JUDGMENT OF THE COURT
12 February 1992 *

In Case C-260/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Paix (District Court), Papeete (French Polynesia), for a preliminary ruling in the proceedings pending before that court between

Bernard Leplat, residing at Papeete, French Polynesia,

and

Territory of French Polynesia,

on the interpretation of Article 133 of the EEC Treaty and the validity of Article 74 of Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community (Official Journal 1986 L 175, p. 1),

THE COURT,

composed of: O. Due, President, Sir Gordon Slynn, R. Joliet, 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. Díez de Velasco and M. Zuleeg, Judges,

Advocate General: F. G. Jacobs,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

* Language of the case: French.

— the Autonomous Territory of French Polynesia, by the Prime Minister, Alexandre Leontieff, and Jean-Paul Levy, *Avocat* at the Cour d'Appel (Court of Appeal), Paris,

— the French Republic, by Philippe Pouzoulet, Assistant Director in the Department of Legal Affairs of the Ministry of Foreign Affairs, and Claude Chavance, Principal Attaché in the Central Administration of that Ministry, acting as Agents,

— the Kingdom of the Netherlands, by B. R. Bot, Secretary-General at the Ministry of Foreign Affairs, acting as Agent,

— the United Kingdom, by Derrick Wyatt, Barrister, and H. A. Kaya, of the Treasury Solicitor's Department, acting as Agents,

— the Council of the European Communities, by Jürgen Huber, an Adviser in its Legal Service, acting as Agent,

— the Commission of the European Communities, by its Legal Advisers, Marie-José Jonczy and Hans Peter Hartvig, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral argument presented at the hearing on 3 October 1991 by the Autonomous Territory of French Polynesia, represented by François Sarda, of the Paris Bar; by the French Government; by the Netherlands Government, represented by H. G. T. W. Knippenberg, Counsellor at the Embassy of the Netherlands in Luxembourg, acting as Agent; by the United Kingdom, represented by J. C. Collins, Assistant Treasury Solicitor, acting as Agent; and by the Council and the Commission,

after hearing the Opinion of the Advocate General at the sitting on 7 November 1991,

gives the following

Judgment

1 By judgment of 20 August 1990, which was received at the Court on 27 August 1990, the Tribunal de Paix (District Court), Papeete (French Polynesia), referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions on the interpretation of Article 133 of the EEC Treaty and the validity of Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community (Official Journal 1986 L 175, p. 1).

2 Those questions were raised in the course of proceedings between Mr Bernard Leplat and the Territory of French Polynesia regarding his request for the repayment of various amounts paid by him when he imported into that territory a vehicle originating in the Federal Republic of Germany.

3 It is apparent from the documents before the Court that at the time of importation, on 26 July 1988, Mr Leplat was required to pay various amounts by way of import revenue duty, the new social welfare solidarity tax, harbour tax and statistical tax.

4 Mr Leplat requested the Tribunal de Paix, Papeete, to order the Territory of French Polynesia to repay him those amounts together with interest at the rate in force. In support of his application, he claimed that the duties and charges paid by him constituted charges having an effect equivalent to customs duties which were referred to in and, in the circumstances of the case, prohibited under Article 133 of

the EEC Treaty. He further claimed that Article 74 of Decision 86/283 could not provide a legal basis for levying the duties and charges in issue in so far as that provision infringed Article 133 of the Treaty.

5 Taking the view that the outcome of the proceedings depended on the interpretation of the Treaty and on the validity of the Community decision in question, the Tribunal de Paix, Papeete, decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

'(1) Do the provisions of Article 133(2) and (3) of the EEC Treaty apply to measures having an effect equivalent to customs duties?

(2) If so, may the overseas countries and territories associated with the Community levy such duties or charges on imports of products originating in the European Economic Community?

(3) If so, what are the obligations imposed on the overseas countries and territories by the objective of reducing customs duties which is mentioned in Article 133(3) of the Treaty?

(4) If not, are the decisions of the Council of the European Communities on the association of the overseas countries and territories which authorize those countries and territories to retain or introduce customs duties on products imported from the Community, in particular Article 74 of Decision 86/283 of 30 June 1986, valid in the light of Articles 133 and 136 of the Treaty?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the main proceedings, the course of 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.

The jurisdiction of the Court

7 The United Kingdom claims that the reference for a preliminary ruling from the Tribunal de Paix, Papeete, is inadmissible on the ground that that court is not a court or tribunal of a Member State.

8 In that respect, it must be pointed out that it follows from the judgment in Joined Cases C-100/89 and C-101/89 *Kaefer and Procacci* v *French State* [1990] ECR I-4647 that a court or tribunal in French Polynesia is a court or tribunal of a Member State within the meaning of Article 177 of the EEC Treaty.

9 The Court accordingly has jurisdiction to give a preliminary ruling on the questions referred by the Tribunal de Paix, Papeete.

