he may enjoy only the more restricted exemption provided for in the case of travel between non-member countries and the Community.

5. In adopting Directive No 69/169, and Directives Nos 72/230 and 78/1032 which supplement it, the Council intended gradually to establish a complete system of exemptions from turnover tax and excise duty for goods contained in travellers' personal luggage. Consequently in this field the Member States are left with only the restricted power given to them by the directives to grant exemptions other than those specified in the directives.

6. Although the EEC Treaty has made it possible in a number of instances for private persons to bring a direct action, where appropriate, before the Court of Justice, it was not intended to create new remedies in the national courts to ensure the observance of Community law other than those already laid down by national law. On the other hand the system of legal protection established by the Treaty, as set out in Article 177 in particular, implies that it must be possible for every type of action provided for by national law to be available for the purpose of ensuring observance of Community provisions having direct effect, on the same conditions concerning the admissibility and procedure as would apply were it a question of ensuring observance of national law.

In Case 158/89

REFERENCE to the Court under Article 177 of the EEC Treaty by the IVth Senate of the Finanzgericht [Finance Court] Hamburg for a preliminary ruling in the action pending before that court between

1. REWE-HANDELSGESELLSCHAFT NORD MBH,

2. REWE-MARKT STEFFEN, Kiel,

and

HAUPTZOLLAMT [Principal Customs Office] KIEL

on the interpretation of Regulation (EEC) No 1544/69 of the Council of 23 July 1969 on the tariff applicable to goods contained in travellers' personal luggage (Official Journal, English Special Edition 1969 (II), p. 359), Council Directive No 69/169/EEC of 28 may 1968 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (Official Journal, English Special Edition 1969 (I), p. 232) and the validity of Council Regulation (EEC) No 3023/77 of 20 December 1977 on

certain measures to put an end to abuses resulting from the sale of agricultural products on board ship (Official Journal 1977 L 358, p. 2),

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, Lord Mackenzie Stuart and T. Koopmans (Presidents of Chambers), A. O'Keeffe, G. Bosco, A. Touffait, O. Due and A. Chloros, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Facts

Various shipping undertakings organize "Butterfahrten" (butter-buying cruises) from ports on the Baltic coast (Schleswig-Holstein). Similar cruises sail from the German North Sea coast. The cruises last eight hours or less. They sail from the maritime customs zone into territorial waters or the high seas outside German territory. Occasionally, after leaving the German customs zone they pay a brief call at Danish ports where the passengers are able to land. During the cruise the passengers on the ships are able to buy goods such as spirits, butter, meat, tobacco, perfume and so on. Within certain limits no tax is charged on the importation of the goods at the German customs frontier. Furthermore as the goods leave the geographical territory of the Community they are subsidized by the Community through the resources of the Agricultural Guidance and Guarantee Fund inasmuch as export refunds and monetary

compensation are granted, for example, for butter and meat.

According to the Commission of the European Communities sales of agricultural products on German ships in 1977 amounted to some 14 000 tonnes of butter, 4 000 tonnes of cheese, 2 500 tonnes of meat and 400 tonnes of sugar. However, the shipowners estimate that in 1977 8 160 tonnes of butter, 2 825 tonnes of cheeese and 1 650 tonnes of meat were sold. In 1978 and 1979 an appreciable fall in the sales of agricultural products on board ships was found, following the adoption of Council Regulation (EEC) No 3023/77 of 20 December 1977 on certain measures to put an end to abuses resulting from the sale of agricultural products on board ship (Official Journal 1977, L 358, p. 2). According to certain German sources available to the Commission the following quantities were sold:

	1978	1979
Butter	6 260 t	5 985 t
Cheese	1 990 t	1 645 t
Meat	708 t	1 090 t

According to the Commission's information, in the other Member States exemptions from duty are limited exclusively to ferry traffic. In cases of "special excursions" on the high seas such Member States do not grant any exemption of this nature.

According to these States the quantities sold on the ferry-boats were as follows:

	Belgium		Netherlands		Ireland	
	1978	1979	1978	1979	1978	1979
Butter	151 t	244 t	—	110 t	—	—
Cheese	—	—	—	12 t	—	—
Meat	—	—	—	—	—	34 t

Shipowners, small shipyards and certain coastal resorts have benefited from this situation. On the other hand, as the plaintiffs in the main action contend, the result of such cruises is to take away a large proportion of the custom of the inhabitants of the Baltic coast from local wholesale and retail traders.

The Community provisions

Regulation No 1544/69 grants within certain limits as to quantity and value exemption from customs duty for goods contained in the personal luggage of travellers coming from non-member countries.

Directive No 69/169/EEC, as amended by the Second Council Directive of 12 June 1972 (Official Journal, English Special Edition 1972 (II), p. 565) and by the Third Council Directive of 19 December 1978 (Official Journal 1978, L 366, p. 28) provides for exemption from turnover tax and specific excise duties basically up to the duty-free

limits on imports effected by travellers from non-member countries (Article 1).

Regulation No 1818/75 of the Council of 10 July 1975 on the agricultural levies, compensatory amounts and other import charges applicable to agricultural products and to certain goods resulting from their processing, contained in travellers' personal baggage (Official Journal 1975, L 185, p. 3) extended the scope of Regulation No 1544/69 to the levies and other agricultural charges and introduced within the framework of trade between two Member States an exemption from compensatory amounts and other import charges which corresponded as to the limits and conditions of its application to the exemption laid down in Directive No 69/169/EEC (Article 2).

Finally, Council Regulation (EEC) No 3023/77 of 20 December 1977 (Official Journal 1977, L 358, p. 2) empowered the Member States to grant an exemption from import duties for certain agricultural products

"sold or distributed on board ships which have left a Community port and are returning to a Community port without calling at a port outside the customs territory of the Community, where these products

— Were, at the time of their exportation from the Community, the subject of export customs formalities with a view to obtaining refunds or other amounts granted on exportation within the framework of the common agricultural policy, or

— Were not, at the time of their delivery on board ship, covered by either of the situations provided for in Article 9 (2) of the Treaty."

(Article 1 (1)).

For the purposes of that regulation "import duties" means customs duties and charges having equivalent effect as well as agricultural levies and other import charges applied under the common agricultural policy (Article 2).

The German provisions

The exemption granted by the German customs authorities on importation is based on the order relating to exemption from import duties of goods in travellers' personal luggage [Reisegepäck-Verordnung] of 3 December 1974 (Bundesgesetzblatt 1974 I, 3377) as last amended by the order of 12 December 1979 (Bundesgesetzblatt I, 2150).

In German law a distinction is drawn between imports from other Member States, which are defined in the same way as in Community law, and "other imports". The category "other imports" in German law is wider than that of imports from a non-member country in Community law. It also covers the importation of goods purchased by travellers

— In connexion with intra-Community air travel, in duty-free shops at the airport of departure (in another Member State) or on board an aircraft during a flight in which the point of departure is situated in another Member State;

— In connexion with intra-Community sea travel on board ship where the point of departure for the crossing

  — Is situated in a port of another Member State (including international traffic by ferries),

— Is situated in a German port, and moreover the port of departure and arrival may be the same.

In both cases the imported goods in question may constitute:

— Goods from a non-member country which have not yet been cleared through customs and were previously held in a bonded warehouse or in a free port under customs supervision, or

— Community goods exempt wholly or in part from turnover taxes or excise duties and agricultural products in free circulation which have qualified for favourable treatment on exportation.

According to paragraph 2 (1) of the order relating to passengers' luggage, goods which passengers import in their personal luggage from time to time and solely for personal use or consumption in the home or as a gift are within certain limits as to quantity and value exempted from import and customs duty. The order draws a distinction between exemption for so-called "major transit" and "minor transit".

The exemption for major transit is conditional on the ship's crossing the maritime customs border from the high seas and either having left a foreign port or having remained outside the customs territory for at least eight hours (Paragraph 3 (5)).

The exemption for minor transit is merely conditional upon the importation of the goods across the maritime customs border, that is on the so-called "Stichfahrten" [excursions] from German ports into the territorial waters. The exemption is not conditional upon the ship's sailing on the high seas, or upon its having either put into a foreign port or remained outside the customs territory for at least eight hours. The exemption for minor transit is less than that for major transit.

Procedure and preliminary questions

The plaintiffs in the main action, one of whom is a wholesale trader and the other a retailer, instituted proceedings before the Finanzgericht [Finance Court] Hamburg, claiming that the butter-buying cruises are in breach of Community law.

