itself, could not be the subject of a prohibition or restriction, it would in particular be disproportionate for the importing Member State to apply without distinction criminal penalties provided in respect of false declarations made in order to effect prohibited imports.

In Case 179/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance, Montpellier, for a preliminary ruling in the proceedings pending before that court between

THE PROCUREUR DE LA RÉPUBLIQUE [Public Prosecutor] at the said Tribunal,

plaintiff,

and

ADMINISTRATION DES DOUANES FRANÇAISES [French Customs Administration],

civil party,

and

MICHELANGELO RIVOIRA,

GIUSEPPE RIVOIRA,

GIOVANNI RIVOIRA, and

THE PARTNERSHIP GIOVANNI RIVOIRA & FIGLI, Verzuolo,

defendants,

on the interpretation of Articles 30 and 115 of the EEC Treaty,

THE COURT (First Chamber)

composed of: J. Mertens de Wilmars, President of Chamber, A. M. Donner and A. O'Keeffe, Judges,

Advocate General: J.-P. Warner
Registrar: J. A. Pompe, Deputy Registrar,

gives the following

JUDGMENT

Facts and issues

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

I — Facts and procedure

In December 1970 and December 1971, Mr Leonce Cayrol imported into France various consignments of table grapes of Spanish origin which were dispatched from Italy (where the grapes had been put into free circulation) by the firm Giovanni Rivoira & Figli. The grapes bore the Italian export mark and were accompanied by the certificate of the Istituto Nazionale per il Commercio Estero (I.C.E.) certifying that the goods were in conformity with the quality standards and stating that they were of Italian origin.

Following a check carried out by the French customs authorities on 9 August 1972, Mr Cayrol and Messrs Rivoira were charged with having imported prohibited goods (since the quota laid down by France for the importation of grapes from Spain had been exhausted) by means of a false declaration of origin and on the basis of false or inaccurate documents.

In its judgment on that charge delivered on 26 January 1976 the Tribunal de Grande Instance, Montpellier, ordered them jointly *inter alia* to pay a fine of FF 532 435 in lieu of confiscation of the goods seized and a fine equal to four times the value of the goods liable to confiscation, namely FF 1 064 870.

Since the Rivoira associates were convicted in their absence, they appealed against this judgment.

Meanwhile, Mr Cayrol accepted a proposal from the French customs authorities to settle for an amount of FF 175 000. He then applied to the Tribunale di Saluzzo for a warrant for attachment against the assets of the Rivoira concern with a view to compensation for the damage. It was during these proceedings that the Court of Justice delivered its judgment of 30 November 1977 in Case 52/77 *Cayrol* v *Rivoira* [1977] ECR 2261.

The Tribunal de Grande Instance, Montpellier, to which Rivoira had appealed against the judgment of 26 January 1976, referred to the Court of Justice for a preliminary ruling a question asking:

1. Whether, according to the provisions of Community law applicable in 1970 and 1971, the fact that France had lawfully fixed a bilateral quota for importations of Spanish grapes into France between 1 July and 31 December of each of those years gave to France the right to prohibit, in respect of the same periods, the importation of like Spanish grapes from Italy where they had been in free circulation, without France having previously requested and obtained authorization from the Commission of the EEC in Brussels under Article 115 of the Treaty.

2. If Question 1 is answered in the negative, whether the fact that the Spanish grapes imported into France from Italy during the above-mentioned periods were declared to be Italian entitles France to consider such declaration as an infringement of French customs legislation attracting the criminal penalties provided for by the Code des Douanes [customs code] in respect of false declarations made in order to effect prohibited imports.

The judgment making the reference, dated 5 June 1978, was lodged at the Court Registry on 25 August 1978.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the defendants in the main action, the French Government and the Commission of the European Communities.

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

By an order of 20 December 1978, the Court decided to assign the case to the First Chamber pursuant to Article 95 (1) of its Rules of Procedure.

