occasions, in particular within the framework of the Association Agreements with the African and Malagasy States and with Greece. This attitude establishes in an eloquent manner the Community doctrine in the field of levies: by reason of their specific function within the framework of the common agricultural policy they cannot be equated with other tariff measures nor, *a fortiori*, can they be brought within the term 'customs treatment'.

In conclusion the Commission considers that the levies cannot fall within the field of Protocol I.7. Quite apart from its actual wording, the *ratio legis* of the Protocol prevents this.

The Protocol only exempts Member States from the obligation under Article 23 of the Treaty progressively to introduce the Common Customs Tariff; the Member States remain on the other hand subject to all other obligations of the Treaty, in particular in matters of the common agricultural policy. Protocol I.7 had as its one and only purpose to derogate in certain cases from the automatic effect of the introduction of the Common Customs Tariff.

The *French Republic* points out that in the case of the independent countries in the Franc Area, Protocol I.7 was intended to be applied only temporarily and that the definitive trading arrangements between those countries and the Community were to be settled in the Association Agreements. In particular this was so in the case of Tunisia, ever since the agreement establishing an association between the EEC and the Tunisian Republic, which was signed in Tunis on 28 March 1969 and which entered into force on 1 September 1969.

As to the substance, the *French Republic* takes the view that in the present case, over and above semantic arguments, the problem is one of good faith in the relationship between the Community or one of its Member States and a developing country. The Community and, before it existed, certain of its Member States assumed a responsibility towards the developing countries. The Community undertook to maintain and intensify the traditional patterns of trade between the Member States of the EEC and the independent countries of the Franc Area and to contribute towards their economic and social development. In anticipation of the conclusions of an Association Agreement the transitional system set up by Protocol I.7 provided in particular a specific system for the importation of certain goods originating in and coming from those countries. The essential purpose of the Protocol was therefore to ensure that the establishment of the EEC did not cause major damage to the economy of certain

developing third countries which before the entry into force of the Treaty had had privileged relationships with their former mother country. In the relationships between certain Member States and certain third countries it permitted suspending the application of those Treaty provisions which would have required a modification of the customs treatment applicable at the time of the entry into force of the Treaty to imports from those third countries and thus permitted the special import systems to remain in force, except in case of any damage resulting therefrom to the other Member States. The Protocol in no way intended to exclude agricultural products; on the contrary, it is essentially in their favour that this exception to Community rules was made.

The claim on the part of the Commission to be entitled to exclude levies from the ambit of the Protocol and to limit this to customs duties proper cannot really be maintained. Since the levies were unknown at the time when the Protocol entered into force one must in replying to the question whether they ought to be included in or excluded from the customs system look to the spirit of the Protocol and the intention of its authors.

(a) The authors of the Treaty and of the Protocol desired to safeguard a continuity between the already existing bilateral advantages and the Association Agreements which would one day be concluded. They certainly did not intend to allow Tunisia to benefit from a preferential system so long as the common organization of the markets, with the system of levies, had not been set up for the product in question, then, as soon as it had been, to take away all preference and then after the conclusion of the Association Agreement again to confer upon it advantages equivalent to those from which it had benefited on a bilateral basis.

The purpose of Protocol I.7, that is to say the continuation of a system of privileged exports, would be misunderstood if it were possible whilst keeping in force a preferential customs system to limit or in an extreme case even to prohibit any importation by using the device of the levy.

(b) To exclude the levies from Protocol I.7 would, as regards olive oil, and more generally all the agricultural products falling within a common organization of the market, have the result of depriving the Protocol of any substance, since the levies would have taken the place of all the protective devices previously in operation.

(c) Without claiming that the levies can immediately be assimilated to customs duties it is right to place on record that the collection of the levies has the effect of modifying the 'customs treatment' within the meaning of the Protocol.

— The expression 'customs treatment' used in the Protocol includes all the elements of treatment on importation known at the time when the Treaty was negotiated, since the Protocol undoubtedly provides the Member States with an opportunity of totally avoiding the Treaty obligations in their relationships with some of their former colonies.

The Protocol refers not only to the concept of 'customs treatment' since the preamble includes the expression 'special treatment when imported' which is referred to again in Article 3 of the body of the Protocol.

