OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 16 December 1986

My Lords,

In this case France seeks the annulment of Commission Regulation No 644/85 (Official Journal 1985, L 73, p. 15) which fixes a countervailing charge on imports into the other Member States of ethyl alcohol of agricultural origin produced in France.

The contested regulation is based on Article 46 of the Treaty which provides:

'Where in a Member State a product is subject to a national market organization or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State, a countervailing charge shall be applied by Member States to imports of this product coming from the Member State where such organization or rules exist, unless that State applies a countervailing charge on export.

The Commission shall fix the amount of these charges at the level required to redress the balance; it may also authorize other measures, the conditions and details of which it shall determine.'

In Case 337/82 *St-Nikolaus-Brennerei* v *HZA Krefeld* [1984] ECR 1051, the Court held that this Article continued in effect after the end of the transitional period. It enables the Commission 'to adopt immediate safeguards against distortions of competition created by a Member State' and by imposing a countervailing charge to seek 'to stabilize the markets and to ensure a fair standard of living for the agricultural population concerned'. 'In each case it is for the Commission to ensure that the duration and the amount of the charge remain within the limits circumscribed by the need to re-establish equilibrium' (paragraphs 14 and 15 of the judgment).

St-Nikolaus-Brennerei concerned Commission Regulation No 851/76 (Official Journal 1976, L 96, p. 41) which also fixed a countervailing charge to be imposed on exports of subsidised ethyl alcohol from France, in that case only to Germany and the Benelux countries. That Regulation was replaced by Commission Regulation No 1407/78 (Official Journal 1978, L 170, p. 28) which fixed a fresh countervailing charge until it was repealed by Commission Regulation No 841/80 (Official Journal 1980, L 90, p. 30).

From then until 1984 no countervailing charge was imposed. Following numerous complaints, including requests for the Commission to prohibit French exports under the powers given to it by the second paragraph of Article 46, the Commission adopted Regulation No 2541/84 (Official Journal 1984, L 238, p. 16) imposing a countervailing charge from 13 September 1984 on imports from France into all other Member States of ethyl alcohol of agri-

cultural origin which had not been denatured in accordance with the relevant provisions in France.

Article 5 (1) obliged the importing Member States to supply the Commission with regular information on the prices at which French ethyl alcohol was being imported: under Article 5 (2) 'in the event of significant change in the factors used in the fixing of the countervailing charge, the Commission shall adjust the charge accordingly'.

France did not challenge the re-imposition of the countervailing duty by that regulation. On the basis of information supplied by Member States, the Commission subsequently took the view that the charge had failed to have the desired effect. Accordingly, Articles 1 and 2 of Regulation No 2541/84 were replaced by new provisions set out in Regulation No 644/85. The amount of the countervailing charge was increased with effect from February 1985; in the light of problems which had arisen in the implementation of Regulation No 2541/84, the nature of the evidence required to establish that the ethyl alcohol was of non-agricultural origin or that it had been denatured in accordance with French provisions, was specified and changes were made as to the administrative provisions for the levying of the countervailing charge by other Member States.

France has advanced six arguments in support of its contention that the contested regulation should be annulled. The Commission maintains that all the arguments other than the first are inadmissible and that all are unfounded.

The Commission contends that five of France's arguments are in fact directed towards the method of calculation of the charge contained in Regulation No 2541/84. This was not contested in time. France, accordingly, can only challenge the changes introduced by the amendments contained in Regulation No 644/85. The French Government replies that the fact that one regulation adopts the same reasoning and calculation methods as an earlier regulation does not mean that the later regulation cannot be challenged under Article 173; alternatively the validity of the earlier regulation can be challenged, pursuant to Article 184 of the Treaty, in an attack on the later regulation.

In its rejoinder, the Commission claimed that reliance on Article 184 of the Treaty was a new argument not raised in the application and therefore itself is inadmissible. At the hearing, the French Government contended that its reliance on Article 184 was not itself a new argument but a new way of putting forward the arguments raised in the application as to the legality of the countervailing charge. Although not without some doubt I would accept that submission. Accordingly, it seems to me that the admissibility of the French Government's claims as to the substance fall to be considered under both Article 173 and Article 184.

The United Kingdom, although intervening in support of the Commission on the substance, takes the view that the French Government's arguments are admissible under both Article 173 and Article 184.

