the limited exemptions granted to travellers from a non-member country. However, no exemption may be granted in respect of such goods in a case where the stay in the Member State through which the traveller passes is of a purely token nature and does not in fact provide an opportunity of making purchases.

In Case 278/82

REFERENCE to the Court pursuant to Article 177 of the EEC Treaty by the Fourth Chamber of the Finanzgericht [Finance Court] Hamburg for a preliminary ruling in the action pending before that court between

(1) REWE-HANDELSGESELLSCHAFT NORD MBH, Höhndorf,

(2) REWE-MARKT HERBERT KUREIT, Niendorf,

plaintiffs,

and

HAUPTZOLLÄMTER [Principal Customs Offices] FLENSBURG, ITZEHOE AND LÜBECK-WEST,

defendants,

Party joined to the proceedings:

FÖRDE-REEDEREI GMBH, Flensburg,

on the interpretation of Regulation (EEC) No 1544/69 of the Council of 23 July 1969 (as amended) on the tariff applicable to goods contained in travellers' personal luggage (Official Journal, English Special Edition 1969 (II), p. 359), of Regulation (EEC) No 1818/75 of the Council of 10 July 1975 on the agricultural levies, compensatory amounts and other import charges applicable to agricultural products and to certain goods resulting from their processing, contained in travellers' personal baggage (Official Journal 1975, L 185, p. 3) and of Council Directive 69/169/EEC of 28 May 1969 (as amended) on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (Official Journal, English Special Edition 1969 (I), p. 232),

THE COURT

composed of: J. Mertens de Wilmars, President, T. Koopmans and Y. Galmot (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco, O. Due and U. Everling, Judges,

Advocate General: S. Rozès
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community may be summarized as follows:

I — Facts and written procedure

A — Facts

1. The previous history of the dispute

The order for reference relates to facts similar to those which led the same Finanzgericht to refer a question to the Court for a preliminary ruling in Case 158/80 (judgment of 7 July 1981, *Rewe-Handelsgesellschaft Nord mbH and Rewe-Markt Steffen* v *Hauptzollamt Kiel* [1981] ECR 1805). In that case the Court gave a ruling on the question whether and to what extent the supply of goods exempt from customs duties and taxes on board "butter-selling ships" and the importation of such products duty-free in travellers' personal luggage was compatible with Community law.

That case, known as the "butter-buying cruises" case, concerned proceedings instituted before the same Finanzgericht by, once again, Rewe-Handelsgesellschaft Nord mbH, a wholesale dealer, and one of its retail outlets against the Hauptzollamt Kiel.

On 13 January 1982 the Finanzgericht Hamburg gave judgment in those proceedings taking into account the operative part of the Court's judgment.

2. The background to the present case

Whereas the previous dispute concerned primarily "butter-buying cruises", that is to say sea cruises which make no or only a token call abroad, the present case relates to the purchase of goods exempt from customs duties and taxes on ships

which provide regular ferry services and in the course of combined boat and coach journeys.

The plaintiffs in the main action are Rewe-Handelsgesellschaft Nord mbH, which is a wholesale dealer in, *inter alia*, perfumes, coffee, tea, matches and foods such as butter, cheese, meats and confectionery as well as spirits, beer, wine and tobacco, and Firma Rewe-Markt Herbert Kureit, which carried on business as a retailer in Niendorf on the Bay of Lübeck and deals in the products supplied by the first plaintiff. The latter's customers are predominantly retailers established along the North Sea and Baltic coast areas of Schleswig-Holstein.

Their action is against the Hauptzollämter responsible for the North Sea and Baltic coast areas and seeks an order directing them to refrain from allowing goods brought back from sea voyages to clear customs free of duty within certain limits, contrary to the relevant provisions of Community law.

Those initial claims were extended to purchases made free of customs duties and taxes on ships operating regular routes and ferry-boats.

Furthermore, it was brought to the attention of the Finanzgericht that ships were leaving ports in the Federal Republic of Germany for Denmark where no entry duties were charged on goods obtained tax-free and from where the passengers returned by coach to the Federal Republic where concessions were also made.

The Finanzgericht states that it intends to review its case-law concerning ferry traffic and that that is the purpose of the questions referred by it to the Court for a preliminary ruling.

Finally the Finanzgericht states that the ferry traffic consisting of short trips between the Federal Republic of Germany and Denmark on which purchases may be made free of customs duties and taxes and the combined ship and coach excursions affect mainly the grocery trade along the North Sea and Baltic coasts.

Such operations have the effect of depriving local wholesale and retail traders of the benefit of a large proportion of the purchasing power of the inhabitants of the North Sea and Baltic coast areas.

B — The Community provisions

1. *Regulation No 1544/69*, as amended by Council Regulation (EEC) No 3313/81 of 17 November 1981, grants, within certain limits as to quantity and value, exemption from duties imposed under the Common Customs Tariff for goods contained in the personal luggage of travellers coming from non-member countries provided that such importations do not have a commercial character.

2. *Directive No 69/169*, as amended by the Second Council Directive of 12 June 1972 (Official Journal, English Special Edition 1972 (II), p. 565), by the Third Council Directive of 19 December 1978 (Official Journal 1978, L 366, p. 28), by the Fourth Council Directive, of 19 December 1978 (Official Journal 1978, L 366, p. 31), by Council Directive 81/933/EEC of 17 November 1981 (Official Journal 1981, L 338, p. 24) and finally by Council Directive 82/443/EEC of 29 June 1982 (Official Journal 1982, L 206, p. 35), specifies first

(in Article 1) the exemptions from turnover tax and excise duty applicable to goods contained in travellers' personal luggage coming from non-member countries and secondly (in Article 2) the limits in terms of value to such exemptions in respect of goods in travellers' personal luggage coming from Member States of the Community; thirdly it lays down (in Article 4) quantitative limits for the importation, free of turnover tax and excise duty, of the goods listed therein and finally it provides (in Article 6) the rules whereby Member States may adopt the necessary measures as regards sales at the retail trade stage to enable turnover tax on goods carried in the personal luggage of travellers leaving a Member State to be remitted under certain conditions and subject to certain reservations.

3. *Regulation (EEC) No 1818/75 of the Council* of 10 July 1975 (Official Journal 1975, L 185, p. 3) on the agricultural levies, compensatory amounts and other import charges applicable to agricultural products and to certain goods resulting from their processing, contained in travellers' personal baggage, extended the scope of Regulation No 1544/69 to levies and other agricultural charges and introduced relief from compensatory amounts and other import charges in the context of travel between two Member States, the grant of which was subject to the same limits and conditions as applied to the grant of the relief provided for by Article 2 of Directive 69/169/EEC.

C — Procedure and the questions referred to the Court

By order of 4 August 1982 the Fourth Chamber of the Finanzgericht Hamburg submitted the following questions to the Court for a preliminary ruling:

"1. Must Regulation (EEC) No 1544/69 of the Council of 23 July 1969, as last amended by Council Regulation (EEC) No 3313/81 of 17 November 1981, Regulation No 1818/75 of the Council of 10 July 1975, as amended by Council Regulation (EEC) No 2780/78 of 27 November 1978, and Council Directive 69/169/EEC of 28 May 1969, as last amended by Directive 81/933/EEC of 17 November 1981, be construed to the effect that the tax concessions provided for therein in respect of customs duties, import charges applicable to agricultural products or goods resulting from their processing, turnover taxes and excise duties also apply to goods which are not in free circulation in the Member States or which have not borne turnover taxes or excise duties in the Member States or non-member countries and which are purchased by passengers on ferries carrying passenger traffic between a Member State and a non-member country?

2. Must the provisions mentioned in Question (1) be construed to the effect that the tax concessions in question also apply to goods which are not in free circulation in the Member States or which have not borne turnover taxes or excise duties in the Member States or non-member countries and which are purchased by passengers on ferries carrying passenger traffic between Member States?

3. Must the provisions mentioned in Question (1) be construed to the effect that the tax concessions in question also apply to goods which are not in free circulation in the

Member States or which have not borne turnover taxes or excise duties in the Member States or non-member countries and which are purchased by passengers on ships sailing from a port in a Member State to the port of another Member State where the passengers go ashore and then, without being charged duty in the country in which they arrive, return by land to the Member State in which they began their journey?"

After concluding that the defendant's objection that the main action is inadmissible is unfounded, the Finanzgericht states in its order for reference that the legal position regarding goods purchased on ferries or during combined ship and coach trips is open to doubt.

It also states that in the Federal Republic of Germany goods may be purchased by masters of ships free of customs duties and taxes and that that concession applies *inter alia* to ships which call at a foreign port.

Finally, it sets out the following legal considerations in its order:

(a) In relation to ferry traffic between a non-member country and a Member State

(i) With regard to customs duties and agricultural levies, the Finanzgericht, taking into account the letter, the spirit and the purpose of Regulation No 1544/69, considers that the provisions could be interpreted to the effect that only goods purchased within the territory of a non-member country may be imported duty-free within the limits set out in the regulation.

The Finanzgericht considers that support for that interpretation is to be found in Article 1 (1) of Regulation No 1544/69 and in the relationship which it is possible to establish between that regulation and the New York Convention concerning Customs Facilities for Touring, from which it follows that tax concessions are intended to facilitate tourist traffic and not the purchase on board ferries of duty-free goods for the purpose of importing them.

Yet the Finanzgericht does admit that it is possible to take the view that the purpose of Regulation No 1544/69 is not to facilitate tourist traffic but to serve the needs of the customs authorities by enabling them to clear imports through customs swiftly.

That purpose would not be achieved if the customs authorities had to determine at the time of importation the origin of the goods in respect of which exemption from customs duties was being claimed.

(ii) With regard to agricultural levies, the Finanzgericht is of the opinion that the same considerations apply to the interpretation of Article 1 of Regulation No 1818/75.

(iii) With regard to turnover taxes, the Finanzgericht considers that, in order to interpret Directive 69/169/EEC, it is necessary to refer to the fourth recital in the preamble thereto where it is stated that as a general rule goods may only be obtained in the country from which they come already taxed.

That indicates that the directive has in view goods obtained in the country from which they come and not goods obtained on board ships.

(b) In relation to intra-Community ferry traffic

(i) With regard to agricultural levies, the Finanzgericht considers that, in order to interpret Regulation No 1818/75, it is necessary to refer to the considerations which it expounded in relation to ferry traffic to and from non-member countries.

(ii) With regard to turnover taxes and excise duties, the Finanzgericht concludes from the provisions of Article 4 (4) of Directive 69/169 that no tax concession may be granted on goods which were obtained free of duty solely in the course of a cruise.

Furthermore, the preamble to the directive supports that point of view since all the objectives set out therein are unrelated to the right to receive concessions in the course of cruises between Member States. In addition, the tax exemption on imports does not serve to avoid double taxation.

Nevertheless the Finanzgericht admits that, if it is correct to interpret that directive by analogy, the goods purchased on board might benefit from the tax exemptions intended for travellers from non-member countries.

(c) In relation to combined ship and coach excursions, the Finanzgericht states that it is almost certain that goods purchased on board ship may not benefit from any exemption on importation if the goods were cleared without any formality for the purpose of transit through another Member State, nor may that other Member State clear the goods free of duty.

