JUDGMENT OF THE COURT
9 August 1994 *

In Joined Cases C-363/93, C-407/93, C-408/93, C-409/93, C-410/93 and C-411/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'Appel, Paris, for a preliminary ruling in the proceedings pending before that court between

René Lancry SA

and

Direction Générale des Douanes

REFERENCES to the Court under Article 177 of the EEC Treaty by the Tribunal d'Instance, Saint-Denis (Réunion) for a preliminary ruling in the proceedings pending before that court between

Dindar Confort SA

and

* Language of the case: French.

Conseil Régional de la Réunion,

Direction Régionale des Douanes de la Réunion,

and between

Christian Ah-Son

and

Direction regionale des douanes de la Reunion,

Conseil regional de la Reunion,

and between

Paul Chevassus-Marche

and

Direction Régionale des Douanes de la Réunion,

Conseil Régional de la Réunion,

and between

Conforéunion SA

and

Conseil Régional de la Réunion,

Direction Régionale des Douanes de la Réunion,

and between

Dindar Autos SA

and

Conseil Régional de la Réunion,

Direction Régionale des Douanes de la Réunion,

on the interpretation of Article 9 et seq. of the EEC Treaty, and on the validity of Article 4 of Council Decision 89/688/EEC of 22 December 1989 concerning the dock dues in the French overseas departments (OJ 1989 L 399, p. 46),

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida, M. Diez de Velasco and D. A. O. Edward (Rapporteur), (Presidents of Chambers), C. N. Kakouris, R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias, F. Grévisse, M. Zuleeg, P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: G. Tesauro,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— René Lancry SA, by Christian Charrière-Bournazel, Philippe Champetier de Ribes and Jean-Pierre Spitzer, Avocats at the Cour de Paris, and Pascal Dubois, of the Limoges Bar,

— Dindar Confort, Conforéunion and Dindar Autos, by Jean-Claude Bouchard, Charles-Etienne Gudin and Thierry Vialaneix, of the Hauts-de-Seine Bar,

— the French Government, by Jean-Louis Falconi, Secretary for Foreign Affairs, and Catherine de Salins, Adviser on Foreign Affairs, acting as Agents,

— the Spanish Government, by Alberto José Navarro González, Director-General for Community Legal and Institutional Coordination, and by Rosario Silva de Lapuerta, Abogado del Estado, of the Community Legal Affairs Department, acting as Agents,

— the Council of the European Union, by Ramon Torrent, Director in the Legal Service, and Christina Giorgi, Adviser in the Legal Service, acting as Agents,

— the Commission of the European Communities, by Blanca Rodriguez Galindo, of its Legal Service, and Virginia Melgar, a national civil servant seconded to the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of René Lancry SA, represented by Christian Charrière-Bournazel, Jean-Pierre Spitzer and Pascal Dubois, Avocats, Dindar Confort, Conforéunion and Dindar Autos, represented by Jean-Claude Bouchard, Charles-Etienne Gudin and Thierry Vialaneix, Avocats, the Région Réunion, represented by Pierre Soler-Couteaux, of the Strasbourg Bar, the Spanish Government, represented by Rosario Silva de Lapuerta, acting as Agent, the Council of the European Union, represented by Ramon Torrent, acting as Agent, and the Commission of the European Communities, represented by Virginia Melgar, acting as Agent, at the hearing on 27 April 1994,

after hearing the Opinion of the Advocate General at the sitting on 28 June 1994,

gives the following

Judgment

1 By judgment of 7 July 1993, received at the Court on 26 July 1993, the Cour d'Appel (Court of Appeal), Paris, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the validity of Council Decision 89/688/EEC of 22 December 1989 concerning the dock dues in the French overseas departments (OJ 1989 L 399, p. 46, hereinafter 'the decision on dock dues'). By judgments of 23 August 1993, received at the Court on 1 October 1993, the Tribunal d'Instance (District Court), Saint-Denis (Réunion), referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 9 et seq. of the EEC Treaty and on the validity of the decision on dock dues.

2 Those questions were raised in proceedings concerning claims for the repayment of sums levied as dock dues ('octroi de mer').

3 It is apparent from the documents before the Court that dock dues were levied in the French overseas departments at the time when the Treaty came into force. They were imposed on all goods, whatever their country of origin, including metropolitan France, by reason of their entry into the overseas department concerned. By contrast, products of the region concerned were not subject to dock dues or to any equivalent internal tax. It is common ground that dock dues were levied with two objectives in mind, the first being to raise tax revenue and the second to encourage local economic activity.

