In Case 142/77,

REFERENCE to the Court under Article 177 of the EEC Treaty by Københavns Byret (Copenhagen City Court) for a preliminary ruling in the actions pending before that court between, first,

STATENS KONTROL MED ÆDLE METALLER (National Authority for the Control of Precious Metals), having its offices in Copenhagen,

and

PREBEN LARSEN, goldsmith, having his place of business in Jyllinge,

and, secondly, between

FLEMMING KJERULFF, goldsmith, having his place of business in Copenhagen,

and

STATENS KONTROL MED ÆDLE METALLER

on the interpretation of the concepts of charge having an effect equivalent to a customs duty on exports within the meaning of Article 16 and of internal taxation within the meaning of the first paragraph of Article 95 of the EEC Treaty in relation to the Danish legislation on the control of articles of precious metal,

THE COURT

composed of: H. Kutscher, President, M. Sørensen and G. Bosco (Presidents of Chambers), A. M. Donner, J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe and A. Touffait, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

In Denmark, Law No 499 of 29 November 1972 on the control of articles of precious metal covers the manufacture, sale and offer for sale by way of trade or business of articles of precious metal (gold, silver and platinum) having a specific minimum content.

Articles 4 and 6 of that law provide that articles of precious metal manufactured in Denmark or imported which are sold or offered for sale must bear a registered mark; all manufacturers or importers of articles of precious metal own such a mark.

Under Article 9 of the law every undertaking which manufactures, imports or deals in articles of precious metal and which is the owner of a registered mark is subject to the supervision of the Statsguardein (National Assay Office) of the Statens Kontrol med Ædle Metaller (National Authority for the Control of Precious Metal) with regard to the title of the precious metal in its possession and of the articles made of such metal.

Pursuant to Article 11 of the law the costs of that supervision are covered *inter alia* by levies charged on owners of a registered mark.

In application of the Law of 29 November 1972, the Danish Minister of Commerce fixed, by Order No 626 of 22 December 1972 on the operations of the Statsguardein, *inter alia* the detailed rules governing the assessment and collection of those levies.

Article 10 of the order introduces a fixed annual charge of an annual sum of Dkr 200 payable by all owners of registered marks; in addition, the owners of registered marks must pay a levy assessed by the Statsguardein on the basis of the size of the undertaking which is itself based on the consumption of precious metals.

Article 10 (4) of the order of 1972 provides that undertakings which have articles manufactured by other persons, in particular as contract work, but which apply their own mark must include such consumption of precious metals in the value of the metals declared to the Statsguardein; on the other hand, undertakings manufacturing articles for other persons, in particular as contract work, without applying their own mark, do not include such consumption of precious metals in their declaration.

On 21 May 1973, the Statens Kontrol med Ædle Metaller asked Mr Preben Larsen, goldsmith in Jyllinge, for payment of the annual charge for use of the mark and of the (quarterly) levy assessed on the basis of the estimated value of the consumption of precious metals in 1972. When Mr Larsen refused to pay that levy, the Statens Kontrol med Ædle Metaller brought proceedings against him before Københavns Byret (Copenhagen City Court).

Another goldsmith, Mr Flemming Kjerulff, having his place of business in Copenhagen, having paid the levy

demanded by the Statens Kontrol med Ædle Metaller on the basis of the declared value of his consumption of precious metal in 1973, claimed repayment thereof before Københavns Byret; he considered that he was not obliged to pay the levy in respect of articles of jewellery bearing not his own mark but the mark of the consignee and exported from Denmark.

By judgment of 4 March 1975, Københavns Byret, after joining the two cases, ruled that the levies were not payable on the consumption of precious metal used by goldsmiths in the manufacture of goods exported without their mark.

Upon appeal by the Statens Kontrol med Ædle Metaller, the Østre Landsret (Court of Appeal for Eastern Denmark), quashed the judgment at first instance by judgment of 21 October 1976 and held that undertakings manufacturing articles for other persons without applying their own mark are to include the consumption of precious metal in the value of precious metals declared to the Statsguardein when the manufacture is carried out as contract work for a foreign undertaking so that the articles do not bear the mark of any Danish undertaking.

Mr Preben Larsen and Mr Flemming Kjerulff claimed at first instance that there had been an infringement of Community law and, since that argument had not been examined, the Østre Landsret referred the cases to Københavns Byret for a ruling on that argument.

