JUDGMENT OF THE COURT (Sixth Chamber)
5 October 1995 *

In Case C-125/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Giudice Conciliatore (Judge-Conciliator), Milan, for a preliminary ruling in the proceedings pending before that court between

Aprile Srl, in liquidation,

and

Amministrazione delle Finanze dello Stato,

on the interpretation of Articles 3(a) and (h), 5, 9, 11, 12, 13, 16 and 189 of the EEC Treaty and Council Directive 83/643/EEC of 1 December 1983 on the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States (OJ 1983 L 359, p. 8), as amended by Council Directive 87/53/EEC of 15 December 1986 (OJ 1987 L 24, p. 33),

THE COURT (Sixth Chamber),

composed of: F. A. Schockweiler (Rapporteur), President of the Chamber, C. N. Kakouris, J. L. Murray, G. Hirsch and H. Ragnemalm, Judges,

* Language of the case: Italian.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Aprile Srl, by E. Beretta and A. Bozzi, of the Milan Bar,

— the Italian Government, by Professor U. Leanza, Head of the Department of Contentious Diplomatic Affairs, Ministry of Foreign Affairs, acting as Agent, assisted by F. Favara, Avvocato dello Stato,

— the Danish Government, by P. Biering, Head of Division, Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by A. Aresu, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Aprile Srl, the Italian Government, represented by Professor U. Leanza, assisted by M. Fiorilli, Avvocato dello Stato, the Danish Government, represented by P. Biering and G. Larsen, Kammeradvocat, and the Commission at the hearing on 11 May 1995,

after hearing the Opinion of the Advocate General at the sitting on 29 June 1995,

gives the following

Judgment

1 By order of 26 April 1994, received at the Court Registry on 29 April 1994, the Giudice Conciliatore, Milan, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty five questions on the interpretation of Articles 3(a) and (h), 5, 9, 11, 12, 13, 16 and 189 of the EEC Treaty, now the EC Treaty, and Council Directive 83/643/EEC of 1 December 1983 on the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States (OJ 1983 L 359, p. 8), as amended by Council Directive 87/53/EEC of 15 December 1986 (OJ 1987 L 24, p. 33).

2 Those questions were raised in proceedings brought by Aprile Srl, a company governed by Italian law, now in liquidation (hereafter 'Aprile'), against the Amministrazione delle Finanze dello Stato (State Finance Administration, hereafter 'the Administration') concerning the latter's refusal to repay to Aprile certain charges collected in breach of Community law in respect of customs transactions.

3 In its judgments in Case 340/87 *Commission* v *Italy* [1989] ECR 1483 and Case C-209/89 *Commission* v *Italy* [1991] ECR I-1575, the Court held that the Italian Republic had failed to fulfil its obligations under the provisions of the Treaty concerning the prohibition of charges having an effect equivalent to customs duties by charging traders in respect of intra-Community trade the cost of inspections and administrative formalities carried out during part of the normal business hours of customs offices at frontier posts as determined by the second indent of Article 5(1)(a) of Council Directive 83/643, as amended by Council Directive 87/53, and by requiring from each undertaking individually, where services are rendered simultaneously to several undertakings individually, in connection with the completion of customs formalities in intra-Community trade, payment of an amount disproportionate to the cost of the services provided.

4 The Italian Republic complied with those judgments by amending its rules with effect from 13 June 1991 and 1 November 1992 respectively. However, those measures did not apply to situations existing before their entry into force, in particular the repayment by the Administration to the traders concerned of amounts collected by the customs offices in breach of Community law.

5 Aprile, which operated as a customs agent at Milan airport and was declared insolvent on 20 October 1992, paid the Italian Administration fees of LIT 933 200 in respect of customs transactions carried out on 22, 23, 24 and 26 November 1990 on the basis of national rules which were held to be incompatible with Community law by the abovementioned two judgments.

6 On 30 March 1994, the administrator of the insolvent company instituted proceedings before the Giudice Conciliatore, Milan, to secure reimbursement of that sum of LIT 933 200.

7 In those proceedings, the Administration contended that the claim was unfounded. It argued, first, that the conditions laid down in the second paragraph of Article 29 of Italian Law No 428 of 29 December 1990 giving effect to the obligations attaching to Italy by virtue of its membership of the European Communities (ordinary supplement to GURI (Italian Official Gazette) No 10 of 12 January 1991, hereafter 'Law No 428') were not fulfilled since the costs of the customs transactions at issue had not been borne by Aprile but had been passed on by it to third parties. Secondly, the imports giving rise to the collection of the charges comprised in part goods from non-member countries, in particular members of the European Free Trade Association (hereafter 'EFTA'), with the result that Community law did not apply to the claim as a whole.

