

In Case 87/75

Reference to the Court under Article 177 of the Treaty by the Tribunale of Genoa for a preliminary ruling in the action pending before it between

CONCERIA DANIELE BRESCIANI (the Brothers Bresciani, Tanners)

and

AMMINISTRAZIONE ITALIANA DELLE FINANZE

on the interpretation of Article 13 of the EEC Treaty and of Article 2 (1) of the Convention of Association between the European Economic Community and the African States and Madagascar associated with that Community, signed at Yaoundé on 20 July 1963 and concluded in the name of the Community by the Council in its Decision of 5 November 1963 (OJ 1964, p. 1430) and of Article 2 (1) of the Convention of Association signed at Yaoundé on 29 July 1969 and concluded in the name of the Community by the Council in its Decision of 29 September 1970 (OJ 1970, L 282, p. 1).

THE COURT

composed of: R. Lecourt, President, H. Kutscher and A. O'Keefe, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen and Lord Mackenzie Stuart, Judges,

Advocate-General: A. Trabucchi

Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The order making the reference and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

In 1969 and 1970, the Conceria Daniele Bresciani imported various consignments of raw cowhides from France and from

Senegal, a State associated with the Communities by the Conventions of Yaoundé.

Italian Decree-law No 1265 of 27 July 1934 provides that all products of animal origin imported into Italy must be submitted for public health inspection at the frontier. For the inspection, the Decree-law provides for the collection of a duty which comprises a lump-sum payment covering the cost of examination and of any laboratory tests.

The Conceria Daniele Bresciani was called upon to pay the public health inspection duties on its cowhide imports.

The Conceria brought an action before the Tribunale of Genoa for repayment of the duty.

It contended that the imposition of the contested charge on hides imported into France fell within the prohibition in Article 13 (2) of the Treaty. Its imposition was, under the Conventions of Yaoundé, also prohibited on skins imported from Senegal.

Article 2 (1) of the Convention of Association signed at Yaoundé on 20 July 1963 provides as follows:

'Goods originating in Associated States shall, when imported into Member States, benefit from the progressive abolition of customs duties and charges having an effect equivalent to such duties, resulting between Member States under the provisions of Articles 12, 13, 14, 15 and 17 of the Treaty and the decisions which have been or may be adopted to accelerate the rate of achieving the aims of the Treaty.'

Article 2 (1) of the Convention of Association signed at Yaoundé on 29 July 1969 provides as follows:

'Products originating in the Associated States shall, on importation into the Community, be admitted free of customs

duties and charges having equivalent effect, but the treatment applied to these products shall not be more favourable than that applied by the Member States among themselves.'

The President of the Tribunale held, first, that the contested charge was nothing other than the consideration demanded of an individual who, by his own act (by importing products of animal origin) caused the service to be rendered. Secondly, he considered that the fact that the charge is based on the quantity of the goods rather than on their value distinguishes the duty in question from charges which fall within the prohibition in Article 13 of the Treaty. Thirdly, although the duty in question is levied on the basis of different methods and times, it is also levied on national products of the same kind.

Nevertheless the President of the Tribunale stayed the proceedings and referred the following questions to the Court under Article 177 of the EEC Treaty:

1. Does the public health inspection duty, imposed under Article 32 (4) of Consolidated Health Laws No 1265 of 27 July 1934, the amount of which is fixed under Law No 30 of 23 January 1968, on imported goods of animal origin and which possesses the features described above, constitute a charge having an effect equivalent to customs duties within the meaning of Article 13 (2) of the EEC Treaty?
2. Does Article 13 (2) of the EEC Treaty have the effect of abolishing charges having an effect equivalent to customs duties on imports in relation to intra-Community imports with effect from 1 July 1968 or from 1 January 1970?
3. Do the words 'charges having an effect equivalent to customs duties' have the same meaning
 - (a) in Article 13 (2) of the EEC Treaty;
 - (b) in Article 2 (1) of the Convention of Association between the EEC

and the African States and Madagascar States, signed at Yaoundé on 20 July 1963 and ratified by Italy by Law No 406 of 20 May 1964 and incorporated in Community law by Decision No 345/64/EEC of the Council of 5 November 1963;

