JUDGMENT OF THE COURT
16 July 1992 *

In Case C-163/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'Appel, Saint-Denis, Réunion, for a preliminary ruling in the proceedings pending before that court between

Administration des Douanes et Droits Indirects,

and

Léopold Legros,

Louise Brun, née Alidor,

Armand-Joseph Payet,

Henri-Michel Techer,

supported by

La Région Réunion,

intervener,

on the interpretation of the Treaty establishing the European Economic Community, and in particular Articles 9, 13 and 95,

* Language of the case: French.

THE COURT,

composed of: O. Due, President, R. Joliet, F. A. Schockweiler, F. Grévisse and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Diez de Velasco, M. Zuleeg, J. L. Murray and D. A. O. Edward, Judges,

Advocate General: F. G. Jacobs,
Registrar: D. Triantafyllou, Administrator,

after considering the written observations submitted on behalf of:

— Messrs Legros, Payet and Techer and Mrs Brun, by Philippe Rivière, of the Saint-Denis (Réunion) Bar;

— Région Réunion, by Pierre Soler-Couteaux, Professor at the Robert Schuman Faculty, of the Strasbourg Bar;

— the Government of the French Republic, by Philippe Pouzoulet, acting as Agent, assisted by Géraud de Bergues, Deputy Agent;

— the Commission of the European Communities, by Jörn Sack, Legal Adviser at the Commission, acting as Agent;

having regard to the Report for the Hearing,

after hearing the oral observations of the Région Réunion, represented by Mr Llorens, of the Strasbourg Bar, the French Government, the Council of the European Communities, represented by Mr Torrens, acting as agent, and of the Commission at the hearing on 31 March 1992,

after hearing the Opinion of the Advocate General at the sitting on 21 November 1991 and on 20 May 1992,

gives the following

Judgment

1 By a judgment of 21 February 1990, received at the Court on 1 March 1990, the Cour d'Appel (Court of Appeal), Saint-Denis (Réunion), referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of that Treaty, in particular Articles 9, 13 and 95 thereof, and Article 6 of the free-trade agreement between the Community and Sweden.

2 Those questions arose in the course of proceedings between the Administration des Douanes et Droits Indirects (Customs and Indirect Taxation Administration) and Léopold Legros, Armand-Joseph Payet, Henri-Michel Techer and Louise Brun, née Alidor ('the respondents') concerning their claims for reimbursement of certain sums paid by them to the Administration des Douanes et Droits Indirects.

3 It appears from the documents before the Court that the respondents bought from an agent in metropolitan France three motor vehicles manufactured in the Federal Republic of Germany and one which originated in Sweden. When those vehicles were introduced into French customs territory they benefitted from suspended duty arrangements. While still bearing transit registration plates, they were transported to Réunion under an internal Community transit system in the case of the German motor vehicles and under an external Community transit system in the case of the Swedish vehicle. The suspended duty arrangements lasted until they reached Réunion, where the customs clearance formalities were carried out. At the time of customs clearance the Customs and Indirect Taxation Administration demanded payment from each of the respondents of a sum by way of *octroi de mer* (dock dues) applicable on the entry of goods into Réunion.

4 It is not disputed that the dock dues are levied in the French overseas departments on the basis of certain decrees dating from 1947 and a Law of 1984. They apply in principle to all goods, except certain basic goods, of any origin, including goods from metropolitan France and even from other French overseas departments, by

reason of their introduction into the French overseas department in question. On the other hand, products from the French overseas department in question are exempt from dock dues and all equivalent internal charges. The basis for the tax is the customs value of the goods at the point at which they are introduced into the French overseas department in question. The products which are subject to dock dues are taxed at four main rates; furthermore, the regions are authorized to levy, under the same conditions, an additional duty at a maximum rate of 1%. The revenue from dock dues goes essentially to finance local authority budgets according to the rules governing autonomous regions.

