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

In Case C-130/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Corte Suprema di Cassazione (Supreme Court of Cassation) for a preliminary ruling in the proceedings pending before that court between

OTO SpA

and

Ministero delle Finanze

on the interpretation of Article 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 and J. L. Murray (Rapporteur), Judges,

* Language of the case: Italian.

Advocate General: C. O. Lenz,
Registrar: J.-G. Giraud,

after considering the written observations submitted on behalf of:

— OTO SpA, by Carmelo Monaco, Advocate with the right to plead before the Corte di Cassazione,

— the Italian Government, by Professor Luigi Ferrari Bravo, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, assisted by Oscar Fiumara, Avvocato dello Stato,

— the Commission of the European Communities, by Antonio Aresu, of the Legal Service, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 13 May 1993,

gives the following

Judgment

1 By order of 19 February 1992, received at the Court on 22 April 1992, the Corte Suprema di Cassazione referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 12 of the EEC Treaty to enable it to determine whether a national consumption tax (*'imposta erariale di consumo'*) on audiovisual and photo-optical products was compatible with that article in so far as that tax applied to direct imports of those products from non-member countries.

2 That question arose in a dispute between OTO SpA ('OTO') and the Ministero delle Finanze (Finance Ministry) with regard to the basis of assessment of the national consumption tax payable on imports of goods from Japan.

3 Under Article 13 of Decree-Law No 953 of 30 December 1982 (Official Gazette of the Italian Republic (GURI) No 359 of 31 December 1982), subsequently replaced by Article 4 of Law No 53 of 28 February 1983 (GURI, ordinary supplement to No 58 of 1 March 1983, published in a consolidated version in GURI No 65 of 8 March 1983, p. 1798), a consumption tax on audiovisual and photo-optical products was introduced in Italy with effect from 1 January 1983. That tax is imposed both on products manufactured in Italy and on imported products. So far as the first group of products is concerned, the tax is assessed on the basis of the ex-works value ('*valore franco fabbrica*'); in the case of the second group, the customs value of the goods free at the national frontier ('*valore in dogana franco frontiera nazionale*') is used as the basis.

4 On 23 March 1983 the Ministero delle Finanze, the defendant in the main proceedings, adopted a decree in implementation of Law No 53 (GURI No 83 of 25 March 1983) ('the implementing decree'). The seventh paragraph of Article 2 of that decree provides that, in the case of goods imported into Italy, the free-at-national-frontier value of the goods is to be calculated on the basis of the customs value within the meaning of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (OJ 1980 L 134, p. 1), plus any costs and charges for transport to the Italian border, including charges due for entry into free circulation within the Community, less any components of the price paid or payable in respect of transport and marketing within the national customs territory.

5 In contrast to the provisions of Law No 53, the implementing decree provides that for the calculation of the free-at-national-frontier customs value, account must also

be taken of the charges payable for entry into free circulation within the Community, which entails an increase in the taxable value of goods imported directly from non-member countries vis-à-vis goods placed in free circulation.

6 On 18 October 1984 the Chief Collector of the Rome Customs Office sent to OTO a demand for payment of national consumption tax in respect of imports of goods from Japan effected between 2 February 1983 and 4 September 1983.

7 OTO brought an action against the defendant before the Tribunale di Roma (District Court, Rome) in which it claimed that the national consumption tax had been calculated on the basis of the implementing decree, which, as it departed from Law No 53, had to be regarded as unlawful. The Tribunale di Roma upheld its claim for repayment of the amounts improperly paid by reason of that calculation, which it considered to be inaccurate.

8 The defendant appealed against that judgment, arguing that Article 4 of Law No 53 was contrary to Community law on the ground that it had the result of placing goods brought into free circulation in other Member States and then exported to Italy at a disadvantage compared to goods imported directly into Italy from non-member countries. The Corte d'Appello (Court of Appeal), Rome, accepted that argument and ruled that Article 4 of Law No 53 had to be set aside. As there was no longer anything to block application of the implementing decree, it dismissed OTO's action by judgment of 12 June 1989.

9 OTO appealed in cassation against that judgment.

10 The Corte Suprema di Cassazione stayed the proceedings so as to enable the Court to give a preliminary ruling on the following question:

'On the basis of Article 12 of the EEC Treaty — which prohibits the introduction between the Member States of charges having equivalent effect to customs duties — must a charge having an effect equivalent to a customs duty be understood as meaning only a charge which is imposed by a Member State of the Community on products imported from another Member State or as also including a tax that, albeit not affecting imports directly, makes a product coming from a non-member country *de facto* economically more advantageous than the same type of product coming from a Member State? Particular regard should be had to the situation where that unfavourable treatment for the Member State of the Community is due to the fact that, under the new tax, the value for tax purposes of the product admitted into the Community market by the Member State in the case of a product which was previously imported from a non-member country will be increased by the charges for that product's entry into free circulation, which will not be the case where the product comes from a non-member country.'