- (c) in Article 2 (1) of the Convention of Association between the EEC and the African and Malagasy States, signed at Yaoundé on 29 July 1969 and ratified by Italy by Law No 1048 of 7 December 1970 and incorporated in Community law by Decision No 539/70/EEC of the Council of 29 September 1970?
- 4. Did Article 2 (1) of the Convention of Association between the EEC and the African States and Madagascar, signed at Yaoundé on 20 July 1963
 - (a) have immediate effect;
 - (b) confer on Community 'citizens' an individual right, which the national courts must protect, not to pay to the State charges having an effect equivalent to customs duties;
 - (c) produce these effects as from 1 July 1968 or as from 1 January 1970?
- 5. Has the obligation of the States to refrain from imposing charges having an effect equivalent to customs duties, established by Article 2 (1) of the two successive Yaoundé Conventions, applied without interruption since the dates laid down in the answer to Question 4 (c)?

The order making the reference was registered at the Court on 4 August 1975.

Written observations were submitted by the Conceria Daniele Bresciani and by the Commission of the European Communities pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

Having heard the report of the Judge-Rapporteur and the views of the

Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Summary of written observations

The *Conceria Daniele Bresciani* adopts the observations submitted to the Court by the applicant in the main action in Case 29/72 *Marimex* (Rec. 1972, p. 1309).

On the first question, the *Conceria* contends that the case-law of the Court contains sufficient authority for describing a pecuniary payment, which has the same nature as the duty charged for veterinary inspection at the frontier and is levied on cowhides imported by the plaintiff in the main action, as a charge having equivalent effect to a customs duty.

The public health charges on the imported skins do not constitute the consideration for a service rendered to the individual by a public authority because the public health inspections at the frontier are prescribed for the benefit of the public.

The contested charges are imposed on skins of animal origin only if imported from abroad. Similar national goods are not subject to the contested charge. In this connexion the fact that, under Italian law, certain fees are payable for local authority veterinary inspection is no justification for saying that the contested charge forms part of general system of charges affecting home and foreign goods alike. The difference in the basis on which the two pecuniary charges are calculated makes it impossible for them to be compared, especially in view of the fact that, in the present case, the comparison would be between a charge on skins, the amount of which is specified in advance by the relevant Law, and all the large number of fees charged for local authority public health

inspections at rates which vary according to the different stages which products of animal origin pass through as part of their preparation and processing and which precede tanning and trade in tanned hides.

In Community law, a pecuniary charge which has the features of a charge having equivalent effect within the meaning given to that phrase in the case-law of the Court remains the same even if it is not calculated *ad valorem*. The method of calculation is of no importance.

The Conceria submits that the following reply should be given to the first question referred for a preliminary ruling:

'A pecuniary charge imposed unilaterally by the regulations of the State on imported goods for the services of a public authority which carries out a compulsory public health inspection of imported goods

- (a) has no justification under Article 36 of the Treaty notwithstanding that that Article authorizes the public health inspection of imported goods;
- (b) cannot be held and declared to be lawful as a consideration for a service rendered for the benefit of the importer of the imported goods;
- (c) does not form part of a national taxation system and is not legal, as being part of that system, if the charge concerned falls only on imported or exported goods and is calculated on the basis of criteria peculiar to it which are incapable of being compared with the criteria on the basis of which the pecuniary charge falling on national goods is calculated;
- (d) constitutes a charge equivalent to a customs duty even though it was introduced under a law which mainly governs non-fiscal matters, is calculated according to the weight and not the value of the goods and relates to a public health inspection service set in motion by individuals when

they present goods for importation.

On the second question, the Conceria recalls that in Case 94/74 *IGAV v Ente Nazionale Cellulosa e Carta* ([1975] ECR 699) the Court ruled that, as from 1 January 1970, charges having effect equivalent to customs duties were abolished in the territory of the Community.

