

2. The Tariff Protocols of 16 July and 30 June 1967 are acts of the institutions of the Community within the meaning of subparagraph (b) of the first paragraph of Article 177 of the EEC Treaty and as such fall within the jurisdiction to give preliminary rulings conferred upon the Court of Justice.
3. In relation to the period before 1 July 1968, the Tariff Protocols of 16 July 1962 and 30 June 1967 did not protect individuals against the imposition by a Member State of a charge on products imported from non-member countries. In relation to the period after 1 July 1968, no provision of Community law prevented the imposition on the same products of a charge such as the duty for administrative services provided for by Law No 330 of 15 June 1950, in so far as it was already in existence on that date.

Mertens de Wilmars	Pescatore	O'Keeffe	Everling
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Delivered in open court in Luxembourg on 16 March 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President

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

*Mr President
Members of the Court,*

15 June 1950 on imports of goods from countries which are parties to GATT.

This opinion concerns two further cases on the compatibility with GATT of charges for administrative services imposed pursuant to the Italian Law of

The two plaintiffs in the main proceedings were partly successful in their claim before the Tribunale di Milano [District Court, Milan] that the

¹ — Translated from the German.

charges were unlawful and that consequently the charges which they had paid should be refunded. Article II (I) (b) of GATT, which the Court has had cause to consider in other cases,¹ was cited and the Amministrazione delle Finanze dello Stato [State Finance Administration, hereinafter referred to as "the Administration"] was ordered to make a refund in so far as the goods on which charges were imposed came within the schedule of concessions applicable to Italy (Schedule XXVII), as negotiated on the accession of Italy to GATT. Their claim was rejected, however, in so far as the goods were listed for the first time in Schedule XL (EEC), which, as the Court is aware from other cases, was not drawn up until the beginning of the 1960's, when the Community became involved. The Court clearly adopted the Administration's view that, since Schedule XL (EEC) laid down new duties without affecting the earlier system of duties, all that was relevant in considering the Italian charge for administrative services was whether the goods in question did or did not come within the original Italian schedule of concessions.

Thereupon the plaintiffs appealed to the Corte d'Appello [Court of Appeal], Milan. In their view the Administration was obliged to make a refund irrespective of whether the goods on which charges had been levied were mentioned in schedules of concessions, since the Italian law was incompatible with the prohibition in the preamble to GATT of charges which had not existed on the accession of Italy to GATT. In any event, there was an infringement of Article II (1) (b) of GATT even on the assumption that the goods were not included in the original Italian schedule of concessions, since Schedule XL (EEC) was to be understood as replacing the

original national schedules of concessions.

In view of those problems relating to the interpretation of GATT, the Corte d'Appello by orders dated 6 July 1981 stayed the proceedings pending before it and referred the following questions in like terms for both proceedings to the Court of Justice for a preliminary ruling:

- "1. By virtue of the matters set forth in the preamble to GATT, both in its original form, in which the Contracting States declared themselves desirous of reducing customs tariffs and other obstacles to trade and of eliminating discrimination in international commerce, and in the form adopted pursuant to the Geneva Protocol of 10 March 1955, which Italy ratified by Law No 1307 of 7 November 1977, in which the contracting States, by using the word 'desiring', undertook the abovementioned commitments, may the charge for administrative services established by Law No 330 of 15 June 1950 (after Italy's accession to GATT but prior to the Geneva Protocol) be regarded as compatible with the provisions of GATT, regardless of whether or not the imported goods are included in the original schedules of concessions and regardless of the fact that in the clause prohibiting increase of the pre-existing indirect charges on imports express textual reference is made only to those goods?
2. As a result of the substitution of Schedule XL (Common Customs Tariff) for Schedule XXVII, is the prohibition of the increase of pre-

¹ — Cases 267 to 269/81.

existing indirect charges on imports contained in Article II (1) (b) of GATT compatible, as from the effective date of that substitution (13 January 1963 in the case of Italy) with the charge for administrative services already in force if applied to goods not included in the original Schedule XXVII and included only in Schedule XL?"