Københavns Byret, by Order of its 13th Chamber of 2 November 1977, decided to stay the proceedings under Article 177 of the EEC Treaty until the Court of Justice had given a preliminary ruling on the following questions:

1. Does a levy which is imposed upon undertakings manufacturing, importing or dealing in articles of precious metal in order to meet the costs of the supervision of such undertakings by the authorities and which is calculated on the basis of the undertakings' consumption of precious metals constitute a charge having an effect equivalent to a customs duty on exports within the meaning of Article 16 of the EEC Treaty when it is imposed upon all undertakings which are subject to such supervision in accordance with provisions whereby one and the same article is only subject to charge on one occasion in Denmark irrespective of whether it is again subject to charge abroad?

2. Where manufacture is effected for other persons but the manufacturer does not apply his own mark, is the answer to Question 1 affected by the fact that such consumption of precious metal is not included in the calculation of the chargeable value when such goods are manufactured for a Danish owner of a mark since the latter includes such precious metals in the account of his chargeable consumption whilst the consumption must be included when manufacture is for a foreign undertaking which is not subject to the charge in Denmark since such consumption would not otherwise be included in the basis for the Danish levy, still irrespective of whether it is again subject to charge abroad?

3. In this connexion is it relevant that the precious metal which is made up in Denmark is supplied to the Danish manufacturer by the foreign customer in question to whom the finished product is re-exported?

4. If such a levy is not regarded as constituting a charge having an effect equivalent to a customs duty on exports is it to be regarded as internal taxation (on the imported quantity of gold) contrary to the first paragraph of Article 95 of the EEC Treaty?

The order of Københavns Byret was entered in the Court Register on 18 November 1977.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Commission of the European Communities on 24 January 1978, by Mr Preben Larsen and Mr Flemming Kjerulff on 9 February and by the Government of the Kingdom of Denmark on the same date.

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

II — Written observations submitted to the Court

The *Statens Kontrol med Ædle Metaller,* having examined the system applicable in several European countries with regard to the control of articles of precious metal and having explained the system applied in Denmark, in particular as regards the application of the mark and the detailed rules for financing, states that the levy in question is in the nature of internal taxation imposed on all goods without discrimination.

(a) Domestic marketing and export are systematically treated according to the same criteria; all sales of articles of precious metal are subject to the levy without regard to the market on which the goods are intended to be sold.

Moreover, the levy is not charged when the goods cross the frontier; the Danish system creates no distinction between goods intended for export and other goods. The detailed rules for the administration of the levy system in no way link the charge to the crossing of a frontier.

In accordance with the established case-law of the Court the levy in question cannot therefore be considered as a charge having an effect equivalent to a customs duty.

The levy is in fact charged without regard to any charge which may be imposed on the same product after its export; the Danish system does not take into consideration the fiscal or quasi-fiscal system applicable to the goods once they have left the country.

This fact is the direct result of the uniformity of the treatment given to national products and to exports. In addition, all known systems subject goods to taxation without taking into consideration any additional charge which may be imposed abroad after export. Finally, the possibility of an article's being taxed twice when exported is not contrary to the Treaty; the Court of Justice has ruled to this effect, in particular in its judgment of 22 October 1974 in Case 27/74 *(Demag AG v Finanzamt Duisburg-Süd [1974]* ECR 1037).

According to the case-law of the Court, a financial charge falling within a general system of internal taxation applying systematically to domestic and imported products according to the same criteria cannot be considered as a charge having an effect equivalent to a customs duty unless it is intended exclusively to support activities which specifically benefit the taxed domestic product so as to make good, wholly or in part, the fiscal charge imposed upon them. However, in the present case the proceeds of the levies in question are exclusively intended to meet the costs of the supervision and no revenue is assigned to the objective of promoting the branch of industry in question, either on the domestic market or for export.

It is therefore necessary to reply to the first question as follows:

A levy which is imposed upon undertakings manufacturing, importing or dealing in articles of precious metal in order to meet the costs of the supervision of such undertakings by the authorities and which is calculated on the basis of the undertakings' consumption of precious metals is not in the nature of a charge having an effect equivalent to a customs duty on exports within the meaning of Article 16 of the EEC Treaty.

In any case, the prohibition on charges having an effect equivalent to a customs duty on exports is, in accordance with Article 37 of the Act concerning the Conditions of Accession, capable of taking effect, in so far as the charges imposed in Denmark are concerned, only after 1 January 1974, and only affects, where appropriate, exports to other Member States of the European Economic Community but not those to third countries.

