Greece have no bearing on the application of the countervailing charge established by Article 9 (3) of Regulation No. 816/70. This charge is a measure for stabilizing imports, and forms an essential part of the common organization of the market in wine, whereas the measures provided for by those Articles are designed solely to deal with difficulties due to abnormal market conditions.

In Case 181/73

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal de Première Instance of Brussels for a preliminary ruling in the action pending before that court between

la société de personnes à responsabilité limitée R. & V. HAEGEMAN, Brussels,

and

THE BELGIAN STATE, in the person of the Minister of Economic Affairs, Brussels,

on the interpretation of certain provisions of the Agreement of Association between the European Economic Community and Greece signed at Athens on 9 July 1961 and of Protocol No 14 mentioned in the final act of that Agreement, and on the validity of the countervailing charge imposed by Article 9 (3) of Regulation No 816/70 of the Council dated 28 April 1970, as applied to Greek wine imported into Belgium and the Grand Duchy of Luxembourg,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen, Presidents of Chambers, R. Monaco (Rapporteur), J. Mertens de Wilmars, P. Pescatore, H. Kutscher, C. Ó Dálaigh and A. J. Mackenzie Stuart, Judges,

Advocate-General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

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

I — Facts and written procedure

1. Prior to the coming into force of Regulation No 816/70 of the Council dated 28 April 1970 (OJ 1970, L 99) 'laying down additional provisions for the common organization of the market in wine' imports of Greek wine into Benelux territory were not subject to any customs duties or to any quantitative restrictions. Following the conclusions of the 'Agreement of Association between the European Economic Community and Greece' signed at Athens on 9 July 1961 (OJ 1963 No 26) (hereinafter called the Athens Agreement) Belgium, Luxembourg and the Netherlands undertook to apply to imports from Greece the treatment accorded to imports from Germany, France and Italy, which made no provision for the imposition of customs duties.

On 1 June 1970 Regulation No 816/70 came into force in the Community. Article 9 provides in particular for:

(i) the fixing of a reference price for red wine and a reference price for white wine:

(ii) the application where the free-at-frontier price for a wine, plus customs duties, is lower than the reference price, of a countervailing charge equal to the difference between these two prices.

'Detailed rules for establishing free-at-frontier offer prices and fixing the countervailing charge in the wine sector' were laid down by the Commission in Regulation No 1019/70 dated 29 May 1970, which similarly came into force on 1 June 1970 (OJ 1970, L 118).

The particular provisions of the Athens Agreement relevant to the questions asked are the following:

Protocol No 14, Paragraph 2

'The Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands shall apply to imports from Greece the treatment accorded to imports from Germany, France and Italy.'

Article 37 (2) (a)

'For agricultural products not included in the list contained in Annex III and by derogation from Articles 13, 14, 15, 17, 25, 26 and 27 of the Agreement, the Contracting Parties:

(a) shall refrain from introducing between themselves new customs duties on imports or exports or charges having equivalent effect and from increasing those which they already apply in their trade with each other at the date of entry into force of the Agreement.'

Article 41 (1)

'In so far as progressive abolition of customs duties and quantitative restrictions between the Contracting Parties may result in prices likely to jeopardize the attainment of the objectives set out in Article 39 of the Treaty establishing the Community, the Community and Greece may. from the date of the introduction of the common agricultural policy in the case of the

Community, and from the entry into force of this Agreement in the case of Greece, apply to particular products a system of minimum prices below which imports may be either

— temporarily suspended or reduced; or

— allowed, but subject to the condition that they are made at a price higher than the minimum price for the product concerned.

In the latter case the minimum prices shall not include customs duties.

Article 43

'Where a product is subject to a market organization or to internal rules having equivalent effect, or where a product is directly or indirectly affected by such a market organization for other products, and where the resulting disparity in the price of the raw materials used has a damaging effect on the market of one or more Member States or of the Community, on the one hand, or of Greece on the other, a countervailing charge may be applied to imports of that product by the Contracting Party concerned, in the absence of a countervailing charge on exports.

The amount of and the rules concerning this charge shall be determined by the Council of Association.

Until the decision of the Council of Association takes effect the Contracting Parties may determine the amount of and rules concerning the charge.'