The Conceria states that the Conventions of Yaoundé (questions 3, 4 and 5) were concluded by the Council pursuant to Article 228 of the Treaty and that they were embodied in the legal order of the EEC by the two decisions of the Council, No 345/64/EEC of 5 November 1963 and No 539/70/EEC of 29 September 1970.

In Case 181/73 *Haegeman v Belgian State* ([1974] ECR 449) the Court held that it was competent to interpret the treaties of association.

Both Article 13 (2) of the Treaty and Article 2 (1) of the two Yaoundé Conventions embody the same concept of a charge having an effect equivalent to customs duties on imports.

Article 2 (1) of the first Yaoundé Convention expressly refers to the provisions of Article 12, 13, 14, 15 and 17 of the Treaty. Although Article 2 (1) of the second Convention contains no reference to the provisions of the EEC Treaty, there is nothing in it to suggest that the concept of charges having equivalent effect in the EEC Treaty is not the same as that in the Yaoundé Convention of 1969.

That the concept of charges having equivalent effect is the same in the EEC Treaty and in the two Conventions is confirmed by the fact that:

1. The foundation of both Conventions is instituted by Articles 131 to 136 of the EEC Treaty and by the implementing Convention for the

association of overseas countries and territories with the Community.

2. In customs conventions prior to the Community treaties, there was no reference to the concept of charges having an effect equivalent to customs duties. After the Treaty was concluded, the Community's efforts to conclude international agreements with third States were intended to extend the application of certain principles and certain key concepts of the Community legal system and of the Treaty to international trade.
3. The concept of a charge having an equivalent effect is necessarily the same in the Treaty and in the agricultural regulations. In common with the Yaoundé Conventions, the agricultural regulations provide for the abolition of charges having an equivalent effect on products imported from third countries.

Article 2 (1) of the Conventions of Association signed at Yaoundé are directly applicable and as, against the administration, confer individual rights on Community importers in accordance with the criteria adopted in the case-law of the Court.

With regard to the date of abolition, the answer to be given to the national court is that 1 January 1970 is also the last date for abolition of charges having equivalent effect on imports into the Community of products originating in the associated States.

Observations of the Commission

After considering the relevant Italian legislation, the Commission states that the public health inspection at the frontier is usually confined to ascertaining visually the state of preservation of imported goods and whether they conform with the accompanying certificates when these are required by the law. There is rarely any need for laboratory tests.

The Commission comments that the parallel drawn by the national court with home-produced skins involves not only different products (dried skins on the one hand and live animals on the other) but also medical inspections which have wholly different objectives with the result that the manner of their application is wholly different, too.

Animals for slaughter are in fact submitted to *ante mortem* public health inspection immediately before slaughter. This inspection is immediately followed and completed by *post mortem* public health inspection immediately after slaughter and skinning. These two inspections are carried out in order to ensure that meat for consumption is in a fit state and the inspection of the skins is only incidental. For these inspections, duties are levied either on each head of cattle or at a flat rate.

As regards the first question, the Commission takes the view that a pecuniary charge levied for the compulsory medical inspection of certain products of animal origin when they cross the frontier constitutes a charge having an effect equivalent to a customs duty on imports which is prohibited in trade between Member States under Articles 9 and 13 (2) of the Treaty.

The Commission recalls that the duty concerned is levied at the frontier in respect of the public health inspection of imported raw hides, applies exclusively to imported products and, as such, does not form part of a general system of national taxation regularly applied, according to the same criteria, to national products and imports of the same product.

Nor does it constitute the consideration for a service rendered because the administrative work done by the State in applying a system of public health inspection, introduced in the public interest, cannot be regarded as a service rendered to the individual importer and as justifying the imposition of a pecuniary charge.