The order for reference was lodged at the Court Registry on 18 October 1982.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities written observations were submitted by Rewe-Handelsgesellschaft Nord and Firma Rewe-Markt Herbert Kureit, represented by Gert Meier, Senior Legal Adviser to Rewe-Central AG, by the Government of the Federal Republic of Germany, represented by Deringer, Tessin, Hermann and Sedemund, Rechtsanwälte before the Oberlandesgericht Köln [Higher Regional Court, Cologne], by the United Kingdom, represented by G. Dagtoglou, Treasury Solicitor's Department, acting as Agent, by Ireland, represented by Louis J. Dockery, Chief State Solicitor, acting as Agent, and by the Commission of the European Communities, represented by its Legal Adviser, Erich Zimmerman.

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

Nevertheless the Court requested the Commission to produce, prior to the oral procedure, the recent proposals for directives on exemptions from customs duties and taxes for goods contained in travellers' personal luggage and on the rules relating to sales in shops under customs control.

II — Written observations submitted to the Court

A — The admissibility of the questions referred to the Court

The plaintiffs in the main action, relying on the order of the Court made on 28 March 1980 in Joined Cases 24 and 97/80R *Commission of the European Communities* v *French Republic* [1980] ECR 1319, express doubts as to the admissibility of the request for a preliminary ruling.

They consider that the Court has already, in the aforementioned judgment of 7 July 1981 in Case 158/80, given an unequivocal ruling that "butter-buying cruises" are incompatible with Community law and did so not only in relation to exemptions from customs

duties but also in relation to exemptions from excise duties. The plaintiffs in the main action consider that it follows from the Court's case-law that the duty to take all necessary measures to comply with a judgment of the Court applies to all the institutions of a Member State, not only when the Court gives judgment pursuant to the combined provisions of Articles 161, 170 and 171 of the Treaty but also when it gives a ruling based on Article 177.

According to the plaintiffs, the Federal Republic of Germany has decided not to comply with certain essential elements of the Court's judgment in Case 158/80.

Thus it is possible to take the view that the Federal Republic and the German customs authorities would, once again, fail to comply with any further ruling of the Court, such as that sought by the Finanzgericht Hamburg by its order of 4 August 1982, whatever that ruling might be.

Since the conclusions of the parties to the main action in Case 158/80 were the same as those of the parties to the main action in this case and since the national court seeks a ruling the subject of which is essentially the same as that of the judgment of 7 July 1981, the preliminary ruling sought by the order for reference is not necessary within the meaning of Article 177 of the Treaty.

B — Introductory comments made in certain observations

1. Introductory comments made by the United Kingdom

The United Kingdom states first that it will only submit observations on the first and second questions referred to the Court since they raise issues of far-reaching importance concerning the structure and costs of intra-Community travel.

Secondly, having traced the historical development of special shops for the sale of duty-free goods to passengers on ships, aeroplanes and hovercraft, it states that a formal endorsement of what had become a well-established international custom was provided by the international Convention concerning Customs Facilities for Touring (the New York Convention), which was signed on 4 June 1954 and to which all Member States of the EEC are parties.

It states that such benefits have always been granted to tourists by the Member States and that such a practice is in conformity with Article 234 of the Treaty.

Thirdly, the United Kingdom emphasizes that the abolition of exemption from turnover tax and excise duty on goods sold to intra-Community travellers in duty-free shops, whether they are at airports or on aircraft or ships, would have serious economic and political implications.

In particular such action would have immediate repercussions on the financial basis of all those United Kingdom undertakings involved in the transport of passengers and freight within the Community, it would have serious social effects both for transport undertakings and for certain producer industries, it would result in an immediate and relatively large increase in the cost of crossing the Channel because an essential source of revenue would have to be

replaced and finally it would be a direct threat to the survival of certain transport lines and companies.

The United Kingdom emphasizes, finally, that the questions posed in the present case raise the issue whether the Council intended to enact legislation altering the regimes for duty-free sales in the circumstances raised or whether the Member States retain their independent power to continue to apply their own rules in that area.

2. Introductory comments made by Ireland

Ireland also emphasizes the importance of the status of duty-free shops on regular ferry routes, which, in Ireland's case, are exclusively engaged in intra-Community trade.

In an annex to its observations Ireland sets out the serious consequences which the abolition of duty-free facilities would have for industry, employment and the financial position of the transport undertakings concerned.

Finally it contends that as an island Member State all its intra-Community trade is conducted by sea or by air and that therefore particular account must be taken of the financial contribution made by duty-free shops on ferry routes.

3. Introductory comments made by the Commission

After analyzing the judgment given by the Court on 7 July 1981 in Case 158/80, the judgment given by the Finanzgericht Hamburg on 13 January 1982 and the considerations which it added to the questions which it referred to the Court by the present order, the Commission is anxious to describe first the steps which it itself took following the Court's judgment of 7 July 1981.

First, it requested the governments of the Member States to take all measures necessary to ensure that administrative practice conformed to that judgment by 1 April 1982 at the latest. Subsequently, by a letter dated 2 April 1982, the Commission initiated the procedure provided for by Article 169 of the Treaty against the Member States and on 11 June 1982 delivered its reasoned opinions to them all. All the Member States then stated that they would take the necessary measures to ensure that from 1 January 1983 goods originating in non-member countries and agricultural products were no longer sold to travellers free of customs duties and agricultural levies in duty-free shops at airports and on board aircraft and ships on international routes.

Subsequently the Commission commenced a further procedure against the Federal Republic of Germany with the purpose of ensuring that action was taken against the "butter-buying cruises" and the duty-free importation following such cruises of goods in travellers' personal luggage.

That procedure culminated in the Commission's bringing an action under Article 169 of the Treaty for a declaration that the State had failed to fulfil its obligations under the Treaty. That action was registered at the Court on 20 December 1982 (Case 325/82).

Finally the Commission is concerned to emphasize the difference between the present case and that relating to the so-called "butter-buying cruises".

Whereas the case which resulted in the judgment of 7 July 1981 concerned sea cruises including no call at a foreign port or only a token call, the present case relates to purchases made free of

customs duties and taxes on board ships providing regular services, on board ferry-boats and in the course of combined ship and coach journeys.

C — *Observations on the actual questions referred to the Court*

1. Exemptions from customs duties and agricultural levies

1.1. In the context of the first question: the transportation of travellers between a non-member country and a Member State

(a) The plantiffs in the main action

They consider that the essential question is to decide whether such customs duty concessions may be claimed by travellers who have not purchased the goods in question either in a Member State or in a non-member country but on a ferry-boat.

In that connection it is necessary first to consider the question of the legal position of ferry-boats which operate between a Member State and a non-member country.

First, the plantiffs in the main action refer to paragraph 1 of the operative part of the aforementioned judgment of the Court of 7 July 1981 and deduce from it that *a fortiori* persons who do not purchase the goods in respect of which they claim relief from customs duties (and taxes) in a non-member country but do so solely on board a ferry-boat cannot be regarded as travellers coming from a non-member country.

Secondly, they emphasize that, as the Finanzgericht Hamburg itself correctly pointed out, Article 1 (1) of Regulation No 1544/69 also supports such an interpretation.

In the case of goods registered as luggage it is necessary to provide proof that the traveller entrusted the item as luggage to the undertaking which transported it. That rule would appear to express categorically the intention of the authors to grant tax concessions only in respect of goods which were brought in from a non-member country at the same time as the travellers.

Thirdly, the plaintiffs in the main action conclude from the aforementioned considerations that, in the absence of clear provisions to the contrary, which would have to be interpreted strictly if there were any doubt, goods purchased on board ferry-boats operating between a Member State (country of importation) and a non-member country are without exception subject to the provisions of the Common Customs Tariff upon importation into the Community.

(b) The Government of the Federal Republic of Germany, the United Kingdom and the Commission submitted contrary observations

All three sets of observations refer first to paragraph 1 of the operative part of the Court's judgment of 7 July 1981, according to which the exemption from customs duties provided for by Community law applies only to goods contained in the personal luggage of travellers coming from a non-member country, irrespective of the origin of the goods or the place from which they come and of the customs duties and taxes which they have borne prior to their importation into the territory of the Community.

Since the exemptions from customs duties for travellers coming from a non-member country apply irrespective of the fiscal regime applicable to the goods, their origin and the circumstances of their purchase, it may be concluded that those exemptions also apply to goods

which travellers have purchased on board ferry-boats free of any customs duties or taxes.

Thus the doubts expressed by the Finanzgericht would seem to have no foundation.

Secondly, support for the contrary view is to be found neither in the spirit and purpose of Regulation No 1544/69 nor in the wording of the second paragraph of Article 1 (1), which defines the term "personal luggage".

The same also applies to agricultural levies since Article 1 of Regulation No 1818/75 of the Council extended the scope of Regulation No 1544/69 to cover agricultural levies and other import charges levied in connection with the common agricultural policy and since, consequently, the same provisions apply to exemptions from such charges as apply to exemptions from customs duties.

The Government of the Federal Republic of Germany states furthermore that any other interpretation of Regulation No 1544/69 would be completely contrary to the practice which has hitherto been followed in international passenger traffic by sea and by air. The international Convention concerning Customs Facilities for Touring, signed on 4 June 1954, does not apply in that context.

The tax concessions laid down by Community law are not as wide as those granted under the provisions of the Convention, which applies to the personal effects of tourists, that is to say of persons in transit, who are importing their travel requisites from abroad. On the other hand, the Community rules also apply to goods which are in the travellers' personal luggage on their return home.

Thus the purpose of Regulation No 1544/69, which is to facilitate customs clearance of goods in relation to passenger traffic with non-member countries, would not be achieved if it were necessary to indicate the origin of the goods in respect of which tax concessions were claimed.

The United Kingdom also contends, for its part, that the second and third recitals in the preamble to Regulation No 1544/69 support such an interpretation.

The Commission submits the same arguments and states that accordingly it does not share the doubts expressed by the Finanzgericht Hamburg in that connection. Furthermore it is anxious to point out that tax concessions may be granted only in the context of genuine passenger traffic between the Community and a non-member country.

1.2. In the context of the second question: intra-Community traffic

In their observations the plaintiffs in the main action, the Government of the Federal Republic of Germany, the United Kingdom and the Commission are in agreement on the following point: as the Court ruled in Case 158/80, customs duty exemption only applies, according to Regulation No 1544/69, which contains exhaustive rules on the matter, to goods contained in the personal luggage of travellers coming from a non-member country; the Member States no longer have any power to grant an exemption in that sphere which exceeds that provided for by the Community rules. There is therefore no room for such exemptions in the context of intra-Community passenger traffic.

The Government of the Federal Republic of Germany adds, furthermore, that the German rules were amended to accord with the new legal position by a regulation of 28 September 1982, which explicitly excludes customs duty exemp-

tions for goods which enter from another Member State of the Communities or from a German port and have not borne customs duty.

The General Customs Regulations were amended in the same manner and provide henceforth that duty-free goods may not be delivered to ships which do not call at a port of a non-member country unless they are intended for immediate consumption on board.