The free-at-frontier price of Greek wine imported into Belgium and Luxembourg being lower than the reference price, a countervailing charge was applied to imports of this product into Belgium. The société (company) *R. and V. Haegeman* (hereinafter called Haegeman), wine importers, requested from the Commission exemption from payment of this charge in respect of current contracts made before the coming into force of Regulation No 816/70 but still in course of execution after this date (1 June 1970). This request was based on a reference to the Athens Agreement, particularly Protocol No 14 mentioned in the final act of that agreement 'concerning exports from Greece of wines of fresh grapes and grape must with fermentation arrested by the addition of alcohol', and also on the (company's) claim that the treatment envisaged in these documents for imports of Greek wine into Benelux territory did not fall under Article 9 of Regulation No 816/70.

The Commission, however, by letter dated 9 August 1971, replied that the desired exemption was not justified either in view of the common organization established in the wine market, or taking into account the Athens Agreement. This position was confirmed by letter dated 27 November 1971.

On 13 December 1971, Haegeman commenced a direct action (Case 96/71) before the Court of Justice applying for the annulment of this refusal and also for damages to compensate for the loss incurred. By judgment dated 25 October 1972 (Rec. 1972, p. 1005) the Court dismissed this application. The Court held firstly that the request for reimbursement of the disputed charge was a matter to be decided by the competent national authorities, and secondly that the question of the Commission's possible liability was in the context bound up with that of the legality of levying the charge.

By summons dated 16 May 1972, Haegeman commenced proceedings against the Belgian State, in the person of the Minister for Economic Affairs, claiming reimbursement of the amount of countervailing charges paid for the import of Greek wines into the territory of the Belgium-Luxembourg Economic Union since 1 June 1970. In support of their contentions Haegeman claimed that Regulation No 816/70 infringed Article 2 of Protocol No 14 mentioned in the final act of the Athens Agreement, and also Articles 37, 41 and 43 of that

Agreement. When this action was brought before the Tribunal de première instance of Brussels, the latter court decided, by judgment dated 17 October 1973, to suspend the proceedings and to refer to the Court of Justice, under Article 177 of the EEC Treaty, the following questions:

'1. What interpretation is to be given to the word "treatment" in paragraph 2 of Protocol No 14 annexed to the Agreement establishing an Association between the European Economic Community and Greece?

'2. Is the countervailing charge imposed by the Commission of the European Communities on Greek wines imported into Belgium and the Grand Duchy of Luxembourg a duty charge having equivalent effect within the meaning of Article 37 (2) of the said Agreement of Association?'

'3. Under Article 43 of the same Agreement of Association, is the Commission of the European Communities empowered to determine on its own, i.e., without reference to the Council of Association, the amount of the countervailing charge to be imposed on imports of Greek wine into the territory of the EEC, and the way in which it is to be collected?

'4. Assuming that the conditions for applying Article 41 of the Agreement of Association are satisfied, is it lawful for the Commission of the European Communities to put the protective measures for which it provides into operation otherwise than by means of a system of minimum prices, and, more particularly, by a system of countervailing charges levied by the Community?'

2. The judgment making the reference reached the Court on 7 November 1973.

The Société de personnes à responsabilité limitée R. & V. Haegeman, represented by its managing director, Mr Victor Haegeman, assisted by Jacques Putzeys, avocat at the Cour d'Appel of Brussels, the Belgian State, represented by the Minister for Economic Affairs, assisted by Adolf Houtekier, avocat at the Cour de Cassation of Belgium, and the Commission of the European Communities, represented by its Legal Adviser, Bernard Paulin, acting as agent, submitted observations under Article 20 of the EEC Statute of the Court of Justice.

Upon hearing the report of the Judge-Rapporteur, and the opinion of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Observations submitted under Article 20 of the EEC Statute of the Court

A — *Written observations submitted by Haegeman*

Haegeman recalls, regarding the *first question,* that one of the essential objectives of the Athens Agreement is the reservation for Greece of preferential treatment by comparison with other third States in dealings with Member States. It is with this objective in view that Paragraph 2 of Protocol No 14 accords to imports of Greek wines into the Benelux countries the same treatment as is applied by these countries to imports of wines from Germany, Italy and France.

These latter imports enjoy totally unrestricted treatment; so imports of wines from Greece also should not be subject to tariffs and quotas. It is erroneous (so it is claimed) to make a distinction in this connexion between the expression, *treatment accorded to imports,* on the one hand, and *treatment as regards tariffs and quotas* on the other. The treatment accorded to imports of Greek wines into the Member States consisting *solely* in restrictions by

way of tariffs and quotas, such a distinction is meaningless in the context. Further, it makes Paragraph 2 of Protocol No 14 quite meaningless in the case of Belgium, which does not apply customs duties or quotas to imports of German, Italian and French wines.

