JUDGMENT OF THE COURT
OF 18 NOVEMBER 1975 [1]

SpA Unil-It.
v Amministrazione Finanzaria dello Stato
(preliminary ruling requested by the Corte Suprema di Cassazione)

Case 30/75

Summary

Agriculture — Common organization of the markets — Imports — Intra-Community levy — Conditions — Fulfilment — Evidence — Certificate DD 4 — National implementing measures — Lack — Other means of proof — Acceptability

(Decision of the Commission of 17 July 1962)

The requirement that the submission of certificate DD 4 is alone acceptable as evidence of fulfilment of the conditions which entitle a trader to pay only the intra-Community levy cannot be applied against a trader who satisfies the formal requirements which are still in force in the importing State when the goods cross the frontier.

A Member State which has not adopted substantive measures to implement the decision introducing the duty to submit certificate DD 4 cannot claim that traders have failed to fulfil the duties involved in that decision but must provisionally accept such other means of proof as are appropriate to the fulfilment of the formal requirements in force.

In Case 30/75

Reference to the Court of Justice under Article 177 of the EEC Treaty by the Corte Suprema di Cassazione for a preliminary ruling in the action pending before that court between

SpA Unil-It., of Milan

and

Amministrazione Finanzaria dello Stato (State Finance Department),

on the interpretation of the Commission Decision of 17 July 1962 (OJ No 76 of 24. 8. 1962, p. 2140) and of certain provisions of Regulation No 13/64/EEC

1 — Language of the Case: Italian.

of the Council of 5 February 1964 on the progressive establishment of a common organization of the market in milk and milk products (OJ No 34 of 27. 2. 1964, p. 549),

THE COURT

composed of: R. Lecourt, President, R. Monaco, H. Kutscher, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen, A. J. Mackenzie Stuart and A. O'Keeffe, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The order making the reference and the written observations submitted in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

The right to benefit from the intra-Community scheme applicable to goods involved in trade between Member States is subject, under a decision of the Commission of 5 December 1960 (OJ No 4 of 20. 1. 1961, p. 29), to the submission of a movement certificate DD 1 or DD 3, depending on the particular case. Certificate DD 1 is used when goods are transported directly from the exporting Member State, and certificate DD 3 is the appropriate document in proof in other cases.

However, by a decision of the Commission of 17 July 1962 (OJ No 76 of 24. 8. 1962, p. 2140) for agricultural products subject to intra-Community levies under the common agricultural policy, certificate DD 4 was introduced and is the appropriate document in proof for the application of intra-Community levies. The date from which a DD 4 certificate had to be presented for these products depended in each case on the date of the entry into force for the product concerned of a system of intra-Community levies. For milk and milk products, including cheese, this date was 1 November 1964, pursuant to Article 32 of Regulation No 13/64/EEC of the Council of 5 February 1964 (OJ No 34 of 27. 2. 1964, p. 549) on the progressive establishment of a common organization of the market in milk and milk products, as amended by Article 1 (2) of Regulation No 82/64/EEC of the

Council of 30 June 1964 (OJ No 105 of 1 July 1964, p. 1626).

As from 1 November 1964 the Italian company SpA Van den Bergh, which has since been merged with SpA Unil-It., the appellant in the main action, imported from the Federal Republic of Germany and from the Netherlands consignments of cheese sent during the month of October 1964 accompanied by certificates DD 1 and DD 3, which were apparently the only certificates which the authorities of the two exporting States were able to issue at the time.

However, the Italian authorities stated that, as from 1 November 1964, in the event of failure to submit certificate DD 4 in conjunction with imports, the products in question had to be treated as though they came from third countries and they demanded the payment of Lit. 90 115 000. The appellant brought an action for the repayment of the amount paid before the Tribunale of Milan which gave judgment in its favour. The Corte d'Appello of Milan allowed the appeal submitted by the Finance Department and rejected the application of Unil-It.