5 The respondents, considering that the charging of dock dues on goods imported into Réunion manufactured in another Member State or in the Kingdom of Sweden was contrary to Community law, brought actions before the competent courts in order to obtain refunds of the amounts paid. In those circumstances, the Cour d'Appel, Saint-Denis, decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Are Articles 3, 9 and 13, failing which the second paragraph of Article 95 of the EEC Treaty, to be interpreted as prohibiting the levying by a Member State or by a local authority within a Member State of an *ad valorem* charge on goods, distinct from VAT, which is imposed by reason of the introduction of the goods into a specific area only of the territory of that State and which affects in the same manner foreign goods and national goods other than those originating in the area in question?

2. More specifically:

(a) Are Articles 9 and 13 of the EEC Treaty to be interpreted as meaning that a charge may be defined as a charge having an effect equivalent to a customs duty when it is levied on the value of foreign or national goods on the occasion of their release for consumption, without direct or indirect reference to the crossing of a State frontier, or do they, on the contrary,

mean that the crossing of a State frontier must be, *de facto* or *de jure*, one of the operative events giving rise to the levying of the charge?

(b) Pursuant to the second paragraph of Article 95 of the EEC Treaty:

— Can the regional origin of a product or class of products constitute a lawful criterion for different fiscal treatment established by a Member State, in so far as it necessarily excludes foreign producers from more favourable provisions, or must such different treatment be based also, or only, on the nature of the product concerned?

— May the fiscal advantages enjoyed by products from the French overseas departments, particularly Réunion, as a result of their exemption from dock dues (*octroi de mer*) be regarded as pursuing aims of economic policy which are compatible with the requirements of the Treaty and of the secondary legislation?

3. Is the free-trade agreement in force between the Community and Sweden to be interpreted as prohibiting the levying by a Member State or by a local authority within a Member State of an *ad valorem* charge on goods, distinct from VAT, which is imposed on the occasion of the release for consumption of goods imported from Sweden by reason of their introduction into a specific area of the territory of that State and which affects in the same manner Community goods other than those originating in the area in question?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case in the main proceedings, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Community law rules applicable to the French overseas departments

7 The status of the French overseas departments in relation to Community law should first be recalled. It is not disputed that, according to the French Constitution, the French overseas departments form an integral part of the French Republic. As such, they are included in the customs territory of the Community, according to Article 1 of Council Regulation (EEC) No 2151/84 of 23 July 1984 on the customs territory of the Community (OJ 1984 L 197, p. 1). However, application of the EEC Treaty to the French overseas departments is subject to special rules laid down in Article 227(2) of the Treaty, which reads as follows:

'With regard to Algeria and the French overseas departments, the general and particular provisions of this Treaty relating to:

— the free movement of goods;

— agriculture, save for Article 40(4);

— the liberalization of services;

— the rules on competition;

— the protective measures provided for in Articles 108, 109 and 226;

— the institutions,

shall apply as soon as this Treaty enters into force.

The conditions under which the other provisions of this Treaty are to apply shall be determined, within two years of the entry into force of this Treaty, by decisions of the Council, acting unanimously on a proposal from the Commission.'

8 According to the case-law of the Court (see the judgment in Case 148/77 *Hansen* v *Hauptzollamt Flensburg* [1978] ECR 1787), it follows from that article that the provisions of the Treaty expressly mentioned in the first paragraph of Article 227(2) were applicable in the French overseas departments as soon as the EEC Treaty entered into force, while, with respect to the other provisions, that article reserved a period of two years within which the Council could determine special conditions. The Court then stated that, with regard to the provisions which are not enumerated in the first paragraph of Article 227(2), it always remains possible subsequently to adopt specific measures in order to meet the needs of those territories.

9 By virtue of the power thus conferred upon it the Council adopted a number of provisions, including in particular Decision 89/687/EEC of 22 December 1989 establishing a programme of options specific to the remote and insular nature of the French overseas departments (Poseidom) (OJ 1989 L 399, p. 39). Within the framework of that programme, the Council also adopted on that date Decision 89/688/EEC concerning the dock dues in the French overseas departments (OJ 1989 L 399, p. 46). The latter decision provides in particular that: 'By 31 December 1992 at the latest, the French authorities shall take the necessary measures for the dock dues arrangements at present in force in the French overseas departments to apply ... to all products whether imported or produced in those areas'. Article 4 of that decision provides that '... the French Republic shall be authorized to maintain the current dock dues arrangements, until not later than 31 December 1992'. It should be noted, however, that the provisions of that decision did not enter into force until after the occurrence of the relevant events in the present case and it is not disputed that they have no retroactive effect.

