

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 14 DECEMBER 1982¹

*Mr President,
Members of the Court,*

In the three cases to which I now turn the Court is asked to determine the legality, in the light of the provisions of GATT, of an Italian duty for administrative services, in so far as it was charged on imports from countries which were parties to GATT.

The duty was introduced by Law No 330 of 15 June 1950 and imposed on all imported goods at a rate of 0.5% of their value. As regards trade within the Community in goods other than agricultural products, for which special provisions on the organization of the market were applicable, the Commission determined in Directive 68/31/EEC of 22 December 1967 (*Journal Officiel* 1968, L 12, p. 8) that the duty was to be progressively abolished by 1 July 1968 at the latest, that is to say the date by which according to the so-called Acceleration Decision all customs duties between Member States were to be abolished. This was because the duty was regarded as a charge having an effect equivalent to a customs duty on imports, under Article 13 (2) of the EEC Treaty.

Because the Italian Republic failed to fulfil that obligation in time, the Commission brought an action under Article 169 of the EEC Treaty (cf. Case 8/70²). Later a reference was also made to the Court for a preliminary ruling in

Case 33/70³, in which it was decided in relation to trade within the Community that as from 1 July 1968 individuals had a direct right to have such charges equivalent to customs duties abolished; that right was based on the combined effect of Articles 9 and 13 of the EEC Treaty, the above-mentioned Acceleration Decision of 26 July 1966 and the directive of the Commission also referred to above.

On 24 June 1971 an Italian law was passed to abolish the contested duty. In relation to trade within the Community it had retroactive effect from 30 June 1968; in relation to imports from non-member countries, however, the law took effect from the date of its entry into force (1 August 1971).

A number of importers, the respondents in the main action, consider that that law is not satisfactory so far as imports from States parties to GATT are concerned. They rely upon the well-established case-law of the Italian Corte Suprema di Cassazione [Supreme Court of Cassation], according to which since Italy's accession to GATT (cf. the Annex Protocol of 10 October 1949 and the law by which it was ratified dated 5 April 1950), the provisions of GATT create subjective rights for individuals. Broadly, their view is that from the preamble to GATT and certain articles of GATT, in particular Articles II, VI and VIII, it is possible to infer a prohibition on the introduction of *new*

1 — Translated from the German.

2 — Judgment of 18 November 1970 in Case 8/70, *Commission of the European Communities v Italian Republic* [1970] ECR 961.

3 — Judgment of 17 December 1970 in Case 33/70, *SACE v Ministry of Finance of the Italian Republic* [1970] ECR 213.

charges on any goods, whether or not they are contained in schedules of concessions. In addition, they refer in particular to Article II (1) (b), which provides that:

"The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided for therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connexion with importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date."

They consider that that implies that there is a prohibition on increasing charges on importation in relation to goods which are included in the schedules of concessions, and that that applies from the date of the Annecy Protocol, to which the Italian Schedule of Concessions XXVII was annexed. They claim that that applies even if the goods in question were not included until later in national schedules of concession, such as the schedule annexed to the Torquay Protocol ratified by Italian law with effect from 27 October 1951, and that annexed to the Geneva Protocol, ratified by Italian law with effect from 2 January 1958, or if they did not appear until later in Schedule XL (EEC) which was negotiated by the Community together with the Member States during the negotiations of the so-called Dillon Round in 1960 to 1961 (cf. the decision of the Council of 3 July 1962 and the protocol of 16 July 1962) and amended during what is known as the Kennedy Round between 1964 and 1967 (cf.

Geneva Protocol of 30 June 1967 and Decision 68/411 of the Council of 27 November 1967, Official Journal, English Special Edition, Second Series I. External Relations (2), p. 228).

As a result, three legal actions were brought in order to obtain from the Amministrazione delle Finanze dello Stato [State Finance Administration, hereinafter referred to as "the Administration"] the refund of the amounts paid in respect of the duty for administrative services.

