JUDGMENT OF THE COURT
NOVEMBER 1972[1]

Belgian State
v NV Cobelex[2]
(Reference for a preliminary ruling by the Rechtbank van Koophandel, Antwerp)

Case 20/72

Summary

Agriculture — Common organization of the markets — Cereals — Levies — Application by the importing Member State mandatory where refunds for third countries are granted by the exporting Member State — Methods

(Regulation No. 19 of the Council, Article 19)

Article 19(2)(a) of Regulation No 19 of the Council requires the importing Member State to apply the prescribed levy to all imports in respect of which the exporting Member State has granted refunds for third countries. This provision is immediately applicable in all the Member States and is binding upon those concerned without the need for additional announcement by the importing Member State.

In Case 20/72

Reference to the Court under Article 177 of the EEC Treaty by the Rechtbank van Koophandel, Antwerp, for a preliminary ruling in the action pending before that court between

BELGIAN STATE, represented by the Minister for Economic Affairs whose offices are at 23 Square de Meeûs, Brussels,

and

NAAMLOZE VENNOOTSCHAP COBELEX, whose registered office is at 24 Groenendalstraat, Antwerp,

on the interpretation of Article 19(2) of Regulation No 19 of the Council of 4 April 1962 (JO 1962, No 30, p. 933),

1 — Language of the Case: Dutch
2 — CMLR.

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents of Chambers, A. M. Donner (Rapporteur), A. Trabucchi, J. Mertens de Wilmars and H. Kutscher, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of the facts and procedure

The facts giving rise to the case and the procedure may be summarized as follows:
In January and February 1964, NV Cobelex, the defendant in the main action, imported maize from France into Belgium. The appropriate import certificates had been issued by the Centrale Dienst voor Contingenten en Vergunningen (hereinafter referred to as 'the CDCV') on 29 November 1963 and 3 December 1963. Under the headings 'duty' and 'charge' the certificates were marked 'O'. By a telex to the CDCV Cobelex had requested the fixing of the levy at zero. After sending 'definitive statements of account' relating to these imports in March 1964, the CDCV sent Cobelex 'amended statements' in a letter of 6 July 1964 demanding a levy of BF 687 712 on the first importation and a levy of BF 1 953 105 on the second importation. The two amended statements stated: 'Certificate DD4 mentions refunds "to third countries". Levy on imports from Member countries -BF 5.5 per 100 kg'.
The importations in question occurred at the time when Regulation No 19 of the Council of 14 April 1962 on the progressive establishment of the common organization of the market in cereals was in force whereby a system of single prices valid throughout the Community was established while each Member State fixed within limits set by the Community (Article 6(1)) basic target prices (Article 5(2)), intervention prices (Article 7) and threshold prices (Articles 4 and 8).
In order to make up for the temporary difference between prices within the Community, the market organization provided for a system of intra-Community levies. Each Member State fixed these levies according to the rules laid down by Regulation No 19, in particular Articles 2 and 3. The levies were calculated on the basis of two factors: (a) The free-at-frontier price of the product from the exporting Member State on arrival at the importing Member States (to be fixed regularly by the Commission, Article 3), (b) The threshold price of the importing Member State. The amount of the levy was the difference between these two factors reduced by a flat-rate amount. The system of intra-Community levies was applicable to products harvested in a Member State. It follows from the system of Regulation No 19, the definition and the aim of that levy that only products purchased in the exporting Member State under the price conditions laid down in the rules could fall within the system provided for in Articles

2 and 3 of the regulation. The particular rules contained in Article 19(2)(a) were applicable to cases where the details set out in Articles 2 and 3 were modified by the intervention of the exporting Member State. The purpose of that article was to maintain the practice which exists in certain countries whereby, as regards exports to another Member State at lower prices, the export price is reduced to the level of the world market price. Nevertheless it was necessary to prevent these products, the price of which was thus reduced to the level of the world market price, from affecting the level of prices in the importing country; for that reason these products had to be subject to special intra-Community levies of an amount equal to the levy for third countries reduced by a flat-rate amount.

In this case the exporting Member State, France, granted a refund to third countries on the export of maize: the DD4 movement certificates stated that the refund granted by the French authorities was the refund to third countries. In these circumstances the CDCV had to amend the statements of account by applying the levy for third countries to the maize imported by Cobelex.

The question at issue between the parties in the case before the Rechtbank van Koophandel, Antwerp, is whether the levies may be justified in view of the relevant provisions in force, in particular Article 19(2)(a) of Regulation No 19.