4 Since a number of complaints had been made concerning dock dues, in 1984 the Commission initiated the infringement procedure against the French Republic. Later it decided to suspend that procedure, preferring to seek a political solution, in which connection the Council adopted two decisions on the basis of Articles 227(2) and 235 of the Treaty.

5 The first is Decision 89/687/EEC of the Council of 22 December 1989 establishing a programme of options specific to the remote and insular nature of the French overseas departments (Poséidom) (OJ 1989 L 399, p. 39, hereinafter 'the Poséidom decision'). The second and fourth recitals to that decision state in particular that the French overseas departments suffer from a serious structural lack of development aggravated by a number of constraints, which makes it necessary to step up Community support in order to promote their economic and social development.

6 The second decision is the one on dock dues which implements the tax component of the Poséidom decision. Article 1 of the decision on dock dues provides that by 31 December 1992 at the latest, the French authorities are to take the necessary measures for the dock dues arrangements then in force in the French overseas departments to apply to all products whether imported into or produced in those areas. Article 4 provides that the French Republic is authorized to maintain the current dock dues arrangements until not later than 31 December 1992, on condition that any proposal concerning extension of the list of products subject to dock dues or any increase in the rates thereof is notified to the Commission, which may oppose it within two months.

7 In Case C-163/90 *Administration des Douanes et Droits Indirects* v *Legros and Others* [1992] ECR I-4625, a number of questions on the interpretation of the Treaty were referred to the Court for a preliminary ruling, with respect to charges exhibiting the features of dock dues. In its judgment in that case, the Court held that a charge proportional to the customs value of goods levied by a Member State on goods imported from another Member State by reason of their entry into a region of the territory of the first Member State constitutes a charge having effect equivalent to a customs duty on imports, notwithstanding the fact that the charge is also imposed on goods entering that region from another part of the same State. However, the Court limited the temporal effects of that judgment.

8 In the *Legros* case, the material events occurred before the Poséidom decision or the decision on dock dues came into force. The Court did not, therefore, give a ruling on either the interpretation or the validity of those decisions.

The facts in Case C-363/93 *Lancry*

9 As Martinique produces no flour, that product has always been imported from metropolitan France, other Community countries or the United States of America. In 1974 dock dues on flour were introduced in Martinique.

10 René Lancry SA ('Lancry'), which markets in Martinique flour imported *inter alia* from metropolitan France, brought a number of actions. By judgments of the Tribunal Administratif (Administrative Court), Fort-de-France, of 2 April 1985 and 25 April 1989, upheld by the judgment of the French Council of State of 2 April 1993, Lancry obtained the annulment of the decisions fixing the rate of dock dues at 25% and subsequently at 20%. In accordance with those judgments, Lancry obtained reimbursement of the difference between the rate annulled and the previous rate of 15%. It then applied to the Tribunal d'Instance, Fort-de-France, to recover all the sums which it had paid during the same period by way of dock dues.

11 Lancry also brought an action before the Tribunal d'Instance, Paris VII, for damages against the Direction Générale des Douanes for levying dock dues on flour imported into Martinique. Lancry lodged an appeal after its action was dismissed.

12 In its judgment of 7 July 1993, the Cour d'Appel, Paris, inferred from the *Legros* judgment that under the rules applying prior to the date on which the decision on dock dues was adopted, that is to say 22 December 1989, the dock dues levied on flour marketed by Lancry from 1974 constituted charges having equivalent effect

to customs duties contrary to the Treaty of Rome. It therefore ordered the defendant to reimburse Lancry the dock dues paid by that company on flour marketed from 1974 to 22 December 1989.

13 The Cour d'Appel noted, however, that the Court of Justice had not ruled on the validity of the decision on dock dues and therefore referred the following question to it for a preliminary ruling:

'Did the Council of the European Communities, by its decision 89/688/EEC of 22 December 1989 concerning the dock dues in the French overseas departments, adopted pursuant to Articles 227(2) and 235 of the Treaty establishing the European Economic Community, validly authorize the French Republic to maintain until 31 December 1992 the current dock dues arrangements which, according to the judgment of the Court of Justice of the European Communities of 16 July 1992 in proceedings for a preliminary ruling, constitute a charge having an effect equivalent to a customs duty?'

The facts in Cases C-407/93 to C-411/93 *Dindar Confort, Ab-Son, Chevassus-Marche, Conforéunion* and *Dindar Autos*

14 By application of 26 January 1993, Dindar Confort brought an action before the Tribunal d'Instance, Saint-Denis, for the repayment with interest of various sums which it had paid as dock dues. Those sums had been levied on goods imported after the *Legros* judgment.