The lawfulness of charges like the dock dues in question

10 By its first two questions the national court seeks to ascertain whether a charge proportional to the customs value of goods levied only in one region of the national territory of a Member State and affecting in the same manner goods from the rest of the national territory or from abroad by reason of their introduction into that region, but from which products obtained in that region are exempt, constitutes either a charge having an effect equivalent to a customs duty or internal taxation.

11 The Court has previously held that a charge which is borne by a product imported from another Member State does not constitute a charge having equivalent effect, but internal taxation within the meaning of Article 95 of the Treaty if it relates to a general system of internal dues applied systematically to categories of products in accordance with objective criteria irrespective of the origin of the products (Case 90/79 *Commission* v *France* [1981] ECR 283, paragraph 14). The Court has also held that where a pecuniary charge is imposed at the import stage it may be classified as internal taxation only if its purpose is to put every kind of product, whatever its origin, in a comparable fiscal situation in the territory of the State imposing the tax (Case 27/67 *Fink-Frucht* v *Hauptzollamt München* [1968] ECR 223).

12 The dock dues apply, with a few exceptions, to all goods entering the Réunion region by reason of their introduction into that part of the territory of France, whereas all products originating from Réunion are systematically exempt from dock dues precisely on account of their regional origin and not because of objective criteria which could also apply to imported products. Because of those factors, the charge at issue cannot be described as internal taxation.

13 Consequently, the question to be examined is whether a levy such as the dock dues in question constitutes a charge having an effect equivalent to a customs duty. In that connection, the Court has already held that any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a fron-

tier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 9 and 12 of the Treaty, even if it is not imposed for the benefit of the State, is not discriminatory or protective in effect, or if the product on which the charge is imposed is not in competition with any domestic product (see, in particular, the judgment in Joined Cases 2/69 and 3/69 *Diamantarbeiders* v *Brachfeld* [1969] ECR 211).

14 The French Republic claims that the disputed levy does not constitute a charge having an effect equivalent to a customs duty. It points out, first of all, that where the goods are imported and released for consumption in metropolitan France, they are not subject to the dock dues. According to the French Republic, it is introduction into the Réunion region, that is to say an internal operation and not the crossing of the state frontier, that constitutes the event giving rise to the levying of the dock dues. Secondly, it points out that the dock dues also affect in the same manner products coming from metropolitan France introduced into Réunion.

15 That argument cannot be accepted.

16 The justification for the prohibition of any customs duty applicable to goods moving between Member States is that any pecuniary charge, however small, imposed on goods by reason of the fact that they cross a frontier impedes the movement of such goods (see the judgment in Joined Cases 2/69 and 3/69 *Diamantarbeiders*, cited above). A charge levied at a regional frontier by reason of the introduction of products into a region of a Member State constitutes an obstacle to the free movement of goods which is at least as serious as a charge levied at the national frontier by reason of the introduction of the products into the whole territory of a Member State.

17 The effect of such a regional levy on the unity of the Community customs territory is not altered by the fact that it is also charged on goods from the other parts of the territory of the Member State in question.

18 The reply to be given to the national court must therefore be that a charge, proportional to the customs value of goods, levied by a Member State on goods imported from another Member State by reason of their entry into a region of the territory of the first Member State constitutes a charge having an effect equivalent to a customs duty on imports, notwithstanding the fact that the charge is also imposed on goods entering that region from another part of the same State.

Applicability of the free-trade agreement in force between the Community and Sweden (third question of the national court)

19 By its third question the national court seeks to ascertain whether the agreement between the Community and the Kingdom of Sweden (Council Regulation (EEC) No 2838/72 of 19 December 1972 concluding an Agreement between the European Economic Community and the Kingdom of Sweden, OJ 1972 L 300, p. 96, hereinafter 'the agreement') prohibits the levying of a charge having the characteristics of the dock dues, as described above, on products coming from Sweden.