By an order given on 26 April 1972 the Rechtbank van Koophandel decided to ask the Court:

1. Does Article 19(2) of Regulation No 19 of the Council of 4 April 1962 mean that where the exporting Member State grants refunds, the importing Member State is under a duty to apply levies on the importer immediately or is the importing Member State entitled to do so merely from a later date which it may determine?

2. If the first hypothesis is correct must it be considered that this duty only applies in respect of relations existing between the Member States concerned or does it also *ipso jure* influence relations between the importing Member State and the importer in that it is irrelevant whether the importer observed all the formalities in that respect for the purposes of ascertaining and determining the amount of the levy at the proper time if the Member State only subsequently discovers that the exporting country granted refunds?

3. Again, if the first hypothesis is correct, does the 'self-executing' nature of Article 19(2) of Regulation No 19 go so far that apart from the notification provided for in the second subparagraph of Article 19(2), any announcement to the importers and exporters themselves made in advance in the manner prescribed by the national legislation of the Member States concerned is superfluous?

The decision referring the questions to the Court for a preliminary ruling was entered in the Court Register on 8 May 1972.

Cobelex, the Government of Belgium and the Commission of the European Communities submitted written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice.

On hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to dispense with a preparatory inquiry.

Cobelex and the Commission presented oral argument at the hearing on 26 September 1972.

In the proceedings before the Court of Justice the defendant in the main action was presented by G. Van Hecke of the Antwerp Bar and the Commission by its Legal Adviser, J. Bourgeois.

The Advocate-General delivered his opinion at the hearing on 5 October 1972.

II — Written observations submitted in accordance with Article 20 of the Protocol on the Statute of the Court of Justice

The observations submitted in accordance with Article 20 of the Protocol on the Statute of the Court of Justice may be summarized as follows:

1. *The first question*

(a) *Cobelex*, the defendant in the main action, maintains that an answer to the first question cannot be elicited from the wording of Article 19(2). Even if the Belgian State was under a duty to apply the levies in question, such an obligation must be reconciled with the legitimate interest of the importers in the accuracy of official information given when they make importations. The delay of the Belgian government in applying the levies cannot have the consequence that importers suffer financial loss because of this negligence. The answer must therefore be in the negative.

(b) The *Belgian Government* states that while the exporting Member States are free to grant or not to grant the refund to third countries (Article 19(2)(b)) importing Member States are under a duty to apply the levy laid down in Article 19(2)(a) as soon as a refund has been granted. This interpretation follows from the system established by Regulation No 19 and from the wording of Article 19(2).
Article 19(2)(a) forms part of the regulation within the meaning of Article 189 of the EEC Treaty and is therefore directly applicable (it does not depend for its legal effect on a measure adopted by the national legal system). The precise and unconditional nature of the duty under this provision means that it *ipso jure* affects relations between the importing Member State and the importer. Since the importing Member State is obliged to apply the levies in question the question must therefore be answered in the negative.
The *Commission* first elucidates the objectives and the system of Regulation No 19 and proceeds to examine the wording of Article 19(2)(a) and reaches the same conclusions as the Belgian Government. The consequence of the failure to apply the levy provided for by Article 19(2)(a) to products to which the exporting Member State has granted the refund to non-member countries is that the importation is made below the threshold price of the importing Member State and thus jeopardizes the attainment of the level of price sought and therefore the objectives of Regulation No 19, that is, to approximate level of national prices to a common level.
The Commission suggests that the first question should be answered as follows:

> 'Article 19(2)(a) of Regulation No 19 of the Council of 4 April 1962 requires the importing Member State to apply the appropriate levies immediately and to all imports for which the exporting Member State grants refunds to third countries'.

2. *The second question*

(a) *Cobelex* maintains that under the general principle of legal certainty, the statements of account must be definitively fixed when the imports are completed. The question must be answered in the negative.

(b) The *Belgian Government* observes that it follows from its opinion on the first question that the duties stemming directly from Article 19(2)(a) of Regulation No 19 for importers cannot be affected by the application of national measures which derogate therefrom or made subject to provisions of the domestic legal system. The granting by the exporting Member States of refunds to third countries is the only condition on which the importers' duty to pay the levies provided for in Article 19(2)(a) depends.