By an order of 5 June the IVth Senate of the Finanzgericht Hamburg requested the Court of Justice to deliver a preliminary ruling on the following questions:

"I — *Customs duty*

1. Is Regulation (EEC) No 1544/69 of the Council of 23 July 1969, as last amended by Council Regulation (EEC) No 3061/78 of 19 December 1978, to be interpreted as meaning that the exemption from customs duties mentioned therein applies only to goods which come from the customs territory of a non-member country and additionally as the case may be to goods which are in free circulation in that country for the purposes of customs law, or is it sufficient for the goods to have originated in Member States and to have been imported by sea across the maritime customs border or the frontier of the national territory of the respective Member State?

2. Does Regulation (EEC) No 1544/69 of the Council, as last amended by Council Regu-

lation (EEC) No 3061/78, where appropriate read in conjunction with Article 28 of the EEC Treaty — save in the case of the goods covered by Council Regulation (EEC) No 3023/77 of 20 December 1977 — contain exhaustive rules for the exemption from customs duties of goods in travellers' personal luggage or may Member States independently grant exemption from customs duties going beyond the scope of Regulation (EEC) No 1544/69 save in the case of the goods covered by Regulation (EEC) No 3023/77?

3. Does a breach of a Community regulation give directly applicable rights to a person whose rights have been adversely affected by provisions laid down by the law or administrative action of a Member State or the implementation thereof which are inconsistent with the provisions of that regulation so that he may bring an action before a national court for the application of measures contravening Community law to be discontinued or for the provisions of Community law to be complied with?

4. Is Council Regulation (EEC) No 3023/77 invalid because it is in breach of a superior rule of Community law (for example, the principle of equality, the prohibition of discrimination, freedom of competition, the principle of proportionality)?

5. If the answer to Question 4 is in the affirmative does a person whose rights are adversely affected by reason of the law or administrative provision of a Member State, or the implementation thereof, based on Council Regulation (EEC) No 3023/77, acquire directly applicable rights so that he may bring an action before a national court for the application of measures contravening Community law to be discontinued?

II — *Turnover tax and excise duty*

1. Is Council Directive No 69/169/EEC of 28 May 1969, as last amended by Council Directive No 78/1032/EEC of 19 December 1978, to be interpreted as meaning that the exemption from turnover tax and excise duty therein provided for applies only to goods in travellers' personal luggage which come from the customs territory of a non-member country (Article 1) or, if they originate in a Member State, from the customs territory of the Community (Article 2) and additionally, as the case may be, to goods which are in free circulation for the purposes of customs law in a non-member country or Member State, or is it sufficient for the goods to have been imported by sea across the maritime customs border or the frontier of the national territory of the respective Member State?

2. Does Council Directive No 69/169/EEC, as last amended, contain definitive rules for the exemption from turnover tax and excise duty of goods in travellers' personal luggage

or may Member States independently grant goods in travellers' personal luggage exemption from turnover tax and excise duty going beyond the scope of the directive?

3. Does Council Directive No 69/169/EEC, as last amended, give directly applicable rights to a person whose rights have been adversely affected by provisions laid down by the law or administrative action of a Member State or the implementation thereof which are inconsistent with the provisions of that directive, so that he may bring an action before a national court for the application of national measures contravening Community law to be discontinued?"

The Finanzgericht maintains that Regulation No 1544/69 is linked as to its subject-matter to the Convention of 4 June 1954 concerning customs facilities for touring (the New York Tourist Agreement). According to that agreement customs exemption must be granted in respect of tourists' luggage. The agreement defines a tourist as any person who visitis the territory of a contracting State where he is not ordinarily resident (Article 1 (b)). The Finanzgericht therefore considers that there is no doubt that travellers ordinarily resident in the customs territory of the Community, who have set out on a sea voyage and, without entering the customs or national territory of a non-member country, return across the frontier of the national territory of a Member State or, after sailing only in coastal waters, re-cross the maritime customs border, cannot claim exemption from customs duties under Regulation No 1544/69.

The Finanzgericht considers, however, that doubt exists with regard to the goods. The provisions in question do not expressly settle the question whether goods brought back by travellers must also come from the customs territory of the non-member country and possibly also have been in free circulation there under its customs arrangements.

In the opinion of the Finanzgericht Regulation No 1544/69 does not apply either to the "Stichfahrten" (excursions) from ports on the Baltic coast of Germany or to trips on the high seas which do not call at a non-member country or cruises where the contact with Denmark is purely symbolic. The question arises whether, except for the goods covered by Regulation No 3023/77, Regulation No 1544/69 contains definitive rules in respect of tariff exemption for the personal luggage of travellers or whether Member States are free to grant wider exemptions from customs duty on travellers' personal luggage. In the view of the Finanzgericht the fact that Regulation No 1544/69 is based on the provisions of Article 28 of the EEC Treaty shows that the Community treats the grant of such exemptions from duty as a matter coming under the Common Customs Tariff. The Council decides whether to alter or suspend the Common Customs Tariff. Consequently the Member States are debarred from adopting their own rules on the grant of exemptions from customs duty.

According to the case-law of the Bundesverfassungsgericht [Federal Constitutional Court] (judgment of 20 July 1954 1 BvR 459/52 *inter alia* — a case of investment aid — decisions of the Bundesverfassungsgericht Volume 4, p. 7) and of the Bundesverwaltungsgericht [Federal Administrative Court] (judgment of 30 August 1968, VII C 122/66, decisions of the Bundesverwaltungsgericht, Volume 30, p. 191) laws regulating the economy which are passed to further the interests of individual groups and which alter the economic situation are in breach of the principle of equality if they are not passed in the public interest and if the interests of other persons which merit protection are arbitrarily affected. If there is such a breach of the principle of equality then under German law the person affected has a right of action.

The order making the reference was recorded at the Court Registry on 9 July 1980.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community written observations were lodged by Rewe-Handelsgesellschaft Nord mbH and Rewe-Markt Steffen, represented by Gert Meier, Chief Legal Adviser to Rewe-Zentral AG, by the Federal German Government, represented by A. Deringer, Rechtsanwalt, Cologne, and by M. Seidel, Ministerialrat at the Federal Ministry of Economics, by the Government of the United Kingdom, represented by R. D. Munrow of the Treasury Solicitor's Department, acting as Agent, by the Commission of the European Communities, represented by Jörn Sack, a member of its Legal Department, acting as Agent, and by the Council of the European Communities, represented by Bernhard Schloh, one of its Legal Advisers, acting as Agent.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

The *plaintiffs in the main action* claim that Regulation No 1544/69 must be interpreted as meaning that the exemption from duty for which it makes provision applies only to goods which come from the customs territory of a non-member country and are in free circulation there under customs law.

The legal basis of Regulation No 1544/69 is Article 28 of the EEC which governs the "autonomous alteration or suspension of duties in the Common Customs Tariff". Such adjustments under Article 28 of the Treaty concern the free movement of goods, not the movement of persons, between the Community and its Member States on the one hand and non-member countries on the other. Consequently Regulation No 1544/69 concerns the tariff treatment of goods contained in the personal luggage of travellers in conjunction with the establishment of the Common Customs Tariff, that is the free movement of goods between non-member countries and the Community, in order to eliminate obstacles to travel which might arise from the tariff treatment of goods from non-member countries.

The said regulation contains exhaustive rules on the exemption from duty of goods contained in the personal luggage of travellers. On 1 January 1976 power to legislate in matters covered by the Common Customs Tariff passed to the Community. According to Article 28 of the Treaty only the Council may

authorize the grant of an exemption from customs duty where Member States are concerned. In so far as such authorizations do not exist the Common Tariff applies uniformly in its entirety throughout the whole of the Community and no power exists to grant exemptions from customs duties by means of unilateral national measures. It follows that in so far as the German order relating to travellers' luggage provides for exemptions from customs duties which are not laid down by decisions of the Council within the framework of the Common Customs Tariff such national measures are void as being in breach of Article 28 of the Treaty.

Since Community regulations apply in national territory the national courts must of their own motion take account of the fact that laws and regulations adopted by the Member States in infringement of such a regulation are invalid (judgment of 17 May 1972 in Case 93/71 *Leonesio* [1972] ECR 287).

Regulation No 3023/77 is void because it infringes the basic rights to freedom to pursue an occupation and to develop the personality and to equality of treatment. Freedom to pursue an occupation forms part of the right to free choice of employment, which is protected as a basic right in the Community. With regard to the trade of wholesalers and retailers of foodstuffs, such freedom of choice includes the right to determine the range of goods and to fix selling prices. Regulation No 3023/77 infringes that liberty which is protected as a basic right.

