JUDGMENT OF THE COURT
8 JULY 1965[1]

Waldemar Deutschmann
v Federal Republic of Germany

(Reference for a preliminary ruling by the Verwaltungsgericht, Frankfurt-am-Main)

Case 10/65

Summary

Policy of the EEC — Common Rules — Tax provisions — Import licences — Charges imposed on the issue of such licences do not constitute taxation within the meaning of Article 95 of the EEC Treaty

A charge imposed on the issue of an import licence without which importation would not be possible is not governed by Article 95 of the EEC Treaty, since such a charge has the same effect upon the free movement of goods as a customs duty.
Cf. summary, para. 5, Joined Cases 2 and 3/62, Rec. 1962, p. 818.

In Case 10/65

Reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht, Frankfurt-am-Main, for a preliminary ruling in the action pending before that court between

WALDEMAR DEUTSCHMANN undertaking of Essen/Ruhr, assisted by Messrs Ditges and Ehle, 7 von Grootestraße, Cologne-Marienburg,

plaintiff,

v

FEDERAL REPUBLIC OF GERMANY, represented by the President of the 'Außenhandelsstelle für Erzeugnisse der Ernährung und Landwirtschaft' (Office for Foreign Trade in Foodstuffs and Agricultural Products) of Frankfurt-am-Main,

defendant,

on the interpretation of Article 95 of the EEC Treaty,

1 — Language of the Case: German.
2 — CMLR.

THE COURT

composed of: Ch. L. Hammes, President, A. M. Donner (Rapporteur) and R. Lecourt, Presidents of Chambers, A. Trabucchi and W. Strauß, Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

At the request of the plaintiff in the main action, in 1962, 1963 and 1964 the 'Außenhandelsstelle für Erzeugnisse der Ernährung und Landwirtschaft' issued to it import licences for foodstuffs and agricultural products coming from other Member States of the EEC. On these occasions the plaintiff was required to pay charges amounting to 1 943.19 DM under the Law of 17 December 1951 on the imposition of charges by the Außenhandelsstelle of the Federal Ministry of Food, Agriculture and Forests, together with the Regulation on Charges (Gebührenordnung) of 19 December 1956, as it existed on 20 January 1958. Alleging that the imposition of the charges infringes Articles 9, 12, 30 and 95 of the EEC Treaty, the plaintiff applied to the Verwaltungsgericht, Frankfurt-am-Main, for the annulment of these requests for payment and an order for the defendant to refund the charges paid.

On 3 February 1965, the Third Chamber of the Verwaltungsgericht decided to refer the following question to the Court of Justice of the European Communities:

Must the first paragraph of Article 95 of the EEC Treaty be interpreted as meaning that the grant of import licences for foodstuffs and agricultural products originating in other Member States of the European Economic Community may not be made the subject of any charge under the Law of 17 December 1951 on the imposition of charges by the Außenhandelsstelle of the Bundesministerium für Ernährung, Landwirtschaft und Forsten (BGBl. I, p. 969)?

The order of reference is based, *inter alia,* upon the following consideration:

'The imposition of charges on the issue of import licences for foodstuffs or agricultural products originating in other Member States of the European Economic Community appears to be an indirect charge incompatible with the first paragraph of Article 95 of the EEC Treaty in that similar domestic products are not subject to such taxation. It is true that the charge is imposed on the issue of an import licence, but as these products cannot be imported without such a licence, a charge imposed on its issue is an indirect burden on the imported product itself.'

II — Procedure

The reference for a preliminary ruling made to the Court by the President of

the Third Chamber was received at the Registry on 16 February 1965.

On 22 February the reference was notified to the parties to the main action, the Member States and the Commission of the EEC by the Registrar of the Court.

The written observations provided for by Article 20 of the Statute of the Court were submitted:

— on 21 April 1965 by the Commission of the EEC,

— on 22 April 1965 by the plaintiff in the main action,

— and on 3 May 1965 by the Federal Republic of Germany.

At the hearing in open court on 18 May 1965, oral observations were submitted by the plaintiff in the main action, the Government of the Federal Republic of Germany and the Commission of the EEC.

The Advocate-General delivered his opinion at the hearing on 3 June 1965.

III — Observations submitted under Article 20 of the Statute of the Court

The observations submitted under the second paragraph of Article 20 of the Statute may be summarized as follows:

The Commission of the EEC declares that:

1) A charge imposed on the issue of import licences is a charge having an effect equivalent to customs duties. According to the definition given by the Court in its judgment in Joined Cases 2 and 3/62:

'A charge having equivalent effect within the meaning of Articles 9 and 12, whatever it is called and whatever its mode of application, may be regarded as a duty imposed unilaterally either at the time of importation or subsequently, and which, if imposed specifically upon a product imported from a Member State to the exclusion of a similar domestic product, has, by altering its price, the same effect on the free movement of products as a customs duty.'