The arguments both ways in relation to Article 173 have an attraction. On the one hand, it is argued that it is plain that a merely confirmatory act does not start time running again so as to enable the initial act, which is merely confirmed, to be challenged (e.g. Cases 42 and 49/59 *Snupat* [1961]

ECR 53 at p. 75; Case 17/71 *Tontodonati* [1971] ECR 1059; Cases 33 and 75/79 *Kuhner* [1980] ECR 1677 at p. 1694). It also seems clear that if a general scheme is set up or general criteria are laid down in one regulation and they are then applied in a second regulation, a further regulation replacing exclusively the detailed application to be found in the second regulation does not, as a general rule, make it possible to challenge the legality of the provisions of the general regulation. The present case should follow those principles it is argued.

On the other side, it is said that the mere fact that in a subsequent independent regulation, the same criteria or the same provisions are adopted as in an earlier regulation, does not mean that those criteria or provisions cannot be challenged in the later regulation (Case 2/57 *Hauts Fourneaux* v *High Authority* [1958] ECR 199). This it is said is such a case.

In my view, however, the present case does not fall into any one of these three categories. It is not merely a confirmatory act; it is not an act amending simply an implementing regulation; equally it is not a wholly independent regulation replacing another. This is an amending regulation, the initial regulation remaining in force save as amended. The amending regulation adopts the same criteria as were used for the first fixing of the charge in order to adjust the actual rate, subject to the administrative changes which have been made and to a change in the reference period.

If this regulation had simply repealed and replaced the earlier regulation, in my view it could be challenged even if the same language had been used to spell out the criteria, and the various articles had been repeated in the same language.

In fact Articles 1 and 2 of Regulation No 644/85 are adopted to introduce changes in the administration of the scheme as well as the new rate and, as the Commission points out on page 8 of its defence, it appears from the fourth recital to Regulation No 644/85 that the reference period for the price of molasses was changed. Instead of taking the period December 1984 to February 1985, it took the period October to December 1984. In this respect the result was favourable to France in that the resulting charge was lower than if the later period had been taken so no complaint is made of it.

The new scheme is, accordingly, in several respects different from the old even if the essential criteria or method of calculation are the same. Without in any way criticizing the Commission for adopting the new charge by way of amendment, it would have been equally possible and perhaps tidier to have done what was done by way of a new regulation. Albeit the initial regulation remains in being and cannot itself be challenged under Article 173, in the light of the changes made in what is essentially the operative part of the regulation, I accept that Regulation No 644/85 produces a different scheme and should be regarded as an 'act' whose legality may be reviewed as a whole for the purposes of Article 173. To

take the alternative view seems to me to give too restrictive an interpretation to Article 173 and not to be compelled by the interests of legal certainty since any decision as to the validity of Regulation No 644/85 cannot lead to the setting aside of anything done under Regulation No 2541/84. The French Government is, thus, not limited to its first ground of complaint which goes to facts allegedly occurring subsequent to the first regulation and which are relied on to justify changing the rate of the charge. I, accordingly, consider that the whole case is admissible under Article 173.

On that basis the French Government does not need to rely on Article 184. On the alternative view, however, the question would arise.

It is clear that Article 184 can only be raised in proceedings brought before the Court under another article of the Treaty (Joined Cases 31 and 33/62 *Wöhrmann* v *Commission* [1962] ECR 501). Those proceedings must obviously be admissible proceedings so that if none of the grounds relied on under Article 173 had been admissible there would be no way in which France could rely on Article 184. It is, however, accepted by the Commission that in respect of the first ground the proceedings under Article 173 are admissible.

A number of questions still arise. In *Wöhrmann* the Court said that: 'The sole object of Article 184 is thus to protect an interested party against the application of an illegal regulation, without thereby in any way calling in issue the regulation itself, which can no longer be challenged because of the expiry of the time-limit laid down by Article 173'. More usually such a plea may be raised in a case where a person seeks to challenge a decision addressed to him. He is then entitled to contend that the regulation upon which the decision is based was itself inapplicable (or illegal) on one of the grounds set out in Article 173. If one regulation lays down general criteria and another regulation, based on it, applies those criteria in a way which is of direct and individual concern to a natural or legal person, that person, if entitled to bring proceedings against the second regulation, can equally, as I see it, rely on Article 184 so as to challenge the validity of the basic regulation.