Substance

10 In order to answer the questions in the reference, it is appropriate first of all to consider the nature of the association which the EEC Treaty provides for the overseas countries and territories (hereinafter referred to as 'the countries and territories'). That association is the subject of arrangements defined in Part Four of the Treaty (Articles 131 to 136), with the result that, failing express reference, the general provisions of the Treaty do not apply to the countries and territories. Article 131 provides that the purpose of that association 'shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole'. Article 132 defines the objectives of association, stipulating in particular that 'Member States shall apply to their trade with the countries and territories the same treatment as they accord each other', while 'each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations'. Article 133(1) provides that customs duties on imports into the Member States of goods originating in the countries and territories are to be completely abolished. Article 133(2) provides that customs duties on imports into each country or territory from Member States are to be progressively abolished.

Article 133(3), however, provides that the countries and territories may levy customs duties which meet the needs of their development and industrialization or produce revenue for their budgets.

11 Finally, the first paragraph of Article 136 provides that, for a period of five years after the entry into force of the Treaty, the details of and procedure for association are to be determined by an Implementing Convention annexed to the Treaty. The second paragraph of that article provides that, before the Implementing Convention expires, the Council is to lay down provisions for a further period, on the basis of the experience acquired and of the principles set out in the Treaty. In application of that provision, the Council has taken a number of decisions, the first of which was Decision 64/349/EEC (Journal Officiel 1964, 93, p. 1472), while that in force at the material time was Decision 86/283.

The first question

12 French Polynesia, the Netherlands Government and the French Government consider that Article 133 covers not only customs duties in the strict sense but also charges having an effect equivalent to such duties.

13 The United Kingdom and the Commission, on the other hand, claim that the provisions of Article 133(2) and (3) apply only to customs duties in the strict sense and not to charges having equivalent effect. In that respect, they take the view that when the Treaty or, as the case may be, the decisions taken on the basis of Article 136 of the Treaty regulate charges having an effect equivalent to customs duties they do so expressly, and that this is not so in the case of Article 133. According to the United Kingdom and the Commission, even though Article 133(2) refers to a number of provisions of the Treaty dealing with both customs duties and charges having equivalent effect, that reference relates to those provisions only in so far as they deal with customs duties in the strict sense, since they alone are expressly referred to in Article 133. Moreover, the reference in Article 133(3) to the percentages and the timetable of the reductions provided for in the Treaty are relevant only with regard to customs duties in the strict sense; that reference can therefore apply only to the timetable for the reductions of customs duties provided for in Article 14 of the Treaty and not to the timetable for the abolition of charges having equivalent effect, which must be determined by directives adopted by the Commission pursuant to Article 13 and is not determined by the Treaty itself.

14 The argument of the United Kingdom and the Commission cannot be upheld.

15 In the first place, it follows from the judgment of the Court in Joined Cases 37/73 and 38/73 *Sociaal Fonds voor de Diamantarbeiders* v *N. V. Indiamex and Association de fait De Belder* [1973] ECR 1609, paragraphs 10 and 13, that a measure dealing with customs duties but which does not expressly mention charges having equivalent effect may be understood as being intended also to refer to such charges.

16 The reference in Article 133(2) to Articles 12, 13, 14, 15 and 17 of the Treaty, moreover, tends to show that the expression 'customs duties' used in Article 133 covers both customs duties and charges having equivalent effect. It should be noted that those articles deal with both customs duties and charges having equivalent effect even though the heading of the section in which they appear mentions only customs duties. The fact that the timetable for reductions of customs duties, the progressive abolition of which is provided for under Article 13, is determined by Article 14, whereas the abolition of charges having equivalent effect is, pursuant to Article 13, to be determined by way of directives and not by Article 14, does not affect the interpretation of the scope of Article 133.

17 Finally, within the framework of the objectives set out in Article 132, Article 133 defines what is to happen to customs duties by prescribing that those on imports into the Member States of goods originating in the countries and territories are to be completely abolished, while allowing the countries and territories, under certain conditions, to continue to levy customs duties on imports into each country or territory from Member States or from the other countries or territories.

18 An interpretation of Article 133 restricting its scope to customs duties in the narrow sense would render the arrangements established by that article nugatory and would deprive them of their practical effect in so far as it would be possible to avoid their application by introducing charges which, while not customs duties in the strict sense, none the less had the same effects on trade between the Member States and the countries and territories. Such an interpretation, moreover, would be contrary to the objectives defined in the part of the Treaty dealing with the association of the countries and territories.

19 It should also be pointed out that Article 133(1) provides that 'customs duties on imports into the Member States of goods originating in the countries and territories shall be completely abolished . . . '. That provision gives concrete form to the objective set out in Article 132(1), which provides that the Member States are to apply to their trade with the countries and territories the same treatment as they accord each other pursuant to the Treaty. Clearly, the Member States are not entitled to introduce either customs duties or charges having equivalent effect in their trade with each other. It follows that, in order to comply with the obligation laid down in Article 132(1), the reference to customs duties in Article 133(1) must include charges having an effect equivalent to customs duties. While the question does not expressly refer to Article 133(1), it is clear that the expression 'customs duties' must be defined within the meaning of Article 133 as a whole.