Nevertheless tax-free goods which are in free circulation and which are imported in the course of intra-Community passenger traffic are also exempt from duty under the amended German provisions provided they do not exceed the maximum amounts, in value or in quantity, in force in respect of passenger traffic coming from a non-member country.

For its part, the United Kingdom emphasizes that, in its view, all goods purchased by passengers on ferries carrying passenger traffic between two Member States must fulfil the conditions laid down in Articles 9 and 10 of the Treaty.

It states that, in common with other Member States, it implemented such an interpretation of Regulation No 1544/69 by introducing such a requirement for all "duty-free" sales to intra-Community travellers.

The Commission, for its part, is concerned to state that, in view of the wording of Regulation No 1544/69, the question of the duty-free sale of goods in the course of passenger traffic between Member States ought not to arise.

According to the Commission, in order to answer the question asked in the present case, it must be assumed that such goods are also offered and sold on ferries operating between the ports of different Member States.

1.3. In the context of the third question: intra-Community travel combining ship and coach

(a) In their observations the plaintiffs in the main action and the Commission are in agreement on this point.

Taken as a whole this question, they maintain, falls within the same context as the second question, the sole difference being that the travellers, having completed a crossing on a ship or ferry-boat between Member States, disembark and return by land to the place from which they have come by coach and that neither on arrival at the port of the other Member State nor in the course of their return journey to the State from which they have come are they charged duty on the goods they purchased duty-free on board the vessel.

Thus the plaintiffs in the main action and the Commission refer on this point to the observations which they submitted in relation to the sale of goods free of customs duties and agricultural levies in intra-Community traffic and take the view that such exemptions should not be permitted in this particular case either.

The plaintiffs in the main action emphasize that the country of destination should tax goods purchased on ferry-boats and that the country of origin should, in any event, levy duty on the travellers' return to it where the country of destination only recorded travellers' luggage in an informal manner for the purposes of transit.

The Commission, for its part, states that the circumstances described in the question are similar to those of the case known as the "butter-buying cruises" case, since both cases relate to excursions organized primarily for the purpose of giving the passengers the opportunity to purchase free of customs duties and taxes

goods the majority of which are normally subject to high rates of duty.

It is true that, unlike passengers on "butter-buying cruises", who have no contact whatsoever with a non-member country or with another Member State or have such contact in circumstances which do not permit them to disembark and make purchases, persons who take part in combined ship and coach excursions do disembark at the port of another Member State.

The Commission considers that it is possible to leave open the question whether such passengers have the opportunity to make purchases in that port since the question submitted to the Court refers only to goods which they have purchased duty-free on board the ship which is providing the excursion.

(b) In this connection *the Government of the Federal Republic of Germany* makes the following preliminary observations and, as in relation to the other two questions submitted by the Finanzgericht, wishes to point out that the questions raised could relate to two categories of goods.

(i) The term "goods which are not in free circulation in the Member States" means products originating in a non-member country on which the customs duties laid down by the Common Customs Tariff have not been charged and which are not, from a customs point of view, in free circulation in a Member State within the meaning of Article 10 (1) of the Treaty and the directives implementing it.

They must be equated with goods falling within Article 1 (2) (b) of Council Regulation (EEC) No 222/77 of 13 December 1976 (Official Journal 1977, L 38, p. 1).

In addition to goods which have not been cleared through customs, the question referred to the Court by the Finanzgericht relates to products which are certainly in free circulation from a customs point of view but which have not been subjected to the turnover taxes and excise duties of a Member State and also to goods which have been exempted from the taxes of a Member State (goods which have not been charged to tax).

(ii) In order to answer the question, the Government of the Federal Republic of Germany submits observations relating at the same time to exemptions from customs duties, charges levied on imports of agricultural products, turnover taxes and excise duties.

(iii) The Government of the Federal Republic of Germany is of the opinion that, in asking the third question, the Finanzgericht assumes that goods which are obtained tax-free on board a ferry-boat operating between ports in several Member States and which are contained in passengers' luggage on leaving the ship are cleared through customs in the port of arrival not in order to put them into free circulation but as a transit procedure.

In that case the Member State to which the travellers return by land is in the same position as the Member State in which the sea voyage came to an end if the goods were cleared through customs and were put into free circulation there.

The Government of the Federal Republic of Germany therefore concludes that:

Goods which are not put into free circulation from a customs point of view in a Member State must be subjected to duty there since the exemption cannot be granted in respect of them;

Goods which have indeed been put into free circulation from a customs point of view but which were purchased tax-free, that is to say not on the terms applicable to the domestic market, are exempt from tax according to the rules in force in respect of passenger traffic with non-member countries.

Goods in the Member State of transit are to be treated in the same manner if they have been cleared through customs at the port of arrival not for the purpose of being put into free circulation but for transit purposes.

Goods which have been cleared through customs at the port of arrival for the purpose of being put into free circulation should be granted tax exemption in the Member State of transit under the conditions laid down in Article 2 and Column II of Article 4 (1) of Directive 69/169/EEC.

The position will however be the same where certain entry duties were not levied in the course of clearance of the goods for free circulation.

In general the Government of the Federal Republic of Germany takes the view that the question of the nature of informal clearance at the port of arrival (clearance for the goods to be put into free circulation or for transit) is a question of fact and the fact that goods purchased on board may subsequently be sold in the Member State where the sea voyage terminated to persons living there without any fiscal repercussions is an indication that customs clearance was for the purpose of putting the goods into free circulation.

In that event, finally, it is immaterial whether the goods were subjected to duties by a non-member country.

2. Exemption from turnover taxes and excise duties

2.1. Ireland submitted observations relating to all three questions referred to the Court by the Finanzgericht

From the fact that Directive 69/169/EEC was adopted by the original Member States prior to Ireland's accession, from the wording of the final recital in the preamble to the Second Council Directive (72/230/EEC) and from the Advocate General's Opinion in the aforementioned Case 158/80, Ireland concludes that, as duty-free shops on regular ferry routes have not yet become the subject-matter of Community legislation, it follows that the Member States retain discretion in that matter.

In its view that position is reinforced, furthermore, by the following six considerations:

First, the existence of prior international obligations arising in particular from the New York Convention, to which Ireland adhered prior to joining the Community;

Secondly, the abandonment of the Commission's proposal of 22 September 1972 for a third directive (amending Directive 69/169/EEC), which would have expressly included tax-free shops on regular ferries and would have involved their abolition;

Thirdly, the wording of Article 6 (2) of Directive 69/169, since the phrase "without prejudice to rules relating to sales made at airport shops under customs control and on board aircraft" limits the scope of the provision and recognizes the existing duty-free regimes in intra-Community trade based on domestic legislation. As the Community had no island Member at the time when that directive was adopted, it may be suggested that the drafters were merely concerned to exclude duty-free shops in air travel, by way of definition, while intending as a matter of policy to exclude them in travel generally, including those on ferries;

Fourthly, the fact that the Council directives which have been adopted in this area are harmonizing measures whose legal basis is Article 99 of the Treaty;

Fifthly, the wording of the final recital in the preamble to Directive 72/230/EEC, according to which the directives apply to standard cases, while, in Ireland's view, the duty-free regime is of an exceptional nature;

Finally, sixthly, the mention in the final recital of the preamble to Directive 72/230/EEC of the gradual nature of the complete abolition of remission of tax, which implies a clear limitation of its scope so as to exclude the duty-free regime.

Thus Ireland takes the view that the existing duty-free regime on regular ferry routes, in addition to its economic advantages, makes the people more aware of the reality of the common market, acts as an inducement for Community citizens to travel to other Member States and therefore encourages cross-fertilization from the point of view of cultural and human contact.

It adds that the Court should hold that duty-free shops on ferries operating on a regular route in intra-Community passenger traffic are outside the scope of Directive 69/169/EEC, as amended, on the ground that the Community institutions have not yet succeeded in adopting the relevant measures.

Such a ruling would have the effect of encouraging the Community institutions to accelerate the process of harmonization in that area, which in Ireland's view is most desirable.

2.2. The other observations submitted to the Court are subdivided by reference to the questions referred to the Court by the Finanzgericht

2.2.1. In relation to the first question, passenger transportation between a non-member country and a Member State

(a) *The plaintiffs in the main action* consider that no exemption applies to the goods in question when acquired in the course of such travel since the expression "travellers coming from third countries" contained in Directive 69/169/EEC, cannot be given a different interpretation from that given to the same expression in Regulation No 1544/69.

The plaintiffs in the main action rely on four arguments in support of their reasoning:

First, such an interpretation follows from the origin of the rules, as was stated by the Court in its judgment in Case 158/80.

Secondly, Article 3 (3) of Directive 69/169 provides that the traveller must prove that personal luggage was registered as accompanied luggage at the time of his departure with the company which was responsible for conveying him. It follows that as regards tax concessions the Community legislature considered that goods to which the concessions applied had to have been purchased in a non-member country.

Thirdly, the fourth recital in the preamble to Directive 69/169/EEC supports such an interpretation since it emphasizes, on the one hand, that a tax reduction should be granted, because, as a general rule, goods, whether in a non-

member country or in another Member State, can only be obtained already taxed, and, on the other hand, that double taxation should be avoided.

In the circumstances of the present case the owner or the supplier of the ferry-boat will generally have acquired the goods tax-free and any exemption on the importation of such goods into a Member State will not have the effect of preventing double taxation but amount to a tax concession.

Furthermore, in the case of goods offered for sale which do not originate in the Community such concessions amount to a breach of the principle of Community preference.

Fourthly, by virtue of the provisions of the Sixth Council Directive (77/388/EEC) on value-added tax, the Member States are under a duty to charge turnover tax in respect of every import, subject to the exemptions listed in Article 14 (1) (which do not apply to the present case).

Consequently, Directive 69/169/EEC, which derogates from the general rule, must be interpreted strictly and turnover tax and specific excise duties must be charged on goods obtained on board ferry-boats operating between a non-member country and a Member State on their importation into that Member State.

(b) *The Government of the Federal Republic of Germany, the United Kingdom and the Commission* maintain that, on the contrary, the tax concessions provided by Article 69/169/EEC, as amended, do apply to the goods to which the Finanzgericht refers in its order and which have been purchased by passengers on ferry-boats operating between a non-member country and a Member State.

They all state in their submissions that such a proposition may be deduced from Article 1 of Directive 69/169/EEC and the judgment of the Court in Case 158/80 (paragraph 34).

Consequently, as in the case of exemption from customs duties, the place of purchase of the goods contained in the traveller's luggage is irrelevant to the grant of the tax exemption, whether the purchases were made in the non-member country in question or on board a ferry-boat.

2.2.2. In relation to the second question: intra-Community passenger transportation

(a) *The plaintiffs in the main action* consider that the exemptions from turnover taxes and excise duties provided by Community law do not apply to the goods referred to in the order for reference when obtained in the course of such travel.

They rely on three arguments in support of that contention.

First, they maintain that by virtue of Article 2 (1) of Directive 69/169/EEC an exemption from turnover taxes and excise duties applies only to goods which a traveller coming from one of the Member States of the Community has acquired subject to the general rules governing taxation on the domestic market of one of those States.

