JUDGMENT OF THE COURT (Sixth Chamber)
7 July 1994 *

In Case C-130/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hof van Beroep, Brussels, for a preliminary ruling in the proceedings pending before that court between

Lamaire NV

and

Nationale Dienst voor Afzet van Land- en Tuinbouwprodukten (NDALTP),

on the interpretation of Articles 9 and 12 of the EEC Treaty,

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, C. N. Kakouris, F. A. Schockweiler, P. J. G. Kapteyn (Rapporteur) and J. L. Murray, Judges,

* Language of the case: Dutch.

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

after considering the written observations submitted on behalf of the Commission of the European Communities, by Blanca Rodríguez Galindo and Ben Smulders, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Nationale Dienst voor Afzet van Land- en Tuinbouwprodukten, represented by Frederic Steghers, of the Brussels Bar, and the Commission at the hearing on 24 March 1994,

after hearing the Opinion of the Advocate General at the sitting on 26 April 1994,

gives the following

Judgment

1 By judgment of 25 March 1993, received at the Court on 30 March 1993, the Hof van Beroep (Court of Appeal), Brussels, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 9 and 12 of the EEC Treaty.

2 That question was raised in proceedings between the Nationale Dienst voor Afzet van Land-en Tuinbouwprodukten (National Board for the Sale of Agricultural and Horticultural Products) ('the National Board') and the company Lamaire NV

('Lamaire'), which trades in potatoes in Belgium, concerning the lawfulness of a compulsory contribution to the National Board levied on potato exports.

3 The National Board was established by the Belgian Law of 27 December 1938 (*Belgisch Staatsblad* of 26 January 1939), as amended by the Law of 11 April 1983 (*Belgisch Staatsblad* of 24 September 1983), to promote the sale at home and abroad of agricultural, horticultural and fishery products.

4 Under Article 4(c) of the law, the National Board may 'levy a compulsory contribution in respect of each product or group of products ... on natural and legal persons who produce, process, transport, sell or market agricultural, horticultural or fishery products'.

5 Those compulsory contributions were laid down by Royal Decree of 15 May 1986 (*Belgisch Staatsblad* of 19 June 1986), as amended by Royal Decree of 14 July 1987 (*Belgisch Staatsblad* of 29 July 1987), Article 4 of which reads as follows:

'The annual compulsory contributions for the purposes of promoting the sale of products falling within the remit of the advisory department for "Produce from large-scale farming" have been decided as follows with respect to potatoes:

1. a fixed contribution of five thousand francs for accredited undertakings engaged in preparing, packing or peeling potatoes, and for potato wholesalers, brokers and merchants;

2. a fixed contribution of five thousand francs for importers of potatoes for human consumption;

3. a fixed contribution of twenty-five thousand francs for importers of new potatoes;

4. a contribution of two francs per one hundred kilograms of potatoes exported.

The contributions laid down in points 1, 2 and 3 are not cumulative: only the highest is taken into consideration.'

6 It is apparent from the documents before the Court that Lamaire has a significant export trade. In the course of its business, Lamaire paid for 1986 and 1987 the contributions relating to potato exports, provided for by Article 4(4) of the Royal Decree of 15 May 1986, but it refused to pay the contribution for 1988.

7 In proceedings before the Rechtbank van Eerste Aanleg (Court of First Instance), Brussels, Lamaire claimed that it was entitled to reimbursement of the contributions paid to the National Board for 1986 and 1987 and that it was not obliged to pay the contribution required by the National Board for 1988, since the legal basis for the payments made or to be made was Article 4(4) of the Royal Decree of 1986, which was incompatible with Articles 9 and 12 of the EEC Treaty.

8 By judgment of 15 November 1991, the Rechtbank van Eerste Aanleg, Brussels, dismissed the claim for reimbursement of the contributions for 1986 and 1987 and upheld the National Board's counter-claim for payment of the contribution for 1988.

9 The Hof van Beroep, Brussels, was uncertain whether the criteria governing the charging of the levy set out in the abovementioned royal decrees were compatible with Articles 9 and 12 of the Treaty which it recognized as having direct effect. It therefore stayed the proceedings and sought a preliminary ruling from the Court on the following question:

'Do the words "duties on imports and exports" and/or "charges having equivalent effect" also encompass the contribution of BFR 2 per 100 kg of potatoes exported, which, pursuant to the Royal Decree of 15 May 1986, as amended by the Royal Decree of 14 July 1987 — and more particularly by Article 4 thereof — concerning the compulsory contributions designed to promote the sale of agricultural produce (*Belgisch Staatsblad* of 19 July 1986 and 29 July 1987), is levied by the National Board for the Sale of Agricultural and Horticultural Products on potato exporters?'

10 It should first of all be noted that, although in proceedings brought under Article 177 of the Treaty, it is not for the Court to rule on the compatibility of national rules with provisions of Community law, the Court is competent to give a ruling on the interpretation of Community law in order to enable the national court to assess the compatibility of those rules with the Community provisions.