II — Summary of the written observations submitted to the Court

Rivoira submits that Question 1 finds an answer in the principles laid down by the judgment in Case 52/77 *Cayrol* v *Rivoira [1977]* ECR 2261. It emerges from that judgment (paragraphs 24 to 26 of the decision) that the basic condition for the application of Article 115 of the Treaty was fulfilled at the time, and that the French Republic neither applied for nor obtained the authorization referred to in the second sentence of the first paragraph of Article 115. That authorization would only have enabled it to exclude Spanish grapes from Community treatment and to check the origin of that product in trade within the Community.

It emphasizes that goods in free circulation enjoy Community treatment in any Member State. In the present case, the various consignments of grapes were travelling under cover of Certificates DD1 or T2. According to Rivoira, those certificates bear witness to the lawful admission of the goods into free circulation within the meaning of Article 9 (2) of the Treaty (judgment of 15 September 1976 in Case 41/76 *Donckerwolcke* [1976] 2 ECR 1921).

As to Question 2, Rivoira argues that there is a difference between customs rules and any other measure of customs supervision. The latter are of a purely administrative nature and cannot include penalties such as seizure of the goods or any pecuniary penalty fixed according to the value of the goods (paragraphs 37 and 38 of the decision in Case 52/77 cited above). Among such administrative contraventions are those concerning the declaration of Community origin. It follows from Case 52/77 *(Cayrol* v *Rivoira* cited above) that an inaccurate statement of origin cannot be regarded as an infringement of a rule of customs law.

Consequently, such a statement also cannot be punished under the penal rules laid down for cases of infringement of customs law.

It also emerges from the case-law of the Court that there is discrimination inasmuch as in the present case the inaccurate statement of origin — as a quality

control — does not attract penalties in respect of all products marketed within the State concerned but under the strict provisions of the Code des Douanes attracts penalties only in respect of imported products (Case 53/76 *Bouhelier* [1977] ECR 197).

According to the provisions of Regulations Nos 58/62 (Official Journal, English Special Edition 1959-1962, p. 204) and 158/66 (Journal Officiel No 192, 27 October 1966, p. 3282/66), statements relating to the origin of the goods were required in order to protect the interests of consumers; they are not a customs matter (paragraph 48 to 50 of the decision in Case 52/77 cited above).

The *French Government* confirms first of all that it is true that for 1970 and 1971 France had not availed itself of the opportunity afforded by Article 115 of the Treaty to take necessary protective measures with the agreement of the Commission.

It considers that it was entitled to ask importers for the origin of table grapes imported into France under the conditions laid down by the case-law of the Court (Case 41/76 *Donckerwolcke* and Case 52/72 *Cayrol* v *Rivoira* cited above). Statement of the origin of products was intended precisely to enable the French authorities to keep a watch on import trends in order to be able to avail itself of the procedure provided for in Article 115 of the Treaty should the need arise.

Consequently, an inaccurate statement of such origin made with a clearly fraudulent purpose may be subject to a penalty. The Court did not deny that such penalties were possible so long as they were not disproportionate having regard to the purely administrative nature of the contravention.

However, the present case in fact concerns a fraudulent manoeuvre and not a mistake made in good faith.

The French Government submits that if such a manoeuvre is proved, it should be subject to criminal penalties irrespective of the imposition of an administrative penalty applying to a mere mistake in the statement of origin.

The *Commission* submits that Question 1 should be given a negative answer, as is already apparent from the judgment in Case 52/77 cited above.

This conclusion is confirmed by the express terms of Article 1 (1) of Regulation No 2513/69 of the Council of 9 December 1969 on the co-ordination and standardization of the treatment accorded by each Member State to imports of fruit and vegetables from non-member countries (Journal Officiel No L 318, p. 6), from which it emerges that the power left to the Member States by that provision to apply certain quantitative restrictions is limited to imports of the products concerned from non-member countries.