1. The first action concerns the importation of crude oil and shale oil from Kuwait, which is a party to GATT, between July 1964 and December 1967. It is not wholly clear whether the goods were already included in the Italian Schedule of Concessions XXVII, as is claimed by Società Petrolifera Italiana ["Petrolifera"] but disputed by the Italian Government and the Commission, or whether they appear in Schedule XL (EEC), as the Italian Government maintains and the Commission disputes.

2. The second case concerns the importation of various products between 1965 and 1971 from countries which were parties to GATT. The court which made the reference established that the goods were not, as the importer alleged, included in the original Italian Schedule of Concessions XXVII but were, as the Commission confirms, included in that schedule only on the basis of the Torquay Protocol. It also appears to be established that practically all of the goods were included in Schedule XL (EEC) as it appeared both after the Dillon Round and after the Kennedy Round.

3. Finally, the third case concerns the importation between October and December 1963 of various products from countries which were parties to GATT. Here again, the court of reference established that the goods in question

were not, as the importer alleged, included in the original Italian Schedule of Concessions XXVII, although the Commission contends that that view is incorrect in relation to *one* of the products; they were in fact included in the schedule partly by the Torquay Protocol and partly by the Geneva Protocol of 1956. Once again, it seems to be established that virtually all of the goods are included in Schedule XL (EEC) as it appeared both after the Dillon Round and after the Kennedy Round.

The defendant Administration took the view that so far as goods which were included for the first time in schedules drawn up *after* the original Schedule XXVII are concerned, the relevant amount of duty to be taken into consideration must be that which applied at the time when the *new* schedules were drawn up. Therefore the introduction of the duty for administrative services in 1950 cannot be regarded as a prohibited increase in import charges in particular in relation to the "bindings" effected during the Dillon Round. Accordingly an order was made providing for the refund of that charge only in so far as it was levied on goods which were included in the *original* Schedule of Concessions XXVII but not in relation to goods in respect of which concessions had been granted for the first time in Schedule XL (EEC).

However, the Italian courts allowed the claims for repayment in their entirety, as may be seen in the judgments of the Corte d'Appello [Court of Appeal], Genoa, of 26 January 1979 (as regards the first case) and 28 October 1977 (as regards the second case) and also from the judgment of the Corte d'Appello, Turin, of 25 February 1978 (in the third case). They held that the relevant date for determining the import duties which

were not to be increased was the date of Italy's accession to GATT (10 October 1949) and that it was also sufficient that the goods in question were included in Schedule XL (EEC), as that schedule had replaced Schedule XXVII.

The Administration lodged an appeal in cassation before the Corte Suprema di Cassazione. In view of the case-law of the Court of Justice, the Corte Suprema di Cassazione must consider once again, in these proceedings, whether it should uphold its case-law on the direct applicability of the provisions of GATT. It also identifies problems concerning the interpretation of GATT in relation to the arguments put forward by the importers concerning the prohibition on introducing *new* charges and concerning the relevant date for the purposes of Article II of GATT with regard to the prohibition on *increasing* charges. As in the proceedings which led to Case 266/81¹, moreover, the essential question before it is whether and since when the Court of Justice may under Article 177 of the EEC Treaty interpret the provisions of GATT and measures adopted under GATT, even if the validity of Community measures is not at issue.

By orders of 21 May 1981 the Corte Suprema di Cassazione therefore stayed the proceedings and referred to the Court of Justice a request for a preliminary ruling in all three cases on the following questions:

"(A) By way of a preliminary point: Since the Community has been substituted for the Member States with regard to the fulfilment of the obligations laid down in GATT

¹ — Case 266/81 — *Società Italiana per l'Oleodotto Transalpino v Ministero delle Finanze and Others*, in which I have just delivered an opinion.

and since it negotiated the concessions and bindings made within the framework thereof before 1 July 1968, do the provisions of GATT and the schedules thus negotiated fall (and if so, since when and subject to what limitations) within the measures on the interpretation of which the Court of Justice has jurisdiction to give a preliminary ruling under Article 177 of the Treaty, even where the national court is requested to apply them or to interpret them with reference to relations between parties for purposes other than that of determining whether or not a Community measure is valid?

