JUDGMENT OF THE COURT
22 April 1997 *

In Case C-310/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tariefcommissie (Netherlands) for a preliminary ruling in the proceedings pending before that court between

Road Air BV

and

Inspecteur der Invoerrechten en Accijnzen

on the interpretation of the provisions of Part Four of the EEC Treaty and on the validity and interpretation of Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community (OJ 1986 L 175, p. 1, hereinafter 'the Fifth Decision') and Council Decision 91/110/EEC of 27 February 1991 extending the validity of Council Decision 86/283/EEC (OJ 1991 L 58, p. 27),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, G. F. Mancini, J. C. Moitinho de Almeida, J. L. Murray and L. Sevón (Presidents of Chambers), C. N. Kakouris, P. J. G. Kapteyn, C. Gulmann, D. A. O. Edward (Rapporteur), J.-P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm, M. Wathelet and R. Schintgen, Judges,

* Language of the case: Dutch.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

Road Air BV, the plaintiff in the main proceedings, by P. V. F. Bos and M. M. Slotboom, of the Rotterdam Bar,

— the Netherlands Government, by J. G. Lammers, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the French Government, by C. de Salins, Assistant Director in the Directorate for Legal Affairs of the Ministry of Foreign Affairs, and A. de Bourgoing, Chargé de Mission in the same directorate, acting as Agents,

— the Council of the European Union, by J. Huber and G. Houttuin, of its Legal Service, acting as Agents,

— the Commission of the European Communities, by H. van Lier, Principal Legal Adviser, acting as Agent, and J. Stuyck, of the Brussels Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of Road Air BV, represented by P. V. F. Bos and M. M. Slotboom, the Netherlands Government, represented by M. A. Fierstra, Assistant Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, the Council, represented by J. Huber and G. Houttuin, and the Commission, represented by H. van Lier and J. Stuyck, at the hearing on 26 November 1996,

after hearing the Opinion of the Advocate General at the sitting on 14 January 1997,

gives the following

Judgment

1 By order of 21 September 1995, received at the Court Registry on 29 September 1995, the Tariefcommissie (Administrative Court for Customs and Excise) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of the provisions of Part Four of the EEC Treaty, now the EC Treaty, on the association of the overseas countries and territories (hereinafter 'the OCT') with the Community, and on the validity and interpretation of Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community (OJ 1986 L 175, p. 1, hereinafter 'the Fifth Decision') and Council Decision 91/110/EEC of 27 February 1991 extending the validity of Council Decision 86/283/EEC (OJ 1991 L 58, p. 27).

2 That question was raised in proceedings brought by Road Air BV against the decision of the Inspecteur der Invoerrechten en Accijnzen (Inspector of Customs and Excise), Hoofddorp, requiring it to pay customs duties of HFL 54.40 on the import from the Netherlands Antilles of 7 kg of coffee in powder form originating in Colombia.

3 Article 227 of the EEC Treaty defines the territorial scope of the Treaty. Article 227(3) extends its scope to the overseas countries and territories listed in Annex IV and provides that those countries and territories are to have the 'special arrangements for association set out in Part Four of [the] Treaty' applied to them.

4 Part Four of the Treaty is entitled 'Association of the overseas countries and territories'.

5 Under the first paragraph of Article 131 of the EEC Treaty, 'The Member States agree to associate with the Community the non-European countries which have special relations with Belgium, Denmark, France, Italy, the Netherlands and the United Kingdom'. According to the same provision, those countries and territories are listed in Annex IV to the Treaty.

6 Originally, the Netherlands Antilles were not included in that list; they were inserted, in accordance with Article 227(3) of the Treaty, by Convention 64/533/EEC of 13 November 1962 amending the Treaty establishing the European Economic Community with a view to rendering applicable to the Netherlands Antilles the special conditions of association laid down in Part Four of that Treaty (*Journal Officiel* 1964, 150, p. 2414), which entered into force on 1 October 1964.

7 Article 132 of the Treaty provides:

'Association shall have the following objectives:

1. Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to this Treaty.

...'

8 Article 133 of the Treaty adds:

'1. Customs duties on imports into the Member States of goods originating in the countries and territories shall be completely abolished in conformity with the progressive abolition of customs duties between Member States in accordance with the provisions of this Treaty.

2. Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be progressively abolished in accordance with the provisions of Articles 12, 13, 14, 15 and 17.'

9 According to Article 134 of the Treaty,

'If the level of duties applicable to goods from a third country on entry into a country or territory is liable, when the provisions of Article 133(1) have been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States the measures needed to remedy the situation'.