Cases 267 to 269/81, namely that, because at that time the Community had not completely replaced the Member States in matters relating to tariffs, the case would have to be decided solely on the basis of Italian law in conjunction with the relevant provisions of GATT. I do not need now to give in detail the reasons for that view; in that regard I refer to the detailed observations which I made in my Opinion in Joined Cases 267 to 269/81.

My opinion on those questions is as follows:

1. The Corte d'Appello has not asked, as in Joined Cases 267 to 269/81, from what date the relevant GATT obligations are to be regarded as Community obligations.

That question may indeed be pertinent in the present proceedings, since we do not know from the information given to us when the imports at issue were effected and when the charges for administrative services were imposed upon them. In relation to Case 391/81, we know only that a refund is claimed for the period from 1960 to 1970, so that it may be assumed that the imports took place during that period.

Should it transpire that the events which have come before the Corte d'Appello for consideration took place wholly or partly before 1 July 1968, that is to say before the Common Customs Tariff entered into force, the position would be that described in response to the express inquiry by the national court in Joined

2. The *first question*, as put, cannot be answered, because the Court is not entitled, in proceedings under Article 177 of the EEC Treaty, directly to consider the compatibility of a national law with Community rules, that is to say the validity of national provisions. The question must therefore be re-worded so that the preamble to GATT and provisions of GATT have to be interpreted in the light of the Italian law on duties adopted after the accession to GATT. In that connection it must be resolved in particular whether, in view of the fact that Article II of GATT, which prohibits any increase in import duties, expressly refers to the schedules of concessions, the essential issue is whether the goods on which charges have been imposed were included in the original schedule of concessions.

Basically, as the observations of the plaintiffs in the main proceedings have made clear, the problem is whether GATT, after accession thereto, prohibits the introduction of new charges, irrespective of whether or not the goods affected are included in the schedules of concessions. In that regard I have said all that needs to be said in my Opinion in Joined Cases 267 to 269/81. After thorough consideration of all the arguments which were put forward, I came to the conclusion that GATT does

not in fact contain a "standstill" obligation as the plaintiffs claim.

The lawfulness of the Italian charge for administrative services cannot be challenged, just as it could not be challenged in the said cases, simply on the ground that the Italian law was passed after Italy's accession to GATT.

3. The *second question* — which also has had to be re-framed — seeks an interpretation of Article II (1) (b) of GATT with regard to the Italian charge for administrative services. In particular it must be decided whether, in a case in which the imported goods were not included in Schedule XXVII, the original schedule of concessions, but only in Schedule XL (EEC), the prohibition of any increase in import duties became effective only on the entry into force of the new schedule of

concessions. It is not quite clear whether the goods in question were also included in Schedule XL (EEC) as laid down after the conclusion of the so-called Kennedy Round.

If that is assumed to be the case, as the Commission considers right, then it is quite clear that the problems raised by the second question in the present proceedings are identical to those referred to last in Joined Cases 267 and 269/81. On that point too I can therefore content myself with referring to my Opinion in those cases and by way of summary simply observe that the levy of the Italian charge for administrative services does not appear to be incompatible with the GATT rules where the goods were not included in Schedule XXVII, the schedule of concessions applicable to Italy, but were included only in later schedules of concessions.

4. Accordingly, the following answers can be given to the questions put by the Corte d'Appello, Milan:

- (a) The provisions of GATT do not prohibit the levying on imported goods — regardless of whether or not they were included in the schedules of concessions — of charges which were not provided for at the time of the accession of the importing country to GATT.
- (b) If the imported goods were not included in the original schedule of concessions applicable to Italy (Schedule XXVII) but only in Schedule XL (EEC), which replaced it, then the prohibition in Article II (1) (b) of any increase in import duties applies only from the date of entry into force of the Protocol referring to Schedule XL (EEC).