- (B) If the foregoing question is answered in the affirmative: What, if any, are the effects which follow, within the legal order of the Community and within those of the Member States, from the fact that the Community has been substituted for the Member States with regard to fulfilment of the obligations laid down in GATT, and that it negotiated the new common schedule, XL (EEC)? If those effects occur at different times, what is their sequence? In particular, for the purpose of deducing therefrom a basis for the interpretation or a rule for the application of later national provisions which conflict with the provisions of GATT, is the national court obliged to take the view, having regard to the attribution of jurisdiction under Article 177 of the Treaty, that GATT, with specific reference to the provisions referred to in the following questions, operates at the level of a mere international obligation and has no direct effect internally, or

else that it does have such effect with regard to relations between parties, and, if the latter is the case, has GATT the same status as, or greater status than, the conflicting national provisions?

- (C) If an affirmative reply is given to Question (A) and whatever the reply to Question (B), with a view to providing the national court with guidelines relevant to the interpretation of the national provisions:

- (1) Does GATT — and in particular the preamble (now Article 1 (2)) in conjunction with Articles II (now III) (1) (b) and (2), III (now IV) (2), VI and VIII — prohibit the introduction for any product, whether or not included in the schedules referred to in Article II (now III), of new customs duties or other duties or charges of any kind imposed on or in connexion with importation?
- (2) In the case of the products included in the schedule of concessions granted by a State after its accession to GATT — and in particular, with regard to those States which are also members of the European Economic Community, in the case of goods included in the XL (EEC) Schedule drawn up on conclusion of, first, the Dillon Round and, secondly, the Kennedy Round — is the time which must be used as a reference to determine the level of the duties and other charges on imports covered by the

prohibition on increases laid down in Article II (now III) (1) (b) of GATT the date of accession to GATT or the date of the protocol introducing the new concession?"

2. In these cases, however, the first question also raises additional problems, on which it is now necessary to make special comment, first as regards the schedules negotiated in the framework of GATT laying down customs concessions and secondly as regards the question since when and to what extent the Court of Justice may be regarded as having jurisdiction to interpret GATT.

On those questions my opinion is as follows:

I — First question

1. The first question largely corresponds to the first question submitted in Case 266/81, cited above. To that extent, I may now simply refer to the relevant part of my opinion in that case.

(a) So far as determining the rôle of schedules in the general scheme of GATT is concerned, in particular where successive schedules have different contents, it should be noted that the schedules are negotiated in the framework of GATT and set out in special protocols. They are therefore agreements concluded in the context of GATT, and Article II (7) expressly provides that the schedules annexed to GATT constitute an integral part of Part I of GATT.

Essentially, then, it may be stated that since it is accepted that the Community has assumed the obligations of the Member States under GATT, the provisions of GATT should logically be treated in the same way as agreements concluded by the Community. From that it follows that under Article 177 of the EEC Treaty, the Court has jurisdiction to interpret GATT and that jurisdiction extends in principle not only to determining the validity of Community measures in relation to GATT but also to where an interpretation is required in relation to national law either to determine whether national provisions may be overridden by GATT or merely to interpret national law so as to conform to GATT.

In so far as the Community is a party to such an agreement, it therefore seems perfectly acceptable to speak of "acts of the Community" and to recognize that the Court of Justice has interpretative jurisdiction. That should be applicable as regards the results of the Dillon Round set out in Schedule XL (EEC) which replaced the national schedules of concessions, since the relevant protocol, which entered into force on 1 January 1963, was also concluded by the Community. It certainly also applies to the results of the Kennedy Round, since they were negotiated and concluded by the Community alone and resulted in the entry into force of the Common Customs Tariff on 1 July 1968.

(b) The question as to when the Court of Justice's jurisdiction to interpret the provisions of GATT began is, undoubtedly, rather more difficult. In that regard it should first be pointed out that the arguments in the main action related only to *charges on importation*, and therefore an answer is required only in relation to the obligations contained in GATT *in relation to such charges*.