10 Article 136 of the Treaty provides:

'For an initial period of five years after the entry into force of this Treaty, the details of and procedure for the association of the countries and territories with the Community shall be determined by an Implementing Convention annexed to this Treaty.

Before the Convention referred to in the preceding paragraph expires, the Council shall, acting unanimously, lay down provisions for a further period, on the basis of the experience acquired and of the principles set out in this Treaty.'

11 On the basis of the second paragraph of Article 136 of the Treaty, on 25 February 1964 the Council adopted Decision 64/349/EEC on the association of the overseas countries and territories with the European Economic Community (*Journal Officiel* 1964, 93, p. 1472). That decision was intended to replace, as from 1 June 1964 (the date of entry into force of the internal agreement on the financing and management of Community aid signed in Yaoundé on 20 July 1963), the Implementing Convention on the association of the overseas countries and territories with the European Economic Community, annexed to the Treaty and concluded for a period of five years.

12 Subsequently, Decisions 70/549/EEC, 76/568/EEC and 80/1186/EEC, of 29 September 1970 (OJ, English Special Edition, Second Series I(2), p. 164), 29 June 1976 (OJ 1976 L 176, p. 8) and 16 December 1980 (OJ 1980 L 361, p. 1) respectively, on the association of the overseas countries and territories with the European Economic Community, were adopted by the Council.

13 Finally, on 30 June 1986, the Council adopted the Fifth Decision which, under Article 183 thereof, was to be applicable until 28 February 1990. However, it was extended to 30 June 1991 by Article 1 of Decision 91/110.

14 Article 70(1) of the Fifth Decision is worded as follows:

'1. Products originating in the countries and territories shall be imported into the Community free of customs duties and charges having equivalent effect.'

15 '[P]roducts originating in the countries and territories' are defined by Article 1(1)(b) of Annex II to the Fifth Decision in the following terms:

'1. products wholly obtained in one or more countries or territories;

2. products wholly obtained in one or more countries or territories in the manufacture of which products other than those wholly obtained in the countries or territories are used, provided that the said products have undergone sufficient working or processing within the meaning of Article 3.'

16 On 25 July 1991 the Council adopted Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1, hereinafter 'the Sixth Decision'), which entered into force on 20 September 1991. According to Article 240(1) thereof, it is applicable for a period of 10 years as from 1 March 1990.

17 Article 101 of that decision provides:

'1. Products originating in the OCT shall be imported into the Community free of customs duties and charges having equivalent effect.

2. Products not originating in the OCT but which are in free circulation in an OCT and are re-exported as such to the Community shall be accepted for import into the Community free of customs duties and taxes having equivalent effect providing that they:

— have paid, in the OCT concerned, customs duties and taxes having equivalent effect of a level equal to, or higher than, the customs duties applicable in the Community on import of these same products originating in third countries eligible for the most-favoured-nation clause,

— have not been the subject of an exemption from, or a refund of, in whole or in part, customs duties or taxes having equivalent effect,

— are accompanied by an export certificate.

...'.

18 On 24 June 1991 Road Air declared to the Netherlands customs authorities the import of 7 kg of coffee extract in powder form originating in Colombia which had been released into free circulation in the Netherlands Antilles.

19 On 25 June 1991 the goods were classified under subheading 2101 10 11 of the Common Customs Tariff, to which customs duty was applicable at the rate of 18% of the customs value. The amount payable was thus HFL 54.40.

20 Road Air objected to that duty on the ground that, under Article 132(1) of the Treaty, the Member States were not entitled to levy customs duties on goods which, although originating in a non-member country, had been duly released into free circulation in the OCT.

21 The Inspecteur der Invoerrechten en Accijnzen, Hoofddorp, dismissed that objection, taking the view that the only goods benefiting from the abolition of customs duties were those satisfying the conditions as to origin.

22 Considering that the decision to be given in the proceedings called for an interpretation of Part Four of the Treaty, the Tariefcommissie stayed proceedings pending a preliminary ruling from the Court of Justice on the following question:

'Is Part Four of the EEC Treaty, in particular Articles 132(1), 133(1) and 134, to be interpreted — regardless of any distinction between goods originating in the OCT and goods originating in third countries, and thus by way of derogation from Council Decisions 86/283/EEC and 91/110/EEC — as meaning that no customs duties were payable on 25 June 1991 on goods which, immediately before being imported into the Community, were in free circulation in an OCT country?'