(b) If a manufacturer does not apply his mark to the article which he has produced it is for the trader who has applied a Danish mark to it to include the value of the precious metal in the calculation of his basis of assessment to tax. If, on the other hand, the product is exported without bearing a Danish registered mark, the manufacturer must, according to the judgment of the Østre Landsret of 21 October 1976, himself include the value of the article in the calculation of his own chargeable consumption. The manufacturer is therefore treated differently according to whether he exports his articles without applying a mark to them or whether he sells them on the Danish market. The article is however not treated differently, from a tax point of view, according to whether it is sold in Denmark or, on the contrary, exported. All exported products are in fact subject to the levy whether or not they bear a mark and that levy is strictly identical to that imposed on the products sold on the domestic market. The distinction which the manufacturer is prompted to make, amongst the goods to which he does not apply his own mark, between those which are exported and those which are not exported, merely constitutes a distinction of a technical nature in the payment of the levy; it is irrelevant from the point of view of the system of taxation applicable to the goods themselves.

If the manufacturer were not bound to pay the levy in respect of articles exported without bearing a registered mark, those articles would benefit from an unjustified advantage in terms of competition as against articles exported bearing a registered mark, since the latter are incontestably subject to tax.

The difference in treatment which has been observed is therefore merely apparent.

In practice, the detailed rules for the control do not enable a discrimination to be made between goods intended for export and goods bound to the domestic market.

The second question calls for the following answer:

The fact that the consumption of precious metal is not included in the calculation of the chargeable value when goods are manufactured for a Danish owner of a mark whilst, on the contrary, that consumption must be included when manufacture is for a foreign undertaking which is not subject to the charge in that country does not affect the answer to be given to Question 1.

(c) The fact that the manufacturer receives the precious metal from a foreign customer to whom the finished product is re-exported cannot have any effect on taxation.

To exempt that manufacturer from the payment of the levy would amount to granting him special advantages in terms of competition. Moreover, he is subject

to the supervision on the same conditions as other undertakings and must therefore necessarily pay the same levies.

It is likewise irrelevant whether under the circumstances the manufacturer obtains a profit from the purchase of the raw material or whether he merely receives remuneration for the work: the levy is not a turnover tax on the precious metal; it is charged on account of the supervision of the manufacturer's undertaking.

As regards the financial charge of the levy, it is necessary to state that the remuneration paid to the manufacturer may be adapted to the size of the undertaking and that any imbalance between these two factors does not in any case enable the conclusion to be drawn that the levy is a customs duty on exports.

The third question calls for the following reply:

It is irrelevant that the precious metal which is made up in Denmark is supplied to the Danish manufacturer by the foreign customer in question to whom the finished product is re-exported.

(d) The levy in question in the main actions is charged exclusively on products which have been worked; the precious metals which are resold unworked are subject to another charge.

With regard to the levy in question the essential point is that imported goods and national products are charged at the same rate.

It is therefore necessary to reply to the fourth question as follows:

The levy in question cannot be regarded as internal taxation contrary to the first paragraph of Article 95 of the EEC Treaty.

Mr Preben Larsen and Mr Flemming Kjerulff take the view that the levy in question constitutes an obstacle to international trade.

(a) Goldsmiths must pay a levy on the quantity of gold received from a foreign customer although they receive as payment consideration only for the work carried out considered by itself and do not have the opportunity of making the usual profit on the raw material itself (gold) where the gold is supplied by the foreign customer whose mark is applied to the finished produkt. The same applies if the Danish manufacturer buys gold for a foreign customer.

In addition, in a certain number of countries to which the finished product is exported a charge is imposed for the control carried out on the gold in the country of destination; production is therefore subject to double taxation. The latter is not however imposed on the work carried out for Danish undertakings.

In Germany, one of the countries with which competition is particularly keen, no charge comparable to the Danish levy is imposed. In order to remain competitive, a Danish manufacturer or exporter must himself bear the costs of the levy without being able to pass it on to prices. If the levy could be passed on, the system would entail an increase in price which would ultimately be borne by the final consumer, contrary to the objectives of the EEC Treaty.

(b) The Court has accepted that internal taxation may, in certain circumstances, have an effect equivalent to a customs duty on exports. In this connexion, it is necessary to state that the levy in question in this case was not introduced within the context of a Community system but unilaterally by one Member State. The supervision itself is not carried out on an identical basis in all the Member States. The levy is not reasonable remuneration for services rendered: the amount thereof is not in proportion to the scope of the supervision actually carried out on a given manufacturer. The measures of

supervision are determined according to criteria which do not necessarily coincide with those applicable to the products sold on the domestic market. A higher levy is charged, or at least, is capable of being charged, on exported products than on products sold on the domestic market: a manufacturer who manufactures articles in gold without applying his mark thereto, in other words without benefiting from the publicity inherent in the application of the mark, must bear a charge on exports; this would not be the case if he sold to a Danish wholesaler or retailer.

