Delivered in open court in Luxembourg on 14 December 1971.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL DUTHEILLET DE LAMOTHE DELIVERED ON 30 NOVEMBER 1971[1]

Mr President,
Members of the Court,

The facts which gave rise to the present case are quite straightforward.

In 1966 the Politi company imported into Italy chilled pork from Sweden and frozen pigmeat and ham from Belgium.

In 1969 it imported two consignments, one of meat and meat offal of swine from France and the other of chilled pigmeat from Ireland.

When these various imports were effected the Italian tax authorities required the company to pay two charges, known respectively as a 'statistical levy', and a 'duty for administrative services'.

The Politi company considered that the imposition of these charges was prohibited, first, as regards the imports effected in 1966, by the provisions of Articles 14 and 18 of Regulation No 20/62 on the gradual establishment of a common organization of the market in pigmeat and, secondly, as regards the imports effected in 1969, by the provisions of Articles 17 (2) and 19 of Regulation No 121/67, which replaced Regulation No 20.

As you are aware, the provisions of the regulations under discussion prohibit the levying by Member States of any charge having an effect equivalent to a customs duty after the entry into force of the system of levies.

In the original scheme provided for by Regulation No 20 this system of levies applied, although on different terms and at different rates, both to imports from the Member States of the Community and to imports from third countries.

Since the entry into force of Regulation No 121/67, levies apply only to products imported from third countries.

In order to enforce the rights which it considered it held under these regulations, the applicant company brought interlocutory proceedings as provided for in Article 633 of the Italian Code of Civil Procedure against the Italian State. These are summary proceedings by which a creditor asks a court to recognize the existence of a debt and to order the debtor to pay it.

The President of the Tribunale Civile di Torino considered that these proceedings raised a certain number of preliminary questions concerning the interpretation of provisions of the Community regulations referred to and, under Article 177 of the Treaty, he referred the questions which are before you today.

Before beginning my consideration of these questions, I should like to make two preliminary observations concerning certain points which have been raised in the course of the proceedings and in particular during the recent hearing.

1. In his oral arguments the representative of the Government of the Italian Republic questioned the applicability of Article 177 of the Treaty in this instance.

1 — Translated from the French.

He based his argument on certain peculiarities of Italian 'interlocutory' proceedings, and in particular on the fact that this is a 'summary' procedure, maintaining that no valid reference could be made to the Court under Article 177 in the course of such proceedings.

Your case-law has already provided the answer to this objection.

In your judgments in S.p.A. *SACE* v *Minister for Finance of the Italian Republic* of 17 December 1970 (Case 33/70, Rec. 1970, p. 1213) and *Eunomia di Porro e C.* of 26 October 1971 (Case 18/71, Rec. 1971, p. 811), you impliedly but necessarily accepted the validity of a reference to the Court of Justice by the Italian courts under Article 177 of the Treaty within the context of the interlocutory procedure provided for by the national Code of Civil Procedure.

You had certainly not overlooked the problem, since:

— first, our senior colleague, Mr Advocate-General Roemer, had emphasized it in his opinion in the S.p.A. *SACE* case;

— secondly, in the *Eunomia* case, you amended the usual wording of your recital concerning the costs in order to take into account the special features of the Italian interlocutory procedure.

2. The representative of the Government of the Italian Republic and the representative of the Politi company have stated that on the day that the President of the Tribunale di Torino signed the order making the reference in this case, Law No 447 of 24 June 1971 was published in the Italian Official Journal, abolishing the two charges in question and even providing for that abolition to have a certain retroactive effect, at least as regards one of the charges.

The representative of the Italian Government and the representative of the Politi company draw different conclusions from this fact.

In the opinion of the representative of the Italian Government its effect was to some extent to render the questions referred to you by the President of the Tribunale Civile di Torino irrelevant.

However, the representative of the Politi company considers that it should lead you to recall in your judgment the principle of the precedence of Community rules over national laws, even if the latter are enacted subsequently. You have been told that it is necessary to recall this principle, since although it is now entirely accepted in the Netherlands by virtue of a Grondwetsbepaling (constitutional provision), in the Grand Duchy of Luxembourg and the Kingdom of Belgium through the case-law of the highest courts, as well as in the Federal Republic of Germany, and although certain trends of the French Cour de Cassation give grounds for hope that it might also be accepted by that high court,[1] certain objections still prevent its recognition in Italy.

However, I consider that to accede to either of these requests would be contrary to the principles which you have already established for the application of Article 177:

(a) You consider that, notwithstanding any new facts or events which might affect the action pending before the national court, you can take cognizance only of the decision making the reference adopted by that court, as long as it has not itself withdrawn such decision and it has not been annulled by a decision of a higher court.

Moreover, let me add that it is clear that not all the questions submitted to you by the President of the Tribunale Civile di Torino have become irrelevant since the entry into force of the Italian Law of 24 June 1971.

1 — Cf. Cour suprême de justice of Luxembourg, 14 July 1954—Cour de Cassation of Belgium (First Chamber), 27 May 1971, *Belgian State* v *Fromagerie 'Le Ski'* (Journal des tribunaux 1971, p. 160)—Bundesverfassungsgericht, 9 June 1971, *Firme Lütticke*—French Cour de Cassation (Criminal Division), *Union des transports aériens* (JCP semaine juridique 1970, no 1653).

(b) According to your case-law the instigator of the action giving rise to a reference by a national court is not entitled to amend or add to the questions submitted to you by that court. In this instance, the President of the Tribunale Civile di Torino has not referred to you any question concerning the compatibility of the Italian Law of 24 June 1971 with Community regulations.