It is possible, on the other hand, to distinguish between the treatment accorded to Greek wines in process of importation and the treatment accorded them in process of movement in the territories of the Member States. But it is quite evident that the principle behind Protocol No 14 as defined above applies to the treatment of imports only. Since the countervailing charge is an element in the treatment of imports, the levying of it infringes Paragraph 2 of the said Protocol. Haegeman suggests the following answer to the first question:

'Paragraph 2 of Protocol No 14 annexed to the Agreement creating an Association between the European Economic Community and Greece is to be interpreted as relating to the treatment accorded to imports of Greek wines into the territory of the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands.'

With regard to the *second question* Haegeman maintains that since the expression countervailing charge has no fixed legal content, it must be defined in each concrete situation by reference to the purposes for which and results with which it has actually been imposed. In the context of Article 37 (2) (a) of the Athens Agreement there can be no doubt that this charge has effects equivalent to those of a customs duty, since it handicaps imports into the Member States and has the purpose and effect of protecting Community production by bringing the price of Greek wine up to the level of the reference price.

Haegeman argues that it is incorrect to equate the charge in question with a levy, in order to justify its application in reliance upon Protocol No 12, which, as regards Articles 12 and 37 of the Athens Agreement, expressly excludes the levies imposed within the framework of the common agricultural policy from being considered as charges having equivalent effect. In this context, it must not be overlooked that in cases like the present where the Community is bound by an Association Agreement imposing a standstill and forbidding any new customs duties or charges having equivalent effect, the question of the nature of a countervailing charge is to be decided not according to Community law, but according to international law. The solution in these cases must be reached (Haegeman argues) without losing sight of the rôle played by customs duties in international affairs, which is always to protect the national or Community market. Since the disputed charge fulfils this protective rôle *vis-à-vis* third countries, there can be no doubt that in an international context and more particularly in the context of the Athens Agreement, it ought to be considered as a charge having equivalent effect.

Furthermore, it is impossible to equate the countervailing charge with a levy owing to the fact that the charge in question does not fulfil the requirements and characteristic function of a financial mechanism of this kind. Since Greek wines enter the Benelux countries at prices lower than the reference price, the effects of the countervailing charge in the Community are not the same in every Member State.

Haegeman suggests the following answer to the second question:

The countervailing charge imposed by the Commission of the European Communities on the importation of Greek wines into Belgium and the Grand Duchy of Luxembourg is a charge having equivalent effect to a customs duty within the meaning of Article 37 (2) (a) of the Agreement of Association, and under international law it cannot be equated with a levy within the meaning of Protocol No 12.'

With regard to the *third question,* Haegeman points out that in the context

of Article 43 of the Athens Agreement the countervailing charge is envisaged as a measure giving protection to one contracting party and for that reason causing repercussions in the markets of the other contracting parties. This is precisely the reason why the authors of the Agreement laid down compulsory procedure for determining the amount of such a charge and the way in which it is to be collected. Under this procedure, only the Council of Association is empowered to make decisions, since the possibility mentioned in the last paragraph of Article 43 is only relevant to a special situation characterized by urgency and calling for the adoption of provisional measures. In the present case, however, it is certain that the countervailing charge was determined unilaterally by the Community, without even consulting the Council of Association. The following answer to the third question is accordingly suggested:

'Under Article 43 of the Agreement of Association the Commission of the European Communities is not empowered to determine on its own, i.e., without reference to the Council of Association, the amount of the countervailing charge or the way in which it is to be collected.'