The considerations to be found in the judgment in Joined Cases 21 to 24/72¹ undoubtedly constitute the main starting point for discussion. In that case, it is stated that the Community has assumed the functions inherent in the tariff and trade policy, progressively during the transitional period and in their entirety on the expiry of that period. Since the entry into force of the EEC Treaty and more particularly since the setting up of the common external tariff, the transfer of powers which has occurred in the relations between Member States and the Community has been put into concrete form in different ways within the framework of GATT and has been recognized by the other contracting parties; in so far as under the EEC Treaty the Community has assumed the powers previously exercised by Member States in the area governed by GATT, the provisions of that Agreement have the effect of binding the Community (paragraphs 14 to 18 of the Decision).

(aa) Therefore, the situation in relation to actual *customs duties* should not present any special difficulties.

With regard to non-member countries, the EEC Treaty provided for the progressive introduction of a customs union whereby during the transitional period national customs duties were to be aligned with the Common Customs Tariff and at the end of the period,

which was brought forward by the above-mentioned Acceleration Decision, the Common Customs Tariff was to become applicable. For the adjustment of national tariffs, which occurred for the first time on 1 January 1961, the Common Customs Tariff was originally applicable in the form in which it was laid down in a decision of the Council of 13 February 1960 (Amtsblatt 80 A of 20. 12. 1960, p. 1537 et seq.). At that time negotiations on the progressive abolition of customs duties were taking place in the framework of GATT; those negotiations in 1960 and 1961 were known as the Dillon Round, in which the Community took part in its own right alongside the Member States. The Dillon Round resulted in the establishment of the XL (EEC) common schedule of concessions, which according to the relevant protocol entered into force on 1 January 1963 and replaced the earlier national schedules (which became inapplicable so far as the Community was concerned) except in relation to coal and steel products. The national tariffs then had to be adjusted in accordance with the rates of duty provided for in Schedule XL (EEC), which were reproduced in the Common Customs Tariff. There were further GATT negotiations on tariff reductions in the framework of the Kennedy Round, which was also during the transitional period, and the resultant protocol, which entered into force on 1 January 1968, was signed by the Community alone. The first reduction of customs duties provided for in that protocol took effect on the entry into force of the Common Customs Tariff on 1 July 1968.

Thus so far as *customs duties* were concerned, during the transitional period there were no Community obligations under GATT within the meaning of the judgment of the Court I have referred to, precisely because there were only national obligations, involving a margin of discretion, to adjust national tariffs.

¹ — Judgment of 12 December 1972 in Joined Cases 21 to 24/72, *International Fruit Company NV and Others v Produktschap voor Groenten en Fruit* [1972] ECR 1219.

To that extent, it must be accepted that the Community was not fully substituted for the Member States until 1 July 1968, the date on which the Common Customs Tariff entered into force.

(bb) In the Commission's opinion, the origin of the Court of Justice's jurisdiction to interpret the customs rules in GATT must be the same for *other charges on imports* and the related obligations laid down in Article II of GATT. Both the representative of Michelin and the French Government, however, considered that that view was incorrect. The French Government stressed that even after 1 July 1968 the Member States retained their powers in relation to taxes. The representative of Michelin contended that, according to the case-law of the Court on charges having an effect equivalent to customs duties which already existed on 1 July 1968, Member States were prohibited only from increasing such charges, so that they could still be imposed, provided that there was no Community decision to the contrary; therefore, because the Community did not have exclusive jurisdiction, it should be considered whether the Community powers were effectively exercised. If they were not, and therefore there was no need for a uniform interpretation within the Community, the charges in question must be considered to be governed by national law alone; consequently there would be no possibility of an obligation of Community law arising from GATT, and any obligation should be assessed solely on the basis of national law and the effect of GATT thereon.

It is certainly not correct to refer here to national powers in relation to taxes, since we are concerned with import charges and therefore with measures in the field of external trade policy, in which it is well-known that the Community has had exclusive jurisdiction since the end of the transitional period, on 1 January 1970.

The relevant case-law also gives the impression that, for the purposes of the question at issue here, the decisive factor is not whether Community powers were exercised but rather whether or not such powers existed. Those powers have, however, certainly existed since 1 July 1968 since from that time — as is shown by the judgment in Joined Cases 37 and 38/73¹ — the Community could decide that charges having an effect equivalent to customs duties were incompatible with Community law in relations with non-member countries.