8 By derogation from the ordinary law, the second paragraph of Article 29 of Law No 428, which entered into force on 27 January 1991, makes the reimbursement of charges collected pursuant to national provisions that are incompatible

with Community law subject to the condition that the charge unduly paid by the trader has not been passed on to other persons, thereby ensuring that the claimant is not unjustly enriched. It is apparent from the documents before the Court that the Italian courts tend to assume that the charge has been passed on to third parties. Moreover, the provision in question applies even if reimbursement is sought of sums paid before the entry into force of Law No 428. Finally, claims for reimbursement of sums paid in respect of customs formalities are time-barred after three years, whereas the limitation period under the ordinary law is ten years.

9 The five questions submitted to the Court by the Giudice Conciliatore, Milan, by his order of 26 April 1994 concerned, first, the assessment of the abovementioned provisions of Law No 428 in relation to Community law (first, second and third questions) and, secondly, the applicability to trade with non-member countries of Directive 83/643, as amended by Directive 87/53, and of the provisions of the Treaty concerning the prohibition of charges having equivalent effect (fourth and fifth questions).

10 According to an order made by the Giudice Conciliatore, Milan, on 5 May 1995 and received at the Registry of the Court of Justice on 8 May 1995, the Administration conceded in the main proceedings that Article 29 of Law No 428 was not applicable to Aprile's claim for reimbursement, in view of the non-fiscal nature of the disputed payments, and that it therefore withdrew its defence submissions based on that provision.

11 In those circumstances, the Giudice Conciliatore stated, in his order of 5 May 1995, that an answer to the first three preliminary questions was unnecessary and requested that the Court give a ruling only on the fourth and fifth questions set out in his order of 26 April 1994.

12 Those questions are as follows:

1. 'Pursuant to the EEC regulations implementing in the Community the EEC/EFTA agreements, their additional protocols and subsequent amendments, are the provisions of Council Directive 83/643/EEC also applicable to customs transactions relating to EEC/EFTA trade and products covered by those agreements and subsequent amendments? In particular, with reference to customs transactions relating to products covered by the EEC/EFTA agreements, is legislation of a Member State such as Article 15 of Presidential Decree No 254 of 8 May 1985 and Article 11 of Presidential Decree No 43 of 23 January 1973, Article 11(2)(b) of which limited (contrary to the second indent of Article 5(1) of Council Directive 83/643/EEC of 1 December 1983) the normal business hours of customs offices to six hours daily from Monday to Friday and authorized the charging of the cost of the service for customs transactions effected outside normal business hours, compatible with the abovementioned provisions of Community law?' (fourth question);

2. 'In order to complement and clarify the findings expressly relating to intra-Community trade in the judgment in Case C-209/89 *Commission* v *Italy* [1991] ECR I-1575, are the principles set out in that judgment also applicable to trade with non-member countries and with members of EFTA by virtue of the rules of the EEC Treaty on the prohibition of charges having equivalent effect to customs duties, the Customs Union and the establishment of the Common Customs Tariff and the ensuing secondary legislation? In particular, do the aforementioned provisions of Community law prohibit, with regard also to customs transactions relating to trade with non-member countries, the enactment and/or the retention by a Member State of national legislation — such as that laid down by the Ministerial Decrees of 29 July 1991 (GURI No 193 of 31 July 1971) and 30 January

1971 (GURI of 5 February 1979) — pursuant to which private traders were charged for the cost of services "outside normal business hours", not on the basis of the cost per hour of the personnel actually engaged in the customs transactions requested, which are provided at the same time for the forwarding agent, but a single fee for each customs transaction requested, corresponding to the category and duration of the most costly service rendered, and which is in no way related to the charge levied separately for each of the other customs transactions requested by the forwarding agent and provided at the same time?' (fifth question).

Admissibility

13 According to the Italian Government, those questions are inadmissible since they are abstract, irrelevant and are not needed to enable a decision to be given in the main proceedings. It contends that the national court failed to indicate the non-member countries of origin of the goods in respect of which the charges whose reimbursement is sought by Aprile were paid.