In order to be able to compete with the goods sold on the ships operating "butter-buying cruises" goods must be sold at a price much lower than the purchase price. As this is not feasible the exemption contained in Regulation No 3023/77 necessarily means that the plaintiff Rewe-Markt Steffen must cease selling the goods listed in Article 1 (2) of the regulation. Furthermore the quantities which qualify for the exemptions are so large that the plaintiff Rewe-Handelsgesellschaft Nord is compelled to restrict considerably this range of goods.

The fundamental right of developing the personality, that is to say the right of pursuing a trade without interference from the public authorities of the Community, which is capable of causing distorition of competition, is infringed. The actual principle infringed is that of the equality of treatment of goods crossing the customs frontier of the Community. Regulation No 3023/77 confers upon Member States only the right to grant or withhold an exemption from import duties. Thus the Community legislature itself makes possible treatment which is different in the various Member States and which accordingly is not uniform in its application to goods crossing the customs frontier of the Community from non-member countries. Regulation No 3023/77 infringes the fundamental right to equality of treatment since a specified category of national undertakings, shipowners whose vessels take part in butter-buying cruises, obtains favourable treatment.

Directive No 69/169 must be interpreted to mean that the exemption from turnover tax and excise duty for which it makes provision applies only to goods contained in the personal luggage of travellers coming from the customs territory of a non-member country or of a Member State where they are in free circulation for customs purposes.

Directive No 69/169 is directly applicable on the national territory and

accordingly all laws and regulations of the Member States which are contrary to the provisions contained in that directive are rendered invalid. The national courts must accordingly of their own motion take account of that invalidity in proceedings instituted by a trader whose rights have thereby been infringed.

The *German Government* concurs in the view of the Finanzgericht to the effect that the exemption from customs duties provided for by Regulation No 1544/69 may be relied upon only by travellers coming from non-member countries. The same applies to Directive No 69/169. On voyages of the kind referred to, travellers accordingly may not rely upon either the exemption from customs duties laid down in Regulation No 1544/69 or the exemption from turnover tax and excise duty referred to in Directive No 69/169.

However, there is no requirement that, in order to qualify for duty-free importation, the goods should come from a non-member country or indeed that they should have been in free circulation there. On the contrary it is perfectly possible for them to have come from the customs territory of the Community but to have been obtained in a tax-free shop or during a voyage in a ship or flight in an aircraft.

The Community rules on tax and customs exemptions are not exhaustive and the Member States are therefore entitled to enact supplementary provisions. The legal basis for Regulation No 1544/69 is Article 28 of the Treaty which confers upon the Community power to settle all matters relating to the application of the Common Customs Tariff, including power to enact exemptions from customs duties. In so far as the Community has adopted rules the Member States may not adopt measures of their own which are at variance with the Community rules.

Within the framework of customs legislation there are still numerous areas not covered by Community law which accordingly remain subject to rules made by the Member States. The system of customs exemptions is one of those areas, as exhaustive Community legislation in that matter has not yet been adopted.

Directive No 69/169 is based on Article 99 of the Treaty which provides for the gradual harmonization of the legislation of the various Member States concerning turnover taxes, excise duties and other forms of indirect taxation, thereby reserving to the Member States power to legislate in the fields not covered by Community law. Accordingly Article 14 (2), taken in conjunction with Article 14 (1) (d) of the Sixth Directive on the harmonization of turnover taxes (Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, Official Journal 1977, L 145, p. 1), provides that until the entry into force of Community rules, Member States may maintain derogations covering the final importations of goods qualifying for exemption from customs duties otherwise than as provided for in the Common Customs Tariff.

Regulation No 1818/75 is based on Article 43 and 235 of the Treaty. These two articles do not confer exclusive powers on the Community but leave the Member States free to adopt supplementary rules or provisions of their own in so far as Community law has not laid down definitive rules in the matter.

The Community rules now applicable to the importation free of duties, taxes and

levies of goods contained in the personal luggage of travellers are not exhaustive, leaving certain omissions which the Member States are empowered to make good. In both tax law and customs law the Commission submitted in 1972, that is after the adoption of Directive No 69/169 and of Regulation No 1544/69, proposals for the adoption of Community rules which shows that the Commission itself considers that these fields are not yet covered by Community law.

The German Government claims that imports effected in the sphere of the intra-Community movement of travellers simply give rise to the grant of what is known as the "non-member country exemptions" if the traveller has begun his journey in a part of the territory of another Member State in which turnover tax and/or excise duty are not chargeable on goods consumed within that territory and if he is able to establish that the goods transported in his luggage have been acquired subject to the general conditions governing taxation on the domestic market of a Member State and do not qualify for any refund (Articles 2 (4) and 4 (4) of Directive No 69/169). This principle, which applies to the intra-Community movement of travellers from one Member State to another must also apply — perhaps *a fortiori* — if travellers, on excursions, or cruises to the ports of another Member State, bring back goods acquired duty-free on board during transit in international waters or in the zone situated between the territorial frontier and the maritime customs frontier of the Member State where the voyage terminates. The zone between the maritime frontier of the German territory and the maritime customs frontier under German law does not form part of the zone in which turnover tax and excise duty are imposed; it therefore falls within the definition laid down in the second indent of Article 2 (4) and of the second indent of Article 4 (4) of Directive No 69/169.

The *Government of the United Kingdom* does not wish to express any views on the question whether the true construction and effect of the regulations and directives in issue in this case are to render incompatible with Community law the various reliefs from the application of the Common Customs Tariff which are permitted by the customs authorities of the Federal Republic of Germany, as complained of by the plaintiffs. The United Kingdom starts from the premise that the regulations containing the Common Customs Tariff and the exceptions to it involved in this case are directly applicable in Member States and capable of conferring rights on individuals which national courts must protect. The problem with which the United Kingdom is concerned is whether they are capable of conferring rights on individuals in the circumstances of the plaintiffs. Their grievance is merely that others have been granted relief beyond what Community law authorizes and their claim is rather intended to ensure that other persons have their obligations enforced.

According to the United Kingdom the failure by a Member State adequately to enforce a particular provision of Communitiy law against other persons within its jurisdiction may in certain cases constitute a certain infringement for which the proper remedy lies in appropriate action in the Community sphere by one of the organs of the Community or by another Member

State. It is not an infringement for which Community law as such affords a remedy to the private citizen through an action in his national courts. However much he may be materially prejudiced by it, no right that has been directly conferred on him by Community law has been violated. This is not to say, however, that there can be no circumstances in which he has a remedy in his national courts. It may be that the invalidity of the action (or inaction) of his national authorities which is a consequence of its incompatibility with Community law does give rise, if certain conditions are satisfied, to a right of action on his part and does entitle him to certain remedies. But whether that is so, and what those conditions are, and what those remedies may be, are all matters which are to be decided by the national court in accordance with national law. In the United Kingdom the law relating to the right of a citizen to compel public authorities to act to enforce the law or for a declaratory judgment as to the duty to enforce it depends on his ability to show a special interest in the subject-matter beyond that of the public generally.

With regard to the second part of the order which concerns turnover tax and excise duty, what is at issue is a directive and not directly applicable regulations. Nevertheless the United Kingdom submits that the considerations set out with regard to regulations apply with equal force where the instrument in question is a directive.

It is for the Member States to implement directives choosing their own form and method for doing so. Directives are addressed to Member States and clearly cannot bind individuals directly or *a fortiori* enable an individual to compel by a private action in the courts of a Member State, the enforcement on other individuals of a law which *ex hypothesi* does not yet exist.

The Government of the United Kingdom submits that the Court has frequently recognized that directives, if they are sufficiently precise, may be directly effective to enable a citizen to invoke their provisions against a defaulting Member State endeavouring to enforce against him personally inconsistent national measures (judgment of 5 April 1979 in Case 148/78, *Pubblico Ministero* v *Ratti*, [1979] ECR 1629, judgment of 23 November 1977 in Case 38/77, *Enka BV.* v *Inspecteur der Invoerrechten en Accijnzen*, [1977] ECR 2203). That is, however, a very different matter from endeavouring by private action to compel a Member State to remedy its default generally. According to the United Kingdom such a general remedy is available only to the Commission under Article 169 of the Treaty.

The *Commission* observes that Regulation No 1544/69 does not deal with the origin or status under customs law of goods qualifying for favourable treatment but Article 1 (1) of Regulation No 1544/69, as amended by Regulation No 3061/78 expressly lays down that the

exemption from customs duties is restricted to "travellers coming from third countries". This view is supported by the seventh recital in the preamble to Regulation No 3061/78. Finally, the second recital in the preamble to Regulation No 3023/77 expressly declares that Regulation No 1544/69 does not apply to goods imported following a voyage from a Member State on a ship which has not called at a port within the customs territory of a non-member country. Accordingly the mere fact of leaving the customs territory of the Community which, on the German littoral, usually coincides with the line of the coast, and the subsequent return to the same territory cannot be considered as constituting a voyage to a non-member country.