Finally, as regards the *fourth question,* Haegeman maintains that although Article 41 (1) of the Agreement of Association allows the Community to adopt protective measures in order to prevent free trade between the Contracting Parties from bringing about prices likely to jeopardize the attainment of the objectives of Article 39 of the Treaty; it nevertheless leaves no choice as to the measures to be taken. The only measures which the Community may introduce consist in a system of minimum prices limiting to some extent the disadvantage necessarily experienced by the other Contracting Party. Such a system is not to be confused with the application of a countervailing charge. In the first place, the amount of the countervailing charge varies according to the free-at-frontier offer price of Greek wines and the reference price of Community wine, while minimum prices are necessarily fixed prices. Secondly, the countervailing charge, being levied by the Member States for the Community account, is of no benefit to Greece. For this reason, the application of a countervailing charge instead of a system of minimum prices gives the Community a twofold advantage to the detriment of Greece, and thus upsets the balance between the parties, contrary to the spirit and the letter of the Athens Agreement. Haegeman suggests that the fourth question should, therefore, be answered as follows:

'The provision made in Article 41 for an exceptional case of unilateral protection for the Communities can only be put into operation by means of a system of minimum prices and not by a system of countervailing charges.'

B — Observations submitted by the Belgian State

The Belgian State recalls that under the Athens Agreement and following the coming into force of Regulation No 816/70 imports of wine from Greece are subject to mixed treatment. Firstly they are either exempted from the imposition of customs duties (Benelux) or, within the limits of the tariff quotas opened, subject to duties lower than those of the Common Customs Tariff (France, Italy, Germany); while secondly, they are liable to a countervailing charge if their free-at-frontier offer price after the addition, even if notional (Benelux), of the customs duties of the Common Customs Tariff is lower than the reference price.

In view of this system, the basic question to be resolved is whether, after entering into the Athens Agreement, the Council has retained the power to impose a countervailing charge unilaterally on imports of Greek wines, or whether the introduction of this charge is forbidden to it, unless the procedure provided by

Article 43 of the Agreement has been applied.

As regards the *first question,* the Belgian State considers that the word 'treatment', in paragraph 2 of Protocol No 14, ought to be interpreted in the light of the objectives envisaged in this document. It emerges from paragraphs 1 and 3 in particular that the Protocol is dealing with the system of tariffs and quotas to be applied to imports of Greek wines by the Federal Republic of Germany, the French Republic and the Italian Republic. Paragraph 2, placed in the middle of this system of rules, when referring to 'the treatment accorded to imports from Germany, France and Italy' is thus only referring to the treatment accorded to those imports as respects tariffs and quotas, and is not concerned with the countervailing charge.

As regards the *second question,* the Belgian State maintains that the countervailing charge does not constitute a customs duty or a charge having equivalent effect. It is in the nature of a levy. Its introduction corresponds to the requirements of the common commercial policy and is covered by Protocol No 12 (1) of the Athens Agreement, under which

'The levy system envisaged within the framework of the common agricultural policy constitutes a measure specific to that policy which in the case of its application by either Party is not to be considered as a charge having equivalent effect to customs duties within the meaning of Articles 12 and 37 of the Agreement of Association.'

The very structure of this charge, the purpose with which and the way in which it is applied all go to show that it is a variable tax with the typical characteristics of a levy.

Regarding the *third question,* the Belgian State is of the opinion that the levying of the countervailing charge does not fall under Article 43 of the Athens Agreement. The imposition of this charge, which is in the nature of a levy, is covered by Protocol No 12 to the Agreement quoted above. Further, the conditions for the application of Article 14 were in the circumstances never realised. As appears from Paragraph 1 of this text, it is, in the circumstances, for the Greek authorities — and not the Community authorities — to claim the benefit of the Article in question, if they consider that the market organization concerned has a damaging effect, and to request a meeting of the Council of Association to levy a possible charge in Greece. Further, Article 43 does not, it is claimed, deal in an exhaustive fashion with all the cases in which a countervailing charge can be levied, but is limited to envisaging one well-defined case, without prejudice to other possibilities bound up with the application of the Treaty. Finally it must be borne in mind that, since Article 43 has no direct effect, the Haegeman company can show no case by invoking a possible infringement of it.

Regarding the *fourth question,* the Belgian State recalls that since the Community is able to introduce unilateral levies or countervailing charges equivalent to levies, Article 41 of the Agreement is not relevant in the circumstances.

C — *Observations submitted by the Commission of the European Communities*

The Commission begins by summarizing the essential outlines of the legal treatment accorded to imports of wines from Greece by the Member States of the Community as originally constituted, before and after the coming into force of Regulation No 816/70 (1 June 1970).

Prior to 1 June 1970, the system in question, consisting of customs duties and quotas, had varied considerably according to which Member State was the importer and whether it was one of the Benelux countries.