If, moreover, it is borne in mind that the concessions granted in the Kennedy Round, which are clearly relevant to the goods in dispute in the main action, were decided upon by the Community alone and that their value might be affected by the application of additional national charges having equivalent effect to customs duties after the concessions entered into force on 1 July 1968, and also the fact that Article II (1) (b) of GATT establishes a close connexion between import charges and the rules on customs duties, the only possible conclusion is that the Community was wholly substituted for the Member States with effect from 1 July 1968 in relation to any question relating to customs tariffs and therefore in relation to all obligations arising out of Article II of GATT.

However, it seems to me that the Commission should be followed on this point, too.

¹ — Judgment of 13 December 1973 in Joined Cases 37 and 38/73, *Sociaal Fonds voor de Diamantarbeiders v NV Indiamex and De Belder*, [1973] ECR 1609.

(cc) Consequently, as soon as the Common Customs Tariff became applicable in its entirety the provisions of GATT relating to import charges became obligations under Community law and therefore it must be accepted that the Court of Justice had jurisdiction to interpret those provisions from that time, because from that time the effects of GATT must be assessed exclusively in relation to Community law. Moreover, on the basis of the information set out in the orders making the reference concerning the dates on which the imports were effected, the facts in Cases 267 and 269/82 should be assessed as a result exclusively on the basis of the provisions of GATT in conjunction with domestic Italian law. It is only in relation to Case 268/82, in so far as it concerns imports effected after 1 July 1968, that a question of Community law arises, in respect of which the interpretation of the provisions of GATT by the Court of Justice may be important.

II — Second question

The second question asks in particular whether the provisions of GATT have direct effect in the national legal orders, whether they must where necessary be regarded as overriding any conflicting national law, and the sequence in which that occurs.

That question also overlaps substantially with the second question in Case 266/81, cited above. In this connexion I may therefore refer once again to my observations in the opinion in that case, especially since in drafting them I naturally took into account the subject-matter of these cases which were to

be dealt with at the same time, and I need only state briefly that in my view there can be no question of the provisions of GATT having direct effect within the meaning of the case-law of the Court of Justice.

It therefore appears unnecessary to go further into the question of the sequence of the effects of GATT. The same applies to the Commission's observations concerning in particular Article II of GATT, the principal provision at issue in these cases, attempting to show that that provision at least, does not have direct effect.

III — Third question

The third question relates to the interpretation of the actual provisions of GATT, and especially Article II. It is expressly stated that the question is asked regardless of the reply to the second question since, as is clear from the observations of the Corte Suprema di Cassazione and the Italian Government, the main actions obviously do not concern the resolution of a conflict between national law and the provisions of GATT. Because the Italian law on the duty for administrative services does not display a clear intention to disregard the rules of GATT, it is rather a question of ensuring, with the aid of an interpretation of GATT, that that law is applied in conformity with GATT. It must first be established whether GATT prohibits the imposition of new customs duties or other charges even on goods which are not included in the schedules of concessions drawn up in accordance with Article II, and therefore whether it imposes a sort of standstill in relation to the charges in existence at the time of accession to GATT. In addition, it must

be determined whether, for the purposes of the prohibition laid down in Article II (1) (b) of GATT on increasing charges on imports, the relevant time is the date of accession to GATT or the date of the adoption of a protocol containing *new* concessions, as regards products which are included in schedules of concessions and which, in particular, appear for the first time in Schedule XL (EEC).

1. As to the first part of the question, the importers claim on various grounds that GATT does contain such a prohibition. They refer to the preamble to GATT, which, as the Italian law by which it was ratified shows, must be regarded as part of GATT and which clearly speaks of the reduction of tariffs and other barriers to trade. In addition they refer to the spirit of GATT and also claim that, as regards the general scheme, parallels may be drawn with the EEC Treaty, especially Article 13 thereof. Furthermore, they believe that support for their point of view is to be found in Article II (2) in which only certain charges, but not those having an effect equivalent to customs duties, are regarded as permissible, and also in Article VIII, which lays down detailed rules in relation to Article II and quite generally, without reference to schedules of concessions, refers to the need to restrict fees and charges imposed on importation or exportation to the approximate cost of services rendered, and to reduce the number of such fees and charges.