The Commission raises the question whether it is sufficient for the sovereign territory of a non-member country to have been entered by sea and for the ship by which the return into the customs territory of the Community is effected to have passed through the coastal waters of a country which is not a member of the Community. In that case the Commission considers that, purely theoretically, contact has been made with a non-member country in the course of the voyage but it takes the view that the meaning and the objective of Regulation No 1544/69 require that the exemption from customs should likewise not apply in such circumstances.

If the possibility of making purchases in a non-member country during a voyage does not exist from the outset there is no reason to grant on arrival the exemptions from customs duties laid down by Regulation No 1544/69 as, according to the Commission, such exemptions are granted precisely to permit travellers to import from a non-member country small quantities of travel souvenirs or goods intended to be consumed in the course of the journey or shortly afterwards without paying taxes and without having to comply with complicated formalities. Likewise it does not suffice for a ship to make a symbolic call at the port of a non-member country in the course of which it is impossible to land and to make purchases. Such a case is likewise not covered by Regulation No 1544/69.

In order to qualify for the exemption under Regulation No 1544/69 a traveller must have stayed for a certain time in a non-member country and in the course of that stay have had an actual opportunity to purchase goods there. If there is such an opportunity Regulation No 1544/69 must be applicable even where the one and only objective of the voyage is to make purchases in the non-member country.

The Commission maintains that the origin and status of the goods are of no importance and that the only relevant factor is the occasion on which they have been imported. In fact from a practical point of view it is often difficult to determine where the goods have in fact been bought. The simplification of customs formalities for small quantities of goods would be rendered largely illusory if customs officers were required to check where and in what circumstances goods have been acquired.

Furthermore Article 2 (1) of Directive No 69/169, which governs exemptions from taxation in international travel within the Community, specifically emphasizes the fact that the goods in question must be in free circulation and must have been acquired subject to the general rules governing taxation on the domestic market of one of the Member States. It might be concluded from the parallel situation of exemptions in customs matters and those in tax matters that the Community legislature must have been fully aware of the problem of the origin and status of the goods and that it was not its intention to take a decision concerning the origin and status

of the goods, but only as to the place of departure of the travellers. It would be absurd not to impose any duty on goods when they are imported from the non-member country of origin and to require, when they are imported through another non-member country, that they should have been placed in free circulation there in accordance with customs law.

The foregoing prompts the Commission to interpret Regulation No 1544/69 to mean that the exemption from duty for which it provides applies only to travellers coming from a non-member country, who may possibly have made a stay there permitting them to purchase goods. The point is not to establish whether the goods brought in on entry to the Community were purchased in that country or indeed whether the arrangements on free circulation of the non-member country in question applied to them.

Regulation No 1544/69 governs exhaustively customs exemptions for goods in the personal luggage of travellers. The Member States are thus prohibited from independently granting exemption from duty in such cases beyond the scope of that regulation.

Article 28 of the Treaty states that the Council is to decide on "any autonomous alteration or suspension of duties in the Common Customs Tariff". The exemptions from customs duty in connexion with travel, such as is at issue here, also forms part of such alterations or suspensions. The Member States accordingly have no powers in this field. Under Article 113 of the Treaty the Community also has exclusive powers with regard to alterations or suspensions laid down within the framework of treaties concluded with non-member countries. With regard to the exemptions from agricultural levies and other charges provided for under the agricultural policy the Community alone is competent under Article 43 of the Treaty, in conjunction with the organizations of the agricultural markets. There cannot therefore in any case be any national provisions in this field.

As to the fourth question of the Finanzgericht the Commission considers that if Regulation No 3023/77 were to be considered as constituting definitive provisions certain factors would indicate that it was invalid. In fact that regulation affects the uniform nature of the validity of the Common Customs Tariff when imports are effected on the occasion of journeys made by certain means of transport although there is no substantive reason which justifies that permanent exception. The provisions of the Common Customs Tariff must be applicable uniformly at the external frontiers of the customs territory of the Community regardless of the means of transport used by travellers.

Regulation No 3023/77 constitutes discrimination between consumers in breach of Article 40 (3) of the Treaty because it permits the consumers of a Member State who live near the coast to purchase agricultural products at prices which are often based on the prices of the world market whilst other consumers are required to pay the higher prices resulting from the common agricultural policy.

The Court has declared that the general principle of equality of treatment forms an integral part of Community law (judgments of 19 October 1977 in Joined Cases 117/76 and 16/77, *Ruckdeschel and Others* v *Hauptzollamt Hamburg*, [1977] ECR 1753 and in Joined Cases 124/76 and 20/77, *S.A. Moulins et Huileries de Pont-à-Mousson and Others* v *Office National Interprofessionnel des Céréales* [1977] ECR 1795). For that

reason the Commission considers that it would be strange to favour certain forms of selling agricultural products (sales on ships) whilst refusing to grant the same advantages in respect of other forms of sale (retail trade on the Continent).

However, Regulation No 3023/77 can constitute only a transitional solution and represents a first step in the definitive elimination of certain abnormal situations which date back to the period before the Common Customs Tariff came fully into force, whilst avoiding adverse economic effects for the persons concerned. The Commission has emphasized this in its declarations in the minutes of the Council when the regulations were adopted by the Council. Accordingly Regulation No 3023/77 is still justified at present as a transitional solution which makes it possible to avoid adverse economic effects for certain persons.

With regard to the third question of the Finanzgericht concerning the rights of individuals the Commission considers that it is drafted in too general terms. It should be limited against the background of the main action, that is to say a reply is necessary only where any rights which may arise for individuals under the customs tariff of the Community are concerned. The Finanzgericht's question amounts in fact to asking whether the provisions of the Common Customs Tariff, and in particular those prescribing the collection of certain customs duties on importation into the Community, make available to traders whose activities are protected by such duties, a right to require the national authorities in fact to apply import duties prescribed in the Common Customs Tariff and whether, if necessary, they may rely on that right in proceedings before the national courts.

The Commission considers that this is the first time the Court of Justice has had to consider so unusual a case in which the plaintiffs request the national authorities to apply tax measures to third parties who, according to the plaintiffs, have hitherto been favoured by the national authorities in breach of Community law. The exceptional nature of the situation is further emphasized by the fact that the adverse effects for the plaintiffs do not stem from the fact that third parties (the travellers) are favoured but indeed indirectly from the fact that the exemptions granted to travellers take the form of competitive advantages for the competitors of the plaintiffs, that is to say the sellers of certain goods on board ship. It is accordingly necessary to consider whether the provisions of the Common Customs Tariff confer personal rights on the plaintiffs. The Commission states that in most cases the Court of Justice has related the question of the personal rights of individuals under Community law to the question of its direct effect. Where a provision of Community law is sufficiently clear and precise and when consequently it does not leave any margin of discretion either to the Community institutions or to the Member States as to its application that provision is regarded by the Court of Justice as having direct effect in the legal systems of the Member States. It follows in general that individuals upon whom such provisions confer rights may rely upon those provisions before the national courts in order to enforce their personal rights flowing from the said provisions (judgment of 17 May 1972 in Case 93/71, *Leonesio*, [1972] ECR 287, judgment of 19 December 1968 in Case 13/68, *Salgoil*, [1968] ECR 453 and the

judgment of 17 December 1969 in Case 33/70, *SACE*, [1970] ECR 1213). However, such provisions must in fact have as their objective the protection of the interests of persons or undertakings (judgment of 22 January 1976 in Case 60/75, *Russo* v *AIMA*, [1976] ECR 45).

There is no doubt that the tariffs imposed by the Common Customs Tariff are sufficiently clear and precise and that they consequently have direct effect in the legal systems of the Member States. However, the duties provided for under the Common Customs Tariff are exclusively protective duties which in general shield only the economy or certain sectors of activity within the Community and they were not intended to protect the existence of particular undertakings. Traders in their capacity as individuals or particular undertakings are not protected by customs duties.

In order to recognize that this point of view is correct the Commission considers that it is sufficient to examine the consequences of a procedural nature if a right of such scope were granted to individuals. The recognition of a personal right to have the prescribed customs duties applied would mean that individuals could request a national court, in proceedings concerning failure by the Member States to comply with the Treaty, to give judgment not only in cases directly concerning them but also in cases of entirely general scope. The legal system laid down by the Treaty prescribes that only the Court of Justice has jurisdiction in connexion with an infringement of the Treaty by a Member State and then only on the application of the Commission or of another Member State. That consideration prompts the Commission to refuse to recognize a personal right of the kind referred to in the question.