15 By application of 21 December 1992, Christian Ah-Son instituted proceedings before the same court for repayment of a sum paid in November 1992, representing the amount of dock dues which he had been charged on bringing into Réunion a car made in the Federal Republic of Germany which he had bought in metropolitan France.

16 By applications of 11 and 12 February 1993, Paul Chevassus-Marche instituted proceedings before the same court for repayment of dock dues paid on 3 December 1992, which were levied on a shipment of beer from metropolitan France.

17 By application of 10 March 1993, Conforéunion instituted proceedings before the same court for repayment of a sum which it had paid by way of dock dues levied on goods brought into Réunion in November 1992. Some of those goods came from other regions of France, some from other Member States of the Community and some, finally, direct from non-member countries.

18 By applications of 26 January 1993 and 23 February 1993, Dindar Autos instituted proceedings before the same court for the repayment of sums corresponding to the dock dues paid on goods imported into Réunion between July and December 1992. Some of those goods came from other regions of France, some from other Member States of the Community and some, finally, direct from non-member countries.

19 The Tribunal d'Instance, Saint-Denis, hearing those cases, stayed the proceedings and referred to the Court the following questions for a preliminary ruling:

'(1) Must the provisions of Article 9 et seq. of the EEC Treaty, in so far as they lay down the principle of a single Community customs area, be interpreted as prohibiting a Member State from levying a charge proportional to their customs value on goods from other regions of the same State, merely by reason of the entry of those goods into a particular region of that State, regard being had to the fact that where such a charge was also imposed on goods entering that region from other Member States, it was held to constitute a charge having an effect equivalent to a customs duty on imports?

(2) Is Article 4 of the Decision of the Council of the European Communities of 22 December 1989 (89/688/EEC) valid in so far as it authorizes the French Republic "to maintain the current dock dues arrangements, until not later than 31 December 1992", subject to the conditions which it lays down, where the dock dues levied under the arrangements then in force constituted charges having an effect equivalent to customs duties on imports and where, under the first subparagraph of Article 227(2) of the Treaty, the provisions of the Treaty referred to in that subparagraph, including those on the free movement of goods, have been applicable in the French overseas departments since the Treaty came into force?'

20 By order of 19 October 1993, made pursuant to Article 43 of the Rules of Procedure of the Court, Cases C-407/93, C-408/93, C-409/93, C-410/93 and C-411/93 were joined for the purposes of the written and oral procedure and of the judgment. By order of 8 April 1994, made pursuant to the same article, Case C-363/93 was joined to those joined cases for the purposes of the oral procedure and the judgment.

21 The first question to consider is whether dues such as dock dues constitute charges having equivalent effect to customs duties, in so far as they are imposed on goods from the same Member State, and the second is whether the decision on dock dues is valid, in so far as it authorizes such dues to be maintained in force until 31 December 1992.

The interpretation of Article 9 et seq. of the Treaty (first question referred by the Tribunal d'Instance, Saint-Denis)

22 The first question referred by the national court asks whether a charge proportional to their customs value, levied by a Member State on all goods entering a region within that State, constitutes a charge having equivalent effect to a customs duty on imports in so far as it is levied on goods entering that region from another part of the same State.

23 The Council considers that, in so far as the dock dues arrangements apply to goods from other parts of France, the situation is confined entirely to that Member State, with the result that the primary law imposing on Member States various prohibitions with regard to relations between them is not applicable. More particularly, according to the Spanish Government, it is essential that intra-Community trade should be affected in order for the provisions of the Treaty relating to the free movement of goods to apply, so that Article 9 et seq. of the Treaty is inapplicable where the goods in question move between two places within the territory of the same Member State.

24 That argument cannot be accepted.

25 First, the Court has consistently held that the justification for the prohibition of customs duties and charges having equivalent effect is based on the fact that any pecuniary charges imposed on goods by reason of the fact that they cross a frontier constitutes an obstacle to the movement of such goods (see, in particular, the judgment in Joined Cases 2/69 and 3/69 *Diamantarbeiders* v *Brachfeld* [1969] ECR 211, point 14).

26 In the *Legros* judgment, the Court noted (at paragraph 16) that a charge levied at a regional frontier by reason of the fact that goods are brought into one region of a Member State undermines the unity of the Community customs territory and constitutes an obstacle to the free movement of goods at least as serious as a charge levied at a national frontier on products entering a Member State as a whole.

