In Case 84/71

Reference to the Court under Article 177 of the EEC Treaty by the President of the Tribunale di Torino for a preliminary ruling in the action pending before that court between

SPA MARIMEX, Milan,

and

MINISTRY FOR FINANCE OF THE ITALIAN REPUBLIC,

on the interpretation of

— Article 12(1) and (2) of Regulation No 14/64/EEC of the Council of 5 February 1964 on the progressive establishment of a common organization of the market in beef and veal (JO 1964, p. 562); and

— of Articles 20(2) and 22(1) of Regulation (EEC No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (OJ English Special Edition 1968(I), p. 187),

THE COURT

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

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. Under Article 12 of *Regulation No 14/64/EEC* 'the charging of any customs duty or charge having equivalent effect, other than as provided in the present regulation', 'shall be incompatible with the application of the present regulation' both in trade between Member States (paragraph (1)) and in respect of imports from third countries (paragraph (2)). The second paragraph of Article 25 fixes 'the data of introduction of the system of trade instituted by the present regulation' at 1 July 1964.
On 30 June 1964, however, the Council adopted *Regulation No 82/64/EEC* 'amending the date of application of certain measures relating to common agricultural policy' (JO 1964, p. 1626), Article 1 of which provides as follows:

'1. The date 31 July 1964 shall be substituted for date 1 July 1964 in:

(a) ...

(b) the following articles of Regulation No 14/64/EEC:
— ...
— Article 25;

(c) ...

2. If, however, the regulations to be made by the Council in implementation of Regulation No 13/64/EEC, Articles 2(2), 5(3) and 10(3), first subparagraph, are adopted before 31 July 1963, that date shall be replaced:

— in the articles of Regulations Nos ... 14/64/EEC set out in paragraph (1) above, by the date 1 November 1964;
— ...

3. If the regulations in implementation of Regulation No 13/64/EEC referred to in paragraph (2) above have not been adopted before 31 July 1964, that date shall be replaced:

— in the articles of Regulation Nos ... 14/64/EEC set out in paragraph (1), by the date 1 November 1964,
— ...'

Regulation (EEC) No 805/68 prohibits 'the levying of any charge having effect equivalent to a customs duty' both in trade with third countries (Article 20(2)) and in the internal trade of the Community (Article 22(1)). Under Article 34 of the same regulation, 'the system established by this regulation shall apply from 29 July 1968' except for certain provisions of no relevance to the present case (second paragraph) and Regulation No 14/64/EEC was repealed with effect from the same date (third paragraph).

2. During 1966, 1968 and 1969, Marimex imported various consignments of beef and veal into Italy from both Member States and third countries. In respect of each of these imported consignments it had to pay the statistics duty and the duty for administrative services provided for under Italian legislation. Considering that these charges were unlawful, it brought an action before the President of the Tribunale di Torino for an order against the Minister for Finance of the Italian Republic for reimbursement of the sums paid. The company claims that the national provisions in question were not applicable to imports of beef and veal into Italy because they were incompatible with Regulation No 14/64/EEC and Regulation (EEC) No 805/68.

3. By order of 18 September 1971 the President of the Tribunale di Torino decided to refer the following questions to the Court:

'1. Is the concept of a 'charge having effect equivalent' to customs duties, referred to in Article 12(1) and (2) of Regulation No 14/64/EEC and in Article 20(2) of Regulation (EEC) No 805/68 the same as that defined by the EEC Treaty, in particular in Articles 9, 12, 13 and 16 thereof?

2. Do the statistics duty (provided for in Article 42 of Decree No 1339 of the President of the Republic of 21 December 1961 and by Article 42 of Decree No 723 of the President of the Republic of 26 June 1965) and the duty for administrative services (provided for by law No 330 of 15 June 1950), come within the charges having equivalent effect which the Italian State is prohibited from levying by Article 12(1) and (2) of Regulation No 14/64/EEC?

3. If the answer to Question No 2 is in the affirmative,

   (a) are the rules contained in Article 12(1) and (2) directly applicable in Italy?

   (b) does Article 12(1) and (2) create individual rights which national courts must protect?

   (c) does the existence of these rights date from 31 July 1964 or from 1 November 1964?

4. Do the statistics duty and the duty for administrative services come within the charges having equivalent effect which the Italian State is prohibited from levying by Article 20(2) and Regulation (EEC) No 805/68?

5. If the answer to Question No 4 is in the affirmative,

   (a) are the rules contained in Article 20(2) of Regulation (EEC) No 805/68 directly applicable in the Italian legal system?

   (b) has Article 20(2) of Regulation (EEC) No 805/68 created individual rights which national courts must protect?

   (c) does the existence of these rights date from 29 July 1968?