That provision lays down an essential requirement for the application of the tax exemption which cannot be set aside by a mere rule of procedure such as that laid down in Article 2 (4) of the directive.

In fact, goods obtained on board ferry-boats cannot be regarded as forming part of the luggage of a traveller coming from the Member States of the Community and, furthermore, such goods have not been acquired subject to the general rules governing taxation on the domestic market of one of the Member States but, by way of exception, tax-free.

Secondly, the plaintiffs in the main action contend that, while it is true that, under certain conditions, Article 2 (4) of the directive grants to travellers coming from Member States the tax concessions provided for in respect of travel to and from non-member countries if they cannot show that the goods were acquired subject to the general conditions governing taxation on the domestic market of a Member State, that provision should not be taken into consideration in the present case. It does not apply to ferry-boats operating between two Member States and the two situations to which Article 2 (4) applies do not exist in the present case.

Thirdly, since Directive 69/169/EEC derogates from the general rules of the Common Customs Tariff, it should be interpreted strictly.

(b) *The Government of the Federal Republic of Germany* presented the following observations on this particular aspect of the Finanzgericht's order.

First, the question is a new one and has not been settled by either the fifth or the sixth paragraph of the operative part of the Court's judgment of 7 July 1981 in Case 158/80.

Secondly, untaxed goods in relation to which the tax exemption is not subject to quantitative restrictions are not exempt from tax in the context of intra-Community passenger traffic, within the limits as to value laid down in Article 2 (1) of Directive 69/169/EEC, since they were not purchased subject to the general rules governing taxation on the domestic market of one of the Member States.

Thirdly, in the case of goods in respect of which the tax exemption is subject to quantitative restrictions (tobacco products, alcoholic drinks, perfumes, coffee, tea), which form a large proportion of the trade carried out on ferry-boats, the Community rules do not expressly provide that they must be acquired subject to the general conditions governing taxation on the domestic market of one of the Member States in order to be able to benefit from exemptions in the context of intra-Community trade.

Nevertheless it follows from Article 4 (4) of the directive that that condition also applies to goods liable to high rates of tax.

Fourthly if the effect of Articles 2 and 4 of the directive is to exclude untaxed goods in the context of intra-Community passenger traffic from exemptions from turnover taxes and excise duties levied upon importation, that does not mean that the exemptions applicable in the context of passenger traffic between Member States and non-member countries provided for by Article 1 and Column I of Article 4 (1) of the directive cannot apply to such goods. Those more limited exemptions have been granted by tradition by the Federal Republic of Germany, as by all the other Member States, in the context of intra-Community passenger traffic by ferry-boat and aircraft.

According to the Government of the Federal Republic of Germany, that practice is not contrary to the directive even if it does not contain express provisions in relation to intra-Community trade in untaxed goods.

It follows from the penultimate recital in the preamble to the directive that the Council took the view that, as a general rule, goods imported in the course of intra-Community passenger traffic were acquired already taxed in the country from which they came. The Council could not have been unaware of those cases which do not follow the general rule. In fact, Article 6 of the directive, as amended, confirms that fact by expressly excluding sales made at airport shops under customs control and on board aircraft from the general scheme of tax concessions in respect of supplies of goods to persons travelling within the Community.

That exception, which is only of any meaning in connection with a limited tax concession in the country of arrival, should also be applied to the case of intra-Community travel effected by ferry-boats.

Furthermore, the admission of such products tax-free in limited quantities (subject to different rules than those governing purchases on the domestic market) is not a unique case in Community law and may be compared in particular to the importation of goods in the course of passenger traffic by members of the armed forces of a Member State stationed in another Member State (Article 5 (3) of the directive).

In support of that argument the Government of the Federal Republic of Germany states, furthermore, that, unlike customs duties, excise duties have not, as yet, been the subject of strict Community rules. Thus neither the tax structures (for the most part) nor the rates of taxation have been harmonized as yet.

Thus, from the point of view of taxes on consumption there is no difference between imports coming from non-member countries and those coming from the Community.

Failing the harmonization of excise duties, there is no objective reason to treat goods purchased in tax-free shops and imported from a Member State of the Community less favourably than those so purchased and imported from a non-member country.

The Government of the Federal Republic of Germany is also concerned to reject the reservations expressed in connection with that argument by the Finanzgericht Hamburg by stating that it is not possible to deduce either from the provisions of the directive or from the preamble thereto that only goods purchased in a "territory" and not on board ship may be exempt from taxes in the context of intra-Community trade.

Furthermore, it cannot be inferred from the directive that the tax exemption is set aside completely when the conditions laid down by the directive for the grant of higher tax-free quantitative limits for fully-taxed goods are not fulfilled in the context of intra-Community trade.

Finally, it is irrelevant, in relation to tax exemption, whether or not the goods obtained on board any means of intra-Community travel were already taxed in a non-member country.

(c) The *United Kingdom* considers that the answer to be given to this part of the question referred to the Court by the Finanzgericht is of the utmost significance and that the duty-free facilities granted to travellers have been recognized in international law for a long time prior to the setting-up of the Community.

Thus it is not conceivable that such well-established facilities should be abrogated without specific Community legislation observing all the safeguards provided by the Treaty.

No such legislation exists and, indeed, the continued existence of the regime of duty-free shops is explicitly recognized by Article 6 (2) of Directive 69/169/EEC, as amended.

The United Kingdom's conclusions are based first on an examination of the legislative history of the relevant Community rules, secondly on an analysis of the provisions of Directive 69/169/EEC, as amended, and thirdly, on the fact that such an interpretation of the provisions is not inconsistent with the Court's judgment in Case 158/80.

(c)1. Legislative history

(c)1.(a) Preparatory work and the preamble to Directive 69/169/EEC

The first point made by the United Kingdom is that when that directive was adopted duty-free trade already constituted a significant economic activity, so that, in the absence of an express intention in the preamble thereto or in the text of the directive itself, the purpose of the directive could not have been to eliminate such trade.

If that was the intention, then in view of the provisions of Articles 190 and 234 of the EEC Treaty that intention should have been made clear.

The fourth recital in the preamble to the directive, by stating that, as a general rule, goods may only be obtained in the country from which they come already taxed, implicitly recognizes that there existed, in 1969, exceptional circumstances in which certain goods could be obtained from the country from which they came without being taxed.

It also follows from the second recital in the preamble to the directive that a further purpose of its adoption was the greater liberalization of the system of taxes on imports in travel between Member States. Such a recital would be inappropriate if the intention of the directive had been to abolish existing duty-free practices for travellers.

In the second place, the legal basis for Directive 69/169/EEC and the directives which have amended it is Article 99 of the Treaty concerning the harmonization of indirect taxes including turnover taxes and excise duties. That contrasts with Regulation No 1544/69 of the Council concerning exemptions from customs duties, which was adopted pursuant to Article 28 of the EEC Treaty.

Consequently, the Court held in its judgment in Case 158/80 that Regulation No 1544/69 set out definitive Community rules in the sphere in which it operated; by contrast, Directive 69/169/EEC and the amendments subsequently made to it constitute legislation seeking to harmonize the tax laws of the Member States. The different scope of those two articles of the Treaty is, furthermore, implicit in the Court's reasoning.

Thirdly, the United Kingdom considers that, despite the doubts and differences of opinion arising with regard to the interpretation of Article 6 (1) of the directive, in fact that article merely precludes the remission of tax on goods already taxed which benefit from the exemptions provided by the directive.

The Commission, after considering the problem, concluded that it was necessary to propose further legislation expressly to

restrict remission of tax in respect of goods which benefited from the exemptions provided by the directive.

The United Kingdom understands that it was made plain at that stage that the proposals would not concern sales made at airport shops under customs control or sales made on board aircraft, for wich a further Commission proposal was envisaged.

That opinion is confirmed by the proposal of the Commission for a second directive amending the original directive (Official Journal 1971, C 106, p. 16). Furthermore, the purpose of Directive 72/230/EEC, as the proposal became on adoption, was to make certain amendments to Article 6 of the original directive and, most importantly, to introduce an introductory reservation into the new Article 6 (2): "Without prejudice to rules relating to sales made at airport shops under customs control and on board aircraft ..." That phrase amounts to express legal recognition of the pre-existing regime in the Member States of sales in duty-free shops to travellers.

(c)1.(b) Subsequent proposals

Directive 72/230/EEC was adopted on 12 June 1972 and on 22 September 1972 the Commission submitted to the Council a proposal for a third directive (Official Journal 1972, C 113, p. 15) and, subsequently, on 16 November 1972 a proposal for a Council regulation (Official Journal 1972, C 134, p. 34), which contained provisions concerning duty-free sales at airport shops and on board aircraft, ships and hovercraft.

Even though those proposals were not adopted, the mere fact that the Commission perceived the need, in 1972, for specific regulation in respect of the regime relating to duty-free shops indicates that Directive 69/169/EEC, as amended by Directive 72/230/EEC, was never intended to regulate the Member States' regimes relating to duty free sales, nor did it have such effect.

(c)1.(c) Subsequent amendments to the directive

The United Kingdom considers that, as the phrase "without prejudice to rules ..." was left in force by the Third Directive (78/1032/EEC), the preamble to which makes no reference to the position of duty-free sales, that directive did not amend the regime in force in the Member States.

(c)2. The text of Directive 69/169/EEC, as amended

(c)2.(a) The meaning of the introductory reservation "without prejudice ..." contained in Article 6 (2) of the directive

The United Kingdom considers it necessary to examine the precise purpose of that reservation in order to discover whether, even if it preserves the regime of duty-free sales at airport shops under customs control and on board aircraft, it may be regarded as apt to cover also the sale of goods free of turnover taxes and excise duties to travellers on board ferry-boats operating between two Member States.

The United Kingdom considers that it would be proper and in accordance with the plain purpose of the reservation to interpret it as including within its ambit rules relating to sales made on shore, for example in shops under customs control at hovercraft terminals, and to sales made on board ferry-boats providing intra-Community travel.

The purpose of the directive is to preserve the general system derived from "on-board" sales in a conveyance crossing international frontiers.

That construction is supported first by the fact that in 1969 and in 1972 there was, amongst the original six Member States, no hovercraft or ferry-boats traffic between those Member States giving rise to trade in duty-free goods.

Secondly, from a practical point of view there is no distinction between the different regimes relating to sales in shops under customs control, whether they are at hovercraft terminals, at airports or on board aircraft or ferry-boats.

The United Kingdom therefore concludes that a wide interpretation of the introductory reservation would give effect to the clear intention of the legislation.

(c)2.(b) The remaining provisions of Directive 69/169/EEC, as amended

The complete text of the directive, as amended, confirms the interpretation that there was never any intention to override, by means of these Community provisions, the Member States' own rules relating to duty-free sales, so far as turnover taxes and excise duties were concerned.

Directive 69/169/EEC, as amended, inasmuch as it relates to turnover taxes, constitutes an authorized exception to the basic principle laid down in the Sixth Council Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes, according to which, if exemption from turnover tax is given on exportation, the tax is to be imposed on importation into another Member State. On the contrary, within the limited sphere of its application, Directive 69/169/EEC emphasizes relief from taxation on importation into another Member State.

It is in that context that *Article 2 (1)* of Directive 69/169/EEC, as amended, is to be understood.