The scope of the principle of free movement of goods in relation to products coming from non-member countries which are in free circulation in a Member State was clearly defined by the judgment of 15 December 1976 in Case 41/76 *Donckerwolcke* [1976] 2 ECR 1921 and by the judgment of 30 November 1977 in Case 52/77 *Cayrol* v *Rivoira* [1977] ECR 2261.

Finally, in 1970 and 1971 a Member State could not prohibit the introduction into its territory of table grapes of Spanish origin coming from another Member State where they were in free circulation, without having been duly authorized to do so by the Commission under Article 115 of the Treaty.

The answer to Question 2 is clear from a mere reading of the words used by the national court. A criminal conviction under a national legislative provision which has been held to be contrary to Community law is also incompatible with that law (judgment of 16 February 1968 in Case 88/77 *Minister for Fisheries* v *Schonenberg and Others* [1978] ECR 473).

However, having regard to the provisions of the French Code des Douanes on the basis of which the national court has to give judgment, it is possible to see the question as having a wider scope.

In this connexion, the Commission puts forward the following arguments.

Through extensive use of the technique of assimilation or legal fictions or presumptions, the French Code des Douanes frequently confers a particularly broad ambit upon the concepts which it employs. This is true in particular of the offence of importing or exporting prohibited goods without a declaration or of false declaration of prohibited goods. Not only does the contravention refer to a concept of prohibited goods which is itself very broad owing to Article 38 of the Code des Douanes, but in extreme cases it can also consist in the declaration of goods which are not prohibited, in particular in the case envisaged in Article 426 (3) of the Code des Douanes which is one of the legal bases of the judgment of the Tribunal de Grande Instance of 26 January 1976. Unlike Article 426 (2) concerning "false declarations whose purpose or effect is to evade application of the prohibition measures", Article 426 (3) relates to false declarations irrespective of their purpose or of their effect or of the measures concerning the goods which form their subject-matter. The false declarations to which it refers are punished as such. [1]

Article 426 (3) makes into a criminal offence the contravention which such a false declaration constitutes because of the aggravating factor of the contravention's having been committed "by means of false, inaccurate, incomplete or inapplicable invoices, certificates or any other documents".

Thus, in the Commission's submission, according to the French Code des Douanes, Article 426 (3) may be applied even where the goods concerned do not form the subject-matter of any measure prohibiting or restricting importation.

In the present case, the problem is to what extent the application of that provision and the criminal convictions to which it can lead are compatible with the rules of the Treaty in the case of goods in free circulation moving between Member States.

The Commission argues that the answer is to be found in the judgments in the cases of *Donckerwolcke* and *Cayrol* v *Rivoira* cited above. It emerges from this case-law that the provisions of the Treaty on the free movement of goods preclude the possibility of a mistaken

1 — Thus the Cour de Cassation (Criminal Chamber 10 November 1970; Dalloz 1971, p. 509, Note J. Mazard) held that Article 426 (3) in no way postulates that the false declaration should have had the aim or effect of evading the payment of duties, taxes or charges. It also applies in cases involving a false declaration or falsely increased declarations of the value of exported goods (Cass. Crim. 3 November 1972, D. 1973, Somm. 11).

declaration of the first origin of goods in free circulation introduced into the territory of a Member State from another Member State giving grounds for the application of a penalty of the kind which Article 414 of the French Code des Douanes lays down for false declarations deemed to be imports or exports of prohibited goods without a declaration. That penalty (the seizure of the goods and a fine equal to twice the value of the goods) cannot be justified inasmuch as it is intended to enforce a prohibition or restriction on importation which *ex hypothesi* is inapplicable to the goods under consideration in the absence of an authorization duly given under Article 115 of the Treaty. It is moreover patently disproportionate having regard to the needs of the State as regards knowledge of the movement of goods.