27 The unity of the Community customs territory is undermined by the establishment of a regional customs frontier just the same, whether the products on which a charge is levied by reason of the fact that they cross a frontier are domestic products or come from other Member States.

28 Furthermore, the obstacle to the free movement of goods created by the imposition on domestic products of a charge levied by reason of their crossing that frontier is no less serious than that created by the collection of a charge of the same kind on products from another Member State.

29 Since the very principle of a customs union covers all trade in goods, as provided for by Article 9 of the Treaty, it requires the free movement of goods generally, as opposed to inter-State trade alone, to be ensured within the union. Although Article 9 et seq. makes express reference only to trade between Member States, that is because it was assumed that there were no charges exhibiting the features of a customs duty in existence within the Member States. Since the absence of such charges is an essential precondition for the attainment of a customs union covering all trade in goods, it follows that they are likewise prohibited by Article 9 et seq.

30 Secondly, the situation does not appear to be of a kind where all the components are wholly confined to one Member State. As the French Government has correctly pointed out, the levying of charges exhibiting the features of dock dues could be classified as a purely internal situation only if the dues were levied exclusively on products from the same Member State. It is not disputed that dock dues apply to all products entering the overseas department concerned, irrespective of their origin. It would accordingly be inconsistent to hold, on the one hand, that dock dues constitute charges having equivalent effect in so far as they are levied on goods from other Member States and to concede, on the other, that those dues do not constitute charges having equivalent effect where they are levied on goods from metropolitan France.

31 Finally, since charges such as dock dues are imposed on all goods alike, it would be very difficult, if not impossible, in practical terms, to distinguish between products of domestic origin and products originating in other Member States. For example, a product manufactured in the Member State concerned but containing parts from another Member State, or a product imported into the State and later shipped to an overseas department, should not be described as domestic products. That would

make it necessary to establish in every case, even in the case of deliveries of products from the same State, whether such products in fact originated in another Member State of the Community. The process of verification would give rise to administrative procedures and further delays which would in themselves constitute obstacles to the free movement of goods.

32 The answer to the first question referred by the Tribunal d'Instance, Saint-Denis, must therefore be that a charge proportional to their customs value, levied by a Member State on all goods entering a region within that State, constitutes a charge having equivalent effect to a customs duty on imports not only in so far as it is levied on goods entering that region from other Member States, but also in so far as it is levied on goods entering that region from another part of the same State.

The validity of the decision on dock dues (question referred by the Cour d'Appel, Paris, and second question referred by the Tribunal d'Instance, Saint-Denis)

33 The Cour d'Appel, Paris, in its question, and the Tribunal d'Instance, Saint-Denis, in its second question, seek to ascertain whether the decision on dock dues is valid in so far as it authorizes the French Republic to maintain until 31 December 1992 the dock dues arrangements that were in force when the decision was adopted.

34 The French and Spanish Governments, the Council and the Commission contend that the Council was empowered, on the basis of both Article 227(2) and Article 235 of the Treaty, to authorize the French Republic to maintain the charge in question until 31 December 1992.

35 First of all the wording of Article 227(2) of the Treaty should be borne in mind:

'2. With regard to Algeria and the French overseas departments, the general and particular provisions of this Treaty relating to:

— the free movement of goods;

— agriculture, save for Article 40(4);

— the liberalization of services;

— the rules on competition;

— the protective measures provided for in Articles 108, 109 and 226;

— the institutions,

shall apply as soon as this Treaty enters into force.

The conditions under which the other provisions of this Treaty are to apply shall be determined, within two years of the entry into force of this Treaty, by decisions of the Council, acting unanimously on a proposal from the Commission.

The institutions of the Community will, within the framework of the procedures provided for in this Treaty, in particular Article 226, take care that the economic and social development of these areas is made possible.'

36 According to the case-law of the Court (see the judgment in Case 148/77 *Hansen* v *Hauptzollamt Flensburg* [1978] ECR 1787, and the judgment in *Legros*, cited above, at paragraph 8), it follows from Article 226 that the provisions of the Treaty expressly referred to in the first subparagraph of Article 227(2) have been applicable in the French overseas departments ever since the Treaty entered into force, while, with regard to the other provisions, it remains possible subsequently, even after the period of two years mentioned in the second subparagraph, to adopt specific measures in order to meet the needs of those territories.

37 By expressly authorizing the Council to determine the conditions of application only of those Treaty provisions not listed in its first subparagraph, Article 227(2) excludes the possibility of derogating from the application in the French overseas departments of the provisions which are mentioned therein, including those relating to the free movement of goods. To interpret Article 235 of the Treaty as allowing the Council to suspend, even temporarily, the application of Articles 9, 12 and 13 of the Treaty in the French overseas departments would be to disregard the fundamental distinction established by Article 227(2) and to deprive its first subparagraph of its effectiveness.