The case has been referred to the Corte Suprema di Cassazione of Italy which considers that questions of interpretation of Community law are raised and, pursuant to Article 177 of the EEC Treaty, has stayed the proceedings and referred to the Court of Justice the following questions for a preliminary ruling:

(a) 1. Do the provisions laid down, pursuant to Articles 9 and 10 of the Treaty, in the Decision of the EEC Commission of 17 July 1962 in conjunction with those laid down in Regulation No 13/64/EEC of the Council of 5 February 1964, mean that the direct application in each Member State of the levy system established by the second of the abovecited enactments in milk and milk products has, since the initial date prescribed in Article 24 [sic] of the regulation and subsequent amendments, and regardless of internal rules promulgated on the subject by individual States, involved for entitlement to benefit from Community treatment a duty to use movement certificate DD 4 for which provision is made under the first enactment, as would accord with the finding of the Court of Justice in its judgment of 22 October 1970 in Case 12/70? *(Craeynest and Vandewalle)*

(a) 2. Does this legislation also apply if the abovementioned date on which Regulation No 13/64 was to enter into force fell between the date when the goods were exported from one of the Member States and the date when they were imported into another Member State?

(b) If the answer to the foregoing questions is in the affirmative, and in view of paragraphs (1) and (2) of Article 2 of the aforementioned Decision of 17 July 1962 and note II on the attached form referring to the last paragraph of the preamble, does the system established by the aforementioned Regulation No 13/64/EEC apply only in the case of direct transportation, which is the subject of movement certificate DD 1, referred to in the first subparagraph of paragraph (1) and paragraph (2) of Article 2 of the Decision of the EEC Commission of 5 December 1960, or also 'in the other cases' which are the subject of the different certificate, DD 3, for which provision is also made in the Decision of 5 December 1960 (in the second subparagraph of paragraph (1) of Article 2)?

The order making the reference of 22 November 1974 was filed at the Court Registry on 18 March 1975.

Upon hearing the report of the Judge-Rapporteur and the views of the

Advocate-General, the Court decided that there was no need to hold a preparatory inquiry.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the appellant in the main action, the Commission and the Italian Government.

II — Written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice

A — Observations of the Commission

After examining the Community rules concerning the use of certificate DD 1 for direct importation from one Member State to another and certificate DD 3 in other cases (Commission Decision of 5 December 1960) and the introduction of certificate DD 4 for agricultural products subject to intra-Community levies (Commission Decision of 17 July 1962) the Commission goes on to point out that Regulation No 13/64 establishes a common organization of the market in milk and milk products based in particular on the imposition of intra-Community levies which are lower, in order to ensure Community preference, than those imposed on products coming from third countries.

With regard to the first question, the Commission cites the judgment of the Court of Justice of 22 October 1970 (Case 12/70, *Craeynest and Vandewalle* v *Belgium*, [1970] ECR 905) and deduces that for the products in question, the obligation to use certificate DD 4 exclusively as from 1 November 1964 arises on the one hand from Regulation No 13/64, which was directly applicable as from 1 November 1964, and, on the other hand, from the Commission Decision of 17 July 1962 which is binding in all its aspects independently of national implementing measures. That decision, too, is directly applicable because it is unconditional and sufficiently clear.

National implementing provisions cannot therefore create rights or obligations but simply repeat those rights or obligations already laid down by directly applicable Community provisions.

In answer to the second question, the Commission maintains that the obligation to produce certificate DD 4 applies equally to the case where the date of the entry into force of Regulation No 13/64 falls between the date when the goods were exported from one Member State and the date when they were imported into another Member State. Regulation No 13/64, which came into force on 1 November 1964, introduced, on a temporary basis, a common organization of the market for milk products involving intra-Community levies which were, however, in order to maintain Community preference, fixed at a level lower than that of levies for imports coming from third countries. It was therefore essential that as from 1 November 1964 it could be established with certainty whether a product could benefit from the preferential intra-Community treatment introduced by Regulation No 13/64. Under the Decision of 17 July 1962, in particular Article 3 (2), certificate DD 4 alone is the document in proof for the application of the intra-Community levy system. The importing company could moreover have relied upon the second subparagraph of Article 3 (1) of that decision which provides, with the particular aim of protecting legitimate private interests, that certificate DD 4 may also be obtained after the goods to which it relates have been exported 'if due to an involuntary error or omission, it is not produced when they are exported'.