The Commission recalls that in the *Marimex* case, the facts were different from those in the present case. The judgment in *Marimex* was concerned with the legality of duties imposed for the public health inspection of live cattle and of beef and veal for human consumption and applied to imported products as well as to national products, but according to different criteria. There is, accordingly, no reason why the *Marimex* judgment should be referred to in the present case, which involves a duty which, although relating to public health inspections, is levied on imported products by reason of their crossing the frontier and not on national products of the same kind.

On the second question, the Commission recalls that the judgment in Case 94/74 *IGAV v ENCC*, quoted above, held that Article 13 (2) of the Treaty has, by its very nature, produced direct effects in the legal relations between the Member States and those subject to their jurisdiction and that this was so as from 1 January 1970.

With regard to the Yaoundé Conventions (Questions 3 to 5), the Commission points out that Article 2 (1) of the Convention of 20 July 1963 refers expressly and unconditionally to certain articles of the Treaty. It follows from this that, in so far as the articles of the Treaty therein referred to have direct legal effects, Article 2 (1) of the abovementioned Convention confers rights on individuals which the national courts must protect. The combined effect of the provisions of Article 2 (1) of the said Convention and of Article 13 (2) of the EEC Treaty is that, as from 1 January 1970, Member States cannot impose charges having an effect equivalent to customs duties on imports of products from the African States and Madagascar.

As regards the second Convention signed at Yaoundé on 29 July 1969 and which came into force on 1 January 1971, the obligation to abolish customs duties and

charges having equivalent effect on products imported from associated States is laid down in Article 2 (1) in terms so unrestricted, clear and precise as to have direct effect in the relations between the Member States and individuals.

The Commission makes the additional comment that it is worth bearing in mind that the imports in question were in part carried out in 1969, namely, during the transitional period. At that time, the Member States were already under an obligation to comply with the stand-still obligation contained in Article 12 of the Treaty.

The duty relating to the public health inspection of imported raw hides which, when the EEC Treaty came into force, was, for fresh hides, Lit. 180 per quintal and for dry skins, Lit. 240 per quintal, was in 1968 increased to Lit. 300 per quintal for all types of raw hides. Inasmuch, accordingly, as the plaintiff in the main action has had to pay the difference between the old and the new duty for imports of skins carried out during the year 1969, there is an infringement of the provisions of Article 12 of the Treaty.

The Commission mentions that it has initiated the procedure under Article 169 of the Treaty against the Italian Republic on the subject of the contested charge but that the procedure has not yet been completed.

The Commission submits that the following replies should be given to the questions referred by the President of the Tribunale of Genoa:

1. 'A pecuniary charge applied exclusively to imported products and of all of animal origin and imposed in connexion with the public health inspection of these products, constitutes a charge having an effect equivalent to customs duties, which is prohibited in trade between the original Member States, as well as in trade between the Community and

the associated African States and Madagascar, and this was so as from 1 January 1970.

2. The provisions set forth in Article 2 (1) of the Conventions of Association between the EEC and the African States and Madagascar, signed at Yaoundé on 20 July 1963 and 29 July 1969 respectively, have, since 1 January 1970, produced direct effects in the legal relations between the Member States and those subject to their jurisdiction.'

Oral procedure

Mr Capelli, for the Conceria Daniele Bresciani and Mr Abate, for the Commission, presented their oral observations at the hearing on 9 December 1975.

Mr Abate, in reply to questions put by the Court, emphasized that this was the first time that the Court had been called upon to rule directly on the nature and scope of a provision of an international agreement such as the Yaoundé Convention. However, in *Haegeman v Commission* (Rec. 1972, p. 1005) the Court, which sent the applicant back to the national court, implicitly recognized the possibility that the Association Agreement between the Community and Greece might have a direct effect.

The Commission takes the view that the inclusion in Article 2 (1) of the first Yaoundé Convention of a reference to the rules of the Treaty prohibiting the imposition of charges having equivalent effect vests the article with the same authority as the provisions to which it refers.

The Commission does not regard it as necessary to go into the question of the formal and procedural requirements of the decisions of the association Council concerning extension of the validity of the provisions of the Yaoundé Convention.