It has, however, been suggested that a Member State cannot rely on Article 184 in view of its 'privileged' position under Article 173. It is always legally competent to attack a regulation under Article 173; to allow it to rely on Article 184 would give it a second bite at the cherry after time had run for bringing proceedings under Article 173. Reference has been made to Case 92/78 *Simmenthal* v *Commission* [1979] ECR 777, where the Court considered Article 184 to be the expression of a general principle 'conferring upon any party to the proceedings the right to challenge, for the purpose of obtaining the annulment of a decision of direct and individual concern to that party the validity of previous acts of the institution which form the legal basis of the decision which is being attacked, *if that party was not entitled under Article 173 of the Treaty to bring a direct action challenging those acts by which it was thus affected without having been in a position to ask that they be declared void*'.

France, on the other hand, contends that in Case 32/65 *Italy* v *Council and Commission* [1966] ECR 386, the Court implicitly accepted that a Member State could rely on

Article 184 since it rejected the claim made in the case under that Article principally on the basis that there was no sufficient link between the regulation particularly under attack and the earlier regulations whose validity was sought to be challenged. It is said that if a Member State could not rely on Article 184 the Court would have said so without considering whether the earlier regulations were the legal basis of the later regulation.

It does not seem to me that in *Simmenthal* the Court was adverting to the question whether the plea under Article 184 could be raised by a Member State; *Italy* is not a direct decision on the point. The matter is thus open.

The Commission does not contend that Article 184 can never be relied on by a Member State. It raises the question, however, whether there should not be some limitation on the rights of Member States under Article 184 because of their privileged position under Article 173. It suggests that such a right may exist where the Member State, which could have sought an order under Article 173 and does not do so, is 'taken by surprise' by the way in which the act of the institution is applied. That could not apply here, says the Commission, since France was closely involved in the drafting of Regulation No 2541/84 and must have been fully aware of the intended effects. It would, therefore, not be right to give France the opportunity to raise the matter in this way.

Despite the 'privileged' position of Member States under Article 173, I consider that 'any party' in Article 184 means 'any party' and not 'any party other than a Member State'. I also consider that parties to proceedings, otherwise valid, are for this purpose to be treated on the same footing. A Member State does not have to show that there was a good reason why it did not act in time under Article 173, or that it was taken by surprise by the application or effect of an act of the Council or the Commission, before it can rely on Article 184, any more than does a person to whom a decision is addressed or a person directly and individually concerned by a decision in the form of a regulation or which is addressed to another person. It seems to me that this limitation, which the Commission seeks to introduce, is not to be found in the provisions of the Treaty. It would, if adopted, raise difficult questions of fact and I can see no compelling or even valid reason for reading it into Article 184.

There must, however, be a sufficient link between the regulation or decision, the subject matter of the Article 173 proceedings, and the regulation the validity of which is challenged under Article 184 (*Italy, supra*). The latter will normally be the legal basis of the former. Moreover, the former regulation must be 'at issue' in the proceedings. Where the latter is merely applying general criteria set out in the former then there will usually be no difficulty in relying on Article 184. The present is not such a case. However, in the present case, assuming that, for the reasons advanced by the Commission, France cannot challenge Regulation No 644/85 under Article 173 in respect of the last five grounds relating to matters adopted from the earlier regulation, it seems to me that in challenging the rate of charge adopted on the first admissible ground, France is also entitled to raise the 'inapplicability' of the criteria or factors adopted in Regulation No 2541/84 on which Regulation No 644/85 is based, which criteria effectively it repeats. Those criteria do not have to be at issue as admissible grounds under Article 173 in respect of Regulation No 644/85 before they can be challenged under Article 184 in respect of Regulation No 2541/84.

If, therefore, the view is taken that the last five grounds relied on by France cannot be raised under Article 173 in respect of Regulation No 644/85, it seems to me that the same matters can be raised under Article 184 in respect of Regulation No 2541/84 since that regulation is 'at issue' within the meaning of Article 184. It provides the legal basis upon which the validity of Regulation No 644/85 depends.