(c) The system in question may moreover be regarded as constituting a quantitative restriction on exports, contrary to Article 34 of the EEC Treaty.

(d) The levy may in addition be regarded as internal taxation on the quantity of gold imported, contrary to the first paragraph of Article 95 of the Treaty: it is not charged where the gold is worked for a Danish customer and the registered mark of the latter is applied.

(e) The questions referred to the Court should be answered as follows:

1. A levy such as that at issue in the main actions may have an effect equivalent to a customs duty on exports within the meaning of Article 16 of the EEC Treaty.
2. In the conditions referred to in the second question, such a levy must be regarded as having an effect equivalent to a customs duty on exports within the meaning of Article 16.
3. It is irrelevant whether or not the precious metal is sent to the Danish manufacturer by the foreign customer in question since the effect of the levy is the same.
4. In so far as the first three questions are answered as indicated above, the fourth question becomes purposeless. Alternatively, that question might be answered as follows: Such a charge must be regarded as internal taxation, contrary to the first paragraph of Article 95 of the Treaty.

The *Government of the Kingdom of Denmark* retraces the history of the Danish legislation on the control of precious metals and explains in detail the system of Law No 499 of 29 November 1972.

(a) In the light of the criteria laid down in the case-law of the Court for the purpose of classifying a levy either as a charge having an effect equivalent to a customs duty on exports or as internal taxation, the levy imposed in Denmark on precious metals can only be regarded as internal taxation.

It is levied on the basis of the consumption of precious metals and not on the basis of the crossing of a frontier. Its legal basis is a law applicable both to exports and to sales on the domestic market within the context of a general system of control of the quality of articles of precious metal. The amount thereof is determined by means of uniform criteria in proportion to the consumption of precious metal; exporters are not handicapped *vis-à-vis* manufacturers selling their production on the domestic market. The fact that the products in question are also subject to taxation abroad is irrelevant, at least as long as the national systems of taxation and supervision have not been harmonized. Finally, the Danish system in no way sims at hindering exports but, on the contrary, at encouraging them.

For all those reasons it is necessary to reply to the first question in the negative.

(b) If the system of levies in question were regarded as coming under Article 16 of the EEC Treaty, it would be necessary to make a distinction between exports according to the country of destination.

So far as exports to third countries with which the Community has not entered into special agreements are concerned, there is no general prohibition on imposing on exported goods a levy having an effect equivalent to a customs duty.

With regard to exports to countries which are members of EFTA and with which the Community has entered into trade agreements, it is necessary to state that those agreements are subject to principles of interpretation different from those to which the EEC is subject; in particular, their provisions corresponding to Article 16 of the EEC Treaty are not directly applicable.

As regards exports to Member States of the Community and third countries with which the Community has entered into a free trade agreement, it is necessary to make a distinction, in application of Article 37 of the Act concerning the Conditions of Accession, according to whether the levy concerns exports before or after the time-limit of 1 January 1974. In any case, Article 16 of the EEC Treaty applies only to exports to other countries of the Community.

(c) The levy is, in principle, charged on manufacturers of articles of precious metal whether these are sold on the domestic market or exported. This rule contains an exception as regards manufacturers who carry out work for others without applying their own mark; in this case, the levy is charged on the commissioner whose mark appears on the article ordered. However, if the goods are exported without the application of a Danish registered mark the only way for the Statens Kontrol med Ædle Metaller to collect the levy is to impose it on the Danish manufacturer. This measure does not involve any discrimination against undertakings exporting those goods. The latter are, on the contrary, placed on an equal footing with exporters of articles bearing a registered mark who for that reason pay the levy. To abolish the charge on exports of goods not bearing the mark would have the effect of giving preferential treatment to that special export arrangement to the disadvantage of the export of products bearing the mark without there being any difference in the control carried out on them capable of justifying such a privilege.

The discrimination referred to is therefore completely unjustified.

An amendment imposing the levy also on a manufacturer who carries out work for a Danish customer instead of making the latter pay would, it is true, have the effect of formally abolishing the difference in treatment but not of altering the situation from the point of view of competition in the case of exports since the charge would continue to be imposed only once.