These charges imposed on the issue of import licences which form the subject of this case correspond to this definition.

2) Article 95 of the Treaty does not apply to charges having an effect equivalent to customs duties. Article 13 (2) and the first and third paragraphs of Article 95 cannot be applied at the same time, since the same taxation cannot be abolished progressively during the transitional period and at the same time not later than the beginning of the second stage of that period. Moreover, the obligation to abolish that taxation cannot be based on a directive of the Commission, and at the same time exist directly by virtue of the Treaty. Thus, the two Articles are mutually exclusive in their application. Consequently, Article 95 of the Treaty only applies to taxation which is imposed on both imported and domestic products, although on the latter to a lesser extent. Not only is this interpretation in accordance with the '*ratio legis*' but it is impossible to infer from the Treaty any other criterion with which to define the respective scopes of Articles 13 and 95.

The plaintiff in the main action emphasizes that German law recognizes three types of taxation: taxes in the strict sense ('Steuern') (which must include customs duties), charges ('Gebühren') and dues ('Beiträge'). In German case-law the distinction between a charge and a tax is not clear. In this case, the plaintiff claims that the charges in question must be covered by the prohibition contained in Article 95 of the EEC Treaty, since they constitute taxes in the true sense.

As regards Article 95, the plaintiff claims that:

1. This Article is directly applicable, since it lays down a clear and uncon-

ditional prohibition which comes into force from the beginning of the second stage (1 January 1962).

2. It does not refer to 'Steuern' (taxes), as the (German) heading of the Chapter leads one to believe, but to 'taxation of any kind' ('Abgaben gleich welcher Art'). Moreover, the French heading of this Chapter ('Dispositions Fiscales') does not refer solely to 'taxes' (Steuern'). Article 95 must be interpreted in close conjunction with Article 9 of the EEC Treaty, since these two Articles must ensure complete protection against any discrimination in taxation in trade between Member States.

In the interpretation of Article 95 the only factors of importance are the repercussions which, considered objectively, such taxation could have on trade between Member States. Taxation such as the charges imposed by the Außenhandelsstelle are in fact taxes ('Steuern') capable of influencing trade between Member States.

Thus, the wording, the spirit and the purpose of Article 95 of the EEC Treaty clearly indicate that, as domestic taxation, the charges imposed by the Außenhandelsstelle must be included in the concept of 'taxation of any kind' to which this Article refers.

3. The charges imposed by the Außenhandelsstelle constitute indirect taxation.

4. Moreover, they constitute discriminatory taxation within the meaning of Article 95.

In its judgment in Joined Cases 2 and 3/62, the Court described the gist of Article 95 in the following terms:

'Although the first paragraph of Article 95 by implication allows "taxation" on an imported product, it is only to the limited extent to which the *same taxation* is imposed *equally* upon *similar domestic products*.'

No identical or similar taxation exists for domestic products; comparable charges are therefore not imposed on domestic products.

It may be concluded from the above consideration that Article 95 of the EEC Treaty applies to the charges imposed by the Außenhandelsstelle.

The Government of the Federal Republic of Germany states in particular that it considers that administrative charges ('Verwaltungsgebühren') do not come within the concept of 'taxation' ('Abgaben') referred to in the first paragraph of Article 95 of the EEC Treaty.

1. Article 95 occurs in the Chapter relating to 'Steuerliche Vorschriften' (Tax Provisions), and in all four languages the wording of this Article indicates that it refers only to taxes ('Steuern') in the strict sense. This is also clear from Article 98. Administrative charges cannot constitute taxes.

2. Confirmation of this interpretation is to be found in the sources of Article 95 and in the relationship between this Article and Article III of GATT.

3. It is impossible for the provisions of Articles 95 and 12 of the EEC Treaty to be applied at the same time. 'Customs duties' and 'charges having equivalent effect' (Article 12) are not the same as 'taxation of any kind' (Article 95); it is clear from the judgment in Joined Cases 2 and 3/62 that the two concepts must be distinguished in the following way: Article 95 only applies where taxation is imposed on products without regard to their origin, or where it is imposed on products originating in other Member States in order to compensate for taxation on similar domestic products or, where there are no similar products, in order to protect domestic production. The concept of 'charges having an effect equivalent to customs duties' cannot include such charges as those forming the subject of this action.