Like the Commission, however, I consider that the importers' view is not tenable.

(a) For a start, the reference to the preamble to GATT and its spirit and the

attempt to draw a parallel with the EEC Treaty bears little weight.

The preamble to GATT, which also throws light on its spirit, refers — so far as is of interest here — only to the desire to contribute to the objectives of GATT by entering into arrangements directed to the substantial reduction of tariffs and other barriers to trade. It is further stressed that such arrangements are entered into on a reciprocal and mutually advantageous basis. It is in fact impossible to see how a standstill requirement can be inferred from that.

It is also clear from that that a comparison with the EEC Treaty is inappropriate, for the latter provided for the complete abolition of existing trade barriers within a relatively short time, whereas the general scheme of GATT, which applies over a longer period, provides not for the abolition, but only for a reduction of obstacles to trade and in addition permits the withdrawal of such concessions as may be granted from time to time.

(b) So far as charges on importation are concerned, the schedules of concessions and consequently Article II are of primary importance in the machinery of GATT. When Article II states that charges on imports other than customs duties must not be in excess of those imposed in the date of GATT, the words used — I refer to the words "*such* products" at the beginning of the second sentence of paragraph (1) (b) — show clearly that the prohibition refers not to all goods but only to products in respect of which concession are granted in schedules. There is also support for that view in the obvious aim of the provision, which is to prevent the value of concessions from being reduced as a result of other charges on imports, and that is confirmed by the transitional

provision contained in Article 4 of Italian Law No 330 of 15 June 1950. It would be difficult to understand the wording of the second sentence of Article II (1) (b) if a general prohibition on increasing charges on imports and introducing new charges of that kind were imposed on the States parties to GATT. Therefore Article II (2), to which the importers refer in that regard and which states that certain charges, namely charges equivalent to an internal tax, anti-dumping and countervailing duties and also fees commensurate with the cost of services rendered, are permissible "at any time on the importation of any product", cannot mean that other charges may never be imposed. It is more likely to refer chiefly to Article II (1) (b) and be intended to establish that the charges referred to are not affected by that provision.

(c) In addition, the Commission correctly stressed that other provisions also rule out the possibility of a standstill being imposed by GATT as, for example, that part of Article V which provides that "reasonable" charges are permissible, or equally Article VIII, which provides that fees and charges imposed on importation or exportation are to be limited in amount to the approximate cost of services rendered.

With regard to Article VIII, to which the importers also referred in support of their view, it may further be observed that that provision, in so far as it refers to the need to reduce fees and charges, constitutes not so much an absolute obligation as a guide or a programme, in view of the fact that Article VIII (2) states simply that the contracting parties are to take action in accordance with the

principles and objectives of paragraph (1) at the earliest practicable date.

(d) Finally, it is also important — and here I return to the schedules of concessions and their central rôle in the rules laid down in GATT concerning importation — that bindings are effected in each case for three years and may then be revoked. I refer here to Article XXVIII with its provisions on the modification of schedules which, if negotiations are not successful, may be undertaken unilaterally with the result that the concessions granted by other contracting parties may also then be withdrawn. Reference should also be made to Article XXVII, which provides that any contracting party is free to withhold or to withdraw in whole or in part any concession in respect of which such contracting party determines that it was initially negotiated with a government which has not become, or has ceased to be, a contracting party. The general aim should always be, in accordance with the principles contained in the preamble, to maintain a certain balance. However, it would obviously be considerably more difficult to achieve that aim if it were to be accepted that GATT imposed a standstill in relation to charges on importation even in respect of goods which are not included in any schedule of concessions.

(e) It must therefore be stated in answer to the first part of the third question that there is no provision in GATT imposing any general prohibition on increasing import charges in existence on accession by introducing new charges or increasing existing charges, and that therefore the Italian law on the duty for administrative services which was

adopted after ratification of the protocol of accession cannot, in that respect at least, be regarded as contrary to GATT.