20 The answer to the first question in the reference must therefore be that Article 133(2) and (3) also applies to charges having an effect equivalent to customs duties.

The second question

21 It should be noted in this regard that the first subparagraph of Article 133(3) recognizes that the countries and territories are empowered to levy customs duties but restricts that power to those which meet the needs of their development and industrialization or produce revenue for their budgets.

22 The second subparagraph of Article 133(3) provides that the duties referred to in the first subparagraph of that article are to be progressively reduced to the level of those imposed on imports of products from the Member State with which each country or territory has special relations, in accordance with the percentages and timetable of the reductions provided for under the Treaty.

23 As the Council correctly points out, the second subparagraph of Article 133(3) refers only to customs duties existing when the Treaty entered into force, which might create the impression that the scope of the first subparagraph is also restricted to those customs duties.

24 Article 133(5) however, provides that 'the introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States'. That provision thus recognizes that the countries and territories are empowered to introduce and amend customs duties on imported goods. That power, however, is restricted to the levying of customs duties that satisfy the conditions laid down in the first subparagraph of Article 133(3). It is therefore clear that the first subparagraph of Article 133(3), read in conjunction with Article 133(5), applies not only to the retention of existing duties but also to the introduction of new duties.

25 The answer to the second question in the reference must therefore be that the overseas countries and territories to which Part Four of the Treaty applies may levy customs duties and charges having equivalent effect on imports from the Member States of the EEC provided, first, that the duties or charges levied meet the needs of their development and industrialization or produce revenue for their budgets and, secondly, that the introduction of or any change in such duties or charges does not give rise to any direct or indirect discrimination between imports from the various Member States, and subject to the obligation to implement reductions laid down in the second subparagraph of Article 133(3).

The third question

26 The third question concerns the obligations imposed on the overseas countries and territories by the objective of reducing customs duties set out in the second subparagraph of Article 133(3) of the Treaty.

27 The objective of that second subparagraph, which applies to customs duties in existence when the Treaty entered into force, was to reduce customs duties progressively to the level of those imposed on imports of products from the Member State with which each country or territory has special relations.

28 The third subparagraph of Article 2(2) of Decision 64/349 of the Council, cited above, which was adopted on the basis of Article 136 of the Treaty, provides that 'customs duties and charges having equivalent effect to such duties, levied in the overseas countries and territories in accordance with the preceding subparagraph . . . may not give rise, in law or in fact, to direct or indirect discrimination in the arrangements applicable to the Member States and the other countries and territories'. The duties mentioned in the preceding subparagraph of Article 2, that is to say, the second subparagraph of Article 2(2) are the duties 'retained or introduced in each country or territory'.

29 According to the very words of those provisions, therefore, the duties retained, that is to say, those in existence prior to the entry into force of the Treaty of Rome, could no longer involve any direct or indirect discrimination with effect from the implementation of Decision 64/349 of the Council.

30 It follows that the objective of reducing the duties set out in the second subparagraph of Article 133(3) was achieved when Decision 64/349 was implemented and that, accordingly, customs duties in existence when the Treaty entered into force may no longer give rise to any discrimination.

31 The answer to the third question referred by the national court must therefore be that the obligation to implement reductions laid down in the second subparagraph of Article 133(3) applies to customs duties existing when the Treaty entered into force and, with effect from the implementation of Decision 64/349, with regard to those customs duties or charges having equivalent effect, all discrimination between imports from the various Member States is prohibited.

The fourth question referred by the national court

32 As the fourth question was referred by the national court only in case the first question should be answered in the negative, it is unnecessary to reply to it.

Costs

33 The costs incurred by the French Republic, the Kingdom of the Netherlands, the United Kingdom, the Council and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, 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 Tribunal de Paix, Papeete (French Polynesia), by judgment of 20 August 1990, hereby rules:

1. **Article 133(2) and (3) of the EEC Treaty also applies to charges having an effect equivalent to customs duties;**

2. **The overseas countries and territories to which Part Four of the EEC Treaty applies may levy customs duties and charges having equivalent effect on imports from the Member States of the EEC provided, first, that the duties or charges levied meet the needs of their development and industrialization or produce revenue for their budgets and, secondly, that the introduction of or any change in such duties or charges does not give rise to any direct or indirect discrimination between imports from the various Member States, and subject to the obligation to implement reductions laid down in the second subparagraph of Article 133(3);**

3. **The obligation to implement reductions laid down in the second subparagraph of Article 133(3) applies to customs duties existing when the Treaty entered into force and, with effect from the implementation of Decision 64/349/EEC of the Council on the association of the overseas countries and territories with the European Economic Community, with regard to those customs duties or charges having equivalent effect, all discrimination between imports from the various Member States is prohibited.**

Due Slynn Joliet Grévisse

Kapteyn Mancini Kakouris Moitinho de Almeida

Rodríguez Iglesias Díez de Velasco Zuleeg

Delivered in open court in Luxembourg on 12 February 1992.

J.-G. Giraud O. Due

Registrar President