— It is hardly to be denied that the levy collected upon the entry of a product into the territory of a Member State is one of the elements of the import regime.

— The introduction of levies has enlarged the concept of 'customs treatment' within the meaning of the Protocol by the new element of treatment on importation.

(d) As regards the criticism of excessively wide interpretation of the Protocol, the French Republic points out that, since the Protocol does not confer any right on third countries and since it does not impose any obligation on Member States, it provides in itself the possibility of a restrictive application of those exceptions which it authorizes and leaves discretion in this respect to the Member States. Besides France has always kept within limits in the application of the Protocol, seeking to maintain a certain

equilibrium between the essential interests of the third States in question and the requirements for the construction of Europe.

(e) International terminology and practice in no way assimilate customs treatment and tariff treatment; the terminologies used in particular by the Customs Cooperation Council and by GATT allow the term 'customs treatment' to include various measures which, at the frontiers, may obstruct trade by the levy thereon of sums calculated according to varying rules but which all have the effect of influencing the consumers' choice by a deliberate increase in the price of products ultimately imported.

(f) It would be inaccurate to claim that only the Community is in a position to assess whether and on what condition exemptions from levy may be granted.

The examples of certain Association Agreements cited in support of this thesis lack relevance; they refer to situations altogether different from that envisaged by Protocol I.7: the Treaty itself distinguishes them and since these concern agreements entered into with the Community, any derogation naturally is a matter for the Community. The system provided by the Protocol is altogether different; it requires no modification of the customs treatment applicable to certain bilateral commercial relations; pending the ultimate conclusion of Association Agreements with the Community it only imposes upon the Member States involved an obligation to supply information; the Commission may not intervene except in case of damage caused to a Member State.

C — *The effects of exemption granted by the French Republic*

The Commission in essence points to the following effects of exemption at issue in the proceedings:

(a) The quota of 20 000 metric tonnes opened by the French Republic for the im-

portation of olive oil from Tunisia free of customs duty and of Community levy represents approximately 20% of the total Community imports; the exemption from levy on Tunisian olive oil therefore jeopardize the implementation of the objectives of the common organization of the market for olive oil.

In fact the consequences of this exemption are in particular as follows:

— It does not allow the raising of the price of imported olive oil to the level of the threshold price fixed for all the imports into the Community; it leads therefore to a market price lower than the common organization wanted to fix for the producers and consumers of all the Member States.

The fact that during the whole of the 1967/1968 marketing year the price on the Italian market was lower than the target price, is partly due to the absence of outlets on the French market.

It is not correct that the Italian offer price for extra quality virgin oil suited to the French consumer was in excess of the target price; the Italian extra quality oils are in fact of a superior kind.

— Exemption would compromise the maintenance of the target price and could by favouring imports contribute to an accumulation of surpluses which would thereafter have to be disposed of at the expense of the European Agricultural Guidance and Guarantee Fund.

— Notwithstanding the common organization of the markets it causes a partitioning off within the Common Market:

— since on the one hand the quota opened in favour of Tunisia amounts of itself to the average annual requirements of France, the French market is in fact closed to olive oil produced within the Community;

— on the other hand excluding from free circulation Tunisian oil imported into France constitutes an obstacle to the free movement of goods and necessitates keeping control at the frontiers

between Member States which is the negation of a single market; difficulties of a practical kind have in fact manifested themselves, particularly between France and Italy.

- By setting in France a price level lower than that achieved in accordance with Regulation No 136/66/EEC it creates in the other Member States a discrimination to the detriment of French producers and to the advantage of French consumers.
- It reduces the share of the receipts of the guarantee section of the European Agricultural Guidance and Guarantee Fund, amounting to 90% of the levies raised by the Member States, by an amount equivalent to the levies not imposed against Tunisia and this increases proportionately the contribution of Member States calculated on the basis of the scale.

France has for some years unilaterally reduced its contribution to the European Agricultural Guidance and Guarantee Fund, which is set at 90% of the levies and as a consequence has increased that of the other Member States which is calculated on the basis of the fixed scale. It would be a very different solution for the Community itself to renounce certain receipts from the European Agricultural Guidance and Guarantee Fund. Besides, the advantage granted by France involves the Community in a reduction in the levy by 8.50 units of account per 100 kg whilst by Regulation No 1471/69 the Community had only granted a reduction of 5 units of account.

