JUDGMENT OF THE COURT (First Chamber)

9 September 2004 *

In Case C-72/03,

REFERENCE for a preliminary ruling under Article 234 EC,

from the Commissione tributaria di Massa Carrara (Italy), made by decision of 11 December 2002, registered at the Court on 18 February 2003, in the proceedings brought by

Carbonati Apuani Srl

against

Comune di Carrara,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, A. Rosas, S. von Bahr, R. Silva de Lapuerta and K. Lenaerts (Rapporteur), Judges,

* Language of the case: Italian.

Advocate General: M. Poiares Maduro,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 17 March 2004,

after considering the observations submitted on behalf of:

— Carbonati Apuani, by G. Andreani and R. Diamanti, avvocati,

— the Comune di Carrara, by A. Calamia, F. Batistoni Ferrara, L. Buselli, G.M. Roberti and A. Franchi, avvocati,

— the Italian Government, by M. Fiorilli, avvocato dello Stato,

— the Commission of the European Communities, by X. Lewis and R. Amorosi, acting as Agents, and G. Bambara, avvocato,

after hearing the Advocate General's Opinion at the sitting on 6 May 2004,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 23 EC, 81 EC, 85 EC and 86 EC.

2 The reference was made in the course of proceedings challenging the compatibility with Community law of a charge levied by the Comune di Carrara on marble excavated within its territory on its being transported across the boundaries of municipal territory.

The relevant provisions of Italian law

3 The single article of Law No 749 of 15 July 1911, as amended by Article 55(18) of Law No 449 of 27 December 1997 (GURI No 302, 30 December 1997), provides:

'There shall be established in favour of the Comune di Carrara a tax on marble excavated within, and transported from, its territory. That tax shall be applied and collected by the Comune when the marble leaves its territory on the basis of a special regulation, to be decided upon by the Consiglio Comunale [municipal council] after consultation of the social partners.

Every year, when setting the budget for the Comune, the Consiglio Comunale shall fix the rate at which that tax shall be levied in the following year. However, when the Comune has to meet ongoing commitments to be paid from or guaranteed by the tax yield, the Consiglio Comunale may fix in advance the minimum amount of that tax for several years.

The Comune may, following a decision of the Council, in accordance with municipal and provincial law, and subject to approval by the Giunta provinciale amministrativa [Administrative Provincial Council], provide that the tax yield should be allocated, in part, to discharge the costs or charges of the construction and operation of the port of Marina di Carrara, where appropriate pursuant to Law No 50 of 12 February 1903 and, in part, to underwrite the subscriptions of the workers in the marble industry to the Cassa nazionale di previdenza per gli operai [National Workers' Insurance Fund]. ...'

4 Article 2(2)(b) of Decree-Law No 8 of 26 January 1999, converted, with amendments, into Law No 75 of 25 March 1999 (GURI No 72 of 27 March 1999), provides:

'The single article of Law No 749/1911 ... shall be interpreted as meaning that the tax ... applies to marble and its derivatives and is to be decided in relation to the municipality's overheads directly or indirectly arising from activities in the local marble industry.'

5 On the basis of those provisions the Comune di Carrara imposes, by council regulation, a tax on marble excavated in its territory and transported out of that municipal territory. At the material time, the rate of tax was fixed at ITL 8 000 per tonne for blocks of marble.

6 By contrast, marble excavated and used within the municipal territory is exempt from the tax. In addition, the order for reference states that exemptions may also be provided for in favour of marble used or worked in municipalities neighbouring the Comune di Carrara.

The dispute in the main proceedings and the question referred

7 The applicant in the main proceedings challenged before the Commissione tributaria provinciale di Massa Carrara the tax notice by which the Comune di Carrara assessed the marble tax payable by the applicant for the month of May 2001. Before that court it raised the question of the compatibility of that tax with the provisions of the EC Treaty.

8 The Commissione tributaria provinciale di Massa Carrara — taking the view that the marble tax could be regarded as a customs duty or as a charge having effect equivalent to such a duty and that application of that tax could distort competition — decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Are the rules laid down in Italian Laws No 749 of 15 July 1911, No 449 of 27 December 1997 and in Decree-Law No 8 of 26 January 1999, as converted with amendments into Law No 75/1999 — imposition of the marble tax in the Comune di Carrara — compatible with Articles 23, 81, 85 and 86 of the Treaty establishing the European Community, in the version in force following amendment by the Treaty of Amsterdam, which was ratified in Italy by Law No 209/1998?'