As a final reason for refusing to admit France's plea under Article 184, the Commission draws an analogy with those cases in which the Court has refused to allow a Member State to question the validity of a negative decision under Article 93 (2) taken against it in proceedings brought by the Commission against that Member State for failure to comply with the decision. The relevant cases are Case 156/77 *Commission* v *Belgium* [1978] ECR 1881, Case 52/83 *Commission* v *France* [1983] ECR 3787 and Case 93/84 *Commission* v *France* [1985], judgment of 13 March 1985, ECR 829. I do not consider that those cases are in point. The relevant paragraphs from the Court's judgments in those cases are directed to an examination of the special rights of appeal to the Court provided by Article 93 (2). The second paragraph of that provision provides as follows:

'If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 169 and 170, refer the matter to the Court of Justice direct.'

As the Court said in Case 156/77 *Commission* v *Belgium*, 'the purpose of the application referred to therein may only be a declaration that the Member State concerned has failed to comply with the Commission decision compelling it to abolish or alter an aid within a specific period'. It follows from that, as the wording of the provision makes clear, that such applications may only be brought by the Commission or Member States other than the one to which the decision was addressed. That State is obliged to challenge the decision in time or comply with it.

In my view, therefore, all the arguments raised are admissible in these proceedings.

On that basis it is necessary to consider seriatim the six grounds raised.

The first is that the Commission erred in stating that 'the volume of such imports has not followed a downward trend since the charge was introduced' (third recital of the contested regulation), a factor which led the Commission to increase the charge.

The French Government contends that French exports had in fact fallen since the initial charge was fixed by Regulation No

2541/84. It supported that assertion with statistics comparing exports from September 1984 to February 1985 with the same period in 1983-84. In the former period the table shows a total of 373 674 hectolitres compared with 329 979 hectolitres for the latter period, a drop of some 11%.

The Commission has put in statistics based on the information supplied to it by various Member States pursuant to Article 5 of Regulation No 2541/84. The two sets of figures are not directly comparable since they relate to different Member States and different periods. Because of that, the Court asked the parties to comment on each other's figures in writing before the hearing. The Commission took the view that it could not contest the French figures which had never been communicated to it; the only figures supplied to the Commission by France were not sufficiently precise as to the product in question in these proceedings to be useful. France failed to reply to the Court's question. Why it did not do so has not been satisfactorily explained.

The Commission, supported by the United Kingdom, makes two points. The first is that it is inappropriate to compare the period September 1984 to February 1985 with the corresponding months in 1983 and 1984. Many variable factors other than the imposition of the charge might have had an influence on export volumes during those periods so as to invalidate the comparison. In my view that is right. The relevant comparison is between the prices and volumes prevailing during the period before the imposition of the charge and those prevailing during the period following it.

Secondly it is said that, since trade flows are extremely difficult to monitor accurately, one should not expect the two sets of figures to match up to a high degree of precision and that it is sufficient to see broadly whether they show the same trend.

In my view nothing that has been said by France shows that this is an erroneous or untenable approach.

According to the French figures, French exports to other Member States in September 1984 were 73 197 hectolitres. In October 1984, the first full month after the charge was introduced, the figure fell dramatically to 35 426 hectolitres. It rallied slightly in the next two months, 43 960 hectolitres for November and 39 699 hectolitres for December. In January 1985, there was a steep increase to 64 844 hectolitres and in February, exports were virtually what they had been when the charge was introduced, namely 72 853 hectolitres.

The Commission's figures for the same period relate to fewer Member States (five against the eight shown in France's statistics) and also relate to alcohol at 100% volume, whereas France's figures relate to alcohol at 80% volume. Whilst the Commission's totals of French exports are therefore much lower, the two sets of figures show the same basic trend. On the Commission's figures, total hectolitres exported from France to the five Member States concerned were 21 415 for September 1984, 12 299 for October, 16 650 for November, 16 611 for December, 23 837 for January 1985 and 28 008 for February 1985.

On the figures available to the Commission therefore French exports in January 1985 and more significantly in February 1985 exceeded the level in September 1984 when the charge was introduced and in any event from November are consistently upwards.

On the basis of both sets of figures it seems to me that there is nothing to show that the Commission was wrong to consider that French exports had not shown a downward trend in the relevant period. I accordingly reject the first argument.

The French Government's second argument challenges the statement in the same recital that 'representative quantities of the product are imported at prices below the importing Member States' marketing prices'. It says that this demonstrates that the Commission believes that the market for ethyl alcohol is a market for a single product or at least a homogeneous group of products, a belief which it says is erroneous because there are at least four categories of alcohol which, by virtue of their price, quality and end use, constitute distinct markets. Therefore, according to the French Government, there can be no such thing as 'representative quantities' and this criterion for the fixing of the charge is wholly arbitrary.