23 In order to provide the national court with a helpful answer, it is necessary first to consider the applicability to coffee extract originating in Colombia of Council Regulation (EEC) No 3835/90 of 20 December 1990 amending Regulations (EEC) Nos 3831/90, 3832/90 and 3833/90 in respect of the system of generalized tariff preferences applied to certain products originating in Bolivia, Colombia, Ecuador and Peru (OJ 1990 L 370, p. 126), second, to examine Article 133(1) of the Treaty, Article 136 of the Treaty and, finally, the applicability of the Council's Fifth and Sixth Decisions.

The applicability of Regulation No 3835/90

24 In its written observations the French Government submits that the dispute in the main proceedings is covered by Regulation No 3835/90.

25 Article 3(1) of that regulation provides that Common Customs Tariff duties are to be totally suspended from 1 January to 31 December 1991 for products originating from the four States concerned, which are listed in the annex to that regulation.

26 That annex includes miscellaneous edible preparations falling within ex-Chapter 21 of the NC Code, excluding sugar syrups falling within subheadings 2106 90 30, 2106 90 51, 2106 90 55 and 2106 90 59.

27 It follows that, by virtue of that regulation, no customs duty may be levied on the import into the Netherlands on 25 June 1991 of coffee powder originating in Colombia.

28 It falls to the national court to consider, under national procedural rules, whether the dispute in the main proceedings can be determined by application of Regulation No 3835/90.

The interpretation of Article 133(1) of the Treaty

29 Road Air considers that Article 133(1) of the Treaty not only covers products originating in the OCT but also relates to products from non-member countries in free circulation there.

30 Road Air relies, first, on Article 132(1) of the Treaty, which imposes on Member States the obligation to apply to their trade with OCT countries the same treatment as they accord each other under the Treaty. It then refers to the German

version of Article 133(1) of the Treaty, which uses the expression 'Waren aus den Ländern und Hoheitsgebieten ...' (goods from the OCT). Finally, it mentions the scheme of Article 134 which, it submits, would be rendered meaningless if only products originating in the OCT could benefit from preferential treatment in the Member States.

31 In that regard, it must be noted that the Dutch, English, Danish, Irish, Greek, Spanish, Finnish and Swedish versions use terms specifically referring to 'products' or 'goods': 'goederen van oorsprong uit...', 'goods originating in...', 'varer med oprindelse i...', 'earraí de thionscnamh na...', 'των καταγομένων εμπορευμάτων από...', 'mercancías originarias de...', 'peräisin... tavaroiden...', 'varor med ursprung i...'. It follows that, according to those versions, Article 133(1) can apply only to products which originate in an OCT.

32 Other language versions (the French, Italian and Portuguese versions) use vaguer terms: 'importations originaires de ...', 'importazioni originarie dei ...', 'importações originárias dos ...'. Those versions are clearly open to an interpretation compatible with the one above. Finally, the German version 'Waren aus ...' refers to 'goods', in the same way as the language versions mentioned in the foregoing paragraph, but it does not use any term directly expressing the idea of origin. Even if it were ambiguous in that respect, it must be interpreted in a manner conforming with the other language versions.

33 It was, moreover, on the basis of that interpretation that, in the six decisions adopted by the Commission under Article 136 of the Treaty, only products originating in the OCT were exempted from customs duties and charges having equivalent effect. Similarly, there was annexed to Convention 64/533, which made the special OCT association conditions applicable to the Netherlands Antilles, Protocol 64/534/EEC on imports into the European Economic Community of petro-

leum products refined in the Netherlands Antilles (*Journal Officiel*, 1964, 150, p. 2416), according to which the special conditions laid down for those products still differed from those applicable to the same products originating in non-member countries.

34 It must, finally, be stressed that the interpretation advocated by Road Air would require that the OCT be granted conditions similar to those which the Member States accord each other progressively, under the Treaty, in respect not only of imports of products originating in the OCT but also of products imported into them, with the result that the OCT would form part of the common customs area, a result which goes far beyond what was envisaged by the Treaty.

35 It follows that Article 133(1) does not extend to goods not originating in OCT but in free circulation there and that, moreover, Part Four of the Treaty did not lay down any specific conditions for such products.

36 Contrary to Road Air's assertion, that interpretation does not render Article 134 of the Treaty meaningless. It is sufficient, on that point, to note that, between the entry into force of the Treaty and creation of the common customs area, certain products originating in non-member countries could be granted a reduction of customs duties or be exempted from duties in an OCT, and thereafter in the Member State with which that OCT maintained special relations. That situation was capable of giving rise to deflections of trade to the detriment of a Member State and the latter would therefore have been entitled to make a request to the Commission under Article 134.

The interpretation of Article 136 of the Treaty

37 The first paragraph of Article 136 of the Treaty envisages 'an initial period of five years' for which the details of and procedure for the association of the OCT are to be determined by an Implementing Convention annexed to the Treaty. The second paragraph provides for 'a further period' for which the Council is to lay down new provisions on the basis of the experience acquired and of the principles set out in the Treaty.

38 Road Air considers that the second paragraph of Article 136 empowered the Council to adopt only one decision concerning association with the OCT following the Implementing Convention annexed to the Treaty, mentioned above. The Council's practice of adopting a number of successive decisions subsequent to the decision adopted upon the expiry of the Implementing Convention is therefore, in its submission, contrary to the Treaty.

39 It is to be observed that although the second paragraph of Article 136 does not specify the duration of the further period for which the Council may adopt provisions needed for attainment of the objectives of association, it confers on the Council a considerable degree of discretion in that regard.

40 Association of the OCT with the Community is to be achieved by a dynamic and progressive process which may necessitate the adoption of a number of measures in order to attain all the objectives mentioned in Article 132 of the Treaty, having regard to the experience acquired through the Council's previous decisions.

41 In the light of those objectives, the second paragraph of Article 136 must be interpreted as providing not for a single 'further period' for which the Council is empowered to adopt provisions needed in order to attain the objectives of association but for the introduction of a regime under which the Council may adopt a number of successive decisions each containing provisions 'for a further period'.

42 Since the various decisions adopted by the Council in implementation of that provision are thus valid, it is now necessary to determine which decision was applicable at the material time, namely 25 June 1991, and what were the conditions laid down for goods originating in non-member countries but in free circulation in OCT.

The applicability of the Fifth and Sixth Decisions

43 The period of 16 months from 1 March 1990 to 30 June 1991 was covered, as from 20 September 1991, by both the Fifth Decision and the Sixth Decision, each of which laid down different conditions for goods originating in non-member countries and in free circulation in an OCT.

44 The Fifth Decision, which had been extended to 30 June 1991 by Decision 91/110, granted exemption from customs duties and import charges in the Community only for products originating in the OCT (Article 70), defined in Annex II to that decision as products which have been wholly obtained there or undergo sufficient processing there, to the exclusion of products originating in non-member countries.

45 The Sixth Decision, which entered into force on 20 September 1991, applies, by virtue of Article 240 thereof, for a period of ten years as from 1 March 1990. It provides for more favourable conditions than those provided by the Fifth Decision for products originating in non-member countries which are in free circulation in an OCT. Article 101(2) of that decision exempts a number of products from customs duties provided in particular that customs duties or charges having equivalent effect of an amount equal to or greater than the customs duties applicable in the Community to the import of the same products have been paid in the OCT in question and have not been the subject of an exemption or a total or partial refund.

46 The result is that the imports in question, carried out on 25 June 1991, were subject, as from 20 September 1991, to the Sixth Decision, which applied retroactively to transactions undertaken on or after 1 March 1990.

47 As the Advocate General observed at points 24 to 43 of his Opinion, such retroactive application is permissible if it is capable of placing the person concerned in a more favourable legal situation and provided that his legitimate expectations are properly respected.

48 It is clear in that regard that the Member States must set against the customs duties to be paid in the Community the customs duties or charges having equivalent effect that have already been paid in the OCT.

49 The answer to the question from the national court must therefore be that Part Four of the Treaty, and more particularly Articles 132(1), 133(1) and 134, must be interpreted as meaning that on 25 June 1991 customs duties could be levied on

imports into the Community of goods originating in non-member countries which were in free circulation in an OCT, to the extent to which, in accordance with Article 101 of the Sixth Decision, the duties paid in the OCT in question were lower than the duties applicable in the Community.

Costs

50 The costs incurred by the Netherlands and French Governments, the Council of the European Union and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Tariefcommissie by order of 21 September 1995, hereby rules:

Part Four of the EC Treaty, and more particularly Articles 132(1), 133(1) and 134, must be interpreted as meaning that on 25 June 1991 customs duties could be levied on imports into the Community of goods originating in non-member

countries which were in free circulation in a country forming part of the overseas countries and territories, to the extent to which, in accordance with Article 101 of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community, the duties paid in the overseas country or territory in question were lower than the duties applicable in the Community.

Rodríguez Iglesias Mancini Moitinho de Almeida Murray

Sevón Kakouris Kapteyn Gulmann

Edward Puissochet Hirsch Jann

Ragnemalm Wathelet Schintgen

Delivered in open court in Luxembourg on 22 April 1997.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President