On the admissibility of the question referred for a preliminary ruling

9 According to the Commission, the order for reference does not set out sufficiently clearly the factual and legal background to the question referred. It is therefore of the view that the question is inadmissible.

10 Here it has to be pointed out that the need to provide an interpretation of Community law which will be of use to the national court makes it necessary that the national court should define the factual and legislative context of the question it is asking or, at the very least, explain the factual circumstances on which that question is based (see, inter alia, the judgment in Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraph 6; the orders in Case C-157/92 *Banchero* [1993] ECR I-1085, paragraph 4; Joined Cases C-128/97 and C-137/97 *Testa and Modesti* [1998] ECR I-2181, paragraph 5; and Case C-9/98 *Agostini* [1998] ECR I-4261, paragraph 4).

11 The Court has likewise held that it is essential that the national court should give at the very least some explanation of the reasons for the choice of the Community provisions which it requires to be interpreted and on the link it establishes between those provisions and the national legislation applicable to the dispute (order in Case C-116/00 *Laguillaumie* [2000] ECR I-4979, point 16).

12 In the circumstances of this case, it must be stated that the Court has enough information available to it to enable it to give a reply that may be of some use to the national court, in so far as the question referred turns on the interpretation of Article 23 EC. As a matter of fact, first, the order for reference specifically sets out the legislative framework of the marble tax which, according to the national court, could be regarded as a customs duty or as a measure having equivalent effect. Second, with regard to the factual context, the order for reference makes it clear that

the applicant in the main proceedings, which transported Carrara marble out of the municipal territory, has challenged before the national court the lawfulness of the tax notice by which the Comune assessed the marble tax imposed on it for the month of May 2001.

13 In contrast, as the Advocate General has pointed out in paragraphs 18 to 21 of his Opinion, the national court has supplied no useful information concerning the connection it makes between Articles 81 EC, 85 EC and 86 EC and the national legislation applicable to the dispute. All it says is that the tax may affect competition, without, however, explaining what link there could be between the marble tax and supposedly anti-competitive conduct on the part of undertakings.

14 In those circumstances, the reference for a preliminary ruling is admissible only in so far as it concerns the interpretation of Article 23 EC.

On the question referred

15 By its question, the national court seeks in substance to ascertain whether a tax such as the marble tax, levied solely in one municipality of a Member State and imposed on one class of goods — namely, marble excavated in that municipality's territory — when such goods are transported out of that municipality, constitutes a charge having effect equivalent to a customs duty.

16 The Italian Government and the Comune di Carrara maintain that the marble tax is applicable without distinction to marble exported to other Member States and to marble sent to other parts of Italy. Since the tax is not imposed solely on goods

intended for export, they argue that it cannot be regarded as falling within the ambit of Article 23 EC. At the very most, the tax at issue constitutes internal taxation for the purposes of Article 90 EC, compatible with the Treaty because it is imposed in the same manner and at the same stage of marketing on marble processed and marketed in Italy and on marble exported to other Member States (see Case C-90/94 *Haahr Petroleum* [1997] ECR I-4085, and Case C-234/99 *Nygård* [2002] ECR I-3657).

17 It ought here to be borne in mind that the Court has previously held that a charge does not constitute a charge having effect equivalent to a customs duty, but internal taxation within the meaning of Article 90 EC, if it relates to a general system of internal dues applied systematically to categories of products in accordance with objective criteria irrespective of the origin or destination of the products (Case 90/79 *Commission* v *France* [1981] ECR 283, paragraph 14, and Case C-163/90 *Legros and Others* [1992] ECR I-4625, paragraph 11).

18 In the circumstances of the present case, it is to be observed that the tax at issue is applied to Carrara marble when it is transported across the territorial boundaries of the Comune di Carrara. The chargeable event thus consists of the crossing of those boundaries. Marble used within the Comune di Carrara is exempt from the tax, precisely because it is used locally and not on account of objective criteria that might apply equally to marble transported out of the municipality. Because of those factors, the tax at issue cannot be described as internal taxation within the meaning of Article 90 EC (see *Legros*, paragraph 12).