20 It should be recalled in this regard that the agreement applies to certain products, among them motor vehicles, originating in the Community and in Sweden. Article 6 prohibits the introduction of new charges having an effect equivalent to a customs duty on imports in trade between the Community and Sweden and also provides for the abolition, on 1 July 1977, of existing charges having equivalent effect.

21 The French Republic argues that even if the dock dues were to be classified as a charge having an effect equivalent to a customs duty within the meaning of the EEC Treaty, it does not follow that they constitute such a charge within the meaning of Article 6 of the agreement. In support of that argument, it refers in particular to the judgment in Case 270/80 *Polydor and Another* v *Harlequin Record Shops and Another* [1982] ECR 329, in which the Court held that similarity between the terms of Article 14(2) and 23 of the free-trade agreement in force between the Community and Portugal, on the one hand, and those of Articles 30 and 36 of the EEC Treaty, on the other, was not a sufficient reason for transposing to the provisions of the agreement the case-law of the Court, which determines, in the context of the Community, the relationship between protection of industrial and commercial property rights and rules on the free movement of goods.

22 That argument cannot be accepted.

23 It is true that the terms of an agreement concluded between the Community and a non-member country do not necessarily have the same meaning as identical terms appearing in the provisions of the EEC Treaty. It follows from the judgment in *Polydor* that, in order to determine whether the interpretation of a provision contained in the EEC Treaty must be extended to an identical provision contained in an agreement such as the one referred to in the present case, that provision should be analysed in the light of both the purpose and the objective of the agreement and of its context.

24 According to its preamble, the purpose of the agreement is to consolidate and to extend the economic relations existing between the Community and Sweden and to ensure, with due regard for fair conditions of competition, the harmonious development of their commerce for the purpose of contributing to the work of constructing Europe. To this end, the contracting parties have resolved to eliminate progressively the obstacles to substantially all their trade, in accordance with the provisions of the General Agreement on Tariffs and Trade (GATT) concerning the establishment of free-trade areas.

25 According to Article XXIV, paragraph 8(b), of the General Agreement, a free-trade area is to be understood to mean a 'group of two or more customs territories in which the duties and other restrictive regulations of commerce ... are eliminated on substantially all the trade between the constituent territories in products originating in such territories'.

26 It follows that, in the context of the objective of eliminating obstacles to trade, elimination of customs duties is of prime importance, as is elimination of charges having equivalent effect, which, according to the case-law of the Court, are closely linked to customs charges *stricto sensu* (see, in particular, the judgment in *Diamantarbeiders*, cited above, and the judgment in Case C-260/90 *Leplat* [1992] ECR I-643). The agreement would therefore be deprived of much of its effectiveness if

the term 'charge having equivalent effect' contained in Article 6 of the agreement were to be interpreted as having a more limited scope than the same term appearing in the EEC Treaty.

27 The answer to the third question referred by the national court must therefore be that Article 6 of the Agreement between the Community and Sweden, contained in the annex to Regulation No 2838/72, is to be interpreted as prohibiting the levying by a Member State of an *ad valorem* charge on goods imported from Sweden by reason of their entry into a region of that Member State, notwithstanding the fact that the charge is also imposed on goods entering that region from another part of the territory of the Member State concerned.

Temporal effects of this judgment

28 In their written and oral observations, the Région Réunion and the French Republic suggested that if the Court were to consider that charges such as the dock dues in question were incompatible with the relevant provisions of the EEC Treaty and the free-trade agreement concluded between the Community and Sweden, it could limit the effects of its judgment in time.

29 In support of this request, the French Republic points out, in particular, that application of Community law in the French overseas departments had long been surrounded by legal uncertainty and that this uncertainty still affected the dock dues. It also draws the Court's attention to the disastrous financial consequences which would ensue for the French overseas departments from a judgment requiring the amounts incorrectly charged hitherto to be repaid. The local authorities of the French overseas departments would have to deal with an incalculable number of claims for refunds which they would certainly be unable to meet. That situation would be aggravated by the fact that the time-limit for such claims would be 30 years under French civil law.