On the basis of the foregoing considerations, the Commission suggests that the question referred to the Court should be answered as follows:

1. Although the Member States could — having regard to the combined provisions of Article 1 of Regulation No 2513/69 and of Articles 1 and 11 of Annex I to the Agreement between the EEC and Spain — continue to apply to table grapes of Spanish origin during the part of the year between 1 July and 31 December quantitative restrictions in existence prior to Regulation No 2513/69, those provisions did not allow them to extend the application of such restrictions to imports of table grapes of Spanish origin from another State in which they were in free circulation in the absence of an authorization duly given by the Commission under Article 115 of the Treaty.
2. A criminal conviction for contravention of a prohibition on imports which is contrary to Article 30 of the Treaty is itself incompatible with that Article.

A mistaken declaration concerning the first origin of goods in free circulation coming from another Member State cannot give grounds for the application of a criminal penalty of the kind which Article 141 of the French Code des Douanes lays down for false declarations deemed to be imports or exports of prohibited goods without a declaration, since such a penalty is patently disproportionate having regard to what is necessary for the purposes of enabling a Member State to obtain reasonably complete and accurate information on the movement of goods falling within specific measures of commercial policy.

III — Oral procedure

At the hearing on 22 February 1979 the defendant and the intervener in the main action, represented by Giovanni Maria Ubertazzi and Fausto Capelli of the Milan Bar, and the Commission of the European Communities, represented by its Agent Jean Amphoux, submitted oral argument.

The Advocate General delivered his opinion at the hearing on 15 March 1979.

Decision

1 By a judgment of 5 June 1978, which was received at the Court Registry on 25 August 1978, the Tribunal de Grande Instance, Montpellier, Deuxième Chambre Correctionnelle [Second Criminal Chamber], referred two questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty.

2 These questions were raised in the context of a prosecution brought by the Procureur de la République [Public Prosecutor] and the Administration des Douanes [Customs Administration] against the Rivoira associates.

3 In December 1970 and December 1971 the latter imported into France various consignments of table grapes of Spanish origin which were dispatched from Italy, where the grapes were in free circulation.

4 Upon importation into France, the said consignments were accompanied by the certificate of the Istituto Nazionale per il Commercio Estero certifying that the goods were in conformity with the quality standards and stating that they were of Italian origin.

5 At the time of the importation the bilateral quota fixed by France for grapes imported from Spain had been exhausted.

6 Following a check carried out by the French customs authorities the Rivoira associates were charged with having imported prohibited goods by means of a false declaration of origin and on the basis of false or inaccurate documents.

7 Having been convicted and ordered to pay fines in their absence, the Rivoira associates appealed, which led the national court to ask the following preliminary questions:

"1. Whether, according to the provisions of Community law applicable in 1970 and 1971, the fact that France had lawfully fixed a bilateral quota for importations of Spanish grapes into France between 1 July and 31 December of each of those years gave to France the right to prohibit, in

respect of the same periods, the importation of like Spanish grapes from Italy where they had been in free circulation, without France having previously requested and obtained authorization from the Commission of the EEC in Brussels under Article 115 of the Treaty.

2. If Question 1 is answered in the negative, whether the fact that the Spanish grapes imported into France from Italy during the above-mentioned periods were declared to be Italian entitles France to consider such declaration as an infringement of French customs legislation attracting the criminal penalties provided for by the Code des Douanes [customs code] in respect of false declarations made in order to effect prohibited imports."

Question 1

8 By a judgment of 30 November 1977 given in Case 52/77 *Cayrol* v *Rivoira* [1977] ECR 2261, the Court, interpreting Article 1 of Regulation No 2513/69 of the Council of 9 December 1969 on the co-ordination and standardization of the treatment accorded by each Member State to imports of fruit and vegetables from non-member countries (Journal Officiel No L 318, p. 6) and Articles 1 and 11 of Annex I to the Agreement between the EEC and Spain which was the subject of Regulation No 1524/70 of the Council of 20 July 1970 (Official Journal, English Special Edition, Second Series, I. External Relations (1), p. 269), ruled that in 1970 and 1971 Member States could continue to apply to table grapes of Spanish origin during the part of the year between 1 July and 31 December quantitative restrictions in existence prior to Regulation No 2513/69.