6. (a) Are the rules contained in Article 22(1) of Regulation (EEC) No 805/68 directly applicable in the Italian legal system?

   (b) has Article 22(1) of Regulation (EEC) No 805/68 created individual rights which national courts must protect?

   (c) does the existence of these rights date from 29 July 1968?

7. Have the duty imposed on the Italian State not to demand payment of the statistics duty and of the duty for administrative services on the importation of products which come within a common organization of the market in beef and veal and the subjective right of individuals not to pay the above mentioned 'charges having equivalent effect' which is its corollary existed continuously between the date ascertained in the reply to Question No 3 and the time-limit laid down in Law No 447 of 24 June 1971 for abolition of the statistics duty and the duty for administrative services?'

4. The order making the reference was entered at the Court Registry on 30 September 1971. Under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, Marimex, the Government of the Italian Republic and the Commission of the European Communities submitted written observations.

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.

Marimex, the Italian Government and the Commission presented oral argument at the hearing on 1 February 1972.

The Advocate-General delivered his opinion at the hearing on 24 February 1972.

Marimex was represented by Giovanni Maria Ubertazzi and Fausto Capelli, of the Milan Bar; the Italian Government by

Adolfo Maresca, Minister Plenipotentiary, assisted by Giorgio Zagari, Deputy State Advocate-Genreal; and the Commission by its Legal Adviser, Doctor Cesare Maestripieri.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The observations in question may be summarized as follows:

1. Jurisdiction of the Court

Marimex states that there can be no doubt the validity and admissibility of the reference. The national court can, before hearing the other parties, request a preliminary ruling in the course of summary proceedings such as those for an injunction under Articles 633 et seq. of the Italian code of civil procedure.
These arguments are supported by the judgment of the Court of 14 December 1971 in Case 43/71 (*SpA Politi* v *Ministry for Finance of the Italian Republic*).
The *Italian Government* had, in its written observations, challenged the admissibility of the request for interpretation by referring to the arguments which it had put forward in the Politi case mentioned above. After noting the judgment delivery by the Court in that case, the Italian Government state during the hearing that it left the decision on that point to the discretion of the Court.
The *Commission* substantially shares the view put forward by the Marimex company.

2. The substance of the case

Only Marimex and the Commission adopt a view-point on the substance of the case.

Questions 1, 2 and 4

In the view of Marimex, it is clear from the case-law of the Court that the statistics duty and the duty for administrative services referred to by the Italian court in Question No 2 constitute 'charges having equivalent effect'; see the judgments of 1 July 1969 in Case 24/68 (*Commission of the European Communities* v *Italian Republic* [1969] ECR 193), 18 November 1970 in Case 88/70 (*Commission of the European Communities* v *Italian Republic* [1970] ECR 961), 17 December 1970 in Case 33/70 (*SpA SACE* v *Ministry for Finance of the Italian Republic* [1970] ECR 1213) and 14 December 1971 in Case 43/71, quoted above.
The *Commission* points out that the concept of 'charge having equivalent effect' in Articles 12(1) and (2) of Regulation No 14/64 and Article 20(2) of Regulation No 805/68 has the same meaning as in Articles 9, 12, 13 and 16 of the EEC Treaty. This is clear not only from the fact that the same words are used but also from the object pursued by those regulations, namely to substitute a Community system for the various national measures impeding trade between Member States and with third countries (see the third and fourth recitals of the preamble to Regulation No 14/64 and the twelfth and thirteenth recitals of the preamble to Regulation No 805/68).
As for the criteria used in defining charges having an effect equivalent to a customs duty, reference need only be made, in particular, to the judgments quoted by Marimex and the judgment of 1 July 1969 in Joined Cases 2 and 3/69 (*Sociaal Fonds voor de Diamantarbeiders* v *SA Ch. Brachfeld and Sons and Chougol Diamond Co.* [1969] ECR 211).

Questions 3(a) and (b), 5(a) and (b) and 6(a) and (b)

Marimex claims that the provisions pointed out by the national court are contained in Community regulations which are of general application and are binding in their entirety by virtue of Article 189 of the Treaty. Moreover, those provisions fulfil all the conditions required by the Court for a Community rule to confer rights on those subject to Community law. In short, they are expressed in clear and precise terms, are unconditional and not subject to subsequent action by Member

States or institutions of the Community and lie outside the discretionary power of the Member States.
The *Commission*'s arguments are in essence the same as those of Marimex.

Questions 3(c), 5(c), 6(c) and 7

Marimex takes the view that the subjective rights for individuals referred to by the national court were created:

— on 1 November 1964 as regards goods imported after the entry into force of Regulation No 14/64 and before the entry into force of Regulation No 805/68 (see Article 1(2) of Regulation No 82/64);

— on 29 July 1968 as regards goods imported after the entry into force of Regulation No 805/68 (see Article 34 of that regulation).