The coming into force of Regulation No 816/70 had not affected this system's

tariff structure which in conformity with Article 23 (3) of the EEC Treaty had, since 1 January 1970, been determined by the Common Customs Tariff. The system of commercial policy resulting from this Regulation entails in particular, as well as the possible application of a safeguard clause analogous to that found in the common organization of other markets, prohibition of charges having equivalent effect and of quantitative restrictions, as well as the fixing of a reference price. The prohibition of charges having equivalent effect and of quantitative restrictions has been of equal benefit to Greek wine. Further, since every country which is not a Member of the Community is a third country, and the Athens Agreement, far from forbidding it, gives express permission, it appeared resonable (in the view of the Commission) to extend the system of reference prices to Greece as to other third countries.

The levying of a countervailing charge under the conditions laid down in Article 9 is closely bound up with this system. It does not affect the special treatment as regards tariffs from which Greek wine continues to benefit. Whereas in Benelux these imports have only to pay a countervailing charge, imports of wines from other third countries are subject to the common duty system, involving, in addition, the payment of customs duties retermined by the Common Customs Tariff.

Finally, the problem to which Regulation No 816/70 gives rise in this context only concerns the Community as originally constituted, since the Athens Agreement is binding upon the new Member States only by virtue of an Additional Protocol currently in course of negotiation.

Proceeding to the examination of the questions asked, the Commission observes, concerning their admissibility, that the manner in which they have been formulated is not such as to enable the referring judge to reach a solution of the case. It is of equal and even paramount importance to know whether Article 9 (3) of Regulation No 816/70 is binding on the Community and is capable of conferring on interested parties a right enforceable at law, and if so, whether it is or is not in conformity with the relevant provisions of the Athens Agreement. It is only after these questions have been settled that the Belgian judge would be in a position to resolve the problem facing him. The essential question he should have addressed to the Court is:

'Whether Regulation No 816/70 — in so far as it provides for levying countervailing charges in respect of Greece also — is invalid as contrary to Articles 37 (2), 41 and 43 of the Athens Agreement and also to Paragraph 2 of Protocol 14 annexed thereto.

Passing finally to the examination of the substance of the question asked, the Commission, as a preliminary, points out that, as regards agriculture, the programme envisaged in Articles 33 to 36 of the Athens Agreement has been practically a dead letter, the political situation in Greece, since 21 April 1967, having led the Community to limit the application of the Agreement to what is strictly necessary. For this reason the only measures relating to agriculture which could be put into effect were the transitional systems mentioned in Article 37 of the Agreement and in the Protocols thereto; but these systems are concerned only with customs duties and quantitative restrictions, i.e., with the obstacles to free movement of goods in existence on 9 July 1961.

In giving its opinion on the *first two questions* the Commission stresses that the word 'treatment' used in Paragraph 2 of Protocol No 14 relates only to matters falling under this Protocol, i.e., treatment as respects customs duties and quantitative restrictions applicable to the imports in question. The theory according to which the word 'treatment' has a much wider meaning covering the totality of measures affecting these imports, produces absurd results.

Supposing that Paragraph 2 of Protocol 14 is intended to oblige the Benelux countries to accord Greek wines the same treatment which they must grant to French, German and Italian wines under Community Regulations, it would be necessary to conclude that the purpose and effect of the Protocol was to extend to the production of Greek wines, not only the provisions inherent in the common organization of the market, but also all the rules intended to make the customs union effective, including those relating to the movement of products within the Community. This is why the word 'treatment' used in Paragraph 2 of Protocol No 14 can only be interpreted as covering the treatment as regards tariffs and quotas regulated by this Protocol.

Since the countervailing charge provided for by Regulation No 816/70 cannot be equated either with a quantitative restriction or with a customs duty in the proper sense, it does not form a part of the 'treatment' as so defined. It is in the nature of the levies introduced within the framework of the common agricultural policy. These levies are applied in different ways. They may consist in a single variable charge taking the place of all other forms of protection at the frontier, or in the aggregation of two elements, one fixed, consisting of customs duty, the other variable, additional to the fixed element. In both cases the purpose of the levy is the same, i.e., to enable the price of the imported product to be brought up to the level fixed within the Community.

Further, even supposing that the disputed countervailing charge can in the abstract be equated with a charge having equivalent effect, this equation is excluded in the context both by the wording and by the intention of the authors of the Athens Agreement. For all these reasons, there are good grounds to conclude that this charge is in the nature of a levy and, as such, does not contravene the provisions of Article 37 (2) (a) of the Agreement.