38 It follows that the Council was not empowered, through the adoption of the decision on dock dues, to authorize the French Republic to maintain in force charges such as dock dues, which constitute charges having equivalent effect to customs duties and fall, therefore, within the scope of the Treaty provisions on the free movement of goods.

39 The answer to the questions referred by the national courts must therefore be that the decision on dock dues is invalid in so far as it authorizes the French Republic to maintain until 31 December 1992 the dock dues arrangements that were in force when the decision was adopted.

Temporal effects of this judgment

40 The French Government, supported by the Région Réunion, is asking the Court to limit the temporal effects of its judgment, as it did in *Legros*, in the event of a declaration that the decision on dock dues is invalid. The French Government considers that the conditions laid down by the Court for imposing such limits — first, the risk of serious economic consequences and, second, uncertainty as to the scope of the Community provisions — are satisfied in this case. As regards the first condition, it would be hard for the local authorities to which the dock dues are paid to bear the economic consequences of a ruling to the effect that the decision is invalid since, according to the French Government, the limitation to which the Court agreed to have recourse in *Legros* relates only to dock dues levied on the basis of national law alone and does not apply to sums levied on the basis of Article 4 of the decision after 22 December 1989, the date on which it was adopted. As for the second condition, the French Government points out that the Court ruled in the *Legros* case that the particular features of dock dues and the specific characteristics of the overseas departments created a state of uncertainty as to whether those charges were lawful from the point of view of Community law; that uncertainty, according to the French Government, appeared to have been removed by the decision on dock dues.

41 Those arguments cannot be accepted.

42 In the first place, it must be borne in mind that in this judgment the Court has declared the decision on dock dues invalid in so far as it authorizes the French

Republic to maintain the dock dues arrangements in force until 31 December 1992. It follows that dock dues levied between the date on which the decision of 22 December 1989 came into operation and 31 December 1992 were of exactly the same legal nature as those levied before that period, that is to say they were charges having equivalent effect to customs duties levied on the basis of national law.

43 It follows that the temporal limitation imposed by the Court in the *Legros* judgment applies also to actions for repayment of sums levied as dock dues after the decision of 22 December 1989 came into operation until 16 July 1992, the date on which that judgment was given.

44 Secondly, in his Opinions of 21 November 1991 and 20 May 1992, Advocate General Jacobs made very clear his view that the decision on dock dues was invalid in so far as it authorized the dock dues arrangements to be maintained in force at the time of its adoption. It is true that in the *Legros* judgment, the Court did not rule on the validity of the decision on dock dues. However, at the hearing in the *Legros* case on 31 March 1992, the French Government pointed out in particular that the Court was not called upon, in those proceedings for a preliminary ruling, to rule on the validity of that decision. The French Republic could not therefore reasonably have inferred from the Court's silence on that point that the decision on dock dues authorized it to maintain the dock dues arrangements then in force after 22 December 1989.

45 It follows that after 16 July 1992, the date of the *Legros* judgment, the French Government could not reasonably have continued to believe that the relevant

national legislation was in conformity with Community law. Moreover, the interests of the local authorities are adequately protected by the temporal limitation set by the Court in *Legros*. There is therefore no need to limit the temporal effects of this judgment.

Costs

46 The costs incurred by the French and Spanish Governments, the Council of the European Union 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,

in answer to the questions referred to it by the Cour d'Appel, Paris, by judgment of 7 July 1993, and by the Tribunal d'Instance, Saint-Denis, by judgments of 23 August 1993, hereby rules:

1. A charge proportional to their customs value, levied by a Member State on all goods entering a region within that State, constitutes a charge having

equivalent effect to a customs duty on imports not only in so far as it is levied on goods entering that region from other Member States, but also in so far as it is levied on goods entering that region from another part of the same State.

2. Decision 89/688/EEC of the Council of the European Communities of 22 December 1989 concerning the dock dues in the French overseas departments is invalid in so far as it authorizes the French Republic to maintain until 31 December 1992 the dock dues arrangements that were in force when the decision was adopted.

Due Mancini Moitinho de Almeida

Diez de Velasco Edward Kakouris

Joliet Schockweiler Rodríguez Iglesias

Grévisse Zuleeg Kapteyn Murray

Delivered in open court in Luxembourg on 9 August 1994.

R. Grass O. Due

Registrar President