The effect of these provisions, taken as a whole, is that the prohibition on levying charges having equivalent effect has existed continuously from 1 November 1964 up to the present and, in any case, until the date laid down by Italian Law No 447 of 24 June 1971 for abolition of the statistics duty and of the duty for administrative services, that is to say, until, respectively, 2 August 1971 and 1 July 1968.
The seventh question from the national court raises in addition the issue of the conflict between Community law and the rules of national law. It is to be hoped that, in giving its judgment, the Court will expressly confirm its previous case-law with regard to the precedence of Community law over all national enactments, even if of later date.
The *Commission* takes the same view as Marimex concerning the dates from which the prohibitions involved became effective (1 November 1964 in the case of the system established by Regulation No 14/64; 29 July 1968, in the case of the system introduced by Regulation No 805/68). With regard to the former date, the Commission points out that the situation contemplated in Article 1(2) of Regulation No 82/64, namely, where the regulations to be made in implementation of certain provisions of Regulation No 13/64 are adopted before 31 July 1964, did in fact occur; the reference is to Regulations Nos 111/64/EEC, 112/64/EEC and 114/64/EEC of the Council, all of 30 July 1964 (JO 1964, p. 2174, 2180 and 2187).
It follows from Article 34 of Regulation No 805/68 that the prohibitions in question have been in force continuously up to the present since they came into effect under the system laid down in Regulation No 14/64.
With regard to the effect of Italian Law No 447, the national court must first endeavour to resolve by means of interpretation any conflict between Community law and national law by applying the principle that a national legislature must not be presumed to have intended to break its international commitments. In this connexion, Law No 447 may be considered to have been adopted to repeal formally the provisions declared to be incompatible with the Treaty by the judgments of the Court in Cases 24/68 and 8/70 and to ensure that the costs which were thereby incurred by the Italian State were covered, but not to have been intended to exclude the application of the Community rules concerned with regard to the period prior to the dates from which it abolished the statistics duty and the duty for administrative services.
Should it nevertheless, in spite of all attempts at interpretation, be necessary to declare that the abovementioned law is incompatible with directly applicable provisions of Community law, the conflict is resolved by the case-law of the Court concerning the supremacy of such provisions (see, in particular, the judgment of 15 July 1964 in Case 6/64, *Costa* v *ENEL* [1964] ECR 585 *et seq.*) and by national case-law applying it. It is advisable for the Court once more to declare that the binding nature of directly applicable Community rules cannot vary from one State to another on the basis of national measures without endangering the functioning of the Community system and jeopardizing the attainment of the objectives of the Treaty.

Grounds of judgment

1 By order of 18 September 1971, which was received at the Court Registry on 30 September 1971, the President of the Tribunale di Torino has referred to the Court several questions on the interpretation, in particular, of Regulation No 14/64/EEC of the Council of 5 February 1964 and Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal.

These questions were referred in connexion with the application by the Italian authorities to imports from other Member States and third countries of a duty for administrative services and a statistics duty, which were introduced by Italian Law No 330 of 15 June 1950 and Decrees of the President of the Italian Republic Nos 723 of 26 June 1965 and 1339 of 21 December 1961.

Questions 1, 2 and 4

2 The first question invites the Court to rule whether 'the concept of a charge having effect equivalent to customs duties, referred to in Article 12(1) and (2) of Regulation No 14/64 and in Article 20(2) of Regulation No 805/68 is the same as that defined by the EEC Treaty, in particular in Articles 9, 12, 13 and 16 thereof'.

The second and fourth questions ask whether the duty for administrative services and the statistics duty introduced under Italian legislation constitute such charges, which are prohibited under the regulations quoted.

3 It follows from the judgments of the Court of 1 July 1969 in Case 24/68 ([1969] ECR 193 *et seq.*) and of 18 November 1970 in Case 8/70 ([1970] ECR 961 *et seq.*) that these duties constitute charges having an effect equivalent to a customs duty within the meaning of Articles 9, 12 and 13 of the EEC Treaty and of certain regulations on the common organization of the agricultural market, especially Article 12(1) of Regulation No 14/64 and Article 22(1) of Regulation No 805/68. The concept, in the provisions of the regulations quoted by the Italian court, of 'charge having equivalent effect' has the same meaning as in Article 9 *et seq.* of the Treaty and in the other regulations on the organization of the agricultural market.

Questions 3(a) and (b), 5(a) and (b), 6(a) and (b)

4 The Court is further asked whether the provisions of Article 12(1) and (2) of Regulation No 14/64 and of Articles 20(2) and 22(1) of Regulation No 805/68 lay down rules which are directly applicable in the Member States and have created

subjective rights for the benefit of individuals which the national courts must protect.