The system in force at present in Denmark does not involve, from the economic point of view, a real difference in treatment since the levies are of the same nature and the same amount whatever the state of production at which they are collected. It is therefore necessary to reply to the second question in the negative.

(d) Gold imported in the conditions referred to in the third question in the order for reference is also subject to the control by the Statens Kontrol med Ædle Metaller and therefore to the levy.

As the work of a goldsmith consists in working raw material in a series of operations as a result of which identification becomes impossible, articles of precious metal cannot be exempted from a system of controls

carried out by means of random sampling on the ground that they have been manufactured from metal supplied by a foreign client.

The reply to the third question is therefore in the negative.

(e) The levy in question is in the nature of internal taxation and must be examined on the basis of Article 95 of the EEC Treaty. As it is of general application and makes no distinction according to the origin of the gold, it is not contrary to that provision.

It is therefore necessary to reply to the fourth question in the negative.

The *Commission of the European Communities*, having explained the Danish system of control of articles of precious metals as follows from Law No 499 of 29 November 1972 and Ministerial Order No 626 of 22 December 1972, observes that the questions on the interpretation of Article 16 of the EEC Treaty do not really seem determining with regard to the outcome of the main actions since customs duties on exports and charges having an equivalent effect need, under Article 37 of the Act concerning the Conditions of Accession, only be abolished by 1 January 1974 at the latest.

(a) The first question should be answered in the negative.

The prohibition laid down in the EEC Treaty on charges having an effect equivalent to customs duties is intended to guarantee that goods circulating between the Member States are not given discriminatory treatment in one Member State as against products manufactured and in circulation in that State; more concretely, as regards exports, trade with the other Member States must not be subject to heavier economic burdens than domestic trade in the same products. To determine whether a charge or levy has an effect equivalent to a customs duty on exports, it is irrelevant whether the State of destination imposes a similar charge on the same product; it is solely necessary to compare the charge or levy imposed on exported products with that borne by the same goods sold on the domestic market.

(b) Manufacturers producing articles of precious metal are subject in Denmark to supervision by the Statens Kontrol med Ædle Metaller whether the articles which they produce are exported or sold on the domestic market. Imports of finished products are also subject to the control and the levy is calculated on the basis of the value of the precious metal which they contain. In the same way, the levy payable by manufacturers is calculated on the basis of the value of the consumption of precious metal. The levy is imposed only once: it must be paid by the undertaking or the trader whose mark is applied to the article or, if the article is exported without the application of a registered mark in Denmark, by the undertaking which makes it. The levy is not higher in the case of exports and is not charged because the article produced is exported; it is only claimed from the undertaking which makes the article if a registered mark is not applied to the article in Denmark. Manufacturers working for a foreign customer are not placed in a situation different from that of manufacturers working for a customer on the domestic market who apply that customer's mark to the article produced. The basis of assessment to the levy is the same in both cases; there is merely a necessary technical distinction with regard to the payment of the levy.

Internal taxation could not have an effect equivalent to a customs duty on exports unless it imposed a higher tax on imports than on domestic trade. The levy in question is however only charged so as to cover the costs of the

control of the title of the precious metals; it is not intended to finance activities calculated to make domestic trade more lucrative than export or otherwise to promote products intended for domestic consumption to the disadvantage of exported products.

In these circumstances the second question should also be answered in the negative.

(c) If the second question is answered in the negative there is no longer any need to reply to the third: it is irrelevant with regard to the calculation of the levy payable by a manufacturer whether the precious metal is imported by the manufacturer or supplied by a foreign customer. In the second case this is a typical example of inward processing traffic which involves in certain cases the application of special customs arrangements. Moreover, it is appropriate to note that all precious metals must be imported and that in the case of inward processing traffic or direct importation the manufacturer saves the amount of the small levy paid by wholesale importers of unworked precious metals which increases the price of the products.

(d) A tax charged on the occasion of or as a result of export must be appraised in relation not to Article 95 of the Treaty but to Article 16 thereof.

There is apparent discrimination between manufacturers working for customers established in Denmark and those who work for customers established abroad: the latter in fact pay a levy based on the value of the quantity of gold imported whilst undertakings which manufacture articles intended for the domestic market do not do so. However the levy is paid precisely on the basis of the quantity of gold imported or consumed and according to rules whose effect is that the levy is only paid once and at the same rate for the same product (except for the special levy paid by wholesale importers of unwrought precious metals).

This system of taxation does not appear to be in contradiction with the first paragraph of Article 95 of the EEC Treaty.