After drawing attention to the fact that Greece itself apparently shares the Community's position, concerning both the concept of the levy and its legality under the Athens Agreement (Decree Law No 105, Official Journal of Greece No 145, 22 August 1965), the Commission concludes by suggesting the following answers to the first two questions:

'1. The word "treatment" occurring in Paragraph 2 of Protocol No 14 annexed to the Athens Agreement relates only to customs duties and quantitative restrictions.'

'2. The countervailing charge provided for by Regulation No 816/70 constitutes a levy within the meaning of Protocol No 12 annexed to the Athens Agreement and accordingly, under the terms of that Protocol, it cannot be considered either as a customs duty or as a charge having equivalent effect within the meaning of Article 37 (2) of the said Agreement.'

As regards the *two other questions* the Commission points out firstly that they are badly formulated and secondly that they are irrelevant. Firstly it is clear that the Commission never decided to impose countervailing charges on imports of Greek wine but merely implemented Regulation No 816/70 of the Council by fixing the charges provided for therein. Secondly the Commission never claimed or intended to act within the framework of Articles 41 and 43 of the Athens Agreement.

The reply to these questions should accordingly be as follows:

'3. The Community is only empowered to determine the amount of the charge referred to in Article 43 of the Athens Agreement and the way in which it is collected provisionally and while awaiting a decision of the Council of Association.'

'4. The system of minimum prices envisaged in Article 41 of the Athens

Agreement cannot be put into effect by a system of countervailing charges.'

This answer, however, does not put an end to the problem facing the Belgian court. It would be quite wrong to deduce from its negative form that the countervailing charge levied under Regulation No 816/70 is contrary to Articles 41 and 43 of the Athens Agreement and that this Regulation is accordingly invalid. In deciding upon the disputed measure the Community institutions never at any point relied upon the said Articles, which envisage clearly defined conditions, quite different from the facts of the present situation.

The Commission considers that when replying to these questions the Court should at the same time make it clear to the court of reference that its reply, particularly to the third and fourth questions, in no way implies that Regulation No 816/70, in so far as it provides for the levying of countervailing charges on Greek wines also, is invalid.

III — Oral procedure

Haegeman, the Belgian State and the Commission of the European Communities presented their oral observations at the hearing on 12 March 1974.

The Advocate-General delivered his opinion on 4 April 1974.

Law

1 By judgment dated 17 October 1973, registered at the Court of Justice on 7 November 1973, the Tribunal de première instance of Brussels, under Article 177 of the EEC Treaty, referred preliminary questions on the interpretation of Article 9 (3) of Regulation No 816/70 of the Council dated 28 April 1970 (OJ 1970, L 99) and of certain provisions of the 'Agreement creating an Association between the European Economic Community and Greece', concluded in virtue of the Council's decision dated 25 September 1961 and published in the Official Journal dated 18 February 1963 (p. 293/63), hereinafter called the Athens Agreement.

2 Under the first paragraph of Article 177 of the EEC Treaty 'the Court of Justice shall have jurisdiction to give preliminary rulings concerning... the interpretation of acts of the institutions of the Community.'

3 The Athens Agreement was concluded by the Council under Articles 228 and 238 of the Treaty as appears from the terms of the decision dated 25 September 1961.

4 This Agreement is therefore, in so far as concerns the Community, an act of one of the institutions of the Community within the meaning of subparagraph (b) of the first paragraph of Article 177.

5 The provisions of the Agreement, from the coming into force thereof, form an integral part of Community law.

6 Within the framework of this law, the Court accordingly has jurisdiction to give preliminary rulings concerning the interpretation of this Agreement.

7 The first question asks for a definition of the exact content and scope of the word 'treatment' occurring in Paragraph 2 of Protocol No 14 annexed to the Athens Agreement.

8 It emerges from the pleadings that the essential problem is whether the 'treatment' in this paragraph relates only to customs duties and quotas or to the general system under which Greek wines are imported into the Benelux countries.

9 Paragraph 2 of Protocol No 14 provides that:

'The Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands shall apply to imports from Greece the treatment accorded to imports from Germany, France and Italy.'

10 To interpret this provision it is necessary to examine it in the light of the general structure both of the Athens Agreement, of which it forms part, and of the totality of the provisions contained in the Protocol itself.