(c) The *Commission* states that in general any application of national measures which are incompatible with directly applicable Community provisions is prohibited. This also applies to Community provisions which prescribe directly duties for business undertakings.
Article 19(2)(a) lays down directly the duty for an importer, importing from another Member State products for which that Member State granted a refund to third countries, to pay the specific levy set out in that article. The duty to pay the special intra-Community levy provided for in Article 19(2)(a) cannot be affected by the fact that the importing Member State wrongly applied the normal intra-Community levy provided for in Article 2 of Regulation No 19.

On the one hand the Member State's duty to impose the appropriate levy cannot adversely affect the actual existence of the debt of the levy by virtue of any national provision.
On the other hand there is nothing in the Community rules to show that the levy debt, which stems directly from a provision such as Article 19(2)(a) of Regulation No 19, must be considered, by virtue of these rules, as not existing when a Member State actings an indirect agency of the Community administration makes a mistake in applying that provision.
The question should be answered as follows:

> 'The existence of the duty which stems for the importer directly from this article is not affected by a misapplication of this article by the importing Member State'.

3. *The third question*

(a) *Cobelex* maintains that under Article 15 of Regulation No 19 the amounts of the levies are calculated by the Member State and notified to the other Member States and to the Commission. It follows that the notification of the levies to the importers concerned must be laid down by each Member State itself. This is particularly so as the Commission was not itself responsible for the notification of the levies which moreover varied from one Member State to another in 1964. The question must therefore be answered in the negative.

(b) The *Belgian Government* observes that any national notification relating to the levy provided for by Article 19(2)(a) is merely of an informative nature and cannot therefore be regarded as a measure conferring on individuals rights which must be protected. In addition in view of the direct applicability of Article 19(2)(a) such prior notification is superfluous.

(c) The *Commission* maintains that the application of the levy provided for in Article 19(2)(a) does not depend on any prior announcement. The announcement of special intra-Community levies is superfluous since they result from a simple calculation in which the abovementioned flat-rate amount is deducted from the amount levied by the importing Member State in respect of goods from third countries which two factors have already been published.
The problem of publication can only be raised in respect of the granting of refunds for non-member countries by the exporting Member States. In the exporting Member State in this case, France, the interested parties were informed in good time of this grant. The documents produced in the main action show that the Belgian undertakings concerned should at the very least have known of the French decision.
Nevertheless the decisive factor is that the importers were under a duty at the time of importation to produce a movement certificate DD4 wherein the nature of the refund to be granted by the exporting Member State must be specified. It follows that the grant of refunds to third countries by the exporting Member States for the amount in question should have been known by the importer at the date of the importation. Moreover the importer could and should have ascertained in good time the situation in respect of the levy system with regard to the goods which he wanted to import.
The Commission suggests that the third question should be answered as follows:

> 'For the application of the levy provided for in this article, the importing Member State does not need to give notice in advance that the exporting Member State grants refunds to third countries.'

Grounds of judgment

1 By judgment of 26 April 1972, received at the Court Registry on 8 May 1972, the Rechtbank van Koophandel, Antwerp, has referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty, three questions concerning the interpretation of Article 19(2) of Regulation No 19 of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in cereals (JO No 30, 1962).

2 That article provides that 'A Member State which, in accordance with the provisions of this regulation, is entitled to apply levies *vis-à-vis* another Member State may, when exporting to such State, refund an amount equal to the refund granted in respect of exports to third countries'.

3 The article further provides that 'when a refund on export is granted, the amount of the levy charged by the importing Member State shall be equal to that charged *vis-à-vis* third countries in accordance with the provisions of this regulation, less the standard amount provided for in Article 2(1)'.

4 The first question asks whether Article 19(2) means that where the exporting Member State grants refunds in respect of third countries the importing Member State is under a duty to apply levies on the importer immediately, or whether the importing Member State is entitled to do so from a later date which it may determine.

5 Article 19(2) provides that only the levy in question is applicable to imports carried out in the conditions specified.

6 The view that the Member State is free to apply or not to apply the levies provided for by Regulation No 19 is incompatible with the aim of this regulation which is the progressive establishment of a common organization of the markets.

7 In fact if the levies concerned including that set out in Article 19(2) are not applied, imports would be made below the threshold price of the importing Member States and would thus jeopardize the attainment of the level of prices sought and the progressive approximation of national target prices to a common target price.

8 This conclusion is supported by the provisions of Article 15(3) the mandatory nature of which is evident from comparison with the provisions relating to refunds (Article 19(2) and Article 20) which are of an optional nature.

9 Consequently Article 19(2)(a) requires the importing Member State to apply the prescribed levy to all imports in respect of which the exporting Member State has granted refunds for third countries.