With regard to the question of reciprocity, the Commission never intended to interpret and apply the Conventions of Association solely on the basis of reciprocity. These Conventions are one-way: what the Community provides for the associated countries would be meaningless if the little which it provides was subject to fulfilment of the condition of reciprocity. Exports from the Community to the associated countries consist solely of industrial products. There have been very few difficulties and then only as regards the interpretation of the concept of a charge having equivalent effect.

The Advocate-General delivered his opinion at the hearing on 14 January 1976.

Law

- 1 By order of 24 July 1975, which was received at the Court on 4 August 1975, the Tribunale of Genoa referred to the Court five questions concerning the interpretation of the concept of 'charges having an effect equivalent to customs duties on imports' contained in Article 13 (2) of the EEC Treaty and in Article 2 (1) of the Convention signed at Yaoundé on 20 July 1963 (JO, 1964, p. 1430) and of the Convention signed at Yaoundé on 29 July 1969 (OJ, English Special Edition (Second Series, I External Relations (2))).

- 2 It appears from the file that, in 1969 and 1970, and in any case prior to entry into force of the second Yaoundé Convention, the plaintiff in the main action imported various consignments of raw cowhides from France and from Senegal, a State associated with the Community under the abovementioned Conventions, and had to pay a veterinary and public health inspection duty upon importation.
- 3 The duty was introduced by Italy as a flat-rate charge to offset the costs of the compulsory public health inspection of imported products of animal origin. The national court states that similar products of domestic origin are not subject to the same duty. Nevertheless, in Italy, when animals are slaughtered, there are veterinary inspections for which local authorities charge duties and the main purpose of which is to establish whether the meat is fit for consumption.
- 4 The first question asks whether a pecuniary charge levied for the purposes of a compulsory public health inspection of raw hides as they cross the frontier constitutes a charge having an effect equivalent to customs duties on imports within the meaning of Article 13 (2) of the EEC Treaty.
- 5 As the Court held in its judgment of 14 December 1972, in *Marimex v Amministrazione Italiana delle Finanze* (Rec. 1972, p. 1309), pecuniary charges imposed for reasons of public health examination of products when they cross the frontier, which are determined according to special criteria applicable to them, which are not comparable to the criteria for determining the pecuniary charges affecting similar domestic products, are to be regarded as charges having an effect equivalent to customs duties.
- 6 The national court requests that the three following considerations be taken into account:

First, the fact that the charge is proportionate to the quantity of the goods and not to their value distinguishes a duty of the type at issue from charges which fall within the prohibition under Article 13 of the EEC Treaty. Second, a pecuniary charge of the type at issue is no more than the consideration required from individuals who, through their own action in importing products of animal origin, cause a service to be rendered. In the third place, although there may be differences in the method and time of its application, the duty at issue is also levied on similar products of domestic origin.

- 7 According to Article 9 of the Treaty, the Community is to be based upon a customs union founded upon the prohibition between Member States of customs duties and of 'all charges having equivalent effect' and the adoption of a common customs tariff in their relations with third countries.

Under Article 13 (2), charges having an effect equivalent to customs duties on imports, in force between Member States, are to be progressively abolished by them during the transitional period.

The position of these articles at the beginning of that part of the Treaty reserved for the 'Foundations of the Community' is sufficient to indicate their crucial role in the construction of the common market.

- 8 The justification for the obligation progressively to abolish customs duties is based on the fact that any pecuniary charge, however small, imposed on goods by reason of the fact that they cross a frontier constitutes an obstacle to the movement of such goods.

The obligation progressively to abolish customs duties is supplemented by the obligation to abolish charges having equivalent effect in order to prevent the fundamental principle of the free movement of goods within the common market from being circumvented by the imposition of pecuniary charges of various kinds by a Member State.

The use of these two complementary concepts thus tends, in trade between Member States, to avoid the imposition of any pecuniary charge on goods circulating within the Community by virtue of the fact that they cross a national frontier.