2. As regards the second part of the third question, concerning the interpretation of Article II (1) (b) in relation to successive schedules of concessions with different contents, the court which made the reference correctly took the view that the expression "date of this Agreement" did not mean the date of the creation of GATT, but, where accession to GATT took place later, the date of accession. That is always expressly stated in the protocols of accession which have the same binding force as GATT itself.

Thus Paragraph 5 (a) of the Annecy protocol by which Italy acceded to GATT provides that:

"In each case in which Article II of the General Agreement refers to the date of that Agreement, the applicable date in respect of the schedules annexed to this protocol shall be the date of this protocol."

It must also be admitted that, where in the course of the application of GATT negotiations result in new concessions, the relevant date is always that of the protocol relating to the new concession. That is obviously the general practice in GATT, as is shown, for example, by the Protocols of Torquay and Geneva.

As regards the protocol signed at the end of the Dillon Round, in which the Community together with the Member States determined new common concessions on the occasion of the establishment of the Community Customs Union, not only was it made clear by the Commission — as the latter has shown — that the earlier national concessions were no longer effective, but Paragraph 5 (a) of the Geneva Protocol of 16 July 1962 clearly stated in relation

to the relevant date for the purposes of Article II (1) of GATT as follows:

"(i) The applicable date in respect of each product which is the subject of a concession provided for in the schedule annexed to this protocol of a contracting party or of Switzerland, if such product was not the subject of a concession provided for in the same part or section, of a schedule to the General Agreement of such contracting party or Switzerland on 1 September 1960, shall be the date of this protocol.

(ii) The applicable date in respect of each product which is the subject of a concession provided for in the schedule of the Community shall, when imported into the Kingdom of Belgium, the French Republic, the Federal Republic of Germany, the Republic of Italy, the Grand Duchy of Luxembourg or the Kingdom of the Netherlands, be:

(I) if the product was provided for in Part I of a schedule (or of a relevant section of a schedule) applicable to such contracting party on 1 September 1960: the date of the instrument by which such product was first provided for therein; provided, that a concession on such product has been continuously in effect since the entry into force of the concession provided for in such instrument.

(II) if the product was not so provided for on 1 September 1960: the date of this protocol."

Similarly, Paragraph 4 (a) of the Geneva Protocol of 1967, signed at the end of the Kennedy Round, stated as follows:

"In each case in which paragraph 1 (b) and (c) of Article II of the General

Agreement refers to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in a schedule annexed to this protocol shall be the date of this protocol, but without prejudice to any obligations in effect on that date."

The reservation contained in the last phrase of that provision is obviously a declaration similar to that which was included in Paragraph 5 (2) (1) of the protocol concluded at the end of the Dillon Round and which it was no

longer considered necessary to state expressly.

The answer to the second part of the third question is therefore quite clear. There can be no doubt that the prohibition contained in Article II (1) (b) of GATT on increasing charges on imports affects the Italian duty for administrative services only in so far as the goods concerned already appeared in the Italian Schedule of Concessions XXVII and were not included for the first time in schedules of concessions drawn up subsequently.

IV — In view of the considerations set out above, the questions referred to the Court by the Corte Suprema di Cassazione may be answered as follows:

1. In so far as the Community has been substituted for the Member States in relation to GATT, the Court of Justice has general jurisdiction, that is to say, not only in so far as the validity of Community acts is at issue, to interpret the provisions of GATT, including the agreements reached in the framework of GATT with the Community's participation in order to draw up schedules of concessions.

In relation to the provisions of GATT on customs duties and charges on imports, contained in particular in Article II, the date with effect from which the Court of Justice has jurisdiction to interpret GATT is the date of the entry into force of the Common Customs Tariff (1 July 1968).

2. The provisions of GATT are not directly applicable in the sense that they create rights on which individuals may rely before national courts in order to challenge national laws adopted subsequently which are not compatible with GATT.
3. (a) GATT does not prohibit the introduction of new customs duties or other charges on importation in respect of products which are not included in the schedules of concessions referred to in Article II.
- (b) Article II of GATT must be interpreted as meaning that, as regards products which are included in a schedule of concessions, the facts to be taken into account for the purposes of the prohibition on increasing customs duties and charges on importation are in principle those existing at the time of the conclusion of the protocol by which the new concession is introduced.