11 By the terms of Article 6 of the said Agreement, the Association established between the Community and Greece 'shall be based on a customs union which, save as otherwise provided in the Agreement, shall cover all trade in goods and shall involve the prohibition between Member States of the Community and Greece of customs duties on imports and exports and of all charges having equivalent effect, and the adoption by Greece of the Common Customs Tariff of the Community in its relations with third countries.'

12 The functioning and development of the Association, in respect of agricultural products in particular, should, under Article 33 of the Agreement, be accompanied by progressive harmonization of the agricultural policies of the Community and Greece.

13 This harmonization is made subject firstly to the progress made by the Community in establishing its own common agricultural policy and secondly

to effect being given to the procedure contained in Articles 34 and 35 of the Agreement.

14 In anticipation of such harmonization agricultural products are subject to a treatment defined in Article 37 of the Agreement, involving, for products appearing in the list in Annex III, the gradual elimination of customs duties and import quotas as well as of charges and measures having equivalent effect.

15 The treatment for products not occurring in the abovementioned list consists in the consolidation of the national measures in respect of tariffs and quotas applied by the Contracting Parties at the time of the coming into force of the Agreement and in the extension to their trade with each other of the concessions respecting tariffs and quotas granted to third countries.

16 Further, in the case of agricultural products, Protocol No 12 annexed to this Agreement provides for the eventuality of these becoming subject to the levy system envisaged within the framework of the common agricultural policy.

17 It appears from these arrangements that the object of the Athens Agreement is the achievement of union, with three reservations: the time limits provided under the Agreement, the special advantages in the field of tariffs and quotas secured for Greek exports of certain agricultural products, and the freedom guaranteed to the Community by Protocol No 12 to decide the necessary measures for bringing the common agricultural policy into operation.

18 Since Protocol No 14 provides for the extension to Greek wine exports of the concessions granted, or which might be granted, by the Member States in their trade with each other, it properly belongs among these arrangements.

19 For this reason alone it is clear that the subject matter of Paragraph 2 of this Protocol is solely concerned with the customs duties and quotas applicable to Greek wine exports.

20 Further, this paragraph occurs in a provision which, in the case of exports of Greek wines into Germany, France and Italy, deals exclusively with questions of tariffs and quotas.

21 It must therefore be concluded that the word 'treatment' in Paragraph 2 of Protocol No 14 annexed to the Agreement creating an Association between the

European Economic Community and Greece must be understood as referring only to questions of customs duties and quantitative restrictions.

22 The second question asked is whether the countervailing charge imposed by the Commission of the European Communities on Greek wines imported into Belgium and the Grand Duchy of Luxembourg is a duty or charge having equivalent effect, within the meaning of Article 37 (2) of the said Agreement of Association.

23 Under the first paragraph of Article 9 (3) of Regulation No 816/70 'where the free-at-frontier offer price for a wine, plus customs duties, is lower than the reference price for that wine, a countervailing charge equal to the difference between the reference price and the free-at-frontier offer price plus customs duties shall be levied on imports of that wine and of wines in the same category.'

24 The essential purpose of this charge, according to the fourth recital in the Preamble to this Regulation, is to avoid disturbances on the Community market caused by offers made on the world market at abnormal prices.

25 It appears, therefore, from this arrangement that the charge in question is determined by reference to a price level fixed in accordance with the objectives of the common market, is payable at a variable rate, susceptible to fluctuation according to unforeseeable economic trends, and thus plays a stabilizing rôle in the Community market in wine.

26 Such a charge constitutes a levy inseparable from the establishment of a common organization of the market in wine.

27 If this charge fails to fulfil its protective purpose in the case of imports of Greek wines into the Benelux countries, this does not affect its nature in law, but is due solely to the privileged character of the treatment secured for these imports.

28 The said levy falls under the measures adopted within the framework of the common agricultural policy, in particular under the additional provisions for the common organization of the market in wine laid down by Regulation No 816/70.

29 The first paragraph of Protocol No 12 annexed to the Athens Agreement reserves freedom for the Community by providing that

'the levy system envisaged within the framework of the common agricultural policy constitutes a measure specific to that policy which in the case of its application by either Party is not to be considered as a charge having equivalent effect to customs duties within the meaning of Articles 12 and 37 of the Agreement of Association.'