14 It is common ground that the imports at issue did not comprise exclusively goods from other Member States. It is apparent from the order for reference that, in the main proceedings, the Administration itself stated that some of the goods imported by Aprile, attracting the charges of which repayment is sought, came from non-member countries.

15 Accordingly, in his order of 26 April 1994, the Giudice Conciliatore, Milan, considered it necessary to ask the Court whether Directive 83/643, as amended by Directive 87/53, and the principles laid down with respect to intra-Community trade by the judgment in Case C-209/89, regarding the prohibition of

charges having an effect equivalent to customs duties, also apply to trade with non-member countries.

16 By virtue of the cooperation between the Court of Justice and the national courts provided for by Article 177 of the Treaty and in accordance with settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of each case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (see, for example, Case C-127/92 *Enderby* [1993] ECR I-5535, paragraph 10).

17 Consequently, where the questions submitted by the national court concern the interpretation of a provision of Community law, the Court of Justice is, in principle, bound to give a ruling (Case C-83/91 *Meilicke* [1992] ECR I-4871, paragraph 24).

18 As regards the terms of the national court's order for reference in this case, it is true that it does not contain an exhaustive account of the factual and legal context in which the questions were raised: in particular, it does not specify the non-member countries in which the goods at issue originated.

19 However, that fact is not such as to render the questions inadmissible since it has been established that some of the goods imported by Aprile, which attracted the charges of which that company seeks reimbursement, originated in non-member countries.

20 In those circumstances, the Court, far from being asked to rule on a hypothetical problem, has sufficient information at its disposal regarding the circumstances with which the main proceedings are concerned to enable it to interpret the rules of Community law and to give a helpful answer to the questions submitted.

21 It will then be for the referring court to determine, on the basis of the factual circumstances of the case before it, the exact origin of the goods concerned and, therefore, the legal rules applicable to them.

The first question

22 By this question, the national court essentially asks whether Directive 83/643, as amended by Directive 87/53, especially the second indent of Article 5(1)(a) thereof, is applicable to customs transactions in respect of goods from non-member countries, in particular members of EFTA.

23 According to its title, Directive 83/643, as amended, concerns 'the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States'.

24 Pursuant to Article 1(1) of Directive 83/643,

'Without prejudice to individual provisions in force in the framework of general or specific Community rules, this Directive shall apply to physical inspections and

administrative formalities, hereafter referred to as "inspections and formalities", concerning the transport of goods which have to cross:

— an internal frontier within the Community, or

— an external frontier, where carriage between Member States involves crossing a third country.'

25 It follows that that directive applies only to the carriage of goods between Member States and not to trade with non-member countries.

26 That interpretation is confirmed by the preamble to the directive.

27 However, as is clear from the wording of Article 1(1) of the directive, it does not preclude Community rules, including those governing trade with non-member countries, from laying down special provisions in that connection.

28 The answer to the first question must therefore be that, without prejudice to the application of special Community provisions in force governing trade with certain non-member countries, Directive 83/643, as amended by Directive 87/53, in

particular the second indent of Article 5(1)(a), is not applicable to customs formalities in respect of goods from non-member countries, in particular members of EFTA.

The second question

29 By this question, the national court seeks essentially to establish whether the principles concerning the prohibition of charges having an effect equivalent to customs duties laid down by the Court in relation to intra-Community trade in its judgment in Case 209/89, cited above, are applicable to trade with non-member countries, in particular members of EFTA.

30 In that judgment, the Court held that the Italian Republic had contravened the prohibition of charges having an effect equivalent to customs duties within the meaning of Articles 9, 12, 13 and 16 of the Treaty by applying rules, adopted in 1971 and 1979, requiring from each undertaking individually, where services were rendered outside the customs area or outside normal office hours to several undertakings at the same time, in connection with the completion of customs formalities in intra-Community trade, payment of a fixed-rate charge corresponding to one hour's work.

31 In order to give a helpful answer to the national court, it is necessary, first, to consider whether the Member States are entitled unilaterally to impose charges having equivalent effect in trade with non-member countries and, secondly, to determine the scope of the prohibition of such charges contained in the agreements concluded by the Community with non-member countries or in Community regulations governing trade with non-member countries.

32 Regarding the first point, it must be borne in mind that the Customs Union, which, under Article 9 of the Treaty, is to cover all trade in goods, incorporates a Common Customs Tariff intended to bring about equalization of the charges borne at the external frontiers of the Community by products imported from non-member countries, in order to ensure that trade with such countries is not diverted and that the free movement of products between Member States and the conditions of competition between economic agents are not distorted.