11 Before that question is answered, it is important to note that the Court has already held that a tax such as the national consumption tax at issue in the main proceedings must be regarded as being an integral part of a general system of internal taxation within the meaning of Article 95 of the Treaty and that its compatibility with Community law must be assessed on the basis of that article rather than Articles 9 and 12 of the Treaty (see, most recently, the judgment in Joined Cases C-228/90 to C-234/90, C-339/90 and C-353/90 *Simba and Others* [1992] ECR I-3713, paragraph 7).

12 The Court has recognized that taxes such as the national consumption taxes in force in Italy were governed by common tax rules and were charged on categories of products irrespective of their origin in accordance with an objective criterion, namely the fact that the product fell into a specific category of goods. It has also pointed out that whether those goods were produced at home or abroad did not

seem to have a bearing on the rate, the basis of assessment or the manner in which the tax was levied. Finally, it has stated that the revenue from those taxes was not earmarked for a specific purpose and that it constituted tax revenue identical to other tax revenue and, like it, helped to finance State expenditure generally in all sectors (see the judgment in *Simba and Others*, cited above, paragraph 8).

13 The answer to the question submitted must therefore be that a tax such as the national consumption tax introduced into Italian law by Article 13 of Decree-Law No 953 of 30 December 1982, subsequently Article 4 of Law No 53 of 28 February 1983, does not constitute a charge having an effect equivalent to a customs duty on imports within the meaning of Article 12 of the Treaty.

14 However, in the context of the judicial cooperation established by Article 177 of the Treaty, the Court has the duty, *inter alia*, to interpret all provisions of Community law which national courts need in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court of Justice by those courts (see the judgment in Case C-280/91 *Viessmann* [1993] ECR I-971, paragraph 17).

15 The question referred by the national court must therefore be examined in the light of the Treaty provisions which may apply to the facts of the case, in particular Articles 95 and 113.

16 According to a consistent line of cases, the aim of Article 95 of the Treaty is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which result from the

application of internal taxation which discriminates against products from other Member States. The Court has made it clear, as regards the free movement of goods within the Community, that products which are in free circulation are definitively and wholly assimilated to products originating in Member States. It follows that Article 95 covers all products from Member States, including products originating in non-member countries which are in free circulation in the Member States (see the judgment in Case 193/85 *Co-Frutta* v *Amministrazione delle Finanze dello Stato* [1987] ECR 2085, paragraphs 25, 26 and 29).

17 According to the documents before the Court, Article 4(2) of Law No 53 provides that goods from non-member countries which are in free circulation in a Member State other than Italy are treated, for the purposes of levying the national consumption tax at issue in the main proceedings, in the same way as equivalent products manufactured in one of the Member States.

18 The Court has also consistently held that Article 95 applies only to products from the Member States and, where appropriate, to goods originating in non-member countries which are in free circulation in the Member States. It follows that that provision is not applicable to products imported directly from non-member countries (see the judgment in *Simba and Others*, paragraph 14).

19 Accordingly, a tax such as that which is the subject-matter of the main proceedings does not come within the scope of Article 95 of the Treaty in so far as it is applicable to goods imported directly from non-member countries.

20 So far as concerns the possibility of applying Article 113 of the Treaty, it is important to note that the Treaty does not contain any provision similar to Article 95 regarding domestic taxation in respect of trade with non-member countries, sub-

ject, however, to any treaty provisions which may be in force between the Community and the country of origin of a given product (see the judgment in Case 148/77 *Hansen* v *Hauptzollamt Flensburg* [1978] ECR 1787, paragraph 24) and that although Article 113 confers upon the Community powers which enable it to take any appropriate measure concerning the common commercial policy, it nevertheless does not in itself contain any legal criterion which is sufficiently precise to enable an assessment of the contested national rules to be made (see the judgment in Case 266/81 *SIOT* v *Ministero delle Finanze* [1983] ECR 731, paragraph 29).

21 The answer to the question referred by the national court must therefore be that, in so far as it is applicable to goods imported directly from non-member countries, a tax such as that under consideration in this case is not incompatible with the Treaty provisions relating to the implementation of the common commercial policy, particularly Article 113, subject, however, to the application of any treaty provisions which may be in force between the European Economic Community and the non-member countries in which the goods in question originate.

Costs

22 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the 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 Corte Suprema di Cassazione, by order of 19 February 1992, hereby rules:

1. **A tax such as the national consumption tax introduced into Italian law by Article 13 of Decree-Law No 953 of 30 December 1982, subsequently Article 4 of Law No 53 of 28 February 1983, does not constitute a charge having an effect equivalent to a customs duty on imports within the meaning of Article 12 of the EEC Treaty.**

2. **A tax of that kind does not come within the scope of Article 95 of the Treaty in so far as it is applicable to goods imported directly from non-member countries.**

3. **In so far as it is applicable to goods imported directly from non-member countries, a tax such as that under consideration in this case is not incompatible with the Treaty provisions relating to the implementation of the common commercial policy, particularly Article 113, subject, however, to the application of any treaty provisions which may be in force between the European Economic Community and the non-member countries in which the goods in question originate.**

Mancini Kakouris Schockweiler

Kapteyn Kapteyn Murray

Delivered in open court in Luxembourg on 13 July 1994.

R. Grass

Registrar

G. F. Mancini

President of the Sixth Chamber