The Commission agrees that there are several different qualities of ethyl alcohol but denies that this means that the prices it took into consideration were not representative. It excluded deliveries of unusually small quantities or unusually high quality and found that the free-at-frontier prices of French alcohol were invariably lower than the market price ruling in the importing Member States. Furthermore, it would have been impossible to compare French prices against those ruling in the importing Member States according to the various categories of alcohol or their end use. The Member States could produce no figures enabling such a comparison to be made and, even if there were different markets in different Member States, they would not necessarily be directly comparable. By way of example, the Commission observes that in Belgium and Germany, prices depend on end use whereas in Denmark and the United Kingdom prices depend on the quality of the alcohol itself.

This issue is linked to the French Government's third argument relating to the other factor in the Commission's equation. What the Commission sought to balance by imposing the charge was, on the one hand, French free-at-frontier prices for representative quantities of alcohol (the subject of the second argument) and, on the other hand, a so-called equilibrium price designed to represent, in the words of the first recital to the contested regulation, 'the normal price for non-denatured alcohol on the markets of the Community when competition is not distorted'. That price was *ex hypothesi* a theoretical price since competition was being distorted by French exports. Both the contested regulation and Regulation No 2541/84 are silent as to the method of calculating the equilibrium price.

The French Government's third argument is, in effect, that there is no such thing as an equilibrium price across the board. Differences between the national markets make it impossible to determine a price which would prevail throughout the Community in conditions of undistorted competition. There is a national organization of the market in Germany and Italy;

in the Netherlands, there used to be a cartel and there is now one producer; in the United Kingdom there is also only one producer.

The Commission admits that the picture is complicated. The State monopoly in Germany is designed to protect smaller undertakings, whereas the system in Italy is designed to favour agricultural over industrial products. In France, producers tend to be vertically integrated with sugar manufacturers whereas production is concentrated in the hands of a single undertaking in both the Netherlands and the United Kingdom. Given these and other disparities, the Commission argues that a scheme which took them all into account would be extremely complicated. A different level of charge would have to be set for each Member State and for each grade of alcohol. If France is right that there were four grades of alcohol, that would have required up to 36 different rates. It would also be necessary to instal a system of surcharges and rebates for trade between the Member States other than France. It chose the only really workable system.

France counters that a different level of charge for each Member State, adjusted for variations in quality and for inter-State trade, could be made to work.

The question is not so much whether the scheme chosen by the Commission is the only one workable or whether the solution propounded by the French Government is excessively complicated but whether the Commission exceeded the bounds of its discretion or misdirected itself in law in the way it proceeded. The *St-Nikolaus-Brennerei* judgment recognizes that the Commission under Article 46 may have to adopt 'immediate safeguards' against distortions of competition 'in the exceptional and temporary circumstances which justify the measure' and it may have to proceed 'with the utmost alacrity'.

In my view the Commission was entitled in this case to devise a relatively simple scheme whereby a flat-rate charge would be imposed on French exports for as long as they continued to be exported in significant quantities and at prices significantly below what, on a broad assessment of the position, might have been expected to be the prevailing Community price. This is especially so since both the charge and the theoretical equilibrium price were set at prudently low levels within the range of possibilities, a matter which the applicant has not contested. I do not consider that the second and third arguments have been made out.

France's fourth argument relates to one of the elements used in calculating the equilibrium price. The fourth recital of the contested regulation reads as follows:

'Whereas the free-at-frontier prices of non-denatured French alcohol sold in the Community have increased only slightly whilst the aforementioned equilibrium price has shown a major rise; whereas, following changes in the price of molasses during the fourth quarter of 1984, the equilibrium price stands at 52 ECU per hectolitre; whereas the amount of the countervailing charge should therefore be raised accordingly.'

As already stated, neither the contested regulation nor Regulation No 2541/84 in fact specifies the method of calculating the equilibrium price.

The applicant government claims that it is inappropriate to take as the reference for calculating the equilibrium price the monthly quotation of cif prices for cane molasses at Rotterdam as the Commission in fact did. According to France, cane molasses is used as the raw material for less than 20% of the agricultural alcohol produced in the Community. Most Community alcohol is derived from beet molasses of which France is a leading producer since beet molasses is a by-product of sugar produced from beet. The cif Rotterdam price for cane molasses is also irrelevant because alcohol producers obtain their raw materials under annual contracts and are thus insulated from monthly fluctuations in price, and because cane molasses and beet molasses are not interchangeable for technical reasons.