33 As regards the common commercial policy, based, pursuant to Article 113 of the Treaty, on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements and the achievement of uniformity in measures of liberalization, it implies that national disparities of a fiscal and commercial nature affecting trade with non-member countries must be abolished.

34 Both the unicity of the Community customs territory and the uniformity of the common commercial policy would be seriously undermined if the Member States were authorized unilaterally to impose charges having equivalent effect to customs duties on imports from non-member countries.

35 It has thus been consistently held that the Member States have no right unilaterally to add national charges to the duties payable under the Community rules, otherwise such rules might be deprived of the requisite uniformity (see, in particular, Case 70/77 *Simmenthal* v *Amministrazione delle Finanze dello Stato* [1978] ECR 1453, Case 266/81 *SIOT* v *Ministero delle Finanze* [1983] ECR 731, Joined Cases 267/81, 268/81 and 269/81 *Amminstrazione delle Finanze dello Stato* v *SPI and SAMI* [1983] ECR 801, and Case C-209/89 *Commission* v *Italy*, cited above).

36 In order to ensure that taxation has a uniform impact in all the Member States on trade with non-member countries, it is therefore the responsibility of the Community alone to determine and, if necessary, change the level of duties and taxes payable on products from those countries.

37 It follows that the Member States may not impose, by way of national legislation alone, charges having equivalent effect in trade with non-member countries.

38 Regarding the second point, it must be noted, as the Advocate General stated in paragraphs 43 and 44 of his Opinion, that the prohibition of charges having equivalent effect is laid down expressly in a number of bilateral or multilateral agreements concluded by the Community with one or more non-member countries with a view to eliminating obstacles to trade, and in the Council regulations providing for common organization of the markets in various agricultural products and regulating trade with non-member countries.

39 In those circumstances, there is no reason to interpret the prohibition of charges having an effect equivalent to customs duties differently depending on whether the trade concerned is conducted within the Community or with non-member countries under the abovementioned agreements or regulations governing particular sectors.

40 The purpose of such agreements is to consolidate and extend the economic relations existing between the parties and, in pursuit of that aim, to eliminate obstacles

to trade, including import customs duties and charges having equivalent effect closely linked with them. Those agreements would be deprived of much of their effectiveness if the term charge having equivalent effect contained in them were to be interpreted as having a more limited scope than the same term appearing in the Treaty (Case C-163/90 *Legros and Others* [1992] ECR I-4625, paragraph 26).

41 *A fortiori*, the same reasoning must apply to determination of the scope of the prohibition of charges having equivalent effect contained in the regulations providing for common organization of the agricultural markets which govern trade with non-member countries (see, for example, Case 43/71 *Politi* v *Italy* [1971] ECR 1039, paragraph 7).

42 In view of all the foregoing, the answer to the second preliminary question must be that the Member States are not entitled unilaterally to impose charges having equivalent effect in trade with non-member countries. Where the prohibition of such charges is contained in bilateral or multilateral agreements concluded by the Community with one or more non-member countries with a view to eliminating obstacles to trade and in the Council regulations providing for common organization of the markets in various agricultural products regarding trade with non-member countries, the scope of that prohibition is the same as in the case of intra-Community trade.

Costs

43 The costs incurred by the Danish and Italian Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Giudice Conciliatore, Milan, by order of 26 April 1994, as amended by order of 5 May 1995, hereby rules:

1) **Without prejudice to the application of special Community provisions in force governing trade with certain non-member countries, Council Directive 83/643/EEC of 1 December 1983 on the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States, as amended by Council Directive 87/53/EEC of 15 December 1986, in particular the second indent of Article 5(1)(a), is not applicable to customs transactions in respect of goods from non-member countries, in particular members of EFTA.**

2) **The Member States are not entitled unilaterally to impose charges having equivalent effect in trade with non-member countries. Where the prohibition of such charges is contained in bilateral or multilateral agreements concluded by the Community with one or more non-member countries with a view to eliminating obstacles to trade and in the Council regulations providing for common organization of the markets in various agricultural products regarding trade with non-member countries, the scope of that prohibition is the same as in the case of intra-Community trade.**

Schockweiler Kakouris Murray

Hirsch Ragnemalm

Delivered in open court in Luxembourg on 5 October 1995.

R. Grass
Registrar

F. A. Schockweiler
President of the Sixth Chamber