- 9 Consequently, any pecuniary charge, whatever its designation and mode of application, which is unilaterally imposed on goods imported from another Member State by reason of the fact that they cross a frontier, constitutes a charge having an effect equivalent to a customs duty. In appraising a duty of the type at issue it is, consequently, of no importance that it is proportionate to the quantity of the imported goods and not to their value.
- 10 Nor, in determining the effects of the duty on the free movement of goods, is it of any importance that a duty of the type at issue is proportionate to the costs of a compulsory public health inspection carried out on entry of the goods. The activity of the administration of the State intended to maintain a public health inspection system imposed in the general interest cannot be

regarded as a service rendered to the importer such as to justify the imposition of a pecuniary charge. If, accordingly, public health inspections are still justified at the end of the transitional period, the costs which they occasion must be met by the general public which, as a whole, benefits from the free movement of Community goods.

- 11 The fact that the domestic production is, through other charges, subjected to a similar burden matters little unless those charges and the duty in question are applied according to the same criteria and at the same stage of production, thus making it possible for them to be regarded as falling within a general system of internal taxation applying systematically and in the same way to domestic and imported products.
- 12 The second question is whether Article 13 (2) began to have direct effect on 31 December 1969, the date on which the transitional period ended, or on 1 July 1968, the date on which customs duties were abolished within the Community.
- 13 Subject to any specific provisions, such effect occurred as from the end of the transitional period, namely 1 January 1970. In fact, the Council's decision of 26 July 1966 on the abolition of customs duties in line with the implementation of the Common Customs Tariff on 1 July 1968 (JO p. 2971) is based on the concept of a selective acceleration of actions which, as a whole, were to be completed by the end of the transitional period at the latest. In these circumstances that decision only applies to measures to which it specifically refers, that is to say, to customs duties as such and to quantitative restrictions.
- 14 The reply must therefore be that the direct effect of Article 13 (2) can only be invoked as from 1 January 1970.
- 15 The third question is whether the concept of a charge having equivalent effect has the same meaning in Article 2 (1) of the Yaoundé Convention of 1963 and of the Yaoundé Convention of 1969 as in Article 13 (2) of the Treaty.

The fourth question is whether Article 2 (1) of the Yaoundé Convention of 1963 has immediate effect so as to confer on Community 'citizens' an individual right, which the national courts must protect, not to pay to a

Member State a charge having an effect equivalent to customs duties. As these questions are related, they must be joined for the purposes of the reply.

- 16 The first question to be considered is whether Article 2 (1) of the Yaoundé Convention of 1963 confers on those subject to Community law the right to rely on it in order to challenge the imposition of a national duty. In order to do this, regard must be simultaneously paid to the spirit, the general scheme and the wording of the Convention and of the provision concerned.
- 17 Pursuant to the Fourth Part of the EEC Treaty, certain overseas countries and territories which had special relations with four of the former six Member States were associated with the Community. By reason of these special economic and political connexions, the association was intended, under Article 131 of the EEC Treaty, to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire. The Implementing Convention for the association of overseas countries and territories to the Community, annexed to the Treaty, was concluded for a period of five years.
- 18 Since, at the end of this period, several of the countries and territories had advanced towards political independence, the Yaoundé Convention was concluded in order to maintain the association between certain of those independent African States and Madagascar and the European Economic Community. It was concluded in the name not only of the Member States but also of the Community which, in consequence, are bound by virtue of Article 228.
- 19 As far as customs duties and charges having equivalent effect are concerned, Article 2 (1) of the 1963 Convention provides as follows:

‘Goods originating in Associated States shall, when imported into Member States, benefit from the progressive abolition of customs duties and charges having an effect equivalent to such duties, resulting between Member States under the provisions of Articles 12, 13, 14, 15 and 17 of the Treaty and the decisions which have been or may be adopted to accelerate the rate of achieving the aims of the Treaty.’