That provision permits exemption from turnover taxes and excise duties levied on the importation of goods into a Member State only where the goods have been acquired subject to the general rules governing taxation on the domestic market of one of the Member States and does not allow for any exception to that requirement.

Its purpose is therefore to define the limits as to value of goods which, having already been taxed, may be exempt from any further taxation when carried in the personal luggage of travellers moving from one Member State to another. That is quite a separate matter from the regime prevailing in respect of sales in duty-free shops whether they are in the territory of a Member State or on board a means of transport between two Member States.

Moreover, the original version of that provision did not contain such a requirement.

That interpretation is confirmed by an analysis of Article 2 (4) of the directive, which was inserted by the Third Directive of 19 December 1978. That provision concerns two particular types of travel between Member States.

With regard to *Article 4 (1)* of the directive, concerning the quantitative limits for certain goods, the United Kingdom considers that the same purpose is intended for goods subject to quantitative limits as for unspecified goods, taking into account in particular the wording of Article 4 (4), which was also inserted by the Third Directive of 1978.

Article 6 (1), which prohibits remission of turnover taxes for travellers whose domicile, habitual residence or place of work is situated in a Member State and who have already benefited from the exemptions from tax on the importation of goods into a Member State pursuant to Articles 2 and 4 of the directive, is also to be understood in that context.

The reason for the prohibition laid down by that provision is that such goods ought already to have been acquired subject to the general rules governing taxation on the Member States and Article 6 (1) therefore has a restricted scope, separate from the regime prevailing in respect of duty-free sales authorized by the practice of the Member States.

The remaining paragraphs of Article 6, apart from the introductory reservation of Article 6 (2), relate only to ordinary retail sales in a Member State and the procedural arrangements for obtaining remission of tax. They relate only to goods which do not benefit from the exemptions contained in Articles 2 (1) or 4 of the directive.

Thus, those paragraphs do not relate to the practice of duty-free sales. The prohibition on the remission of excise duty referred to in the last sentence of Article 6 (2) relates solely to remission of value-added tax in the case of ordinary retail sales.

Having regard to the aforementioned considerations and to the avowed purpose of the Commission in proposing the amendments to Directive 69/169/EEC, and in spite of the scope of that directive, the United Kingdom practice is to draw guidance from the provisions of Directive 69/169/EEC, as amended.

Pending complete Community legislation in the field, the United Kingdom allows a traveller coming into its territory, even though he comes directly from another Member State, the "lower third-country limits" in respect of exemption from turnover taxes and excise duties provided in Article 1 and Column 1 of Article 4 (1) of the directive, as amended, unless the traveller is able to establish that the goods in respect of which exemption is claimed were acquired subject to the general rules governing taxation on the domestic market of one of the Member States.

Only in that event is the traveller able to benefit from the higher exemptions provided in Article 2 and Column II of Article 4 (1) of the directive.

(c)3. The scope of the Court's judgment of 7 July 1981 in Case 158/80

The United Kingdom considers that the interpretation which it is asking the Court to adopt in the present case is not inconsistent with the aforementioned judgment.

First, the introductory reservation in Article 6 (2) of the directive recognizes that the Member States have a restricted power to grant exemptions.

Secondly, the United Kingdom considers that the sixth paragraph of the operative part of the Court's judgment does not mean that the existing directives are completely exhaustive in the sense that authority for a Member State to grant any exemptions from turnover taxes and excise duties is to be found within the directives, as amended, and in no other source, but rather that the intention of the Council was gradually to establish a complete system of exemptions from turnover taxes and excise duties in respect of goods contained in travellers' personal luggage.

No such general system of exemptions has been achieved as yet and, specifically, the duty-free regime is still not governed by Community law.

Thus, pending the introduction of such law, it is necessary for a Member State seeking to grant exemptions other than those specifically set out in the directives to have regard to the provisions of those directives and specifically in the present case to have regard to the introductory reservation contained in Article 6 (2) of the directive.

Thirdly, the United Kingdom emphasizes that although the Court made no reference in its judgment to the significance of the reservation contained in Article 6 (2), the Advocate General did refer to it in his Opinion, stating that it had a wide scope.

In conclusion the United Kingdom considers that the answer to be given to this part of the question referred to the Court by the Finanzgericht is as follows:

"The importation of goods free of turnover tax and excise duties to intra-Community travallers who have purchased them on board ships or aircraft or at shops under customs control is a matter still reserved to the rules of the Member States themselves, which produce a substantial degree of uniformity ... Alternatively, if Member States are left with only the restricted powers given in the relevant directives to grant exemptions other than those specified in those directives, then by adopting the monetary and quantitative limits set out in Articles 2 (4) and 4 (4) covering analogous importations a Member State would be properly granting an exemption specified in the directive."

(d) On this point the Commission defers to the Court's wisdom

(d)1. By way of introduction it submits four observations.

First, according to Directive 69/169/EEC (Article 2 (1)) exemption from value-added tax and excise duties applies to goods contained in the personal luggage of travellers coming from Member States provided, on the one hand, that they fulfil the conditions laid down in Articles 9 and 10 of the Treaty, that is to say, that they are in free circulation in the Member States, and, on the other hand, that they have been acquired subject to the general rules governing taxation on the domestic market of one of the Member States.

Secondly, according to the Finanzgericht those conditions are not fulfilled because the goods sold on ferries are either

goods coming from a non-member country which are not in free circulation or goods coming from the Community which have not been subject to tax in any of the Member States.

Thirdly, the question referred to the Court by the Finanzgericht raises a new legal problem which was not considered in the Court's judgment in Case 158/80, which, as regards intra-Community traffic, related only to the situations referred to in the special provisions of Article 2 (4) of the directive.

That is not the position in the present case since the Finanzgericht's question does not state whether the journey was via the territory of a non-member country or whether the ship called at a part of the territory of a Member State where the general rules governing taxation are not applied.

Thus, fourthly, the question to which the Court must reply in order to rule on the legality of the tax-free sale of goods on ferries operating between Member States and of the tax-free importation of such goods into the Member State which is the country of destination is whether or not that exception falls within Directive 69/169/EEC.

(d)2. The *Commission* is of the opinion that, if it is confirmed that the reservation contained in Article 6 (2) in respect of duty-free shops does contain a derogation, from the general principle of the directive, it would be possible to envisage the extension of that derogation, by analogy, to the sale of goods on which taxes have been remitted on board ferry-boats, since that reservation was introduced in 1972, that is to say at a time when there was practically no ferry-boat traffic between the Member States of the Community of Six.

(d)3. *However, according to the Commission,* the essential question is whether or not the reservation contained in Article 6 (2) in respect of duty-free shops contains a derogation from the general scheme of the directive.

(d)3.(a) Arguments submitted by the Commission in support of the contention that the reservation contained in Article 6 (2) should be given a narrow interpretation

First, the Commission contends that, since Article 2 (1) of the directive requires that the goods in question must fulfil the conditions laid down in Article 9 and 10 of the Treaty, that is to say they must be in free circulation in the Member States, it is appropriate to refer to its submission in relation to customs exemptions which may be granted in respect of intra-Community traffic.

Secondly, the Commission considers that Directive 69/169/EEC amounts to a derogation from the provisions of Community law relating to value-added tax. According to the Sixth Directive on value-added tax, the matter is governed by the principle of the country of destination, that is to say that the goods are exempt, at the time of their exportation from a Member State, from the value-added tax which is charged there and are liable, at the time of their importation into another Member State, to the value-added tax levied in that country.

Directive 69/169/EEC derogates from that principle by laying down the principle, in the context of intra-Community passenger traffic, that turnover taxes are levied by the country from which the goods come.

Goods on which the taxes charged by a Member State have been paid must be allowed to be transported into another Member State in travellers' luggage without any formality.

It was for that reason that Article 6 (1) of the directive prohibits the remission of tax on supplies to travellers whose domicile is situated in a Member State and who benefit from the tax concessions provided by the directive.

The purpose of that prohibition of the remission of tax was to avoid, in the context of intra-Community passenger traffic, the tax-free importation into another Member State of goods on which taxes had not been paid in their country of origin.

Thirdly, the Commission states that the significance of the introductory reservation contained in Article 6 (2) in favour of sales in duty-free shops lies in the fact that such sales escape from the prohibition of the remission of excise duties in the context of traffic to and from non-member countries (the second sentence of Article 6 (2) and from the need to comply with the formalities laid down in Article 6 (4) *(ex post facto* remission or obtaining the endorsement of the customs authority).

It is in that sense that the reservation is to be understood. Nevertheless, the Commission recognizes that the wording of that reservation, which is somewhat unfortunate from a semantic point of view, may lead to the impression, with regard to the rules relating to excise duties (that is to say the absolute prohibition of remission of tax on exportation), that any remission is therefore prohibited for tax-free shops just as it is for the remainder of the retail trade.

Fourthly, the Commission emphasizes that such an interpretation of the reservation contained in Article 6 (2) means that the absolute prohibition of remission of tax in relation to intra-Community traffic in respect of goods contained in the luggage of travellers who benefit from tax exemptions also applies to sales in duty-free shops at airports and on board aircraft.

Consequently, the supply of tax-free goods in tax-free shops within the limits as to quantity and value laid down by Articles 2 and 4 of the directive does not conform to the provisions of Directive 69/169/EEC.

That interpretation is confirmed by the fact that those articles do not contain any exception in respect of the tax-free importation into the country of destination of untaxed goods contained in travellers' luggage.

Fifthly, the Commission refers to the proposal for a third directive and for a regulation which it submitted to the Council on 22 September 1972 and 6 November 1972, the purpose of which was to permit the sale of goods free of customs duties and taxes only to travellers with a ticket for travel to a non-member country.

After several years of fruitless discussion, during which the Member States expressed different viewpoints, those proposals were finally withdrawn.

In conclusion on this point, the Commission is of the opinion that such an interpretation of the reservation contained in Article 6 (2) of the directive is based primarily on its context, which consists of provisions granting remission of tax, in the context of passenger transport, in respect of goods exported to non-member countries and in respect of goods within the Community in so far as they are not covered by the exemptions provided for by the directive.

If the Court accepts such an interpretation, then having regard to the wording of the sixth paragraph of the operative part of its judgment of 7 July 1981 in Case 158/80, it may be concluded that the Member States have no power to permit the tax-free sale of goods in the course of intra-Community travel except

where the directive provides for derogations. Of necessity that conclusion would apply to duty-free sales of goods on ferry-boats operating between Member States.

(d)3.(b) Arguments submitted by the Commission in support of the contention that the scope of the introductory reservation contained in Article 6 (2) should be given a wide interpretation

First, the Commission contends that a strict interpretation, as outlined above, does not accord with the purpose of the reservation.

The possibility of a remission of excise duties is, in fact, of far greater economic importance to duty-free shops than exemption from value-added tax.

The special status which is intended to be conferred on tax-free shops by the reservation contained in Article 6 (2) would therefore be deprived of its essential purpose if such shops were subject to the prohibition of remission of excise duties.