With regard to the third question, the Commission observes that certificate

DD 4 could only be used for goods 'carried directly from the exporting Member State into the importing Member State'. The definition of this expression given in Article 2 (2) of the Decision of 17 July 1962 is identical to that given in Article 2 of the Decision of 5 December 1960 in respect of certificate DD 1. It is therefore clear that for agricultural products certificate DD 4 replaces certificate DD 1 in that the use of certificate DD 3 was prohibited for these products from the time when they became subject to intra-Community levies. Certificate DD 3, the issue of which is not subject to the verification required of goods subject to agricultural levies, does not in fact guarantee that the product in question complies with the conditions set out in Regulation No 13/64 which must be satisfied in order to benefit from the preferential intra-Community system.

B — Observations of the appellant in the main action

Unil, the appellant in the main action, contests the reference made by the Corte Suprema di Cassazione of Italy to the judgment of the Court of Justice of 22 October 1970 (Case 12/70, *Craeynest and Vandewalle* v *Belgium*). That case involved fraudulent imports giving rise to possible criminal sanctions against those responsible, while the present case involves imports of milk products, which undeniably come from Common Market countries, in accordance with the legislation in force.

Regulation No 13/64 solely established, as from 1 November 1964, a system of levies for milk products but did not issue any rule binding upon the Member States regarding the procedure and detailed rules to be followed in checking the Community origin of imported products. Moreover, the Commission Decision of 17 July 1962 did not place Member States under an obligation to adopt certificate DD 4 as the sole means of proving the Community origin of goods. The various certificates DD 1, DD 3 and DD 4 were created in order to facilitate and to harmonize the certification of the existence of the conditions necessary for benefit from the Community system. Nevertheless, the customs authorities remain free to require any other documents in proof of the Community origin of the imported products.

In the case in question there existed no Italian legislation nor Community rules requiring, as from 1 November 1964, the exclusive use of certificate DD 4. In addition, it was impossible for Unil to obtain certificate DD 4 since at the time of exportation, in October 1964, the customs authorities were only issuing certificates DD 1 and DD 3 for milk products, in accordance with the rules in force.

It is contrary to the spirit of the Community agreements to apply the rules laid down for imports coming from third countries to imports of products accompanied by certificates showing beyond all doubt their Community origin.

Examination of the second question emphasizes the unlawful nature of the customs authorities' refusal to accord Community treatment to the import in question. The goods were accompanied by a certificate DD 1 and by a certificate DD 3. This shows, in accordance with Article 2 of the Commission Decision of 5 December 1960, that the goods, in any case those covered by the certificate DD 3, were not transported 'directly', within the meaning of paragraph (2) of the abovementioned Article 2, from the exporting Member State to the importing Member State.

Article 2(1) of the Decision of 17 July 1962 provides that 'the goods movement certificate form DD 4 may be used only if the goods to which it relates are carried directly from the exporting Member State into the importing Member State'.

Paragraph (2) of that article defines the concept of 'direct' transport in terms identical to those used in Article 2 of the Decision of 5 December 1960 in respect of certificate DD 1. It must therefore follow that certificate DD 4 replaces certificate DD 1 solely for those agricultural products subject to intra-Community levies which are imported directly. Certificate DD 3 remains applicable to indirect transport.

C — Observations of the Italian Government

With regard to the first question the Italian Government observes that in its judgment of 22 October 1970 (Case 12/70, *Craeynest and Vandewalle* v *Belgium)* the Court has already given a sufficient reply. It follows from that judgment that the right to benefit from the preferential intra-Community system is subject to the production of certificate DD 4 and that Member States may not allow proof of Community origin or of the fact that the goods are in free circulation to be made by means other than the production of that certificate. A consequence of the requirement of uniformity regarding the method of proving Community origin in the various Member States is that the absence of national legislation ensuring the use of certificate DD 4 can only result in refusal to accord preferential Community treatment. Examining the second question the Italian Government points out that the Commission could, under the final subparagraph of Article 32 of Regulation No 13/64, have adopted temporary measures by means of the Management Committee procedure.

The Commisison did not make use of this possibility which, in the opinion of the Italian Government, shows that there was no need to correct the system.

Moreover, any doubtful cases, particularly the present case, could have been resolved at the request of the appellant by applying the second subparagraph of Article 3 (1) of the Decision of 17 July 1962 whereby, in cases of involuntary omission, certificate DD 4 can in exceptional cases be certified after exportation of the goods to which it relates.