4. This is the only interpretation which does not contravene the sense and spirit of the provisions of the Treaty.

5. In the light of the above, it is clear that administrative charges imposed on

import licences cannot constitute taxation within the meaning of Article 95. This Article applies the general principle prohibiting discrimination between different products within the Common Market.
Since the charges made by the Außenhandelsstelle are only imposed on importation, and since the 'similar' product, the taxation of which must be comparable to that of the imported product, is in a different position, it is no longer possible to derive from Article 95 a valid criterion by which to assess the legality of the charge on importation.
Moreover, in the opinion of the Federal Government, administrative charges imposed upon the importation of products originating in other Member States equally do not constitute charges having an effect equivalent to customs duties within the meaning of Articles 12 et seq.

Grounds of judgment

The Verwaltungsgericht, Frankfurt-am-Main, requests the interpretation of the first paragraph of Article 95 of the EEC Treaty, so as to decide whether the grant of import licences for agricultural products originating in other Member States may give rise to the imposition of a charge, as provided for in the German Law of 17 December 1951.

By virtue of Article 177 of the Treaty this question falls within the jurisdiction of the Court of Justice to the extent that it requests an interpretation of the Treaty—in this case Article 95.

In replying to this question the Court can neither interpret the abovementioned German Law nor assess the nature of the charge which it introduces.

In order to define the scope of the abovementioned Article 95, it must be considered in relation to those other provisions the aim of which is to eliminate obstacles to the free movement of goods, in particular Articles 13 and 17.

The rules for the abolition, during the transitional period, of charges having an effect equivalent to customs duties are directly provided for in Article 13.

Article 17 provides that these rules shall also apply to customs duties of a fiscal nature.

This being so, Article 95, which lays down a different time-table for the progressive abolition of the obstacles referred to therein, cannot relate to a charge which is imposed either by reason of, or at the time of, importation and which, being imposed specifically upon a product imported from a

Member State to the exclusion of a similar domestic product, has, by altering its price, the same effect upon the free movement of goods as a customs duty.

The Verwaltungsgericht considers the charge in question to be an 'indirect charge imposed on the issue of an import licence', not affecting domestic products but indirectly burdening foreign goods which could not be imported without such a licence.

It follows from the wording of the question put that it concerns charges imposed on the issue of import licences, that is, on the occasion of importation, the similar national product being naturally exempt from the licence.

The charges referred to are thus imposed solely on imported products.

It follows from the foregoing that Article 95 of the Treaty does not apply to the said charges.

The reply to the preliminary question raised by the Verwaltungsgericht, Frankfurt-am-Main, must therefore be in the negative.

Costs

The costs incurred by the Commission of the European Economic Community and the Government of the Federal Republic of Germany, which both submitted observations to the Court, are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Verwaltungsgericht, Frankfurt-am-Main, the decision as to 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 parties to the main action and the Commission of the European Economic Community;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 13, 17 and 95 of the Treaty establishing the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Economic Communities;

THE COURT

hereby rules:

1. **A charge imposed on the issue of an import licence without which importation would not be possible is not governed by Article 95 of the EEC Treaty;**
2. **The decision as to costs is a matter for the Verwaltungsgericht, Frankfurt-am-Main.**

Hammes Donner Lecourt

Trabucchi Strauß

Delivered in open court in Luxembourg on 8 July 1965.

A. Van Houtte
Registrar

Ch. L. Hammes
President

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 3 JUNE 1965[1]

Mr President,
Members of the Court,

During 1962, 1963 and 1964 the Waldemar Deutschmann undertaking of Essen requested and obtained from the Außenhandelsstelle für Erzeugnisse der Ernährung und Landwirtschaft import licences for foodstuffs and agricultural products (especially fruit and vegetables) originating in other Member States of the Community. Having paid charges for these amounting to 1 943 DM under the Law of 17 December 1951 on the imposition of charges by the Außenhandelsstelle and the Regulation on Charges of 19 December 1956, as it existed on 20 January 1958, it brought an action before the Verwaltungsgericht, Frankfurt-am-Main, for the annulment of the requests for payment and for the refund of the sums paid. In support of its action, it maintained that the imposition of charges was contrary to the Law of 1951, in that the Regulation on which calculation of the charges had been based laid down higher rates than were necessary to cover the expenses of the Außenhandelsstelle during the financial years in question. According to the information given to you by counsel, since 1958 two rates have existed, that is, the general rate of 0.15 per cent. and the rate of 0.015 per cent. (one tenth of the former), which was imposed on twelve 'bulk products' (especially cereals and raw materials for the manufacture of margarine), imports of which were made in large quantities. As you know, the authority concerned considers that these different rates are explained by the difference in the work performed by the Außenhandelsstelle in issuing the licences.

1 — Translated from the French.