Secondly, the actual wording of the introductory reservation contained in Article 6 (2) is not inconsistent with such an interpretation since in 1972, when that provision was inserted into the directive, there were no Community rules governing sales in airport shops under customs control or sales on board aircraft; the rules referred to in the reservation must therefore be those applied by each Member State.

At that time, the tax-free sale of goods in tax-free shops was a general practice in all the Member States.

Thirdly, the Commission points out that in his Opinion delivered in Case 158/80 the Advocate General acknowledged that the reservation contained in Article 6 (2) had a very wide scope. Moreover, he raised the question whether that reservation could not also be interpreted to include the supply of tax-free goods in whatever form to travellers in the context of intra-Community travel.

Finally, the Commission points out that the abolition of tax concessions granted in relation to duty-free shops would have major economic consequences and would result in a significant increase in the price of flights and ferry-boat journeys.

The Commission concludes that it is quite possible that by including the reservation in Article 6 (2) the Community legislature intended to confirm the existing practice in the Member States until Community rules were adopted in the matter.

If the Court decides that the reservation constitutes a general derogation from the scheme of the directive, it would follow that the sale of tax-free goods in tax-free shops would be lawful within the limits laid down by the directive (shops under customs control at airports and sales on board aircraft). Such reasoning may also be applied to tax-free sales on board ferry-boats in relation to the exemptions provided by the directive.

2.2.3. In relation to the third question: combined ship and coach travel within the Community

(a) The observations of the plaintiffs in the main action are summarized under the heading (C) 1.3.(a).

(b) The observations of the Government of the Federal Republic of Germany are summarized under the heading (C) 1.3.(b).

(c) The Commission is of the opinion that a negative reply should be given to

the question whether, in the context of combined ship and coach travel within the Community, exemption from turnover taxes and excise duties is compatible with Community law.

First, such an answer is clearly necessary if the Court considers that the reservation contained in Article 6 (2) does not constitute a general derogation from the scheme of Directive 69/169/EEC.

In that event, what is prohibited in the case of ferry-boats operating between Member States must equally be prohibited in the case of ships carrying passengers participating in excursions involving combined sea and land journeys.

Secondly, even if the Court considers that the reservation contained in Article 6 (2) does constitute a derogation from the general scheme of the directive, the Commission takes the view that the reservation cannot apply to combined excursions. Unlike tax-free sales in tax-free shops at airports or on board aircraft and ferry-boats which give passengers the opportunity during a flight or crossing to acquire goods on which tax has been remitted, the main purpose of combined excursions, as that of "butter-buying cruises", is not to make a journey but to be able, in return for a modest outlay in respect of travel costs, to acquire on board tax-free goods and to import them into the country from which they departed without having to pay the relevant taxes.

The purposes of the operation is therefore to circumvent the tax provisions of Community law.

Thus no tax concession should be allowed in such a situation.

D — Proposed replies submitted to the Court

1. The *plaintiffs in the main action* propose that the following reply be given to the questions referred to the Court by the Finanzgericht:

"Regulations Nos 1544/69 and 1818/75 of the Council of 10 July 1975 and Council Directive 69/169/EEC, as last amended in each case, are to be construed to the effect that the tax concessions provided for therein in respect of customs duty, import charges applicable to agricultural products or goods resulting from the processing thereof, turnover taxes and excise duties do not apply to goods which are purchased on ferry-boats and which are not in free circulation in the Member States or which have not been subject to turnover tax or excise duties in the Member States or non-member countries, regardless of whether the ferry-boats operate between a Member State and a non-member country or between Member States."

2. The *Government of the Federal Republic of Germany* proposes that the following reply be given to the questions referred to the Court by the Finanzgericht:

1. The first question:

"Regulation No 1544/69 of the Council of 23 July 1969 and Council Directive 69/169/EEC of 28 May 1969, as amended at the relevant time, are to be construed to the effect that the exemptions from customs duties and taxes applicable to goods contained in the personal luggage of travellers coming from a non-member country also apply, subject to other requirements, to products purchased on board ferry-boats carrying passengers between a Member

State and a non-member country. In that respect it is irrelevant whether or not the goods have been subject to duties imposed under the Common Customs Tariff, agricultural charges or charges having equivalent effect governed by Community law, turnover taxes or excise duties imposed by a Member State or duties imposed by a non-member country or whether or not the goods have benefited from any assistance for their exportation under the common agricultural policy."

2. The second and third questions:

"Council Directive 69/169/EEC of 28 May 1969, as amended at the relevant time, permits the tax concessions applicable to goods contained in the personal luggage of travellers coming from a non-member country to be granted where the goods have been purchased on board ferry-boats carrying passengers between Member States, are imported in travellers' personal luggage and have been put into free circulation for customs purposes in a Member State but have borne the turnover taxes or excise duties of a Member State. The same will apply to products which have received customs clearance and have been put into free circulation not in the Member State in one of whose ports the journey ends but solely in another Member State. It is irrelevant whether or not the goods have borne the duties imposed by a non-member country."

3. The *United Kingdom* proposes that the following reply be given to the question referred to the Court by the Finanzgericht:

"Council Regulation No 1544/69 of 23 July 1969, as amended by Council Regulation No 3313/81 of 17 November 1981, Council Regulation No 1818/75 of 10 July 1975, as amended by Council Directive 2780/78 of 27 November 1978 and Council Directive 69/169 of 28 May 1969, as last amended by Directive 81/933 of 17 November 1981, are to be interpreted as meaning that the specified exemptions from customs duties, agricultural levies, turnover taxes and excise duties are also valid for goods which are not in free circulation in the Member States or which have not borne turnover tax or excise duty in the Member States or in third countries which have been purchased by travellers on ferries operating between a Member State and a third country."

With regard to the second question:

"The provisions mentioned in Question 2 should be construed to the effect that goods which are not in free circulation in Member States which are purchased by passengers on ferries carrying passenger traffic on journeys between Member States may not benefit from exemption from customs duties and levies on agricultural products.

Where such goods are in free circulation and all customs duties and levies on agricultural produce have been paid, Member States may continue the practice of granting exemptions from turnover taxes and excise duties in relation to the importation of goods sold to passengers on ferries carrying passengers between Member States."

4. *Ireland* proposes that the following reply be given to the questions referred to the Court by the Finanzgericht:

"Duty-free shops on regular ferry routes in intra-Community travel are outside the scope of application of Directive 69/169/EEC, as amended, simply because the Community institutions have not succeeded in adopting the relevant measures as yet."

5. The *Commission* proposes that the following reply be given to the questions referred to the Court by the Finanzgericht:

1.: "The provisions of Community law concerning the tax concessions to be granted in respect of goods contained in travellers' luggage (Regulation No 1544/69 of the Council, Regulation No 1818/75 of the Council and Council Directive 69/169/EEC) are to be construed to the effect that tax concessions in respect of customs duties, import charges applicable to agricultural products or certain products resulting from the processing thereof, turnover taxes and excise duties also apply to goods which are not in free circulation in the Member States or on which the turnover taxes or excise duties applicable in the Member States have not been paid and which have been purchased by passengers on ferries carrying traffic between a Member State and a non-member country."

2.: "The provisions mentioned in Question 1 must be construed to the effect that, in relation to passenger traffic between Member States, the sale of goods free of customs duties and agricultural levies to travellers on board ferries and the importation of those goods tax-free into the State where the journey ends are unlawful.

With regard to exemptions from value-added tax and excise duties and their compatibility with Community law, the reply to the question depends, in the Commission's opinion, on the interpretation of Article 6 (2) of Directive No 69/169/EEC and in relation to such interpretation the Commission defers to the Court's wisdom."

3.: "With regard to combined sea and land excursions and exemption from customs duties and agricultural levies in that context, the Commission refers to its observations on the second question.

The Commission replies in the negative to the question whether exemption from turnover tax and excise duty is compatible with Community law."

III — Oral procedure

At the sitting of 20 September 1983 oral argument was presented by Rewe-Handelsgesellschaft Nord mbH and Firma Rewe-Markt Herbert Kureit, represented by Gert Meier, the Senior Legal Adviser of Rewe-Central AG; by the Federal Republic of Germany, represented by Arved Deringer, acting as Agent, assisted by Frank Olbertz, Expert; by Förde-Reederei GmbH, represented by Walter Seuffert, Rechtsanwalt; by the United Kingdom, represented by G. Dagtoglou and John Laws, acting as Agents; by Ireland, represented by James O'Riley, acting as Agent; by the Government of the French Republic, represented by Gérard Boivineau, acting as Agent; and by the Commission of the European Communities, represented by Erich Zimmermann, acting as Agent.

The Advocate General delivered her opinion at the sitting on 9 November 1983.

Decision

1 By order of 4 August 1982, which was received at the Court on 18 October 1982, the Finanzgericht [Finance Court] Hamburg referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty several questions relating to the interpretation of Regulation (EEC) No 1544/69 of the Council of 23 July 1969 on the tariff applicable to goods contained in travellers' personal luggage (Official Journal, English Special Edition 1969 (II), p. 359), as amended, of Council Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (Official Journal, English Special Edition 1969 (I), p. 232), as amended, and of Regulation (EEC) No 1818/75 of the Council of 10 July 1975 on the agricultural levies, compensatory amounts and other import charges applicable to agricultural products and to certain goods resulting from their processing, contained in travellers' personal baggage (Official Journal 1975, L 185, p. 3), as amended.

2 The questions arose in the course of proceedings between a wholesaler and a retailer established in the Federal Republic of Germany, on the one hand, and the Hauptzollämter [Principal Customs Offices] of the *Land* of Schleswig-Holstein responsible for the North-Sea and Baltic coast areas. The action brought by the plaintiffs in the main proceedings initially sought an order directing the Hauptzollämter to refrain from clearing through customs free of duty goods brought back from sea voyages by passengers in their personal luggage.

3 Whilst the proceedings were originally concerned with the so-called "butter-buying cruises", that is to say short sea cruises and excursions which do not involve a call at a port or only a token call, they were extended, in the course of the hearing before the Finanzgericht, to the system of customs duties and taxes applicable in respect of goods purchased free of customs duties and taxes on ships operating regular routes and on ferries on the importation of such goods. It was also brought to the attention of the Finanzgericht that ships were leaving ports in the Federal Republic of Germany for Denmark where no entry duties were charged on goods acquired tax-free and from where the passengers returned by coach to the Federal Republic of Germany where they also benefited from exemptions.

4 It is clear from the order for reference that the plaintiffs in the main proceedings maintained before the Finanzgericht that such short voyages had the effect of depriving local wholesale and retail traders of the benefit of a large proportion of the purchasing power of the Baltic coast area in favour of the shipping undertakings which organized the cruises.

5 The plaintiffs in the main proceedings therefore requested the Finanzgericht to direct the Hauptzollämter in question to refrain from clearing through customs free of duty goods imported in the aforementioned circumstances.