That does not mean, however, that in such cases individuals do not have any rights. The order for reference shows that the national law fully authorizes a claim that rights have been infringed by unlawful conduct of the authorities in breach of Community law or by invalid national laws. In order to make such a claim individuals do not require a personal right based on Community law. As the Court has already stated, Community law does not require in all cases that complete protection should be available before the national courts (judgment of 6 May 1980 in Case 152/79, *Lee* v *Minister for Agriculture*, [1980] ECR 1495). The principal point is that the effectiveness of Community law must not be fundamentally jeopardized (judgment of 21 January 1976 in Case 60/75, *Russo* v *AIMA*, [1976] ECR 45).

With regard to the fifth question, according to the case-law of the Court of Justice the national authorities are bound to apply a provision of Community law so long as it has not been declared invalid by the Court of Justice (judgment of 13 February 1979 in Case 101/78, *Granaria* v *Hoofdproduktschap*, [1979] ECR 623).

The Commission maintains that in this connexion rights against the national authorities cannot be based on the fundamental rights which are also recognized in Community law since the basic rights in Community law are clearly applicable only against the Community institutions and not against the national authorities even where the latter are carrying out duties which have been entrusted to them by the Community.

With regard to the second part of the order for reference concerning the turnover tax and excise duty the Commission considers that the reply should be that Articles 1 and 2 of Directive No 69/169 are to be interpreted as meaning that the exemption from turnover tax and excise duty therein provided for applies only to goods in the personal luggage of travellers coming from a non-member country or from another Member State perhaps after crossing the high seas but not in the case of entry from the high seas alone. If entry is effected from another Member State, possibly after crossing the high seas or a non-member country, there is an additional condition for granting the exemption, namely that the goods should have been in free circulation in the Member State in pursuance of Articles 9 and 10 of the Treaty and must have been acquired subject to the general rules governing taxation on the domestic market of one of the Member States.

The Commission maintains that Directive No 69/169 contains exhaustive rules on exemptions from turnover tax and excise duty on goods carried in the personal luggage of travellers in international travel. The Member States are not entitled to grant other exemptions of this nature in international traffic. Directive No 69/169 does not provide any right for individuals to require that the authorities of a Member State should collect taxes in cases in which the directive does not provide for any exemption from turnover tax and excise duty. If a Member State does not require travellers, on importing goods into its territory, to pay the taxes normally prescribed there may be a breach of Community law if and in so far as Community law provides that the collection of these taxes is mandatory. Directive No 69/169 and the Sixth Directive on value-added tax impose such an obligation on Member States. Nevertheless private persons do not have a right corresponding to that obligation of the Member States that the taxes shall in fact be collected. In fact the national legal systems do not make provision for a right on the part of individuals to require that other individuals shall in fact pay their taxes, nor does Community law provide any right of this nature.

With regard to Regulation No 1544/69 on customs duties, the *Council* considers that a distinction must be drawn between the persons who import the goods and the goods imported. With regard to the persons, they must be travellers entering the Community from a non-member country. With regard to the goods imported by travellers coming from a non-member country, Regulation No 1544/69 does not require that they should come from the customs territory of a non-member country or even that they should have been placed in free circulation for customs purposes in that country. It does not matter whether the goods from a Member State or from a non-member country.

Directive No 69/169 is largely identical as to its structure and content with Regulation No 1544/69: in both cases the exemptions in question relate to the movement of travellers across a frontier. The considerations which the Council sets out with regard to Regulation No 1544/69 are accordingly applicable to Directive No 69/169.

On the question whether Regulation No 3023/77 is void because it is in breach of a superior rule of Community law the Council refers to the reply which it gave on 19 July 1978 to Written Question No 1316/77 by Mr Notenboom, a Member of the Assembly, who asked *inter alia:*

"2. What political, economic and legal justifications can the Council adduce to support the provisions of Regulation (EEC) No 3023/77 . . .?"

The Council gave the following reply to that question:

"2. The Council considers that, bearing in mind the aim of putting an end to abuses, it gave due consideration in Regulation (EEC) No 3023/77 to the political, economic and legal aspects of the problems presented and thus endeavoured, in a limited and non-definitive manner:

— To take account of the consequences of such measures for economic activity and employment in certain regions of the Community bordering on third countries and subject to competition from the latter in the same sectors of activity;

— To avoid unfavourable economic effects both on Community products and on products imported from third countries and released to the market in the Community, and any distortion of competition between traders and discrimination between Community consumers, particularly with regard to agricultural products, of which there is a surplus in the Community;

— To establish equal conditions of competition for Community agricultural products and for these same products coming from third countries, when sold on board ship;

— To protect the Community's budgetary interests by restricting the granting of the exemptions authorized under the regulation to very small quantities and specific products and by merely making these arrangements optional for the Member States."

(Official Journal 1978, C 199, p. 17)

Regulation No 3023/77 is not in breach of the principle of equality or the prohibition of discrimination. First of all with regard to consumers anyone may go on the cruises in question and thus take advantage of the exceptional provisions if the Member State has exercised the power to grant the exemption from import taxes, as in the case of the Federal Republic of Germany. The right to go on such trips is not reserved either in law or in fact to the residents of the coastal regions from which the ships sail. A large number of travellers come from places far from the coast, from all over North Germany. It is clear that all discrimination on ground of nationality in relation to nationals of other Member States (Article 7 of the Treaty) is also excluded.

The Council maintains that the butter-buying cruises do not constitute a breach of the rule of equality in competition. In 1976 the shipowners organizing day-trips in the Baltic commissioned Professor Juergensen of Hamburg to draw up a report on the organization, consequences and analysis of that traffic. That report, which is dated 24 February 1977, was thus drawn up before the adoption of Regulation No 3023/77. It shows that in 1976 an average of 4.5% of the pass-

engers came to the ships on foot, 20.7% by motor-car, 73.6% by motor-coach and 1.2% by train. The report calculated the loss of earnings sustained by retailers in the foodstuffs branch in the "relevant districts and towns" of Schleswig-Holstein, from Flensburg to Lübeck via Kiel, at 0.3% of their turnover or, in the case of tobacco retailers, at 1.1%. According to the report that branch of the trade could afford to bear such losses.

In the opinion of the Council sales on ships affect the retail and wholesale trade in the coastal regions only to a very small degree. That effect is contained "within reasonable limits". For example, if sales of butter were less, on the other hand the extension of the season in the holiday resorts on the Baltic, the purchasing power of the sailors, who are now employed all the year round, and that of the sales-staff on board the ships and even the fresh food needed for such ships constitute a certain compensation.

Likewise there has been no breach of the principle of proportionality. The means chosen are well adapted to the situation. The exceptional arrangements are applied only to very limited quantities.

Other considerations concerning the economy as a whole militate in favour of the arrangements in question: the day-trips assist in prolonging the tourist season, which furthermore is relatively short, on the German Baltic coast. Such trips counter the tendency of travellers to leave these regions, which do not enjoy such a favourable geographical position; furthermore they play a part in maintaining and creating employment. Without such day-trips most of the ships in question would have to be laid up with the crew laid off for six months in the off-season. It is estimated that the number of persons working throughout the year on board the ships amounts to roughly 1 000. To this must be added persons employed by the coach companies, undertakings fitting out the ships and shipyards.

The Council considers that there are probably several questions to consider together, of which sales on board ship is one. It refers to the tax-free shops at airports and the victualling of ships (and international trains).

With regard to the tax-free shops it has not yet been possible to adopt Community rules, despite a number of attempts. It is sufficient to point out that the European Assembly declared, in the course of its sitting on 18 April 1980, in its opinion on the proposal submitted by the Commission to the Council for a Fifth Directive on the harmonization of provisions laid down by law, regulation or administrative action relating to the rules governing turnover tax and excise duty applicable in international travel, that it requested

"the Commission to report to it on the problems connected with tax-free shops and on the desirability of abolishing them in respect of travel between Member States" (Point 8 of the resolution embodying the opinion, Official Journal 1980, C 117, p. 83).

This case concerns a "third party" that is a person who has only a secondary concern whether or not a Member State applies the Community provisions in favour of the person directly concerned; there may be a reaction affecting a third party, which is why the Finanzgericht

submits the question whether protection will be afforded by the courts.