You will not therefore be required to give a ruling on this point.

If the Italian courts experience difficulties on this point, they are quite entitled to refer further questions to you concerning the interpretation of Community law.

Having made these two preliminary observations I can now consider the questions referred, which give rise to three main problems:

(1) Are charges such as the 'statistical levy' and the 'duty for administrative services', which were imposed during a certain period in Italy, to be regarded as 'charges having an effect equivalent to customs duties' within the meaning given to that phrase by Regulations Nos 20/62 and 121/67?

(2) Are the provisions of those regulations prohibiting the imposition of charges having an effect equivalent to customs duties directly applicable and do they create individual rights which national courts must protect?

(3) From what date have those provisions been applicable and capable of creating such rights?

I

I can be quite brief in my consideration of the first of these problems as I believe that your case-law has already resolved every aspect of it.

1. As regards the charge known as the 'statistical levy' you have already decided in your judgment of 1 July 1969—*Commission* v *Italian Republic* (Case 24/68, [1969] ECR 203)—that it was to be regarded as a charge having an effect equivalent to a customs duty within the meaning given to that expression by Articles 9, 12 and 13 of the Treaty and by the regulations on the common organization of the markets (recital No 18 of the aforementioned judgment).

2. As regards the charge known as the 'duty for administrative services', in your judgment of 18 November 1970—*Commission* v *Italian Republic* (Case 8/70, Rec. 1970, p. 961)—you ruled that it constituted a charge having equivalent effect within the meaning of Article 9 of the Treaty.

Since, in your judgment of 1 July 1969, you acknowledged that the meaning and scope of the phrase 'charges having an effect equivalent to customs duties' was the same when used in the regulations on the agricultural markets as in Article 9 of the Treaty, I consider that the question of this charge is also resolved.

II

As regards the second problem, it appears to be undeniable that the relevant provisions of Regulations Nos 20/62 and 121/67 have direct effect and create individual rights which the national courts must respect.

Moreover, in your judgment of 18 November 1970 you recognized their direct effect pursuant to Article 189 of the Treaty.

The individual rights to which they give rise therefore come into existence from the date of their implementation.

Moreover, let me point out here that the Court has ruled that to levy the two charges in dispute on imports of products for which there was neither a market organization nor a Community regulation was contrary, as from a certain date, to Directive No 68/31 of the Commission regarding the obligation on Member States to abolish charges having equivalent effect; nor did you hesitate to accept that, read in conjunction with Articles 9 and 13 of the Treaty and a decision of the Council, the provisions of that directive were directly applicable and conferred rights on the individuals affected thereby which the

national courts were required to protect: cf. the abovementioned judgment in the S.p.A. *SACE* case.

This applies *a fortiori* to provisions of the regulations relating to the common organization of the market which expressly provide for the abolition of charges having equivalent effect.

III

The problem of the date on which the relevant provisions of the regulations on the common organization of the market in pigmeat created individual rights is rather complex.

(1) Regulation No 20 expressly provided that, both as regards imports from Member States of the Community (Article 14 (1)) and imports from third countries (Article 18 (1)), the implementation of the levy system was 'incompatible' with 'the levying of any customs duty or charge having equivalent effect' (Article 14, with reference to intra-Community trade) or entailed the 'abolition' of charges having equivalent effect (Article 18, with reference to trade with third countries).

It is clear from these two provisions that they created individual rights only with effect from the date of implementation of the levy system.

Article 23 of Regulation No 20 provided that 1 July 1962 should be the uniform date of implementation of the levies.

However, it became clear that it was impossible to take all the necessary measures before 1 July 1962.

Therefore, a series of regulations, which are listed in the report for the hearing, provided for successive exceptions to be made to the original Article 23.

From these various regulations it emerges that the levy system was implemented with effect from:

— 30 July 1962 as regards the products referred to in paragraph (a) of the table appearing in Article 1 of Regulation No 20 (live swine) and as regards pig carcasses;

— 2 September 1963 as regards the other products listed in the same table, in particular as regards offals.

Let me point out that the regulations fixing the amount of these levies came into force on the same dates, which thus removes one of the difficulties which the Italian court appears to have met.

Therefore, according to the nature of the product, Articles 14 and 18 created individual rights with effect from 30 July 1962 and 2 September 1963 respectively.

(2) Regulation No 121/67 merely referred once again to the prohibitions already in force.

In pursuance of Articles 17 and 19 of that regulation, individual rights were therefore created with effect from 1 July 1967, the date of implementation—under Article 32 of Regulation No 121/67—of the system provided for by that regulation.

I consider, therefore, that you should give the following answers to the questions referred by the President of the Tribunale Civile di Torino :

(1) Charges such as the 'statistical levy' and the 'duty for administrative services' as imposed in Italy must be regarded as 'charges having an effect equivalent to customs duties' within the meaning given to that phrase by Regulations Nos 20/62 and 121/67.

(2) The provisions of those regulations prohibiting the imposition of charges

having an effect equivalent to customs duties are directly applicable and create individual rights which national courts must protect.

(3) The provisions of the said regulations created such rights with effect from

— 30 July 1962 as regards the products referred to in Article 1 (1) (a) of Regulation No 20, and as regards pig carcasses,

— 2 September 1963 as regards the products referred to in Article 1 (1) (b) and (c) of the said regulation,

— 1 July 1967 as regards imports effected after that date.