6 The Finanzgericht before which the dispute was brought referred the following questions to the Court for a preliminary ruling:

"1. Must Regulation (EEC) No 1544/69 of the Council of 23 July 1969, as last amended by Council Regulation (EEC) No 3313/81 of 17 November 1981, Regulation No 1818/75 of the Council of 10 July 1975, as amended by Council Regulation (EEC) No 2780/78 of 27 November 1978, and Council Directive 69/169/EEC of 28 May 1969, as last amended by Directive 81/933/EEC of 17 November 1981, be construed to the effect that the tax concessions provided for therein in respect of customs duties, import charges applicable to agricultural products or goods resulting from their processing, turnover taxes and excise duties also apply to goods which are not in free circulation in the Member States or which have not borne turnover taxes or excise duties in the Member States or non-member countries and which are purchased by passengers on ferries carrying passenger traffic between a Member State and a non-member country?

2. Must the provisions mentioned in Question (1) be construed to the effect that the tax concessions in question also apply to goods which are not in free circulation in the Member States or which have not borne turnover taxes or excise duties in the Member States or non-member countries and which are purchased by passengers on ferries carrying passenger traffic between Member States?

3. Must the provisions mentioned in Question (1) be construed to the effect that the tax concessions in question also apply to goods which are not in free circulation in the Member States or which have not borne turnover taxes or excise duties in the Member States or non-member countries

and which are purchased by passengers on ships sailing from a port in a Member State to the port of another Member State where the passengers go ashore and then, without being charged duty in the country in which they arrive, return by land to the Member State in which they began their journey?"

The application of Article 177

7 The plaintiffs in the main action consider that the Court, in its judgment of 7 July 1981 (Case 158/80 *Rewe-Handelsgesellschaft Nord mbH and Rewe-Markt Steffen* v *Hauptzollamt Kiel* [1981] ECR 1805), given in response to questions referred to it for a preliminary ruling by the same Finanzgericht, has already given an unequivocal ruling that "butter-buying cruises" are incompatible with Community law as regards both exemptions from customs duties and exemptions from turnover tax and excise duties. They contend that the conclusions of the parties to the main action which gave rise to the aforementioned judgment are the same as those of the parties to the main action in this case and that the Finanzgericht is seeking from the Court a judgment in essentially the same terms as those of the judgment of 7 July 1981. Accordingly the preliminary ruling sought by the order for reference is not necessary within the meaning of Article 177 of the Treaty.

8 As has already been held, it is not for the Court to decide whether or not a reference for a preliminary ruling is necessary. In the context of the division of judicial functions between national courts and tribunals, on the one hand, and the Court of Justice, on the other, under Article 177 of the Treaty, it is, in fact, for the national court, which alone has a direct knowledge of the facts of the case and of the arguments of the parties and which will have to take responsibility for giving judgment in the case, to assess, on the basis of its full knowledge of the case, whether the questions of law raised in the proceedings pending before it are material and whether a preliminary ruling is necessary to enable it to give judgment.

9 In any event, it should be noted that the aforementioned judgment of 7 July 1981 concerned the tariff and tax treatment of the importation of goods acquired on the occasion of cruises specially organized in order to obtain the benefit of exemptions ("butter-buying cruises"). In this case, on the other hand, the order for reference relates to the tariff and tax treatment of the

importation of goods purchased on board ferries providing regular services or in the course of combined ferry and coach journeys.

The replies to be given to the different questions referred to the Court for a preliminary ruling

10 It should be noted first that the questions put by the national court relate to three types of exemption which may be applicable on the importation of goods contained in the personal luggage of travellers coming from a non-member country or a Member State:

1. Exemptions from customs duties provided for in Regulation No 1544/69 of the Council, cited above, as amended;

2. Exemptions from agricultural levies and other import charges applicable to agricultural products and to certain goods resulting from their processing provided for in Regulation No 1818/75 of the Council of 10 July 1975, cited above, as amended;

3. Exemptions from turnover tax and excise duties provided for in Council Directive 69/169 of 28 May 1969, cited above, as amended.

11 Nevertheless, as far as travel between non-member countries and Member States is concerned, it is possible to give a single reply to the questions concerning customs duty exemptions and those concerning exemptions from agricultural levies and other import charges applicable to agricultural products, referred to in Article 1 of Regulation No 1818/75. By virtue of that provision, Regulation No 1544/69 was extended to agricultural levies and other import charges applicable to goods contained in the personal luggage of travellers entering the Community.

12 Similarly, as far as travel within the Community is concerned, it is possible to give a single reply to the questions concerning exemptions from turnover tax and excise duties, on the one hand, and exemptions from other import charges applicable to agricultural products, referred to in Article 2 of Regulation No 1818/75, on the other hand. By virtue of that provision, exemption from the import charges provided for under the common agricultural policy or under the special arrangements applicable under Article 235 of the Treaty

is allowed for agricultural products and certain goods resulting from their processing, contained in the personal luggage of travellers coming from a Member State. The limits and the conditions for granting the exemption are the same as those set out in Directive 69/169.

1. The first question: transport by sea between a non-member country and a Member State

13 The Finanzgericht's first question asks, in substance, whether, in the case of passenger transport between a non-member country and a Member State, goods contained in travellers' personal luggage which have not been put into free circulation and on which turnover tax and excise duty have not been levied, may benefit on their importation into the Member State from the exemptions from customs duties, agricultural levies and other import charges applicable to agricultural products, on the one hand, and from turnover tax and excise duties, on the other hand, provided for in the aforementioned regulations and directives.

(a) Exemption from customs duties, agricultural levies and other import charges applicable to agricultural products

14 The Court has already ruled, in relation to such exemptions, in its judgment of 7 July 1981, cited above, that Regulation No 1544/69 applies to the luggage of travellers coming from a non-member country "irrespective of the origin of the goods or the place from which they come and of the customs duties and taxes which they have borne prior to their importation into the territory of the Community".

15 The Finanzgericht, which considers that that ruling relates only to goods coming from a non-member country, once again seeks an interpretation of Article 1 of Regulation No 1544/69 and Article 1 of Regulation No 1818/75 with regard to goods acquired on board ferries engaged in passenger transport between a non-member country and a Member State, on the ground, according to the order for reference, that the ferries may obtain supplies in the Community, in particular in the Federal Republic of Germany, of goods which have borne neither customs duties, nor taxes, nor excise duties. In the Finanzgericht's view, the wording, spirit and purpose of Regulation No 1544/69 lend some support to interpreting the above-mentioned provisions as meaning that it is possible to import tax-free, within the limits laid down therein, only goods purchased in the territory of a non-member country.

16 In that respect it must be emphasized that, as the Court has already held in its judgment of 7 July 1981, cited above, the objective of Regulation No 1544/69 is to simplify the clearance through customs of goods contained in travellers' personal luggage coming from non-member countries; that objective would not be attained if the customs authorities were obliged to determine, at the time of importation, the origin of the goods for which exemption from customs duties is claimed. That reasoning applies equally to the situation described by the national court in this case. There is therefore nothing in that situation which calls for any change in the reply given in the judgment of 7 July 1981.

17 The reply to be given to the first part of the question should therefore be that, in relation to transport by sea by ferry between non-member countries and Member States, the exemptions provided for in Regulation No 1544/69 (as amended by Regulation No 3061/78) and in Article 1 of Regulation No 1818/75 (as amended by Regulation No 2780/78) apply to goods contained in the personal luggage of travellers who enter the territory of the Community from a non-member country, irrespective of the origin of the goods and the place from which they come and of the customs duties and taxes which they have borne prior to their importation into the territory of the Community.

(b) Exemptions from turnover tax and excise duties

18 The Court has already stated in reply to this question in its judgment of 7 July 1981, cited above, that the exemptions from turnover tax and excise duties provided for by Directive 69/169, cited above, may be granted only to travellers who arrive in the customs territory of the Community from a non-member country and that, in such a case, "the circumstances in which the goods have been acquired are irrelevant to the grant of the exemption".

19 The Finanzgericht also refers to the circumstances described above in which ferry operators may obtain their supplies and considers that the exemption provided for in Directive 69/169 applies only to goods which have been acquired in the country from which they come and not those acquired on board a ferry.

20 Nevertheless, the reasoning set out above in respect of customs duties may also be applied to exemptions from tax. The Court sees no reason therefore

not to apply the answer previously given to that question to goods purchased on board a ferry.

21 Accordingly the reply to be given to the second part of the question should be that, in relation to transport by sea by ferry between non-member countries and Member States, the exemption provided for in Council Directive 69/169 of 28 May 1969 is granted to travellers who arrive in the customs territory of the Community from a non-member country and the circumstances in which the goods have been acquired are irrelevant to the grant of the exemption.

2. The second question: intra-Community transport by ferry

22 The Finanzgericht's second question asks, in substance, whether, in the case of intra-Community transport by ferry, goods contained in travellers' personal luggage which have not been put into free circulation or borne turnover tax or excise duties may benefit, on their importation into the State to which the travellers are going, from exemptions from:

customs duties;

turnover tax and excise duties;

other import charges applicable to agricultural products and referred to in Article 2 of Regulation No 1818/75.

(a) Exemptions from customs duties

23 The question referred to the Court by the Finanzgericht is devoid of purpose in relation to goods which have already been put into free circulation within the meaning of Article 10 of the Treaty since no customs duties are levied in the context of the intra-Community transportation of goods.

24 Nevertheless, in the case where goods coming from a non-member country and not put into free circulation within the meaning of Article 10 of the Treaty are sold to travellers in the course of intra-Community transport by ferry, it must be recalled that the Court has already held in its judgment of

7 July 1981, cited above, that Regulation No 1544/69 contains exhaustive rules on the exemption of goods contained in the personal luggage of travellers and that the exemption may be applied only in respect of goods contained in the personal luggage of travellers coming from non-member countries. Those rules do not leave Member States any power to grant, in the field covered by the regulation, any exemption wider than those provided for in the regulation.

25 It follows that, in the case of intra-Community travel by ferry, no exemption from customs duties may be applied in respect of goods which have not yet been put into free circulation and which are contained in travellers' personal luggage, on their importation into a Member State.

(b) Exemptions from turnover tax and excise duties, on the one hand, and exemptions from other import charges applicable to agricultural products and referred to in Article 2 of Regulation No 1818/75, on the other hand

26 Article 2 (1) of Directive 69/169, as amended, grants an exemption from turnover tax and excise duties on imports in respect of goods contained in the personal luggage of travellers coming from other Member States subject to a limit fixed by reference to the value of the goods. However, that exemption is granted only if three conditions are satisfied: the goods in question must fulfil the conditions laid down in Articles 9 and 10 of the Treaty, that is to say, they must already be in free circulation; they must have been acquired subject to the general rules governing taxation on the domestic market of one of the Member States; and finally such imports must have no commercial character.

27 In their written observations some Member States maintained that the aforementioned requirements laid down in Article 2 of Directive 69/169 do not apply in the context of intra-Community transport by ferry and put forward three arguments in support of that contention.

28 First, Ireland and the United Kingdom maintained that the aforementioned requirements of Directive 69/169 did not apply on account of the existence of prior international obligations and in particular the provisions of the Convention concerning Customs Facilities for Touring, signed at New York

on 4 June 1954, to which all the Member States are parties (United Nations Treaty Series, Volume 276, 1957, p. 230).

29 That argument cannot be accepted. The Court has held, in its judgment of 27 February 1962 (Case 10/61, *Commission* v *Government of the Italian Republic*, [1962] ECR 1), that "the EEC Treaty ... takes precedence over agreements concluded between Member States before its entry into force". It is clear that the same effect must be attributed to secondary Community law: Directive 69/169/EEC could therefore, in any event, validly set aside the provisions of the New York Convention with regard to travel by sea between Member States.