30 The reply to the second question must, accordingly, be that the countervailing charge imposed on Greek wines imported into Belgium and the Grand Duchy of Luxembourg under Article 9 (3) of Regulation No 816/70 constitutes a levy within the meaning of Protocol No 12 annexed to the Agreement of Association between the European Economic Community and Greece and cannot, under the terms of that Protocol, be considered either as a customs duty or as a charge having equivalent effect within the meaning of Article 37 (2) of that Agreement.

31 The third question asked is whether, under Article 43 of the Athens Agreement, the Commission of the European Communities is empowered to determine on its own, i.e., without reference to the Council of Association, the amount of the countervailing charge to be imposed on imports of Greek wine into the territory of the EEC, and the way in which it is to be collected.

32 The fourth question is whether, assuming that the conditions for applying Article 41 of the Agreement of Association are satisfied, it is lawful for the Commission of the European Communities to put the protective measures for which it provides into operation otherwise than by a system of minimum prices, and, more particularly, by a system of countervailing charges levied by the Community.

33 Articles 41 and 43 of the Agreement deal with special cases characterized either by a disturbance likely to jeopardize the attainment of the objectives set out in Article 37 of the EEC Treaty, or by the existence of a damaging effect on the market of one or more Member States or of the Community, on the one hand, or of Greece, on the other.

34 It appears from these provisions that the measures laid down therein have the sole object of coping with difficulties due to abnormal market situations.

35 The disputed countervailing charge, on the other hand, is a measure for stabilizing imports, and forms an essential part of the common organization of the market in wine.

36 Articles 41 and 43 of the Agreement therefore having no bearing on the application of this charge, the questions relating to their interpretation are in the circumstances irrelevant.

Costs

37 The costs incurred by the Belgian State and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

38 As these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tribunal de Première Instance of Brussels by judgment of that court dated 17 October 1973, hereby rules:

1. **The word 'treatment' in Paragraph 2 of Protocol No 14 annexed to the Agreement creating an Association between the European Economic Community and Greece must be understood as referring only to questions of customs duties and quantitative restrictions.**

2. **The countervailing charge imposed on Greek wines imported into Belgium and the Grand Duchy of Luxembourg under Article 9 (3) of Regulation No 816/70 constitutes a levy within the meaning of Protocol No 12 annexed to the Agreement of Association between the European Economic Community and Greece and cannot, under the terms of that Protocol, be considered either as a customs duty or as a charge having equivalent effect within the meaning of Article 37 (2) of that Agreement.**

3. **Articles 41 and 43 of the Agreement of Association between the European Economic Community and Greece have no bearing on the**

application of the countervailing charge imposed by Article 9 (3) of Regulation No 816/70.

Lecourt Donner Sørensen Monaco Mertens de Wilmars
Pescatore Kutscher Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 30 April 1974.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 2 APRIL 1974

My Lords,

This reference for a preliminary ruling by the Tribunal de première instance of Brussels is a sequel to Case 96/71 *R. & V. Haegeman v Commission* (Rec. 1972, p. 1005).

Your Lordships will remember that the S.P.R.L. R. & V. Haegeman (which I shall call 'the Plaintiff') is a company carrying on business in Brussels as an importer of wine, and in particular of Greek wine. It was the Applicant in Case 96/71 and is the Plaintiff in the present proceedings, in which the Defendant is the Belgian State.

The Plaintiff seeks repayment of 'countervailing charges' exacted from it by the Belgian customs authorities, in pursuance or purported pursuance of Regulation (EEC) No 816/70 of the Council and of the Community legislation implementing that Regulation, on certain importations into Belgium of Greek wine.

The amount of the charges at stake is, according to the Plaintiff, of the order of 30 million Belgian francs. The contention of the Plaintiff is, in brief, that the imposition of those charges was unlawful having regard to the terms of the Agreement of Association between the EEC and Greece which was signed at Athens on 9 July 1961.

Most of the arguments put forward on behalf of the Plaintiff in support of that contention were dealt with by Mr Advocate-General Mayras in his Opinion in Case 96/71 and it may be helpful if I say at once that I respectfully agree with all that he said about them. I say 'most' because, in the present proceedings, some additional arguments are put forward on behalf of the Plaintiff, with which Mr Advocate-General Mayras did not have occasion to deal.

Your Lordships will remember that, in July 1961, when the Agreement of Association with Greece was signed, the common agricultural policy provided for by Articles 38 *et seq.* of the EEC Treaty had not yet been adopted. It is plain however from a perusal of that