9 However, it follows from the wording of Article 1 (1) of Regulation No 2513/69 that this power of the Member States was limited to direct importation from non-member countries of the products concerned.

10 The said Article 1 could not have covered the application by a Member State of restrictions or prohibitions on the importation of products in free circulation within the Community from other Member States, because such an ambit would have constituted a derogation from the fundamental rules of the Treaty on free movement of goods.

11 Only Article 115 of the Treaty gives the Commission the power to authorize the Member States to take protective measures, *inter alia* in the form of derogations from the principle of free movement of goods, against products originating in non-member countries and put into free circulation in one of the Member States.

12 Except where the substantive and procedural conditions laid down in Article 115 are fulfilled, a Member State cannot make the introduction into its territory of goods put into free circulation in another Member State subject to the requirement of an import licence.

13 It follows that the answer must be that in 1970 and 1971 a Member State did not have the right to prohibit the importation of table grapes of Spanish origin but coming from another Member State in which that product was in free circulation without previously having requested and obtained authorization from the Commission in accordance with Article 115 of the Treaty.

Question 2

14 In so far as this question is to be understood as a supplement to Question 1, the answer must be that a criminal penalty attaching to a measure of restriction applied to the importation into one Member State of products put into free circulation in another Member State is as incompatible with Community law as that restriction itself.

15 However, the question can be understood as seeking to ascertain whether Community law precludes the application of the criminal penalties laid down against false declarations where it is established that those false declarations were made in relation to an importation which, in itself, could not be the subject of a prohibition or restriction.

16 At the time when the relevant events occurred, the Member States were entitled to request the production of certain documents upon importation of products put into free circulation in another Member State in order to establish the origin of those products or to monitor the movement of goods.

17 Such a request is not incompatible with the prohibition in Article 30 of the Treaty of all measures having an effect equivalent to quantitative restrictions on imports.

18 However — as was held in the judgment of 15 December 1976 in Case 41/76 *Donckerwolcke* v *Procureur de la République* [1976] 2 ECR 1921 — such a requirement would fall under the prohibition contained in Article 30 if the importer were required to declare with regard to origin, something other than what he knows or may reasonably be expected to know, or if the omission or inaccuracy of the declaration were to attract penalties disproportionate to the nature of the contravention.

19 In particular "the criminal penalties provided for by the Code des Douanes in respect of false declarations made in order to effect prohibited imports" cannot be applied without regard being had to the fact that the present case did not concern prohibited imports.

20 Therefore the answer must be that, although the fact that Spanish grapes imported into France from Italy have been declared as being of Italian origin may in appropriate cases give grounds for the application of the criminal penalties provided against false declarations, it would be disproportionate to apply without distinction the criminal penalties provided in respect of false declarations made in order to effect prohibited imports.

Costs

21 The costs incurred by the Commission and the French Government, which have submitted observations to the Court, are not recoverable.

22 As these proceedings are, so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Tribunal de Grande Instance, Montpellier, by a judgment of 5 June 1978, hereby rules:

1. **In 1970 and 1971 a Member State did not have the right to prohibit the importation of table grapes of Spanish origin but coming from another Member State in which that product was in free circulation without previously having requested and obtained authorization from the Commission in accordance with Article 115 of the Treaty.**

2. **Although the fact that Spanish grapes imported into France from Italy have been declared as being of Italian origin may in appropriate cases give grounds for the application of the criminal penalties provided against false declarations, it would be disproportionate to apply without distinction the criminal penalties provided in respect of false declarations made in order to effect prohibited imports.**

Mertens de Wilmars Donner O'Keeffe

Delivered in open court in Luxembourg on 28 March 1979.

A. Van Houtte,
Registrar

J. Mertens de Wilmars
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 15 MARCH 1979

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling by the Tribunal de Grande Instance of Montpellier. It is a sequel to Case 52/77 *Cayrol* v *Rivoira* [1977] ECR 2261. Your Lordships are familiar with the facts of