(e) It is necessary to reply to the first three questions as follows:

A levy intended to cover the costs of control by the authorities and charged upon undertakings manufacturing, importing or dealing in articles of precious metal which is calculated on the basis of the value of the precious metals used and imposed under rules providing that the levy is imposed only once on the same product cannot be regarded as a charge having an effect equivalent to a customs duty on exports within the meaning of Article 16 of the EEC Treaty as long as that levy applies equally to domestic trade and exports. It is irrelevant with regard to the appraisal of a levy in the light of Article 16 of the Treaty that a customs duty on imports is in addition imposed in another Member State on the product on which that levy is charged.

III — Oral procedure

The Statens Kontrol med Ædle Metaller, represented by Georg Lett, Mr Preben Larsen and Mr Flemming Kjerulff, represented by Peter Dyhr, the Government of the Kingdom of Denmark, represented by Mr Per Lachmann, Head of the Legal Secretariat for Matters relating to European Integration at the Ministry for Foreign Affairs, and the Commission of the European Communities, represented by its Legal Adviser, Mr Bjarne Hoff-Nielsen, presented oral argument and answered a question put by the Court at the hearing on 26 April 1978.

The parties to the main action drew the attention of the Court to the fact that Mr Kerulff not only brought an action

before Københavns Byret for repayment of the amounts which he had paid in respect of the levy in question but also requested a declaratory judgment to the effect that the Statens Kontrol med Ædle Metaller is generally not entitled to charge the levy on the proportion of his production exported abroad without his own mark being applied thereto. It is irrelevant whether or not the facts which form the basis of the main action took place before 1 January 1974, the date from which customs duties on exports and charges having equivalent effect should, under Article 37 of the Act concerning the Conditions of Accession, have been abolished between the Community as originally constituted and the new Member States.

The Advocate General delivered his opinion at the hearing on 6 June 1978.

Decision

1 By order of 2 November 1977, which reached the Court on 18 November 1977, Københavns Byret referred to the Court under Article 177 of the EEC Treaty four questions for a preliminary ruling on the interpretation of the concepts of charge having an effect equivalent to a customs duty on exports within the meaning of Article 16 and of internal taxation within the meaning of the first paragraph of Article 95 of the EEC Treaty in relation to the Danish legislation on the control of articles of precious metal.

2 These questions were raised within the context of a dispute between the Statens Kontrol med Ædle Metaller (National Authority for the Control of Precious Metals) and two goldsmiths over the payment of the charge introduced to cover the expenses of the supervision of undertakings manufacturing, importing or dealing in articles of precious metal.

3 It results from the file that the dispute brought before the national court is essentially caused by the uncertainties which existed in the Danish legislation as to whether or not precious metal worked in Denmark and exported in the form of articles not bearing a Danish mark must be included in the chargeable consumption on which the taxation of the undertakings is assessed.

4 By judgment of 4 March 1975 Københavns Byret found in favour of the goldsmiths in these cases, acknowledging that there is no need, for the purpose of establishing the basis of the assessment to the tax, to include the consumption of precious metal used in the manufacture of goods exported without the application of their mark.

5 The Statens Kontrol med Ædle Metaller appealed against that judgment and the Østre Landsret (Court of Appeal for Eastern Denmark), by judgment of 21 October 1976, dismissed the arguments put forward by the goldsmiths and ruled that the consumption of precious metal exported without application of its mark must be included in the chargeable consumption of the exporting undertaking.

6 As the goldsmiths concerned relied, in the alternative, on the argument that the levying of such a charge was contrary to the EEC Treaty, the Østre Landsret referred the case to Københavns Byret for the examination of that question.

7 As a result of that reference, Københavns Byret referred to the Court four questions for a preliminary ruling worded as follows:

1. Does a levy which is imposed upon undertakings manufacturing, importing or dealing in articles of precious metal in order to meet the costs of the supervision of such undertakings by the authorities and which is calculated on the basis of the undertakings' consumption of precious metals constitute a charge having an effect equivalent to a customs duty on exports within the meaning of Article 16 of the EEC Treaty when it is imposed upon all undertakings which are subject to such supervision in accordance with provisions whereby one and the same article is only subject to charge on one occasion in Denmark irrespective of whether it is again subject to charge abroad?