With regarded to the third question the Italian Government believes that the Decision of 17 July 1962 excludes goods subject to agricultural levies from the sphere of application of the Decision of 5 December 1960 and subjects them to stricter rules for their admission to the preferential intra-Community system. However, that new system excludes indirect transport. This exclusion, which is also in force in sectors other than that of milk products, is a direct consequence both of the objective description of goods covered by a common organization of the market and of the nature of that common organization of the market, including intra-Community levies based on a direct comparison between prices charged in the exporting Member State and in the importing Member State respectively.

The Commission, represented by its Agent, Mr Maestripieri, the Italian Government, represented by its Agent, Mr Zagari, and the appellant in the main action, represented by Mr Rossi, presented oral argument at the hearing on 23 September 1975.

The Advocate-General delivered his opinion at the hearing on 15 October 1975.

Law

1 By judgment of 22 November 1974, received at the Court Registry on 18 March 1975, the Corte Suprema di Cassazione of Italy referred to the Court under Article 177 of the EEC Treaty three questions on the interpretation of the decision of the Commission of 17 July 1962 (OJ No 76 of 24. 8. 1962, p. 2140) and of certain provisions of Regulation No 13/64 of the Council of 5 February 1964 (OJ No 34 of 27. 2. 1964, p. 549) as amended by Regulation No 82/64 of the Council of 30 June 1964 (OJ No 105 of 1. 7. 1964, p. 1626).

2 The decision in question sets up special methods of administrative cooperation for applying the intra-Community levies set up under the common agricultural policy.

It follows a similar decision of the Commission of 5 December 1960 (OJ No 4 of 20. 1. 1961, p. 29) which introduces, for most of the goods involved in trade between the Member States, certificates DD 1 or DD 3 to be submitted, depending on the particular case, to the customs authorities when the goods cross the frontier.

3 As regards those goods on which agricultural levies must be paid when they cross the frontier, the decision in question introduces, by way of derogation from the decision of 5 December, a special certificate, DD 4, which must be submitted when the goods enter the importing Member State, in order for them to obtain the benefit of the system of intra-Community levies which is more favourable than that applying to products coming from third countries.

Certificate DD 4 is drawn up in such a way as to enable the existence of the conditions to which application of the intra-Community levy system is subject to be verified, in particular, the fact that the agricultural products concerned are actually produced within the Community.

4 Regulation No 13/64 of the Council on the progressive establishment of a common organization of the market in milk and milk products, as amended by Regulation No 82/64 provides, in relation to the products to which it refers, including cheese, for the introduction of a double system of levies which came into force on 1 November 1964 applying first, to trade with third countries and, secondly, to intra-Community trade.

As from that date, for the purpose of applying the system of intra-Community agricultural levies, under Articles 1 and 4 of the decision of 17 July 1962 movement certificate DD 4 had to be produced with a period of one month from that date of being certified by the customs office of the exporting Member State, at the customs office of the importing Member State where the goods were presented.

5 The action before the Corte Suprema di Cassazione concerns a company which imported into Italy after 1 November 1964 consignments of cheese from the Federal Republic of Germany and the Netherlands which were sent during October 1964 and accompanied in part by certificates DD 1 (where the goods were transported directly) and in part by certificates DD 3 (where the transport was regarded as indirect).

6 The Unil company maintains that it was unable to obtain the abovementioned certificate DD 4 either from the German authorities or from the Netherlands authorities for the consignments in question.

7 On the other hand, when the importation, in dispute took place, inasmuch as it occurred before 19 November 1964, no legal provision or internal administrative measure had at that time been adopted in Italy extending the obligation to submit certificate DD 4 to the goods referred to by Regulation No 13/64.

This requirement was laid down by a ministerial circular of 19 December 1964 while, as regards the period between 1 and 19 November, a circular in the form of a telegram ruled that milk products would be admitted into Italy under the scheme which temporarily adopted the system of suspended customs duties (dazio in sospeso).

8 Moreover, the double system of levies on milk products was only introduced by a Decree-Law of 23 December 1964 (Gazzetta Ufficiale of 23 December 1964).