30 Secondly, the Government of the Federal Republic of Germany, Ireland and the United Kingdom contend that the Member States retained the power, at their discretion, to grant concessions in respect of goods sold in duty-free shops or on board ferries since no Community rules governed the matter yet.

31 That argument must also be rejected. In fact, as the Court has stated in its judgment of 7 July 1981, cited above: "In adopting Directive 69/169, and the Second and Third Directives of 12 June 1972 and 10 December 1978 respectively which supplement it, the Council intended gradually to establish a complete system of exemptions from turnover tax and excise duty for goods contained in travellers' personal luggage. Consequently in this field the Member States are left with only the restricted power given to them by the directives to grant exemptions other than those specified in the directives." It follows that the Community rules are exhaustive in the matter and that the Member States retain only the restricted power given to them by the provisions of the aforementioned directives themselves.

32 Thirdly, the Government of the Federal Republic of Germany, Ireland and the United Kingdom relied, in support of their contention that Article 2 of Directive 69/169 is not applicable, on the first sentence of Article 6 (2) thereof, which states that: "Without prejudice to rules relating to sales made at airport shops under customs control and on board aircraft, Member States shall take the necessary steps with regard to sales at the retail stage to permit

... the remission of turnover tax on deliveries of goods carried in the personal luggage of travellers leaving a Member State." They consider that that provision gives the Member States powers that are admittedly limited but still sufficient to grant exemption from turnover tax and excise duties in respect of goods sold in duty-free shops on board ferries providing regular services between Member States and imported in travellers' personal luggage.

33 In that respect it should be observed that the aforementioned Article 6 governs only the remission of tax in respect of goods carried in the luggage of travellers leaving a Member State and that the reservation in the first sentence of Article 6 (2) is intended only to permit duty-free sales at airports and on board aircraft to continue for the benefit of travellers leaving a Member State as a derogation from the general scheme of remission of tax established by the other provisions of Article 6.

34 It is clear both from the subject-matter of the proceedings before the Finanzgericht and from the wording of the question referred to the Court, that the Court is called upon to consider not the validity of the duty-free sales concession to travellers leaving a Member State but the validity of the exemptions granted under Articles 1 to 5 of Directive 69/169 to travellers entering a Member State.

35 Accordingly no assistance can be derived in this case from any part of Article 6 of Directive 69/169 for the purposes of answering the question concerning the exemptions from turnover tax and excise duties to be granted in respect of goods contained in the luggage of travellers entering a Member State.

36 However, it is not possible to conclude from this, as do the plaintiffs in the main proceedings, that, since the goods in question have not, according, to the hypothesis described in the Finanzgericht's question itself, been put into free circulation and have not been acquired subject to the general rules governing taxation on the domestic market of one of the Member States, no

exemption from turnover tax and excise duties can be granted on their importation.

37 With regard to intra-Community travel, Article 2 (4) of Directive 69/169, as amended by the Third Council Directive, 78/1032 of 19 December 1978, provides that where the journey from one Member State to another involves transit through the territory of a non-member country or where it begins in a part of the territory of another Member State in which the taxes to which the directive relates are not chargeable on goods consumed within that territory, the traveller must be able to establish that the goods transported in his luggage have been acquired subject to the general conditions governing taxation on the domestic market of a Member State and do not qualify for any refunding of turnover tax or excise duty. If the traveller is unable to furnish such proof he is nevertheless entitled to the more restricted exemption (expressed in terms of value) provided for in respect of passenger transport between non-member countries and the Community.

38 Article 4 (4) of the directive contains an analogous provision with regard to exemptions for goods expressed in quantitative terms.

39 The aforementioned provisions, and in particular the second indents of Articles 2 (4) and 4 (4), show that the exemptions, limited as to value and quantity, provided for in Articles 1 (1) and 4 (1) of the directive do not relate exclusively to travellers coming from non-member countries but also apply, subject to certain special conditions, to travellers coming from Member States of the Community, even where it has not been established that the requirement on which the grant of the preferential exemption in respect of transport between Member States depends, namely that the goods have been acquired subject to the general rules governing taxation on the domestic market of one of the Member States, is satisfied.

40 In those circumstances is appears that the limited exemptions must apply in respect of goods sold in duty-free shops on board ferries operating regular services between Member States. However, the wider exemptions provided for in Articles 2 (1) and 4 (1) of the directive may not be granted unless all the requirements laid down in Article 2 (1) are satisfied.

41 For all those reasons, the reply to the second part of the second question should be that Directive 69/169, as amended, is to be interpreted as meaning that, in the context of intra-Community transport, goods contained in travellers' personal luggage and acquired in duty-free shops on board ferries operating regular services between Member States benefit, on importation, on the one hand, from exemption from turnover tax and excise duties and, on the other hand, from exemption from the other import charges applicable to agricultural products and referred to in Article 2 of Regulation No 1818/75, subject to the limits as to value and quantity of the exemptions granted to travellers coming from a non-member country.

3. The third question: intra-Community transport by combined ferry and coach services

42 The situation postulated in the Finanzgericht's third question concerns ships sailing from a port in one Member State (in this case the Federal Republic of Germany) to a port in another Member State (in this case Denmark) on board which travellers purchase free of customs duties, turnover tax and excise duty goods which are not in free circulation and which have not been charged to any turnover tax or excise duties; the travellers disembark in the port of the latter Member State and return by land to the Member State of departure.

43 This question asks, in substance, whether such goods acquired in the course of such journeys may benefit, on their importation into the Member State in which the journey begins and ends, from exemption from customs duties, on the one hand, and from exemption from turnover tax, excise duties and other charges applicable to agricultural products and referred to in Article 2 of Regulation No 1818/75, on the other hand.

(a) Exemptions from customs duties

44 The situation envisaged by the Finanzgericht is merely a specific instance of intra-Community passenger transport and it must be held, for the reasons already given under Heading 2 (a) above, that no exemption may be granted.

(b) Exemptions from turnover tax and excise duties, on the one hand, and exemptions from the other import charges applicable to agricultural products and referred to in Article 2 of Regulation No 1818/75, on the other hand.

45 The Court notes that it is clear both from the aims of Directive 69/169 and from the terms of Article 2 (1) thereof itself that the concessions provided for in that directive in relation to tax exemptions for goods contained in the personal luggage of persons travelling within the Community, are limited to travellers "coming from Member States of the Community", that is to say, travellers who go from one Member State to another after having in fact had an opportunity to make purchases in the Member State of departure.

46 It follows that a person who, during a cruise departing from a port of a Member State, does not call at another Member State or makes only a token call there and does not remain there for a period during which he in fact has an opportunity of making purchases cannot be regarded as a traveller within the meaning of that provision.

47 Consequently, if, as is generally the case, intra-Community travel by combined ship and coach services, is organized in such a manner that travellers may actually make purchases in the Member State where they disembark prior to returning by land, it is possible to regard the passengers as travellers within the meaning of Directive 69/169, as amended. The same solution should therefore be adopted as that set out above in relation to intra-Community transport on regular services, that is to say an exemption, limited as to value and quantity, corresponding to the exemption granted to travellers coming from a non-member country, may be granted even if the goods in question were not acquired subject to the general rules governing taxation on the domestic market of one of the Member States.

48 On the other hand, if such combined transport is organized, exceptionally, in such a manner that travellers are unable to make purchases during their stay in the Member State through which they pass, they cannot be regarded as travellers within the meaning of Directive 69/169 and the goods acquired during such crossings cannot benefit from any tax exemption.

49 It follows from the foregoing that the reply to be given to the relevant part of the third question should be that, in principle, goods acquired free of turnover tax and excise duties in the course of intra-Community transport by combined ferry and coach services are to benefit from the limited exemptions granted to travellers coming from non-member countries. However, no exemption may be granted in respect of such goods in a case where the stay in the Member State through which the traveller passes is of a purely token nature and does not in fact provide an opportunity of making purchases.

Costs

50 The costs incurred by the Government of the Federal Republic of Germany, by Ireland, by the United Kingdom and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of 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 Finanzgericht Hamburg by order of 4 August 1982, hereby rules:

Community law governing exemptions from customs duties, turnover tax, excise duties and agricultural levies and other import charges applicable to agricultural products, applicable to goods contained in travellers' personal luggage, must be interpreted as follows:

1. In relation to transport by sea by ferry between a non-member country and a Member State

(a) Exemptions from customs duties, agricultural levies and other import charges applicable to agricultural products

The exemptions provided for in Regulation No 1544/69 (as amended by Regulation No 3061/78) and in Article 1 of Regulation No 1818/75 (as

amended by Regulation No 2780/78) apply to goods contained in the personal luggage of travellers coming from a non-member country, irrespective of the origin of the goods and the place from which they come and the customs duties and taxes which they have borne prior to their importation into the territory of the Community.

(b) Exemptions from turnover tax and excise duties

The exemption provided for in Council Directive 69/169 of 28 May 1969 is granted to travellers who arrive in the customs territory of the Community from a non-member country and the circumstances in which the goods have been acquired are irrelevant to the grant of the exemption.

2. In relation to intra-Community transport by ferry

(a) Exemptions from customs duties

Goods which have not yet been put into free circulation and which are contained in travellers' personal luggage may not benefit from any exemption from customs duties on their importation into a Member State.

(b) Exemptions from turnover tax and excise duties, on the one hand, and exemptions from other import charges applicable to agricultural products and referred to in Article 2 of Regulation No 1818/75, on the other hand

Directive 69/169, as amended, is to be interpreted as meaning that, in the context of intra-Community transport, goods contained in travellers' personal luggage and acquired in duty-free shops on board ferries operating regular services between Member States benefit, on importation, on the one hand, from exemption from turnover tax and excise duties and, on the other hand, from exemption from the other import charges applicable to agricultural products and referred to in Article 2 of Regulation No 1818/75, subject to the limits as to value and quantity of the exemptions granted to travellers coming from a non-member country.

3. In relation to intra-Community transport by combined services comprising travel to a Member State by ferry and return by land (coach) to the Member State in which the journey began

(a) Exemptions from customs duties

Goods contained in travellers' personal luggage may not benefit from any exemption from customs duties on their importation when the traveller returns by land to the Member State in which the journey began.

(b) Exemptions from turnover tax and excise duties, on the one hand, and exemptions from other import charges applicable to agricultural products and referred to in Article 2 of Regulation No 1818/75, on the other hand

In principle, goods acquired free of turnover tax and excise duties in the course of intra-Community transport by combined ferry and coach services are to benefit from the limited exemptions granted to travellers coming from a non-member country. However, no exemption may be granted in respect of such goods in a case where the stay in the Member State through which the traveller passes is of a purely token nature and does not in fact provide an opportunity of making purchases.

Mertens de Wilmars Koopmans Galmot Pescatore

Mackenzie Stuart O'Keeffe Bosco Due Everling

Delivered in open court in Luxembourg on 14 February 1984.

For the Registrar

H. A. Rühl

Principal Administrator

J. Mertens de Wilmars

President