2. Where manufacture is effected for other persons but the manufacturer does not apply his own mark is the answer to Question 1 affected by the fact that such consumption of precious metal is not included in the calculation of the chargeable value when such goods are manufactured for a Danish owner of a mark since the latter includes such precious metals in the account of his chargeable consumption whilst the consumption must be included when manufacture is for a foreign undertaking which is not subject to the charge in Denmark since such consumption would not otherwise be included in the basis for the Danish levy, still irrespective of whether it is again subject to charge abroad?

3. In this connexion is it relevant that the precious metal which is made up in Denmark is supplied to the Danish manufacturer by the foreign customer in question to whom the finished product is re-exported?

4. If such a levy is not regarded as constituting a charge having an effect equivalent to a customs duty on exports is it to be regarded as internal

taxation (on the imported quantity of gold) contrary to the first paragraph of Article 95 of the EEC Treaty?

The first, second and third questions (interpretation of Article 16)

8 It follows from the information supplied by Københavns Byret that the Statens Kontrol med Ædle Metaller generally supervises on the national territory the production of articles of precious metal, in other words gold, silver and platinum.

9 The costs of that control are covered *inter alia* by contributions paid by the undertakings in the form of a charge calculated on the basis of the consumption of precious metal of each undertaking.

10 So far as articles marketed on the national territory are concerned, the metal used by each undertaking and bearing the mark of that undertaking forms the basis of assessment to that charge.

11 Articles not marked by the manufacturer are exempted from the charge where they are transferred to the owner of a mark since in that case the consumption of metal in question is, on account of the application of the mark, included in the chargeable consumption of the undertaking owning the mark.

12 The quantities of metal exported, which are exempted by the law from the duty of marking, must be included in the chargeable consumption of the exporting undertaking, as results from the above-mentioned judgment of the Østre Landsret.

13 This charge is explained by the fact that those quantities of metal, which are subject to the control on the same conditions as metal marketed on the national territory, would otherwise escape all taxation in the absence of the application of a Danish mark.

14 It therefore appears that the system of taxation in question is intended to make subject to tax all precious metal used by Danish undertakings and that for that reason all quantities of metal imported, dealt in on the actual

territory of Denmark or exported are included in the chargeable consumption of those undertakings according to the same criteria and without any distinction as to origin or destination.

15 It is therefore a system of internal taxation in the sense in which that expression is used in Article 95 *et seq.* of the Treaty.

16 Where products intended for export are included in the chargeable consumption of the exporter, the charges levied on that account cannot be described as charges having an effect equivalent to a customs duty on exports, since the characteristic of those duties is that they are imposed specifically on exported products and not on the same products marketed on the national territory; this does not apply in the present case.

17 It follows from the foregoing that the first question must be answered in the negative and that the second and third questions are therefore purposeless.

18 The subject-matter of the dispute must therefore be examined exclusively from the point of view of the system of the Treaty as regards the application, in intra-Community trade, of the provisions on internal taxation to which the fourth question refers.

19 Within this context, it is however appropriate to take into account both the third question on contract work carried out for a foreign customer and an aspect of the first and second questions on the possible effects of double taxation when precious metals are exported to other States.

The fourth question (scope of Article 95)

20 The fourth question calls for examination of the problem whether the rule against discrimination laid down by Article 95 of the Treaty is also applicable when a domestic charge is imposed on a product intended for export and, if the answer is in the affirmative, whether a system of taxation such as that applied in Denmark with regard to the control of articles of precious metal is compatible with that rule against discrimination.

21 The wording of Article 95 refers only to the discriminatory application of systems of internal taxation to products imported from other Member States.

22 The application of the same systems of taxation to exports is referred to in Articles 96 to 98 from the point of view of the repayment of excessive taxation which may distort conditions of trade within the common market.

23 It follows from a comparison of those provisions that the aim of the Treaty in this field is to guarantee generally the neutrality of systems of internal taxation with regard to intra-Community trade whenever an economic transaction going beyond the frontiers of a Member State at the same time constitutes the chargeable event giving rise to a fiscal charge within the context of such a system.

24 It therefore seems necessary to interpret Article 95 as meaning that the rule against discrimination which forms the basis of that provision also applies when the export of a product constitutes, within the context of a system of internal taxation, the chargeable event giving rise to a fiscal charge.

25 It would in fact be incompatible with the system of the tax provisions laid down in the Treaty to acknowledge that Member States, in the absence of an express prohibition laid down in the Treaty, are free to apply in a discriminatory manner a system of internal taxation to products intended for export to other Member States.

26 Although it is true that as a general rule the States have no interest in curbing their exports by measures of that kind, it is however impossible to rule out the possibility of such discrimination in cases such as the export of rare products which are particularly valuable or especially sought after.