The Council suggests that the Court of Justice should reply in the negative to the questions concerning the protection of legal rights. The Treaty provides sufficient remedies for the protection of legal rights. The possibility of submitting a question for a preliminary ruling under Article 177 of the Treaty is sufficient in this connexion. Furthermore the provisions of the second paragraph of Article 173, the third paragraph of Article 175 and Article 184 of the Treaty show that an individual has only a limited right to challenge generally-applicable provisions of Community law. None of this implies any reduction in legal protection since the means available under national law, in conjunction with Article 177 of the Treaty, together with the claim for damages provided for under the second paragraph of Article 215 provide remedies which remain fully available.

III — Oral procedure

Rewe-Handelsgesellschaft Nord mbH and Rewe-Markt Steffen, Kiel, represented by Gert Meier, Chief Legal Adviser to Rewe-Zentral AG, the Government of the Federal Republic of Germany, represented by A. Deringer, Rechtsanwalt, Cologne, the French Government, represented by H. Marty-Gauquié, acting as Agent, the Commission of the European Communities, represented by Jörn Sack, a member of its Legal Department, acting as Agent, and by the Council of the European Communities, represented by Bernhard Schloh, its Legal Adviser, acting as Agent, presented oral argument at the sitting on 4 February 1981.

The Advocate General delivered his opinion at the sitting on 18 March 1981.

Decision

1 By an order of 5 June 1980, which was received at the Court on 9 July 1980, the Finanzgericht [Finance Court] Hamburg referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions as to the interpretation of Regulation (EEC) No 1544/69 of the Council of 23 July 1969 on the tariff applicable to goods contained in travellers' personal luggage (Official Journal, English Special Edition 1969 (II), p. 359), Council Directive No 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (Official Journal, English Special Edition 1969 (I), p. 232) and the validity of Council Regulation (EEC) No 3023/77 of 20 December 1977 on certain measures to put an end to abuses resulting from the sale of agricultural products on board ship (Official Journal, L 358, p. 2).

2 These questions were submitted in the course of proceedings between a wholesaler and a retailer established in the Federal Republic of Germany on the one hand and the Hauptzollamt [Principal Customs Office] Kiel, on the other, and raised the issue whether the "butter-buying cruises" run by various shipping companies from ports on the Baltic coast are in breach of Community law.

3 The "butter-buying cruises" cross the maritime customs zone into the territorial waters or on to the high seas outside German territory. During the cruise passengers on the ships have the opportunity to buy goods such as spirits, butter, meat, tobacco, perfume and other products. Within certain limits no tax is charged on the importation of the goods at the German frontier. The "butter-buying cruises" are of considerable commercial importance to the undertakings which organize them.

4 The first plaintiff in the main action is a wholesaler whose head office is near Kiel in the Federal Republic of Germany. It markets, *inter alia*, the same products as those sold during the cruises. Its customers, one of whom is the second plaintiff in the main action, are retailers established in the region of the Baltic coast.

5 The order for reference shows that the applicants argued before the Finanzgericht that the effect of these cruises is to withdraw a large part of the purchasing power of the inhabitants of the Baltic coast from the local retail and wholesale businesses and to redistribute it amongst the shipping companies which arrange such cruises. The fact that these undertakings are able to sell goods tax-free or subsidized gives them a considerable competitive advantage which leads to distortion of competition.

6 The plaintiffs originally asked the Finanzgericht to declare that the defendant must stop permitting the goods concerned to clear customs free of tax. They subsequently requested the Finanzgericht to order the defendant not to apply to passengers, when they cross the customs frontier, the exemption in respect of goods acquired by them tax-free or subsidized on "butter-buying cruises".

7 The Finanzgericht, before which the dispute was brought, submitted the following questions to the Court of Justice for a preliminary ruling:

"Customs duty

1. Is Regulation (EEC) No 1544/69 of the Council of 23 July 1969, as last amended by Council Regulation (EEC) No 3061/78 of 19 December 1978, to be interpreted as meaning that the exemption from customs duties mentioned therein applies only to goods which come from the customs territory of a non-member country and additionally as the case may be to goods which are in free circulation in that country for the purposes of customs law, or is it sufficient for the goods to have originated in Member States and to have been imported by sea across the maritime customs border or the frontier of the national territory of the respective Member State?

2. Does Regulation (EEC) No 1544/69 of the Council, as last amended by Council Regulation (EEC) No 3061/78, where appropriate read in conjunction with Article 28 of the EEC Treaty — save in the case of the goods covered by Council Regulation (EEC) No 3023/77 of 20 December 1977 — contain exhaustive rules for the exemption from customs duties of goods in travellers' personal luggage or may Member States independently grant exemption from customs duties going beyond the scope of Regulation (EEC) No 1544/69 save in the case of the goods covered by Regulation (EEC) No 3023/77?

3. Does a breach of a Community regulation give directly applicable rights to a person whose rights have been adversely affected by provisions laid down by the law or administrative action of a Member State or the implementation thereof which are inconsistent with the provisions of that regulation so that he may bring an action before a national court for the application of measures contravening Community law to be discontinued or for the provisions of Community law to be complied with?

4. Is Council Regulation (EEC) No 3023/77 invalid because it is in breach of a superior rule of Community law (for example, the principle of equality, the prohibition of discrimination, freedom of competition, the principle of proportionality)?

5. If the answer to Question 4 is in the affirmative, does a person whose rights are adversely affected by reason of the law or administrative provision of a Member State, or the implementation thereof, based on Council Regulation (EEC) No 3023/77, acquire directly applicable rights so that he may bring an action before a national court for the application of measures contravening Community law to be discontinued?

Turnover tax and excise duty

6. Is Council Directive No 69/169/EEC of 28 May 1979, as last amended by Council Directive No 78/1032/EEC of 19 December 1978, to be interpreted as meaning that the exemption from turnover tax and excise duty therein provided for applies only to goods in travellers' personal luggage which come from the customs territory of a non-member country (Article 1) or, if they originate in a Member State, from the customs territory of the Community (Article 2) and additionally, as the case may be, to goods which are in free circulation for the purposes of customs law in a non-member country or Member State, or is it sufficient for the goods to have been imported by sea across the maritime customs border or the frontier of the national territory of the respective Member State?

7. Does Council Directive No 69/169/EEC, as last amended, contain definitive rules for the exemption from turnover tax and excise duty of goods in travellers' personal luggage or may Member States independently grant goods in travellers' personal luggage exemption from turnover tax and excise duty going beyond the scope of the directive?

8. Does Council Directive No 69/169/EEC, as last amended, give directly applicable rights to a person whose rights have been adversely affected by provisions laid down by the law or administrative action of a Member State or the implementation thereof which are inconsistent with the provisions of that directive, so that he may bring an action before a national court for the application of national measures contravening Community law to be discontinued?"

I — Customs duty

First question (interpretation of Regulation No 1544/69 — exemptions from customs duty)

8 Regulation No 1544/69, as last amended by Regulation No 3061/78 (Official Journal 1978, L 366, p. 3) lays down the tariff treatment applicable to goods contained in travellers' personal luggage.

9 The objective of Regulation No 1544/69 is, according to the recitals in the preamble thereto, to simplify the work of the customs authorities by avoiding the complex problems raised by reason of the volume of traffic between non-member countries and the Community and the variety of goods imported by travellers. With that aim in view the regulation lays down that a limited

exemption is to be granted in respect of goods contained in travellers' personal baggage if the imported goods have no commercial character.

10 Regulation No 1544/69, as amended by Regulation No 3061/78, is silent as to the origin of the goods which qualify for the exemption from customs duties. Article 1 provides that goods contained in travellers' personal luggage shall be exempt from common customs duties if the imported goods have no commercial character. The second subparagraph of Article 1 (1) states that "personal luggage" means the whole of the luggage which a traveller is in a position to submit to the customs authorities upon his arrival, as well as luggage which he submits later to the same authorities, subject to proof that such luggage was registered as accompanied luggage, at the time of his departure, with the company which has been responsible for conveying him.

11 The regulation concerns small quantities of goods which are of little dutiable value. The objective of the regulation, which is to simplify the clearance through customs of goods contained in travellers' personal luggage coming from non-member countries, would not be attained if the customs authorities were obliged to determine, at the time of importation, the origin of the goods for which exemption from customs duties is claimed.

12 In consequence it must be declared that Regulation No 1544/69 applies to the luggage of travellers coming from non-member countries irrespective of the origin of the goods or the place from which they come and of the customs duties and taxes which they have borne prior to their importation into the territory of the Community.