Article 2 (5) provides as follows:

'At the request of an Associated State, there shall be consultations within the Association Council regarding the conditions of application of this Article.'

- 20 On the other hand, Article 3 (2) limits the obligation on the Associated States to abolish customs duties and charges having equivalent effect by providing that 'each Associated State may retain or introduce customs duties and charges having an effect equivalent to such duties which correspond to its development needs or its industrialization requirements or which are intended to contribute to its budget'.
- 21 Article 61 of the Convention provides that the Community and the Member States shall undertake the obligations set out in Articles 2, 5 and 11 even with respect to Associated States which, on the grounds of international obligations applying at the time of the entry into force of the EEC Treaty and subjecting them to a particular customs treatment, may consider themselves not yet able to offer the Community the reciprocity provided for by Article 3 (2) of the Convention.
- 22 It is apparent from these provisions that the Convention was not concluded in order to ensure equality in the obligations which the Community assumes with regard to the Associated States, but in order to promote their development in accordance with the aim of the first Convention annexed to the Treaty.
- 23 This imbalance between the obligations assumed by the Community towards the Associated States, which is inherent in the special nature of the Convention, does not prevent recognition by the Community that some of its provisions have a direct effect.
- 24 Since the provision according to which consultations regarding the conditions of application of Article 2 of the Convention shall take place only at the request of an Associated State, it follows that the abolition of charges having equivalent effect must, on the part of the Community, proceed automatically.
- 25 By expressly referring, in Article 2 (1) of the Convention, to Article 13 of the Treaty, the Community undertook precisely the same obligation towards the

Associated States to abolish charges having equivalent effect as, in the Treaty, the Member States assumed towards each other. Since this obligation is specific and not subject to any implied or express reservation on the part of the Community, it is capable of conferring on those subject to Community law the right to rely on it before the courts and to do so with effect from 1 January 1970.

- 26 The answer to be given to the national court is, in consequence, that, with effect from 1 January 1970, Article 2 (1) of the Yaoundé Convention of 1963 confers on Community citizens the right, which the national courts of the Community must protect, not to pay to a Member State a charge having an effect equivalent to customs duties.
- 27 The last question asks whether the prohibition of the imposition of charges having equivalent effect imposed upon the Member States by the two Yaoundé Conventions has applied without interruption since 1 January 1970.
- 28 Article 59 of the 1963 Convention provides that it shall be concluded for a period of five years from the date of its entry into force. Article 60 provides that the contracting parties shall examine the provisions which might be made for a further period and that the Association Council shall, if necessary, take any transitional measures required until the new Convention enters into force.
- 29 Since the first Convention of Association expired on 30 May 1969, before the new Convention was adopted, the Association Council, so as to prevent any interruption, extended it on two occasions. As these decisions were adopted by the Association Council under powers conferred on it by the Convention, it must be concluded that the obligations imposed upon the Member States by the first Convention continued to exist without interruption until the second Convention came into force.

Costs

- 30 The costs incurred by the Commission of the European Communities, which submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Tribunale of Genoa hereby rules:

1. Whatever its designation and mode of application, a pecuniary charge which is imposed unilaterally on goods imported from another Member State when they cross a frontier constitutes a charge having an effect equivalent to a customs duty.
2. The direct effect of Article 30 (2) of the Treaty may be invoked only with effect from 1 January 1970.
3. Article 2 (1) of the Convention signed at Yaoundé on 20 July 1963 confers, with effect from 1 January 1970, on those subject to Community law the right, which the national courts of the Community must protect, not to pay to a Member State a charge having an effect equivalent to customs duties.
4. The obligations imposed upon the Member States by the Yaoundé Convention of 1963 continued to exist without interruption until the entry into force of the Convention signed at Yaoundé on 29 July 1969.

Lecourt

Kutscher

O'Keefe

Donner

Mertens de Wilmars

Sørensen

Mackenzie Stuart

Delivered in open court in Luxembourg on 5 February 1976.

A. Van Houtte

R. Lecourt

Registrar

President