On the other side, the Commission argues that cane molasses is the raw material for some 23% of Community alcohol, a figure which is not far removed from the 'less than 20%' advanced by the French Government. Of more importance, there is a consistent relationship between cane and beet molasses and the only price which is regularly quoted is the Rotterdam cif cane price. The Commission produced a table comparing the Rotterdam price expressed in ECU and in US dollars with the ex-works price of a German producer. The table shows that the beet price is consistently higher than the cane price and that the two prices do tend to move in the same direction, although the disparity between the two fluctuates.

The United Kingdom Government argued that immediate parallelism between these two prices is not to be expected. It produced a graph expressing the same figures on a two-monthly rolling average basis which showed a smoother correlation. Even if this is not a precise correlation it seems to me that there is force in four arguments which the United Kingdom adduces and which have not been satisfactorily rebutted by the evidence or arguments of the French Government. First, there is a constant relationship between the cane and beet prices. The French Government is not right to argue that cane and beet molasses are not interchangeable: United Kingdom and Netherlands producers use both kinds of molasses. However, nitrogen is present in beet molasses but has to be added to cane molasses for alcohol production. In consequence, beet commands a premium over cane molasses. Second, this leads to a stable price relationship between the two kinds of molasses which makes the cif Rotterdam cane price, which is the only quoted price and therefore the only objectively verifiable one, an appropriate reference price. Third, it is not the case that all alcohol producers in the Community conclude annual supply contracts; it is certainly not the case in the United Kingdom. Lastly, the fact that French producers are insulated from monthly fluctuations in prices is in reality a consequence of the French organization of the market. The Commission supports this point of view, adding that even in Member States where annual contracts are concluded, they are not necessarily concluded at the same time of year and in any case nothing stops producers from obtaining additional supplies on the Rotterdam market.

At the hearing, the French Government contested this approach. In particular it argued that the ex-works price of a German

producer was not at all representative of prices in the Community as a whole. However, the French Government conceded that it had been unable to produce reliable statistics to undermine the effect or to show the contrary of the figures relied on by the Commission.

Taking all these factors into account, it is not shown, in my view, that the Commission erred in taking the cif Rotterdam price for imported cane molasses as a base reference for the notional Community equilibrium price. It seems to me that the Commission's evidence of the relationship between cane and beet molasses has not been met by the French Government's submissions. I accordingly reject the fourth argument.

The fifth argument is directed at Article 1(1)(b) of Regulation No 2541/84 as set out in Article 1 of the contested regulation (the equivalent provision in the original text of Regulation No 2541/84 being Article 1(2)(b)). This provision makes the charge applicable unless the 'alcohol has been denatured in accordance with the relevant provisions in France'.

It follows that the charge will be imposed on a consignment of non-denatured alcohol even if it is intended for denaturing in another Member State.

Although at first I had doubts as to whether it was necessary to impose the charge on alcohol denatured in France in accordance with the standards of the country of destination, I accept the Commission's explanation (which was not contradicted) that the only alcohol accepted as denatured in France would be that denatured according to French standards. Moreover, it seems to me, as the Commission points out, that the scheme of the countervailing charge would in any event be undermined if a purchaser in one Member State of alcohol which was not denatured in France but was to be denatured in that other Member State could buy it free of the charge. Accordingly, I am not satisfied that what was done went beyond the Commission's discretion or was unlawful.

France's sixth and final argument is that the contested regulation should be annulled in so far as the charge is imposed on all French alcohol exports including those the price of which exceeds the equilibrium price, which latter cannot be regarded as disturbing the market within the meaning of Article 46. The Commission replies that all alcohol produced in France, whatever its quality and price, benefits from the national market organization which, indeed, encourages exports since domestic sales are subject to a tax known as the 'soulte'. This latter argument seems to me to be right. I consider that the Commission was entitled to impose this charge across the board.

Accordingly, in my view, the application of the French Government should be regarded as admissible in its entirety but dismissed as unfounded. The applicant should, in my view, bear the costs of the Commission and of the United Kingdom Government.