19 The next question to be considered is whether a tax such as the marble tax constitutes a charge having effect equivalent to a customs duty for the purposes of Article 23 EC.

20 As the Court has held before on many occasions, any pecuniary charge, however small, and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect, within the meaning of Article 23 EC (see Case 158/82 *Commission* v *Denmark* [1983] ECR 3573, paragraph 18; *Legros and Others*, paragraph 13; Case C-426/92 *Deutsches Milch-Kontor* [1994] ECR I-2757, paragraph 50; Joined Cases C-485/93 and C-486/93 *Simitzi* [1995] ECR I-2655, paragraph 15; and Case C-347/95 *UCAL* [1997] ECR I-4911, paragraph 18).

21 The Italian Government and the Comune di Carrara argue, nevertheless, that the prohibition laid down in Article 23 EC, which is repeated again in Article 25 EC, must refer only to customs duties and charges having equivalent effect in trade 'between Member States'.

22 On this point it ought to be recalled that the justification for the prohibition of customs duties and charges having equivalent effect is that any pecuniary charges imposed on goods by reason of the fact that they cross a frontier constitutes an obstacle to the movement of such goods (see, in particular, Joined Cases 2/69 and 3/69 *Brachfeld and Chougol* [1969] ECR 211, point 14, and Joined Cases C-363/93, C-407/93 to C-411/93 *Lancry and Others* [1994] ECR I-3957, paragraph 25). The very principle of a customs union, as provided for by Article 23 EC, requires the free movement of goods to be ensured within the union generally, not in trade between Member States alone, but more broadly throughout the territory of the customs union. If Articles 23 EC and 25 EC make express reference only to trade between Member States, that is because the framers of the Treaty took it for granted that there were no charges exhibiting the features of a customs duty in existence within the Member States.

23 Again, it is to be borne in mind that in 1986 the Single European Act added to the EEC Treaty Article 8a (then Article 7a of the EC Treaty, and now, after amendment, Article 14 EC), which set as an aim the establishment of an internal market before 31

December 1992. Article 14(2) EC defines the internal market as 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured', without drawing any distinction between inter-State frontiers and frontiers within a State.

24 Since Article 23 EC et seq. must be read in conjunction with Article 14(2) EC, the absence of charges — whether between States or within a State — exhibiting the features of a customs duty is a precondition essential to the realisation of a customs union in which the free movement of goods is ensured.

25 The Court has ruled to that effect before in *Legros and Others*, paragraph 18, *Lancry and Others*, paragraph 32, and *Simitzi*, paragraph 17, holding that a charge imposed when goods cross a territorial boundary within a Member State constitutes a charge having effect equivalent to a customs duty.

26 It must moreover be emphasised that the issue raised in the case in the main proceedings does not appear to be a situation in which all the components are wholly confined to one Member State. Indeed, it has been established that the marble tax is imposed on all marble from Carrara that crosses that municipality's territorial boundaries, no distinction being made between marble the final destination of which is in Italy and marble destined for other Member States. By its nature and terms, the marble tax therefore impinges on trade between Member States (see *Lancry and Others*, paragraph 30; see, to the same effect, with regard to measures having effect equivalent to a quantitative restriction, Case 286/81 *Oosthoek's Uitgeversmaatchaapij* [1982] ECR 4575, paragraph 9; Joined Cases C-277/91, C-318/91 and C-319/91 *Ligur Carni and Others* [1993] ECR I-6621, paragraphs 36 and 37; Case C-254/98 *TK-Heimdienst* [2000] ECR I-151, paragraphs 27 to 31; and Case C-448/98 *Guimont* [2000] ECR I-10663, paragraphs 21 to 23).

27 Nevertheless, the Comune di Carrara argues that various facts militate against the classifying of the marble tax as a charge having an effect equivalent to a customs duty. On this point it observes that the tax at issue in the main proceedings, unlike the charge concerned in *Legros and Others*, *Lancry and Others* and *Simitzi*, is levied by a territorial administrative authority of no great size, and that it is imposed on one class of goods, viz., Carrara marble, and not on all goods crossing the municipality's territorial boundaries.