27 It is therefore appropriate to hold, as the Court of Justice has already indicated in its judgment of 23 January 1975 *(P. J. Van der Hulst's Zonen* v *Produktschap voor Siergewassen,* Case 51/74 [1975] ECR 79, paragraph 34 of the decision), that Article 95, considered in conjunction with the other tax provisions laid down in the Treaty, must be interpreted as also prohibiting any tax discrimination against products intended for export to other Member States.

28 It is appropriate to appraise, in the light of the foregoing, the question whether a system of internal taxation such as the one at issue in the dispute brought before Københavns Byret is compatible with the requirements of the Treaty.

29 In view of the information supplied by the national court, it is impossible to consider as discriminatory a system of levies so arranged that all undertakings using precious metal are obliged to pay their share of tax so that purely national transactions and transactions relating to the import or export of those metals are made subject to tax on the same account.

30 More particularly, if the application of a mark constitutes the condition for the placing of precious metal into circulation on the national territory with the result that the duty to pay tax is linked to the application of the mark by the undertaking in question there is no discrimination in including in the chargeable consumption of an undertaking the quantities of metal exported by the latter without the application of a mark.

31 The same consideration applies to the case referred to in the third question in which the precious metal made up on the national territory was supplied to the manufacturer by a foreign customer to whom the finished product is re-exported, as long as such a transaction fulfils the conditions to which the national legislation attaches a duty to pay tax in the case of similar operations carried out on the national territory even if, in the absence of the application of a mark on exports, the procedure for taxation is different.

32 It follows from the first two questions which have been submitted that the national court asks whether an exemption for quantities of precious metal exported without the application of a mark would be justified if the products in question were intended to undergo a fresh control, with the levying of charges in respect thereof, in the country of destination.

33 It is necessary to observe in this connexion that the EEC Treaty contains no provision prohibiting effects of double taxation of this type.

34 Although the abolition of such effects is doubtless desirable in the interests of the freedom of movement of goods, it can however only result from the harmonization of the national systems under Article 99 or possibly Article 100 of the Treaty.

35 At present, Community law does not however contain any rules which prevent a Member State from also including, in the application of a system of taxation intended to finance the control of precious metal, products intended for export.

36 For the same reason, the fact that a system of taxation is arranged so that the same quantity of metal marketed on the national territory can be included only once for the purpose of establishing the basis of assessment to the levy intended to finance the control of precious metal is not such as to make the application of the same tax to exported products appear discriminatory when the procedures for the control and for the taxation of imports in other States are not within the influence of the exporting State.

37 It is therefore necessary to reply as stated above to the questions submitted to this Court by Københavns Byret.

Costs

38 The costs incurred by the Government of the Kingdom of Denmark and by the Commission of the European Communities which submitted observations to the Court are not recoverable.

39 As these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before Københavns Byret, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by Københavns Byret by order of 2 November 1977, hereby rules:

1. **A levy which is imposed on undertakings manufacturing, importing or dealing in articles of precious metal to meet the costs of the supervision of such undertakings by the authorities and which is calculated on the basis of the undertakings' consumption of precious metals is not in the nature of a customs duty on exports as long as it applies in accordance with the same criteria to all undertakings which are subject to such supervision whatever the origin or destination of the products.**

2. **It follows from Article 95 of the Treaty, considered within the context of the tax provisions laid down in the Treaty, that a system of internal taxation, including a system designed to finance the**

supervision of the production and marketing of articles of precious metal, must be applied without discrimination, whatever the origin or destination of the products.

3. **A system of taxation so arranged that the consumption of precious metal exported and for that reason exempted from the application of a mark is included in the chargeable consumption of the undertakings on the same conditions as the quantities of metal marketed on the national territory and subject as such to the duty of marking must not be regarded as discriminatory.**

   The fact that the precious metal worked in a Member State is supplied to the manufacturer by a foreign customer to whom the finished product is re-exported does not alter this appraisal as long as that transaction is, as regards tax, subject to the same charges as all other similar transactions coming within the scope of the same legal provisions, whatever the procedure for taxation.

4. **In the present state of Community law, the fact that an article of precious metal manufactured in one Member State and exported to another Member State is subject in the State of destination to a further control and to a charge in respect thereof does not prohibit the Member State of origin from including the quantities of metal exported in the basis of assessment to the levy payable for the control of the quality of the metal carried out by that State.**

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 29 June 1978.

A. Van Houtte
Registrar

H. Kutscher
President