11 The national court's question asks essentially whether Articles 9 and 12 of the Treaty preclude national legislation from levying a compulsory contribution, such as the charge of BFR 2 per 100 kg of potatoes exported, provided for in Article 4(4) of the Royal Decree of 15 May 1986, as amended by the Royal Decree of 14 July 1987, on exports of agricultural products to other Member States.

12 Article 9 of the Treaty prohibits between Member States customs duties proper on imports and exports and all charges having equivalent effect.

13 As the Court has recognized on many occasions (see Joined Cases 2/69 and 3/69 *Diamantarbeiders* v *Brachfeld* [1969] ECR 211; Case 46/76 *Bauhuis* v *Netherlands* [1977] ECR 5; Case 132/78 *Denkavit* v *France* [1979] ECR 1923; Case 18/87 *Commission* v *Germany* [1988] ECR 5427 and Case 340/87 *Commission* v *Italy* [1989] ECR 1483), the concept of charges having equivalent effect to customs duties on imports and exports encompasses any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier.

14 According to that case-law, however, a charge which is imposed on goods by reason of the fact that they cross a frontier may escape classification as a charge having equivalent effect as prohibited by the Treaty, if it relates to a general system of internal dues applied systematically and in accordance with the same criteria to domestic products, and imported or exported products alike, if it represents payment for a specific service actually and individually rendered to the trader of a sum in proportion to that service or, in certain circumstances, if it is levied on account of inspections carried out for the purpose of fulfilling obligations imposed by Community law.

15 Moreover, the objective of Articles 9 and 12 of the Treaty is solely to prohibit charges having equivalent effect to customs duties with respect to trade 'between Member States' and it follows that those provisions do not concern the importation or the exportation of products coming from or destined for non-member countries (see Case 148/77 *Hansen* v *Hauptzollamt Flensburg* [1978] ECR 1787, paragraph 22).

16 In the present case, the contribution at issue undoubtedly constitutes a pecuniary charge which has been imposed unilaterally by a Member State on a given product by reason of the fact that it crosses a frontier.

17 It should be noted in that connection that the fact that a compulsory contribution charged on the importation or exportation of goods is levied not on behalf of the State but on behalf of a public body is immaterial to whether such a contribution is to be classified as a charge having equivalent effect within the meaning of Articles 9 and 12 of the Treaty (see *Diamantarbeiders* v *Brachfeld*, cited above, at paragraph 18).

18 The contribution at issue also does not fall within any of the exceptions envisaged by the case-law cited in paragraph 14 of this judgment.

19 In the first place, the contribution at issue was not levied on account of inspections carried out in order to fulfil obligations under provisions of Community law. Secondly, it is applied only to exports of the product in question and thus does not relate to a general system of internal dues applied systematically and in accordance with the same criteria, irrespective of the origin, exporting country or destination of the goods subject to it. Lastly, it is apparent from the documents before the Court that the purpose of the contribution at issue is to finance generally the National Board's promotion of sales. Consequently, it does not represent consideration for a specific or individual benefit provided to the trader, in an amount proportionate to that service.

20 Accordingly, a compulsory contribution levied in respect of the exportation of potatoes, such as the charge levied for the National Board pursuant to Article 4(4) of the Belgian Royal Decree of 15 May 1986, as amended, must be regarded as a

charge having equivalent effect to a customs duty on exports and as such prohibited by Articles 9 and 12 of the Treaty.

21 In the present case, it is for the national court to ascertain to what extent Lamaire's exports were destined for other Member States or for non-member countries. It follows from the foregoing that only exports in the latter category may be subject to the contribution in question.

22 Accordingly, it should be stated in reply to the question from the national court that Articles 9 and 12 of the Treaty preclude national legislation from levying a compulsory contribution on exports of agricultural products to other Member States if the contribution in question is not levied on account of inspections carried out in order to fulfil obligations under provisions of Community law, if it is applied only to exports of the products in question and does not relate to a general system of internal dues applied systematically and in accordance with the same criteria, irrespective of the origin, exporting country or destination of the goods subject to it and, lastly, if it does not represent consideration for a specific or individual benefit provided to the trader in an amount proportionate to that service.

Costs

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

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Hof van Beroep, Brussels, by judgment of 25 March 1993, hereby rules:

Articles 9 and 12 of the EEC Treaty preclude national legislation from levying a compulsory contribution on exports of agricultural products to other Member States if the contribution in question is not levied on account of inspections carried out in order to fulfil obligations under provisions of Community law, if it is applied only to exports of the products in question and does not relate to a general system of internal dues applied systematically and in accordance with the same criteria, irrespective of the origin, exporting country or destination of the goods subject to it and, lastly, if it does not represent consideration for a specific or individual benefit provided to the trader in an amount proportionate to that service.

Mancini Kakouris Schockweiler

Kapteyn Murray

Delivered in open court in Luxembourg on 7 July 1994.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber