JUDGMENT OF THE COURT (Sixth Chamber)
11 August 1995 *

In Joined Cases C-367/93 to C-377/93,

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

F. G. Roders BV

and

Inspecteur der Invoerrechten en Accijnzen (Cases C-367/93, C-368/93, C-369/93 and C-370/93),

and between

RSK Internationale Expeditie-en Vervoeronderneming BV

and

Inspecteur der Invoerrechten en Accijnzen (Cases C-371/93 and C-372/93),

and between

Damco van Swieten BV

* Language of the case: Dutch.

and

Inspecteur der Invoerrechten en Accijnzen (Cases C-373/93 and C-377/93),

and between

VGL Internationale Expeditie BV

and

Inspecteur der Invoerrechten en Accijnzen (Cases C-374/93 and C-375/93),

and between

Zaans Veem BV

and

Inspecteur der Invoerrechten en Accijnzen (Case C-376/93),

on the interpretation of Article 95 of the EEC Treaty,

THE COURT (Sixth Chamber),

composed of: F. A. Schockweiler, President of the Chamber, P. J. G. Kapteyn, G. F. Mancini, C. N. Kakouris and J. L. Murray (Rapporteur), Judges,

Advocate General: G. Tesauro,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— the Inspecteur der Invoerrechten en Accijnzen, M. H. Bijker,

— RSK Internationale Expeditie-en Vervoeronderneming BV, Damco van Swieten BV, VGL Internationale Expeditie BV and Zaans Veem BV, by J. G. Olijve, Tax Adviser,

— the Netherlands Government, by A. Bos, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent,

— the Portuguese Government, by Luis Fernandes, Director of the Legal Service of the Directorate General for the European Communities at the Ministry of Foreign Affairs, and Angelo Cortesão Seiça Neves, lawyer in the same Directorate General, acting as Agents,

— the Commission of the European Communities, by Enrico Traversa and Pieter Van Nuffel, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of F. G. Roders BV, represented by P. Kavelaars, R. J. J. M. Keijsers and H. C. de Bie, Tax Advisers; RSK Internationale Expeditie-en Vervoeronderneming BV, Damco van Swieten BV, VGL Internationale Expeditie BV and Zaans Veem BV; the Netherlands Government, rep-

resented by J. W. de Zwaan, Assistant Legal Adviser at the Ministry of Foreign Affairs, acting as Agent; the Portuguese Government and the Commission at the hearing on 8 December 1994,

after hearing the Opinion of the Advocate General at the sitting on 19 January 1995,

gives the following

Judgment

1 By 11 orders of 7 July 1993, received at the Court on 30 July 1993, the Tariefcommissie (Administrative Court for Customs and Excise) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 95 of that treaty.

2 Those questions were raised in proceedings between importers of alcoholic beverages and the Inspecteur der Invoerrechten en Accijnzen (Inspector of Customs and Excise), Amsterdam, concerning excise duties on wine and special excise duties on wine levied on wines imported from other Member States.

3 Under the Convention relating to the Unification of Excise Duties and of Fees for the Warranty of Articles of Precious Metals, signed by Belgium, Luxembourg and the Netherlands on 18 February 1950 (*Staatsblad* 1951, 215; hereafter 'the Unification Convention'), the rates of excise duty on fermented fruit beverages and sparkling fermented beverages and the criteria governing their application were standardized. Articles 9, 9a and 10 of the Unification Convention, as amended by the Sixth Protocol of 26 January 1976 (*Tractatenblad* 1976, 46), lay

down a common excise duty for the three countries and an additional excise duty for the Netherlands and Belgium. Article 18 provides for measures to be adopted in the Netherlands and in the Belgo-Luxembourg Economic Union to ensure that laws and regulations on the levying of excise duties under the common system are standardized. Under Article 19(2), the excise duties levied by one of the Contracting Parties on products excisable under a common system, which are dispatched from its territory to that of another party, are to accrue to the latter. Settlements between the Parties are to be made in accordance with the rules established by the competent ministers.

4 Under those rules, the common excise duty could be levied on products imported from other countries, according to the point of entry into Benelux territory, by the customs authority having territorial competence. Settlements between the Parties regarding the duties so levied were made on a regular basis.

5 On the basis of Article 9a(3) of the Unification Convention, in the version appearing in the Sixth Protocol, the competent ministers of the Contracting Parties could grant total or partial exemption from excise duties for beverages fermented from fruit other than fresh or dried grapes and produced in or imported into the Benelux area.

6 Luxembourg grape wines were also exempt from excise duties under the Benelux system. That exemption was originally based on Article 6 of the Convention on the Economic Union of Belgium and Luxembourg of 25 July 1921 (League of Nations Treaty Series, 1922, p. 224), which was incorporated in the Treaty of 3 February 1958 instituting the Benelux Economic Union (United Nations Treaty

Series, 381, p. 165), Article 80(2) of which — in the version of the Sixth Protocol — provided that natural wines produced in the Grand Duchy, in accordance with its laws and regulations, and prepared from fresh grapes harvested there, were not subject to the excise duty or to the additional excise duty referred to by the Unification Convention.

7 At the material time, the rates of excise duty were governed by the Seventh Protocol to the Unification Convention, of 14 September 1984 (*Tractatenblad* 1984, 122). Those duties were also laid down by the Netherlands Law of 30 May 1963 concerning excise duty on alcoholic substances (*Staatsblad* 240; hereafter 'the 1963 Law'), which has been amended several times.

8 Articles 4 and 5 of the version of the 1963 Law in force at the material time distinguished between, on the one hand, still wines, including grape wines with an alcoholic strength not exceeding 22% vol. and fruit wines having an alcoholic strength not exceeding 15% vol. and, on the other hand, sparkling wines, including both sparkling wines made from grapes and sparkling wines made from fruit other than grapes. Products falling outside those categories, in particular owing to an alcoholic strength in excess of that specified, were regarded as 'alcoholic substances' and, as such, were subject to a duty on alcohol, which was levied at a higher rate.

9 In principle, all still wines, produced in or imported into the Netherlands, are subject to an excise duty on wine and to a special excise duty on wine (Article 2(2) and (3) of the 1963 Law). Likewise, all sparkling wines are in principle subject to an excise duty on sparkling wines and to a special excise duty on sparkling wines (Article 2(4) and (5) of the 1963 Law). However, under Articles 85a and 88d of the 1963 Law, still fruit wines were exempted from excise duty provided that they met certain requirements with regard to labelling and packaging. Sparkling fruit wines,

on the other hand, were made subject to a lower rate of excise duty than sparkling grape wines. Furthermore, imported sparkling grape wines were made subject to the excise duty on wine, whereas imported sparkling fruit wines were exempted in that respect.

10 On 11 January 1991, the Inspector of Customs and Excise, Amsterdam, dismissed 11 objections against the application of wine duties and special wine duties to the following products, upon their importation from other Member States:

— madeira, originating in Portugal, with an alcoholic strength of 18% (Case C-367/93);

— red wine, originating in France, with an alcoholic strength of 12% (Cases C-368/93, C-372/93 and C-375/93);

— champagne, originating in France, with an alcoholic strength of 12% (Cases C-369/93, C-373/93 and C-377/93);

— vermouth, originating in Italy, with an alcoholic strength of 13.5% (Case C-370/93);

— sherry, originating in Spain, with an alcoholic strength of 17% (Cases C-371/93, C-374/93 and C-376/93).

The importers in question, who had been unable to obtain the exemptions for fruit wines, claimed in their objections that the Netherlands legislation, in so far as it taxed wines differently according to whether they had been made from grapes or from fruit other than grapes, was incompatible with Article 95 of the Treaty.

11 The importers concerned appealed against each decision dismissing an objection. During those appeal proceedings, the Tariefcommissie decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is the charging of wine duty in this instance on the import into the Netherlands of [the product concerned] originating in [the Member State concerned] and having an alcohol strength of [the percentage concerned] incompatible with Article 95 of the EEC Treaty, having regard in particular to the excise duty rules regarding fruit wine in the Netherlands excise duty legislation applicable at that time and having regard *inter alia* to the fact that the Netherlands is a member State of the Benelux?

2. If the answer to Question 1 is in the affirmative, what should be the effect *ratione temporis* thereof?'

12 By order of 6 September 1993, the Court, in accordance with Article 43 of the Rules of Procedure, joined Cases C-367/93, C-368/93, C-369/93, C-370/93, C-371/93, C-372/93, C-373/93, C-374/93, C-375/93, C-376/93 and C-377/93 for the purposes of the written procedure, the oral procedure and the final judgment.

Question 1

13 It must first be observed that, although in proceedings under Article 177 of the Treaty the Court may not rule on the compatibility of national provisions with Community law, it is nevertheless competent to provide the national court with all the elements of interpretation under Community law to enable it to assess such compatibility for the purpose of deciding the case before it (see, in particular, Case C-143/91 *Van der Tas* [1992] ECR I-5045, paragraph 12).

14 By the first question, the Court is asked to interpret the first and second paragraph of Article 95 of the EEC Treaty, which provide that:

'No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.'

15 As the Court has consistently held, the aim of Article 95 as a whole is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation that discriminates against products from other Member States. Thus Article 95 must guarantee the complete neutrality of internal taxation as regards competition between domestic products and imported products (see Case C-47/88 *Commission* v *Denmark* [1990] ECR I-4509, paragraph 9).

16 It is apparent from the orders for reference that the national court is inquiring more particularly about the meaning of domestic products referred to in Article 95 and, in the event that the first paragraph is to be applied, whether the products at issue might be similar to the exempted fruit wines. Should it emerge that the products at issue are not similar to domestic products, it will then be necessary to consider whether the second paragraph of Article 95 is applicable.

The meaning of domestic products

17 An essential matter in the application of Article 95 is the definition of 'domestic products'.

18 On that point, the Netherlands Government submits that, in the present case, that definition depends on the relationship between Article 95 and the Benelux rules mentioned above. Under Article 233 of the Treaty, the provisions of Community law are not to preclude the existence or completion of the union between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of that union are not attained by application of the Treaty. The Court has interpreted that provision as having the aim of preventing the application of Community law from bringing about the disintegration of the regional union or from hindering its development. Article 233 therefore enables the three Member States concerned to apply, in derogation from the Community rules, the rules in force within their union in so far as it is further advanced than the common market (Case 105/83 *Pakvries* v *Minister for Agriculture and Fisheries* [1984] ECR 2101, paragraph 11).

19 Consequently, the Netherlands Government submits that, in view of the unification of excise duties between Belgium, Luxembourg and the Netherlands, those three Member States are to be regarded as a single Member State for the purposes of Article 95 of the Treaty. Accordingly, given the importance within the Benelux countries of the production of fruit wine and grape wine, grape wine should be regarded as a domestic product. Fruit wine and grape wine being both domestic products, there can be no discrimination of the kind referred to in Article 95 of the Treaty.

20 It should be observed here that Belgium, the Netherlands and Luxembourg are to be regarded as a single territory so far as excise duties on wines are concerned. As is clear from paragraph 3 et seq. of the present judgment, the Unification Convention standardized the rates of duty for fermented fruit bever-

ages and sparkling fermented beverages and the criteria governing their application, by laying down a common rate of duty and an additional duty applicable in Belgium and the Netherlands. The Benelux countries have also set up a unified system for levying the excise duties and a mechanism for arranging settlements between the Parties.

21 Consequently, all fruit wines or grape wines produced in the Benelux countries are to be regarded as domestic products for the purposes of Article 95 of the Treaty.

22 The preferential tax treatment accorded to Luxembourg grape wines within Benelux territory, in relation to imported wines, was not contrary to the Treaty. By virtue of the second paragraph of Article 1(1) of the Protocol on the Grand Duchy of Luxembourg annexed to the EEC Treaty, Belgium, Luxembourg and the Netherlands were to apply the system provided for in the third paragraph of Article 6 of the Convention on the Economic Union of Belgium and Luxembourg of 25 July 1921. That derogation has been maintained, on the basis of Article 2 of Regulation (EEC) No 541/70 of the Council of 20 March 1970 on agriculture in the Grand Duchy of Luxembourg (OJ, English Special Edition 1970 (I), p. 161) and other subsequent regulations. Those tax exemptions were abolished on 1 January 1993, pursuant to Article 2 of Council Regulation (EEC) No 204/90 of 22 January 1990 on agriculture in the Grand Duchy of Luxembourg (OJ 1990 L 22, p. 11).

23 Although the Benelux countries did not therefore infringe Article 95 by according preferential treatment to grape wines produced in Luxembourg, they were still not at liberty to favour fruit wines produced in one of the three Benelux countries, to the detriment of beverages which might be similar, coming from another Member State of the Community.

24 As is evident from paragraphs 3 to 5, fruit wines produced in the Benelux countries enjoyed preferential tax treatment in relation to imported grape wines which both the Commission and the plaintiffs in the main proceedings consider to be similar to fruit wines.

25 Such tax discrimination against imported products cannot be regarded as necessary for the functioning of the Benelux system and, therefore, as justified on the basis of Article 233 of the Treaty.

Similarity of the products in question

26 It must now be considered whether the various grape wines at issue in the main proceedings are similar to fruit wines within the meaning of the first paragraph of Article 95 of the Treaty.

27 According to the settled case-law of the Court, which has interpreted the concept of similarity widely, in order to determine whether products are similar it is necessary to consider whether they have similar characteristics and meet the same needs from the point of view of consumers, the test being not whether they are strictly identical but whether their use is similar and comparable. As regards, more particularly, the question whether fruit wines are similar to grape wines, the Court has stated that it is necessary to consider objective characteristics of both categories of beverage, such as their origin, their method of manufacture and their organoleptic properties, in particular taste and alcohol content, and, secondly, to consider whether or not both categories of beverage are capable of meeting the same needs from the point of view of consumers (see the judgment in Case 106/84 *Commission* v *Denmark* [1986] ECR 833, paragraph 12).

28 In the present case, those criteria must be applied in turn to red wines, liqueur wines (sherry and madeira), vermouth and champagne.

29 As regards red wines, a distinction must be made between table wines, at issue in Cases C-368/93 and C-372/93, and quality red wines produced in specified regions (hereafter 'quality red wines p. s. r.'), at issue in Case C-375/93.

30 In paragraphs 14 and 15 of its judgment in Case 106/84, the Court found that table wines, whether fruit wines or grape wines, are made from the same kind of basic products, namely agricultural products, and by the same process, namely natural fermentation. It further observed that the two categories of wine possess similar organoleptic properties — in particular taste and alcohol strength — and meet the same needs of consumers, inasmuch as they can be consumed for the same purposes, namely both to quench thirst and to refresh, and to accompany meals.

31 Having regard to the criteria identified by the Court, it is for the national court to assess whether quality red wines p. s. r. are also to be regarded as similar to fruit wines for the purposes of the first paragraph of Article 95 of the Treaty.

32 As regards the types of liqueur wine at issue in Cases C-371/93, C-374/93 and C-376/93 (sherry) and in Case C-367/93 (madeira), they are different from table wines by reason of the fact that they are usually consumed as aperitifs or as dessert wines and therefore meet different needs from the point of view of consumers. Secondly, it should be noted that the alcohol strength of sherry (17% vol.) and of madeira (18% vol.) is higher than that of the favoured fruit wines (15% vol.).

33 Vermouth, at issue in Case C-370/93, has an alcoholic strength of 13.5% vol., and could therefore be put in the same class as still fruit wines whose alcoholic strength does not exceed 15% vol. Nevertheless, it should be borne in mind that vermouth is not made from the same kind of basic products as fruit wines since not only is ethyl alcohol added to grape wine but also a small quantity of mixed herbs which give vermouth its special flavour. It follows that the organoleptic properties of vermouth do not match those of still fruit wines and that these two categories of beverage meet different consumer needs.

34 Subject to the assessment which the national court must make as to whether there are fruit wines possessing similar properties, it is for that court to determine whether the wine at issue may be regarded as similar.

35 As regards champagne, at issue in Cases C-369/93, C-373/93 and C-377/93, it should first be observed that, although both sparkling fruit wines and champagne are obtained from the same kind of basic products, they are not made by the same process. Whereas champagne is made sparkling by a natural method — by a second alcoholic fermentation in the bottle — sparkling fruit wines require the addition of carbon dioxide, a fermentation process which is not natural. Secondly, the organoleptic properties of champagne are not comparable to those of sparkling fruit wines. Thirdly, the two categories of beverage do not meet the same needs of consumers, particularly since the consumption of champagne is usually associated with special occasions.

36 Having regard to those criteria, it is for the national court to assess whether champagne, at issue in Cases C-369/93, C-373/93 and C-377/93, may be regarded as a product similar to sparkling fruit wines whose alcoholic strength does not exceed 15% vol.

The application of the second paragraph of Article 95

37 Although national legislation such at that in dispute in the main proceedings may be compatible with the first paragraph of Article 95, with respect to sherry, madeira, vermouth and champagne, it may nevertheless conflict with the second paragraph of Article 95. It would therefore appear to be helpful to provide the national court with all the criteria which will enable it to rule on the compatibility of such legislation with that provision.

38 In that connection the Court has already observed that the second paragraph of Article 95 of the Treaty is intended to prevent any form of indirect fiscal protectionism affecting imported products which, although not similar, within the meaning of the first paragraph of Article 95, to domestic products, are nevertheless in a competitive relationship with some of them, even if only partially, indirectly or potentially (see the judgment in Case 356/85 *Commission* v *Belgium* [1987] ECR 3299, paragraph 7).

39 The Court has also consistently held that the assessment of the compatibility of a fiscal charge with the second paragraph of Article 95 must take account of the impact of that charge on the competitive relationships between the products concerned. The essential question is therefore whether or not the charge is of such a kind as to have the effect, on the market in question, of reducing potential consumption of the imported products to the advantage of competing domestic products (see the judgment in Case 356/85, paragraph 15). In that connection, the national court must have regard to the difference between the selling prices of the products in question and the impact of that difference on the consumer's choice, as well as to changes in the consumption of those products.

40 It must therefore be stated in reply to the first question submitted by the Tariefcommissie that:

— a Member State may not rely on Article 233 of the EEC Treaty in order to avoid its obligations under Article 95 of that Treaty where this is not indispensable for the good functioning of the Benelux system;

— the first paragraph of Article 95 of the EEC Treaty is to be interpreted as meaning that it is for the national court, having regard to the criteria identified by the Court of Justice, to assess whether:

  — products such as, on the one hand, red table wine, quality red wines produced in specified regions, sherry, madeira and vermouth and, on the other hand, still fruit wines whose alcoholic strength does not exceed 15% vol., are similar;

  — products such as champagne and sparkling fruit wines whose alcoholic strength does not exceed 15% vol. are similar;

— the second paragraph of Article 95 is to be interpreted as meaning that, in order to assess the compatibility of a fiscal charge, account must be taken of the impact of that charge on the competitive relationships between the products concerned, so that it is important in particular to ascertain whether the charge would have the effect, on the market in question, of reducing potential consumption of the imported products to the advantage of competing domestic products. The national court must have regard here to the difference between the selling prices of the products in question and the impact of that difference on the consumer's choice, as well as to changes in the consumption of those products.

Question 2

41 By the second question, the Court is asked to decide whether, in the event of an affirmative answer to the first question, the effects of the present judgment should be limited in time.

42 It is settled case-law that the interpretation which, in the exercise of the jurisdiction conferred upon it by Article 177 of the Treaty, the Court of Justice gives to a rule of Community law clarifies and defines where necessary the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its coming into force. It follows that the rule so interpreted may, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions enabling an action relating to the application of that rule to be brought before the courts having jurisdiction are satisfied (see the judgment in Case 61/79 *Amministrazione delle Finanze dello Stato* v *Denkavit Italiana* [1980] ECR 1205, paragraph 16).

43 In view of those principles, limiting the effects of a judgment giving a preliminary ruling on a matter of interpretation appears to be quite exceptional (see, in particular, the judgment in Case 61/79 *Denkavit Italiana*, paragraph 17). The Court has taken such a step only in certain specific circumstances, where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force, and where it appeared that both individuals and national authorities had been led into adopting practices which did not comply with Community law by reason of objective, significant uncertainty regarding the implications of Community provisions, to which the conduct of other Member States or the Commission may even have contributed (see, in particular, the judgment in Case C-163/90 *Administration des Douanes et Droits Indirects* v *Legros and Others* [1992] ECR I-4625).

44 Consideration of the present case has disclosed no factor of such a nature as to justify a derogation from the principle that interpretative judgments have retroactive effect.

45 Both the interpretation of Article 95 and the question of its direct applicability have been dealt with in a long-standing, copious and varied body of case-law which has dispelled all doubts regarding the scope of that provision (see, in particular, Joined Cases 142/80 and 143/80 *Amministrazione delle Finanze dello Stato*

v *Essevi and Salengo* [1981] ECR 1413, paragraph 33). It should also be noted that on 17 October 1990 the Commission commenced infringement proceedings against the Kingdom of the Netherlands precisely on the ground that the legislation in question in the main proceedings was incompatible with Article 95 of the Treaty. Those proceedings were subsequently abandoned after the Netherlands adopted new legislation regulating the matter, which entered into force on 1 January 1993.

46 Finally, the Netherlands Government emphasizes the extent of the financial damage which it would suffer if the judgment were to apply immediately and that it would lead to an unfair advantage for the taxpayers concerned, since they have already passed on the tax to their customers and they will not return those sums to customers if they themselves are reimbursed.

47 Those arguments cannot be accepted.

48 Firstly, the financial consequences which might ensue for a government owing to the unlawfulness of a tax have never justified in themselves limiting the effects of a judgment of the Court (see Case C-200/90 *Dansk Denkavit and Poulsen* v *Skatteministeriet* [1992] ECR I-2217). After all, if it were otherwise, the most serious infringements would receive more lenient treatment in so far as it is those infringements that are likely to have the most significant financial implications for Member States. Furthermore, to limit the effects of a judgment solely on the basis of such considerations would considerably diminish the judicial protection of the rights which taxpayers have under Community fiscal legislation.

49 Secondly, the Court has consistently held that, although Community law does not preclude account from being taken of the fact that the burden of the charges unlawfully levied may have been passed on to other traders or to consumers, it is for the Member States to ensure repayment of charges levied contrary to Article 95 in accordance with the provisions of their domestic law, on

conditions which must not be less favourable than those relating to similar domestic actions and which must not in any case make it impossible in practice to exercise the rights conferred by Community law (see the judgment in Case 68/79 *Just* v *Ministry for Fiscal Affairs* [1980] ECR 501, paragraph 27).

50 It should therefore be stated in reply to the second question that there are no grounds for limiting in time the effects of the present judgment.

Costs

51 The costs incurred by the Netherlands and Portuguese Governments 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber)

in answer to the questions referred to it by the Tariefcommissie, by orders of 7 July 1993, hereby rules:

1. A Member State may not rely on Article 233 of the EEC Treaty in order to avoid its obligations under Article 95 of that Treaty where this is not indispensable for the good functioning of the Benelux system.

2. The first paragraph of Article 95 of the EEC Treaty is to be interpreted as meaning that it is for the national court, having regard to the criteria identified by the Court of Justice, to assess whether:

— products such as, on the one hand, red table wine, quality red wines produced in specified regions, sherry, madeira and vermouth and, on the other hand, still fruit wines whose alcoholic strength does not exceed 15% vol., are similar;

— products such as champagne and sparkling fruit wines whose alcoholic strength does not exceed 15% vol. are similar.

3. The second paragraph of Article 95 is to be interpreted as meaning that, in order to assess the compatibility of a fiscal charge, account must be taken of the impact of that charge on the competitive relationships between the products concerned, so that it is important in particular to ascertain whether the charge would have the effect, on the market in question, of reducing potential consumption of the imported products to the advantage of competing domestic products. The national court must have regard here to the difference between the selling prices of the products in question and the impact of that difference on the consumer's choice, as well as to changes in the consumption of those products.

4. There are no grounds for limiting in time the effects of the present judgment.

Schockweiler Kapteyn Mancini

Kakouris Murray

Delivered in open court in Luxembourg on 11 August 1995.

R. Grass F. A. Schockweiler

Registrar President of the Sixth Chamber