10 The second question asks whether the importing Member State's duty affects *ipso jure* relations between that State and the importer in that it is irrelevant that the latter observed all the formalities for the purposes of ascertaining and determining the amount of the levy at the proper time if the importing Member State only subsequently discovers that the exporting country granted refunds.

11 The third question asks in particular whether the direct effects of Article 19(2) go so far that apart from the notifications provided for in the second subparagraph of that paragraph any announcement to importers and exporters made in advance in the manner prescribed by the national legislation is superfluous.

12 Since they form part of a Community regulation the provisions of Article 19 are directly applicable in all Member States by virtue of Article 189 of the Treaty.

13 Moreover the nature and the aims of Regulation No 19 imply that its provisions are applicable with the same binding force in all the Member States in the context of the common organization of the markets thereby established.

14 It should first be noted that the provisions relating to the fixing of the levy in advance only concern by their very nature the intra-Community levies referred to in Article 2 of Regulation No 19.

15 Since the levy provided for in the second sentence of Article 19(2)(a) depends on whether or not the exporting Member State exercises the power to grant refunds to third countries, the fixing of that levy in advance entails risks which the importing Member States cannot always forsee.

16 Moreover the condition imposed by Article 19 on the granting of refunds to third countries in intra-Community trade, namely that the exporting Member State is entitled to impose levies in respect of imports from the importing Member State implies that with regard to trade in the opposite direction the levy referred to in Article 2 of the regulation is fixed at zero.

17 Therefore only when the levy under Article 2 for imports from a Member State is zero need importers expect that the provisions of Article 19 at issue may be applied.

18 Finally the application of Article 19(2)(a) does not require any particular notification or announcement to importers.

19 In fact the notifications to which the Rechtbank van Koophandel refers are set out in Article 19(2)(b) and relate to a case other than that referred to in subparagraph (a).

20 While the authorities of the importing country may usefully draw the attention of those concerned to the existence and the possible consequences of the provisions of Article 19(2)(a) by means of additional information, the provision does not require such announcements for its application.

21 Moreover the Commission's decision establishing means of special administrative cooperation for the application of the intra-Community levies established within the context of the Common Agricultural Policy of 17 July 1962 (JO 1962, p. 2140), provides that a 'movement certificate DD4' in which the nature of the refund granted by the exporting Member State must be specified, is to be presented to the customs authorities of the importing Member State (Article 6); the importer may examine it.

22 Consequently the rule expressed in Article 19(2)(a) is immediately applicable in all the Member States and is binding upon those concerned without the need for additional announcement by the importing Member State.

Costs

23 The costs incurred by the Commission of the European Communities which has submitted observations to the Court are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Rechtbank van Koophandel, Antwerp, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral observations of the parties in the main action and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community especially Article 177;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to Regulation No 19 of the Council of 4 April 1962, especially Article 19(2);
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the Rechtbank van Koophandel, Antwerp, by judgment of that court of 26 April 1972 hereby rules:

1. **Article 19(2)(a) of Regulation No 19 of the Council requires the importing Member State to apply the prescribed levy to all imports in respect of which the exporting Member State has granted refunds for third countries;**

2. **This provision is immediately applicable in all Member States and is binding upon individuals without the need for additional announcements by the importing Member State.**

Lecourt Monaco Pescatore

Donner Trabucchi Mertens de Wilmars Kutscher

Delivered in open court in Luxembourg on 7 November 1972.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 5 OCTOBER 1972[1]

Mr President,
Members of the Court,

The facts giving rise to the present case are as follows:
The defendant and appellant in the main proceedings, a trading company with its registered office in Antwerp, imported maize from France into Belgium on 11 January 1964 and between 1 and 29 February 1964. These operations were carried out on the basis of import licences which were issued on 29 November 1963 and 3 December 1963 by the Belgisch-Luxemburgse Gemengde Administratieve Commissie (Belgian-Luxembourg Joint Administrative Commission) and were valid until 29 February 1964 (first licence) and 31 March 1964 (second licence). It was stated on the licences that they were only valid on production of a movement certificate on form DD4, that is, the certificate introduced by the Decision of the Commission of 17 July 1962 with regard to the application of the intra-Community levy for the common organization of the markets (JO 1962, p. 2140). In addition in accordance with the information given (nil levy) by the defendants by telex messages sent on 28 and 29 November 1963 (relating to the first

1 — Translated from the German.