(b) The exemption without any justification results in Tunisia and the other countries referred to in Protocol I.7 being more favourably treated than the countries and overseas territories more closely linked to the mother countries which already under the EEC Treaty benefit from a full association.

(c) It is no doubt true that the Community intended by the Association Agreement to favour olive oil from Tunisia; but it must be placed on record that the preferential rate

granted by the Community is lower than both that established by the legal system of Protocol I.7 and that illegally applied to the French Republic.

(d) The inapplicability of the Protocol to the levies does not result in the exclusion of agricultural products from the scope of this Protocol.

This indeed applies to all industrial and agricultural products but only as regards their 'customs treatment'. At the level of practical application no difficulty arises for agricultural products so long as no common organization of the market has been set up; furthermore several European organizations of the markets provide for no levy, protection being ensured by the customs duties of the Common Customs Tariff.

(e) Contrary to the view held by the French Republic, the whole problem of the economic relationship between France and Tunisia is not finally resolved by the implementation of the association between the EEC and Tunisia; Protocol I.7 remains applicable to products not included in the Association Agreement and in respect of other products the Protocol is merely suspended. It is therefore not without interest for the Community and particularly for the full attainment of the Common Market that the Court should interpret the Protocol in question.

As regards the effects of the exemption from which olive oil from Tunisia benefits the *French Republic* makes the following observations:

(a) The fact that olive oil imported free of duty from Tunisia does not benefit from 'free circulation' in case of re-export to another Member State follows from Article 2 of the Protocol itself, a Community provision, just like Articles 38 to 47 of the Treaty.

(b) The decision of the French Government to exempt Tunisian olive oil from the levy, justified by Article 4 of the Protocol, cannot be criticized except to the extent to which it may prejudice other Member States; this possible prejudice can only be judged in relation to that caused to the third State in question through the application of the levies.

In this respect it must be pointed out that:

- on the one hand the effect of the exemption granted by France on the economy of other Member States is far from being as serious as is claimed by the Commission;
 - the Italian offer price for extra quality virgin oils suited to the French consumer is in excess of the target price;
 - the absorption by France of a few thousand metric tonnes of Italian olive oil cannot have had any serious influence on the fixing of prices for a product the market volume of which in Italy amounts to almost 500 000 metric tonnes;
 - the market price for olive oil in Italy depends on the level of the price of seed oils;
 - it is unlikely that Italy had any intention of developing an extensive export trade with France; besides, the Italian sales in France have increased from 98 metric tonnes in 1966 to 1039 metric tonnes in 1968;
 - the quota set for Tunisia does not cover the average French annual requirements; this quota is only utilized to a very small degree and the amount lost by the European Agricultural Guidance and Guarantee Fund is for that reason at a level comparable to the advantage which Tunisia ought to derive from Regulation

No 1471/69 applied on the basis of the Association Agreement; the effect which the exemption from levy enjoyed by Tunisia had on the receipts of the European Agricultural Guidance and Guarantee Fund is not easy to access; in any event by Protocol I.7 the Community accepted the possible consequences of a diminution in receipts; the effect of the suspension of a levy on the Tunisian oils was so insignificant that it has never come up in discussions within the Council on the fixing of target and intervention prices;

- on the other hand in considering the economic consequences which might have resulted in the case of the countries referred to in the Protocol, in particular Tunisia, in whose case the Protocol undoubtedly involved an obligation on the part of the Community the possibility of a change in trade with certain Member States as it stood at the date when the Treaty came into force cannot be disregarded; without the French purchases of olive oil Tunisia's commercial deficit would have seriously worsened and the loss of considerable receipts from export sales would have had effects on the economic development of that country which would be quite contrary to the spirit of the Protocol.

Grounds of judgment

- 1 By application of 14 June 1969 the Commission has brought before the Court under Article 169 of the EEC Treaty an action with a view to establishing a failure on the part of the French Republic to fulfil its obligations under Regulation No 136/66/EEC of the Council of 22 September 1966 (OJ 1966, p. 3025; OJ 1965–1966, (English Special Edition November 1972) p. 221) on the establishment of a common organization of the market in oils and fats, by excluding from the application of the levy within the limits of a quota fixed annually imports of olive oil originating in and coming from Tunisia.

I — The legal interest in taking proceedings

- 2 Prior to the entry into force of Regulation No 136/66, imports into France of

- Tunisian olive oil enjoyed an exemption from customs duties under the provisions of the Protocol on goods originating in and coming from certain countries and enjoying special treatment when imported into a Member State, annexed to the Treaty establishing the European Economic Community (known as 'Protocol I.7').
- 3 After the establishment of a common organization of the market in oils and fats under the provisions of the said regulation the French Government, relying on Protocol I.7 excluded such imports from the application of the levy.
 - 4 As a result of the first measures published to this effect in the *Journal Officiel* of the French Republic the Commission by letter of 1 August 1967 addressed to the French Minister for Foreign Affairs raised objections and gave the defendant an opportunity to submit its observations under Article 169 of the Treaty.
 - 5 The treatment in question having been extended by a notice published in the *Journal Officiel* of the French Republic, the Commission on 3 May 1968 delivered a reasoned opinion in which it found that there had been a failure to comply with the Treaty and required that the matter be rectified within a period of one month.
 - 6 This act on the part of the Commission was followed by the publication of a new notice in the *Journal Officiel* of the French Republic continuing the same treatment in respect of the year 1969.
 - 7 An Association Agreement between the Community and the Tunisian Republic signed in Tunis on 28 March 1969 came into force on 1 September 1969 (OJ L 198, p. 1).
 - 8 With a view to carrying this agreement into effect Regulation No 1471/69/CEE of the Council (OJ L 198, p. 93) was adopted on 23 July 1969 on imports of olive oil from Tunisia.
 - 9 It thus appears that the action was brought by the Commission just at a time when the failure alleged against the defendant had virtually ceased through the substitution for the treatment on importation in force in the French Republic of the treatment provided for under Article 5 of Annex I to the Association Agreement.
 - 10 In these circumstances the Court, although not in a position to determine how far it was expedient for the Commission to bring the action under Article 169, must consider whether the Commission still has a sufficient legal interest.

- 11 Even before the action was brought the Commission's attitude was set out in the letter of 1 August 1967 and the reasoned opinion of 3 May 1968 and the time-limit laid down by this opinion expired at a time when the failure complained of was still continuing.
- 12 In an exchange of letters contemporaneous with the signing of the Association Agreement it is on the other hand expressly provided that as regards the products listed in Annexes I and II to the Agreement—which include olive oil—the application of Protocol I.7 is only suspended for the duration of the Agreement, which was entered into for a period of five years and 'shall again take effect when the latter is no longer in force'.
- 13 Finally, in view of the importance of the problems raised by the application of Protocol I.7 from the point of view both of the common organization of agricultural markets and of the common commercial policy, there can be no doubt as to the legal interest in the action brought by the Commission.

II — The substance

- 14 In the Commission's view the introduction by means of Regulation No 136/66 of a common organization of the market in oils and fats, characterized in particular by the collection of levies, put an end to the 'customs treatment' applicable under Protocol I.7 to imports into France of olive oil originating in Tunisia.
- 15 The defendant relies on the same Protocol, having regard to its purpose, in order to justify the continuation of a system of exemption in favour of such imports notwithstanding the introduction of a levy by Regulation 136/66, until the entry into force of the provisions of the Association Agreement between the Community and the Tunisian Republic.
- 16 Protocol I.7 has the purpose of preserving existing patterns of trade between on the one hand certain Member States and on the other hand various third countries with which these States maintain traditional links.
- 17 As regards more particularly the independent countries belonging to the Franc Area—including the Tunisian Republic—a Declaration of Intent annexed to the Treaty establishing the European Economic Community, after expressing the anxiety 'to maintain and intensify the traditional trade flows between the Member

States of the European Economic Community and these independent countries and to contribute to the economic and social development of the latter', offers these countries negotiations with a view to concluding conventions for economic association with the Community.