30 It should be observed that it is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict for any person concerned the opportunity of relying upon the provisions thus interpreted with a view to calling in question legal relationships established in good faith. As the Court has consistently held, such a restriction may be allowed only in the actual judgment ruling upon the interpretation sought. In determining whether or not to limit the temporal effect of a judgment it is necessary to bear in mind that although the practical consequences of any judicial decision must be weighed carefully, the Court cannot go so far as to diminish the objectivity of the law and compromise its future application on the ground of the possible repercussions which might result, as regards the past, from a judicial decision (judgment in Case 24/86 *Blaizot* [1988] ECR 379, paragraphs 28 and 30).

31 As regards the present case, the particular characteristics of the dock dues and the specific identity of the French overseas departments have created a situation of uncertainty regarding the lawfulness of the charge at issue under Community law. That uncertainty is also reflected by the conduct of the Community institutions in relation to the problem of the dock dues.

32 First, the Commission did not pursue the procedure for establishing a breach of obligations which had been initiated against France in relation to the dock dues. It then proposed to the Council Decision 89/688, which was intended, inter alia, to authorize maintenance of the dock dues on a temporary basis in the context of the aforementioned Poseidom programme. Finally, the third and fourth recitals of the preamble to that decision state that 'the dock dues at present constitute a means of support for local production, which has to contend with the problems of remoteness and insularity' and that 'they also are a vital instrument of self-reliance and local democracy, the resources of which must constitute a means of economic and social development of the French overseas departments'.

33 Those circumstances could have led the French Republic and the local authorities in the French overseas departments reasonably to consider that the applicable national legislation was in conformity with Community law.

34 Accordingly, overriding considerations of legal certainty preclude legal relationships whose effects have been exhausted in the past from being called into question when this would retroactively upset the system for financing the local authorities of the French overseas departments.

35 It should therefore be held that neither the provisions of the EEC Treaty relating to charges having equivalent effect to customs duties on imports nor Article 6 of the Agreement between the Community and Sweden may be relied upon in support of claims for refund of charges such as dock dues paid before the date of this judgment, except by claimants who have, before that date, initiated legal proceedings or raised an equivalent claim.

36 That limitation of the temporal effects of this judgment does not apply to claims submitted for refunds of such charges which were paid to the competent authorities after the date of the judgment in respect of goods imported into the French overseas department concerned before that date.

Costs

37 The costs incurred by the French Republic, the Région Réunion, 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

in answer to the questions referred to it by the Cour d'Appel, Saint-Denis, Réunion by judgment of 21 February 1990, hereby rules:

1. A charge, proportional to the customs value of goods, levied by a Member State on goods imported from another Member State by reason of their

entry into a region of the territory of the former Member State constitutes a charge having an effect equivalent to a customs duty on imports, notwithstanding the fact that the charge is also imposed on goods entering that region from another part of the same State.

2. Article 6 of the Agreement concluded between the Community and Sweden, appearing in the Annex to Council Regulation (EEC) No 2838/72 of 19 December 1972, is to be interpreted as prohibiting the levying by a Member State of a charge, proportional to the customs value of goods, on goods imported from Sweden by reason of their entry into a region of that Member State, notwithstanding the fact that the charge is also imposed on goods entering that region from another part of the territory of the Member State concerned.

3. Neither the provisions of the EEC Treaty relating to charges having an effect equivalent to customs duties on imports nor Article 6 of the Agreement between the Community and Sweden may be relied upon in support of claims for refund of charges such as dock dues paid before the date of this judgment, except by claimants who have, before that date, initiated legal proceedings or raised an equivalent claim.

Due Joliet Schockweiler Grévisse Kapteyn

Mancini Kakouris Moitinho de Almeida Rodríguez Iglesias

Diez de Velasco Zuleeg Murray Edward

Delivered in open court in Luxembourg on 16 July 1992.

J.-G. Giraud — Registrar

O. Due — President