9 The appellant in the main action which produced, during the oral procedure, statements to this effect from its associates in the exporting countries, maintains that its efforts during November 1964 to obtain DD 4 certificates had met with the refusal of the customs authorities in the countries concerned.

10 Approximately 18 months after the importation, the Italian authorities claimed from the appellant in the main action the levies applying to trade with third countries on the ground that the importation had not been carried out under cover of certificate DD 4.

The first question

11 In the first question the Court is asked whether as a result of the decision of 17 July 1962, in conjunction with Regulation No 13/64 of the Council of 5 February 1964, the direct application in each Member State of the levy system established by the said Regulation No 13/64 has, since 1 November 1964 and regardless of internal rules promulgated on the subject by individual States, involved for entitlement to benefit from Community treatment a duty to use movement certificate DD 4.

12 Article 12 of Regulation No 13/64 prohibits, with effect from 1 November 1964, in trade between the Member States, the levy of any customs duty or charge having equivalent effect on the agricultural products referred to therein.

For such intra-Community trade it provides, during the transitional period, for a system of levies to be fixed, pursuant to Article 8, by the Member States in accordance with the criteria established by this regulation.

13 As regards intra-Community trade this regulation gives the traders concerned the right to be subject to a lower levy than that imposed on imports of the same products from third countries.

14 The decision of 17 July 1962 compels the Member States to accept the submission of certificate DD 4 alone as proof of fulfilment of the conditions which give rise to the imposition of the more favourable rate of levy.

15 This obligation, which is imposed in order to forestall abuses touching the means by which the trader must prove his right, implies that the Member State concerned put the trader in question in a position to comply with this obligation to prove his right.

This is not the case as long as the importing Member State has not yet adopted the measures necessary to make production of certificate DD 4

obligatory, with the result that the goods in question necessarily cross the frontier under cover of the documents provided for by the earlier rules.

16 Therefore, the requirement that only the submission of certificate DD 4 can be accepted as proof of fulfilment of the conditions giving rise to a right to pay only the intra-Community levy cannot be held against a trader who, when the goods cross the frontier, fulfils the formal requirements which are still in force at that moment in the importing State.

17 Of course, the second subparagraph of Article 3 (2) of the decision of 17 July 1962 provides that 'as an exception, the movement certificate DD 4 may also be certified after the goods to which it relates have been exported, if as the result of an involuntary error or omission, it is not produced when they are exported'.

However, this provision refers to situations other than those in which the Member State concerned had not yet laid down the duty to produce certificate DD 4.

18 The reply to be given to the first question must, therefore, be that the decision of 17 July 1962, in conjunction with Regulation No 13/64 as amended by Regulation No 82/64, entitled the trader to pay the intra-Community levy alone, provided that he proves, by producing certificate DD 4, that he has fulfilled the conditions necessary to benefit therefrom, but that the Member State which has not adopted substantive measures to implement this decision cannot claim that traders have failed to fulfil the obligations which it involves and must, provisionally, allow other means of proof to be used which are appropriate to the fulfilment of these conditions.

19 The reply to the first question renders it unnecessary to deal with the others.

Costs

20 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Corte Suprema di Cassazione by judgment of 22 November 1974, hereby rules:

The decision of 17 July 1962, in conjunction with Regulation No 13/64 as amended by Regulation No 82/64, entitled the trader to pay the intra-Community levy alone, provided that he proves, by producing certificate DD 4, that he has fulfilled the conditions necessary to benefit therefrom, but that the Member State which has not adopted substantive measures to implement this decision cannot claim that traders have failed to fulfil the obligations which it involves and must, provisionally, allow other means of proof to be used which are appropriate to the fulfilment of these conditions.

Lecourt Donner Mertens de Wilmars

Pescatore Sørensen Mackenzie Stuart O'Keeffe

Delivered in open court in Luxembourg on 18 November 1975.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 15 OCTOBER 1975 [1]

Mr President,
Members of the Court,

The following points are important for an understanding of the reference for a preliminary ruling before us today.

Under Article 9 (2) of the EEC Treaty, the provisions of Chapter 1, Section 1, and of Chapter 2 of Title I of Part II of the Treaty (that is to say, the provisions relating to the elimination of customs duties and to the elimination of

1 — Translated from the German.