5 Under the second paragraph of Article 189 of the Treaty, a regulation 'shall have general application' and 'shall be ... directly applicable in all Member States'. In consequence, owing to its very nature and its function in the system of sources of Community law, it produces direct effects and, as such, is capable of conferring rights on individuals which national courts have a duty to protect.

Accordingly the effect of regulations such as those provided for under Article 189 precludes the application of any legislative measure, even a subsequent one, which is incompatible with their provisions. This applies to the provisions quoted.

Questions 3(c), 5(c), 6(c) and 7

6 Finally, the Court is asked to state the dates on which the individual rights arising under Article 12(1) and (2) of Regulation No 14/64 and under Articles 20(2) and 22(1) of Regulation No 805/68 arose. The Court is further requested to declare whether these rights have existed continuously from the time when they arose under the system laid down in Regulation No 14/64. It is therefore necessary to consider from what dates the said provisions took effect and whether they have continued to exist since then.

7 (1) Under Article 25 of Regulation No 14/64, the date of introduction of the system of trade instituted by the regulation was fixed at 1 July 1964. Under Article 1(1)(b) of Regulation No 82/64 the date 31 July 1964 was substituted therefor and, pursuant to paragraphs (2) and (3) of the same provision, was in turn replaced by 1 November 1964. The cumulative effect of these provisions is that the date 1 July 1964, which appears in Article 25 of Regulation No 14/64, has been replaced by 1 November 1964. Accordingly, the provisions of Article 12(1) and (2) of Regulation No 14/64 took effect on 1 November 1964.

8 (2) The third paragraph of Article 34 of the basic regulation, (EEC) No 805/68, repealed Regulation No 14/64 with effect from 29 July 1968. The second paragraph of Article 34 provides that, except for certain measures of no relevance to the present case, 'the system established by this regulation shall apply from' that date. Accordingly, as far as the system established by Regulation No 805/68 is concerned, the provisions of Articles 20(2) and 22(1) of that regulation took effect on 29 July 1968. Regulation No 805/68 is still in force.

9 (3) It follows from the above considerations that the effects in question have existed continuously since 1 November 1964.

Costs

10 The costs incurred by the Government of the Italian Republic and by the Commission of the European Communities, which submitted observations to the Court, are not recoverable and, as these proceedings are a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral observations of the Government of the Italian Republic, the Commission of the European Communities and Marimex;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 9, 12, 13, 177 and 189;
Having regard to Regulation No 14/64/EEC of the Council on the progressive establishment of a common organization of the market in beef and veal, especially Articles 12, 17 and 25;
Having regard to Regulation No 82/64/EEC of the Council amending the date of application of certain measures relating to common agricultural policy, especially Article 1;
Having regard to Regulation (EEC) No 805/68 of the Council on the common organization of the market in beef and veal, especially Articles 20, 22 and 34;
Having regard to the Protocol on the Statute of the Court of Justice of the EEC, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the President of the Tribunale di Torino by order of 18 September 1971, hereby rules:

Questions 1, 2 and 4

1. The concept of 'charge having equivalent effect' has, in Articles 12(1) and (2) of Regulation No 14/64/EEC and 20(2) of Regulation (EEC) No 805/68, the same meaning as in Article 9 et seq. of the Treaty and in the other regulations on the organization of the agricultural market.

Questions 3(a) and (b), 5(a) and (b), 6(a) and (b)

2. All regulations produce direct effects and, as such, are capable of conferring rights on individuals which national courts have a duty to protect; this applies to Article 12(1) and (2) of Regulation No 14/64/EEC and to Articles 20(2) and 22(1) of Regulation (EEC) No 805/68;

Questions 3(c), 5(c), 6(c) and 7

3. The provisions of Article 12(1) and (2) of Regulation No 14/64/EEC took effect on 1 November 1964;

4. The provisions of Articles 20(2) and 22(1) of Regulation (EEC) No 805/68 took effect on 29 July 1968;

5. The effects in question have continued to exist since 1 November 1964.

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 7 March 1972.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 24 FEBRUARY 1972[1]

Mr President,
Members of the Court,

Although the facts of the present case are different from those of the case which was referred by the President of the Tribunale di Torino, on which the Court gave a ruling in its judgment of 14 December 1971 in Case 43/71 (*Politi Sas.* v *Ministry for Finance of the Italian Republic*, the same legal problems are raised in the present case. This means that, in common with the parties who submitted oral observations, I can be fairly brief in giving my opinion.

As the Court will be aware, the Marimex undertaking, Milan, imported into Italy during the years 1966, 1968 and 1969 beef and veal from Member States of the EEC and from third countries.

1 — Translated from the German.