13 It should furthermore be observed that the seventh recital in the preamble to the amending regulation states that "... in order to prevent possible false interpretation, it must be expressly stated that relief from common customs duty is available only to travellers coming from a third country". That recital shows clearly the intention of the Council to avoid abuses. It is thus impossible to consider as a traveller coming from a non-member country, who is capable of qualifying for the exemption from common customs duty, a person who, during a cruise departing from a port of a Member State, does not call at a non-member country or makes only a token call there and does not remain there for an appreciable period, that is to say, a period during which he has in fact an opportunity of making purchases.

14 The reply to the first question should accordingly be that the exemption provided for by Regulation No 1544/69, as last amended by Regulation No 3061/78, applies only to goods contained in the personal luggage of travellers coming from a non-member country. That exemption applies irrespective of the origin of the goods or the place from which they come and of the customs duties and taxes which they have borne prior to their importation into the territory of the Community. However, it is impossible to consider as a traveller coming from a non-member country, within the meaning of the regulation, a person who, during a cruise departing from a port of a Member State, does not call at a non-member country or makes only a token call there and does not remain there for an appreciable period, that is to say, a period during which he has in fact an opportunity of making purchases.

Second question (interpretation of Regulation No 1544/69 — exemptions from customs duties)

15 Article 3 (b) of the Treaty provides that the activities of the Community are to include *inter alia* the establishment of a Common Customs Tariff. Article 9 of the Treaty states the Community is to be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries. Article 28 of the Treaty provides that any autonomous alteration or suspension of duties in the Common Customs Tariff is to be decided by the Council.

16 These provisions show clearly that it is for the Council to decide, on the conditions fixed by the Treaty, the exemptions for which, in given circumstances, certain products may qualify by way of derogation from the Common Customs Tariff. It follows that, at any rate from the time when the Council enacts in a given field rules for the uniform application of exemptions, such as those contained in Regulation No 1544/69 the Member States do not retain any power to grant in that field an exemption wider than those determined by the Community rules.

17 The reply to the second question should accordingly be that Regulation No 1544/69 of the Council of 23 July 1969 contains exhaustive rules on the exemption from customs duty of goods contained in the personal luggage of travellers coming from non-member countries and those rules do not leave Member States any power to grant, in the field covered by the regulation, any exemption wider than those provided for by the regulation.

Fourth question (validity of Regulation No 3023/77 — exemptions from agricultural levies)

18 The fourth question inquires whether Council Regulation No 3023/77 is invalid inasmuch as it is in breach of a superior rule of Community law (for example, the principle of equality, the prohibition of discrimination, freedom of competition and the principle of proportionality).

19 Before the Court considers the regulation in the light of these criteria it is however necessary to consider whether the regulation complies with the requirements of Article 190 of the Treaty which provides that regulations shall state the reasons on which they are based.

20 Regulation No 1818/75 of the Council of 10 July 1975 (Official Journal, L 185, p. 3) extended the exemptions to be granted under Regulation No 1544/69 to agricultural levies and other import charges provided for under the common agricultural policy or under arrangements laid down under Article 235 of the Treaty and which apply only to certain goods resulting from the processing of agricultural products when contained in the personal baggage of travellers entering the Community.

21 Since the Council found that that extension of the exemptions had given rise to abuses it adopted on 20 December 1977 Regulation No 3023/77 "on certain measures to put an end to abuses resulting from the sale of agricultural products on board ship". The recitals in the preamble to the regulation recall first of all that Regulation No 1544/69 (exemptions from customs duties properly so called) does not apply to goods imported following a voyage from a Member State on a ship which has not called at a port within the customs territory of a non-member country. The recitals then state that experience has shown that Community agricultural products which have benefited from export refunds and agricultural products coming from third countries have been sold or distributed on board ships which have left a Community port and are returning to a Community port without calling at a port outside the customs territory of the Community, with a view to their introduction into the Community free of levies under Regulations (EEC) Nos 1544/69 and 1818/75.

22 These recitals show that the Council considered that the introduction into the customs territory of the Community free of customs duties and agri-

cultural levies, of goods acquired by travellers in the circumstances referred to in these recitals was not in accordance with the objective of the regulations in question. Since the objective of granting export refunds was to permit agricultural products of Community origin to compete with the products of non-member countries on markets outside the Community, it would be incompatible with the Community system of export refunds to grant such refunds for exports which were not intended for the market of a non-member country but for reimportation into the Community free of the levies normally charged on the importation of agricultural products. Such transactions would be likely to cause a clear loss for agricultural guidance and guarantee funds and to distort competition on the domestic market.

23 In the fifth recital in the preamble to Regulation No 3023/77 the Council nevertheless states the following:

"... the legal situation in this connexion should be clarified; ... to this end Member States should be authorized to grant exemptions for the products listed in Annex II to the Treaty sold or distributed on board ships under the above conditions for very limited quantities beyond which these products may no longer be introduced into the Community unless proper import duties are paid."

24 Accordingly the regulation authorizes the Member States to grant an exemption from import duties in respect of certain quantities of products specified in Article 1 (2) of the regulation in the circumstances described in the recitals.

25 Article 190 of the Treaty provides that "regulations, directives and decisions of the Council and of the Commission shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty". That article requires that such measures should contain a statement of the reasons which led the institution to adopt them, so as to make possible a review by the Court and so that the Member States and the nationals concerned may have knowledge of the conditions under which the Community institutions have applied the Treaty.

26 The statement of the reasons on which Regulation No 3023/77 was based does not fulfil that requirement. It does not in fact provide any explanation of the reason for which the Council, on finding that Regulation No 1544/69, contrary to a practice which had developed, should not be applied in the circumstances set out above, considered it necessary to establish a special system of exemptions applicable to that type of situation. Such a contradiction in the statement of reasons is all the more serious inasmuch as it concerns a provision empowering the Member States to grant exemptions, albeit on a small scale, from import duties, which constitute an essential part of the common agricultural policy. In those circumstances the statement of reasons does not provide any legal justification for the contested provisions of the regulation and accordingly it does not appear necessary to consider their basis in order to establish whether they are compatible with the rules of the common market.

27 It is therefore sufficient to find that Regulation No 3023/77 does not contain a statement of the reasons on which it is based as required by Article 190 of the Treaty and is accordingly not valid.

II — Turnover tax and excise duty

Sixth and seventh questions (interpretation of Directive No 69/169 — exemptions from VAT and excise duty)

28 Directive No 69/169, as supplemented by the Second Council Directive of 12 June 1972 (Official Journal, English Special Edition 1972 (II), p. 565) and by the Third Council Directive of 19 December 1978 (Official Journal, L 366, p. 28) on the harmonization of provisions laid down by law, regulation or administrative action relating to the rules governing turnover tax and excise duty applicable in international travel, provides that an exemption from those taxes levied on importation is applicable, within the framework of travel between non-member countries and the Community, to goods contained in the personal luggage of travellers and not exceeding certain limits as to value.

29 The same directive also makes provision for exemption from the same taxes levied on importation and applicable to goods contained in the personal luggage of travellers coming from Member States of the Community, within certain limits as to value, provided that they fulfil the conditions laid down in Articles 9 and 10 of the Treaty and have been acquired subject to the general rules governing taxation on the domestic market of one of the Member States.

30 In Article 4 of the same directive it is provided that, without prejudice to national provisions applicable to travellers whose residence is outside Europe, each Member State is required to set the quantitative limits therein mentioned for exemptions from turnover tax and excise duty of certain goods listed therein (tobacco products, alcoholic beverages, perfumes and toilet waters, coffee and tea). The limits applicable in travel between non-member countries and the Community are not so high as those applicable in travel between Member States.

31 That directive also permits Member States to set lower limits as to value or quantity for the exemption of goods imported by frontier workers and certain other persons.

32 It contains in addition provisions governing the remission of tax by the Member States in respect of goods contained in the personal luggage of travellers leaving a Member State.

33 The recitals to the two directives which supplemented Directive No 69/169 show that the Council adopted them in implementation of the Resolution of the Council and of the Representatives of the Governments of the Member States of 22 March 1971 which provides for a gradual widening of tax exemption granted to individuals when crossing intra-Community frontiers. The Council considered it desirable as a first step that certain common rules applicable to persons residing in the Community should be laid down relating to standard cases of remission of tax at the retail trade stage.

34 In the case of travel between non-member countries and the Community the actual wording of the directive shows that the exemption may be granted only to travellers who arrive in the customs territory of the Community from a non-member country and that in this case the circumstances in which the goods have been acquired are irrelevant to the grant of the exemption.