- 18 It therefore seems that the intention evinced by the French Government of avoiding any measure which might have led to a deterioration of commercial relations with Tunisia in the sector in question in the present action, is based on the objectives of both Protocol I.7 and the aforementioned Declaration of Intent.
- 19 Nevertheless, after the entry into force of Regulation No 136/66 this objective could only be achieved by means which are in conformity with the new situation created by that regulation.
- 20 Regulation No 136/66 implementing Article 40 of the Treaty, established a common organization of the market in oils and fats based on a price policy which is determined in accordance with a number of objectives concerning the level of agricultural income, the putting into effect of a coherent production policy, competitive conditions of trade in the different oils and fats, the stabilization of the markets and the fixing of an appropriate price level to consumers.
- 21 This policy is put into effect by means of a complex system of steps involving purchases, storage and sales by intervention agencies, a set of regulations on imports and exports by means of a system of levies and refunds, as well as measures for restoring the balance and protective measures in case of disturbances affecting the market in question.
- 22 Under the provisions of Article 3 (2) of Regulation No 136/66, save in case of express derogation, 'the levying of any customs duty' is incompatible with the provisions of that regulation.
- 23 It therefore seems that the intervention and protection technique under Regulation No 136/66 is different from the systems of customs treatment under Protocol I.7 both in its aim and in the means which it employs.
- 24 This innovation which results from the extension of the common agricultural policy to the sector in question no longer allows the mere application of duty-free import, conceived for the purpose of a system of protection based exclusively on the application of customs duties, without regard to any organization of the market.

- 25 In these circumstances, the purpose of Protocol I.7 had to be achieved, as from the entry into force of Regulation No 136/66 by means of provisions compatible with the principles forming the basis of the common organization of the market in oils and fats.
- 26 Consequently the exercise of rights reserved to the French Republic by Protocol I.7 had to be adapted to the new organizational technique introduced by Regulation No 136/66.
- 27 Whilst not excluding any steps taken by the Member State holding the rights reserved by Protocol I.7, such an adaptation could only be the task of the Community institutions competent to implement the common agricultural policy and to regulate the Community's relationship with third countries, taking into account the common nature of the organization for the sector of the market in question and the consequences, both commercial and financial, which affect the whole Community by any derogation from the principles of the regulation.
- 28 It would therefore have been the Commission's task to suggest and the Council's to enact, at the time when Regulation No 136/66 was adopted, express provisions for the purpose of regulating the problem resulting from the effect upon the preference under Protocol I.7 of the new legal situation created by the organization of the market in oils and fats.
- 29 Such provisions appear all the more necessary since the authors of Regulation No 136/66 must have known that an Association Agreement with the Tunisian Republic was envisaged by which the preference in favour of imports of olive oil would in some measure be continued.
- 30 In these circumstances it would have been advisable to adopt certain derogations from Regulation No 136/66 in respect of the interim period between the introduction of the organization of the market in oils and fats and the entry into force of the Association Agreement.
- 31 The fact that Regulation No 136/66 is silent on the point may have given rise to the question whether the unchanged exercise of the rights deriving from Protocol I.7 was, at any rate provisionally, compatible with the provisions of that regulation.
- 32 Bearing in mind the equivocal nature of the situation thus brought about, the French Republic cannot be accused of any failure to fulfil its obligations.

- 33 The application brought by the Commission must therefore be rejected as not sufficiently well founded.

III — Costs

- 34 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.
- 35 The Commission has failed in its submissions.

On those grounds,

Upon reading the pleadings;
 Upon hearing the report of the Judge-Rapporteur;
 Upon hearing the parties;
 Upon hearing the opinion of the Advocate-General;
 Having regard to the Treaty establishing the European Economic Community, especially Articles 23, 38 to 47 and 169 as well as the Protocol on goods originating in and coming from certain countries and enjoying special treatment when imported into a Member State, annexed to the said Treaty;
 Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
 Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT,

hereby:

1. Dismisses the application;
2. Orders the Commission of the European Communities to pay the costs.

Lecourt

Monaco

Pescatore

Donner

Trabucchi

Strauß

Mertens de Wilmars

Delivered in open court in Luxembourg on 9 July 1970.

A. Van Houtte

R. Lecourt

Registrar

President