35 With regard to intra-Community travel Article 2 (4) of the Third Directive amends Directive No 69/169 by adding a provision to the effect that where the travel from one Member State to another involves transit through the territory of a non-member country or begins in a part of the territory of another Member State in which the taxes referred to in the directive are not

chargeable on goods consumed within that territory, the traveller must be able to establish that the goods transported in his luggage have been acquired subject to the general conditions governing taxation on the domestic market of a Member State and do not qualify for any refund of turnover tax and/or excise duty. If the traveller is unable to provide the aforementioned proof he may enjoy only the more restricted exemption provided for in the case of travel between non-member countries and the Community.

36 Both the recitals to and the provisions of the directives in question show that the Council intended gradually to establish a complete system of exemptions from turnover tax and excise duty for goods contained in travellers' personal luggage and that consequently in this field the Member States are left with only the restricted power given to them in the directives to grant exemptions other than those specified in the directives.

37 The reply to the sixth question must accordingly be that:

(a) In the case of travel between non-member countries and the Community the exemption provided for in Directive No 69/169 may be granted only to travellers who arrive in the customs territory of the Community from a non-member country and in this case the circumstances in which the goods have been acquired are irrelevant to the grant of the exemptions;

(b) In the case of travel within the Community, where the journey from one Member State to another involves transit through the territory of a non-member country or begins in a part of the territory of the other Member State in which the taxes to which the directive refers are not chargeable on goods which are consumed within that territory, the traveller must be able to establish that the goods transported in his luggage were acquired subject to the general conditions governing taxation on the domestic market of a Member State and do not qualify for any refund of turnover tax and/or excise duty. If the traveller is unable to provide the aforementioned proof he may enjoy only the more restricted exemption provided for in the case of travel between non-member countries and the Community.

38 The reply to the seventh question must be that in adopting the directives the Council intended gradually to establish a complete system of exemptions from turnover tax and excise duty for goods contained in travellers' personal luggage and consequently in this field the Member States are left with only the restricted power given to them by the directives to grant exemptions other than those specified in the directives.

Third, fifth and eighth questions (remedies conferred upon persons by the regulations and the directives in question)

39 These three questions concern the question whether a person whose interests are adversely affected either by national legislation incompatible with Community law or by the application of an unlawful Community measure may take action before the national courts in order to have measures contrary to Community law declared inoperative.

40 In its order the Finanzgericht states that, according to the case-law of the Bundesverfassungsgericht [Federal Constitutional Court] and of the Bundesverwaltungsgericht [Federal Administrative Court], laws controlling the economy which are passed to further the interests of individual groups and which alter the situation with regard to competition are in breach of the principle of equality if they are not required in the public interest and if the interests of other persons which merit protection are arbitrarily prejudiced. In such a case under German law the person affected has a right of action. Placed in that context, the questions raised by the national court are intended in substance to establish whether that right of action may be exercised in similar conditions within the framework of the Community legal system in particular in the sense that if the economic interests of a person to whom Community law applies are adversely affected by the non-application of a Community provision to a third party, either through the action of a Member State or of the Community authorities that person may institute proceedings before the courts of a Member State in order to compel the national authorities to apply the provisions in question or to refrain from infringing them.

41 It should be remarked first of all that under Article 189 of the Treaty a regulation "shall be binding in its entirety and directly applicable in all Member States". A directive "shall be binding, as to the result to be achieved", but leaves to the national authorities the choice of form and methods. According to the case-law of the Court the binding effect of a directive implies that a national authority may not apply to an individual a

national legislative or administrative measure which is not in accordance with a provision of the directive which has all the characteristics necessary to render possible its application by the court.

42 It follows from these considerations that a person may rely before the national courts on his rights under the regulation.

43 Likewise, a national authority may not apply to a person legislative or administrative measures which are not in accordance with an unconditional and sufficiently clear obligation imposed by the directive.

44 With regard to the right of a trader to request the courts to require the authorities of a Member State to compel a third party to comply with obligations arising from Community rules in a given legal situation in which that trader is not involved but is economically adversely affected by the failure to observe Community law, it must be remarked first of all that, although the Treaty has made it possible in a number of instances for private persons to bring a direct action, where appropriate, before the Court of Justice, it was not intended to create new remedies in the national courts to ensure the observance of Community law other than those already laid down by national law. On the other hand the system of legal protection established by the Treaty, as set out in Article 177 in particular, implies that it must be possible for every type of action provided for by national law to be available for the purpose of ensuring observance of Community provisions having direct effect, on the same conditions concerning the admissibility and procedure as would apply were it a question of ensuring observance of national law.

45 With regard more particularly to Regulation No 3023/77, it should be noted that that regulation in itself does not confer any exemption. It merely conferred upon the national authorities power to grant a restricted exemption. It accordingly follows from the fact that the regulation is invalid that national measures taken on the basis thereof are not in accordance with Community law.

46 The reply to the third, fifth and eighth questions should accordingly be as follows:

"The system of legal protection established by the Treaty, as set out in Article 177 in particular, implies that it must be possible for every type of action provided for by national law to be available before the national courts for the purpose of ensuring observance of Community provisions having direct effect, on the same conditions concerning admissibility and procedure as would apply were it a question of ensuring observance of national law."

Costs

47 The costs incurred by the Government of the Federal Republic of Germany, by the Government of the French Republic, by the Government of the United Kingdom, by the Council of the European Communities and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since the 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 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 Finanzgericht Hamburg, by order of 5 June 1980, hereby rules:

1. **The exemption provided for by Regulation No 1544/69, as last amended by Regulation No 3061/78, applies only to goods contained in the personal luggage of travellers coming from a non-member country. That exemption applies irrespective of the origin of the goods or the place from which they come and of the customs duties and taxes which they have borne prior to their importation into the territory of the Community. However, it is impossible to consider as a traveller coming from a non-member country, within the meaning of the regulation, a person who, during a cruise departing from a port of a Member State, does not call at a non-member country or who makes only a token call there and does not remain there for an appreciable period, that is to say, a period during which he has in fact an opportunity of making purchases.**

2. Regulation No 1544/69 of the Council of 23 July 1969 contains exhaustive rules on the exemption from customs duty of goods contained in the personal luggage of travellers coming from non-3402936oceedings are, in sorestricted005member countries and those rules do not leave Member States any power to grant, in the field covered by the regulation, any exemption wider than those provided for by the regulation.

3. Council Regulation No 3023/77 of 20 December 1977 on certain measures to put an end to abuses resulting from the sale of agricultural products on board ship does not contain an adequate statement of the reasons on which it is based and is accordingly not valid.

4. In the case of travel between non-member countries and the Community, the exemption provided for in Council Directive No 69/169 of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel may be granted only to travellers who arrive in the customs territory of the Community from a non-member country and in this case the circumstances in which the goods have been acquired are irrelevant to the grant of the exemptions.

5. In the case of travel within the Community, where the journey from one Member State to another involves transit through the territory of a non-member country or begins in a part of the territory of the other Member State in which the taxes to which the directive refers are not chargeable on goods which are consumed within that territory, the traveller must be able to establish that the goods transported in his luggage were acquired subject to the general conditions governing taxation on the domestic market of a Member State and do not qualify for any refund of turnover tax and/or excise duty. If the traveller is unable to provide the aforementioned proof he may enjoy only the more restricted exemption provided for in the case of travel between non-member countries and the Community.

6. In adopting Directive No 69/169, and the Second and Third Directives of 12 June 1972 and of 10 December 1978 respectively which supplement it, the Council intended gradually to establish a complete system of exemptions from turnover tax and excise duty for goods contained in travellers' personal luggage. Consequently in this

field the Member States are left with only the restricted power given to them by the directives to grant exemptions other than those specified in the directives.

7. **The system of legal protection established by the Treaty, as set out in Article 177 in particular, implies that is must be possible for every type of action provided for by national law to be available before the national courts for the purpose of ensuring observance of Community provisions having direct effect, on the same conditions concerning admissibility and procedure as would apply were it a question of ensuring observance of national law.**

Mertens de Wilmars Pescatore Mackenzie Stuart Koopmans O'Keeffe

Bosco Touffait Due Chloros

Delivered in open court in Luxembourg on 7 July 1981.3402939e left wiare, in sorestricted8,0085

A. Van Houtte
Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 18 MARCH 1981 [1]

Mr President,
Members of the Court,

1. By an order of 5 June 1980 the Finanzgericht [Finance Court] Hamburg referred to the Court of Justice numerous preliminary questions, eight to be precise, which stem from an action involving somewhat unusual facts. In order to summarize them it is necessary

1 — Translated from the Italian.