28 Those arguments cannot be accepted. Indeed, it must be borne in mind that, just like Article 25 EC, Article 23 EC prohibits any pecuniary charge, albeit minimal, that might create an impediment to trade in the form of customs duty, unilaterally imposed by a competent public authority of a Member State (see paragraph 20 above). For the purposes of classifying a tax as a charge having effect equivalent to a customs duty, the size of the territorial administrative authority which levied the tax is therefore immaterial, in so far as that tax constitutes an obstacle to trade in the internal market.

29 In addition, given that Articles 23 EC and 25 EC seek to abolish all obstacles to trade created by customs duties, it is irrelevant that the tax in question is imposed on one specific category of goods (see Case C-109/98 *CRT France International* [1999] ECR I-2237, and Joined Cases C-441/98 and C-442/98 *Michaïlidis* [2000] ECR I-7145) or on all goods crossing the territorial boundaries of the authority concerned (*Legros and Others* and *Lancry and Others*).

30 In addition, the defendant in the main proceedings stresses the particular purpose of the tax at issue in the main proceedings. The revenue from the tax is intended to cover the expenses borne by the Comune di Carrara as a consequence of the marble industry's activities in its territory. The tax responds to an interest of all operators in that industry, including those that market the goods concerned abroad.

31 The Court has held before that customs duties and charges having equivalent effect are prohibited regardless of the purpose for which they were introduced and the destination of the revenue from them (Case 24/68 *Commission* v *Italy* [1969] ECR 193, paragraph 7, and *Simitzi*, paragraph 14). None the less, the Court has accepted that a charge which represents payment for a service actually rendered to an economic operator, of an amount in proportion to that service, does not constitute a charge having an effect equivalent to a customs duty (Case 63/74 *Cadsky* [1975] ECR 281, paragraph 8; Case 158/82 *Commission* v *Denmark* [1983] ECR 3573, paragraph 19; and *CRT France International*, paragraph 17).

32 That is not, however, the case in the present circumstances. As a matter of fact there is at best an indirect link between the tax at issue and the services provided for the operators on which the tax is imposed. The Comune di Carrara's observations make it clear that that charge is intended, in particular, to cover the costs incurred by the municipal authority in repairing and maintaining the road network, installing infrastructure for the harbour, the upkeep of a museum, research into safety in quarries, training activities in the field of mining engineering, or social benefits for workers. Some of those services do not specifically benefit the operators that transport marble out of the territory of the Comune di Carrara.

33 With regard to the argument that 'local' operators paying municipal taxes are already contributing to the expenses which the marble industry causes the municipal authority to bear, it has to be recalled that the chargeable event in respect of this tax occurs when marble crosses the municipality's territorial boundaries, irrespective of whether the operator concerned is subject to municipal taxes.

34 In any case, the fact that a tax imposed on the crossing of a frontier between States or within a State was introduced in order to compensate for a local charge applying to similar domestic products is not sufficient to exempt that tax from being

classified as a charge having equivalent effect. If it were, it would make the prohibition on charges having an effect equivalent to customs duties empty and meaningless (see, to that effect, Case 132/78 *Denkavit* [1979] ECR 1923, paragraph 8, and *Michaïlidis*, paragraph 23).

35 It follows therefore from all the foregoing that a tax proportionate to the weight of goods, levied in one municipality of a Member State only and imposed on one class of goods when those goods are transported across the territorial boundaries of that municipality, constitutes a charge having effect equivalent to a customs duty on exports within the meaning of Article 23 EC, despite the fact that the tax is imposed also on goods the final destination of which is within the Member State concerned.

On the temporal effects of this judgment

36 Supposing the Court were to consider a tax such as that at issue in the proceedings to be incompatible with the relevant provisions of the Treaty, the Comune di Carrara asks it to limit the temporal effects of this judgment. It refers, on the one hand, to uncertainty concerning the provisions of law applicable to the tax in question and, on the other, to the ensuing serious financial consequences for the Comune di Carrara's budget if the effects of the judgment were not limited in time.

37 It is to be observed that it is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict for any person concerned the opportunity of relying upon the provisions thus interpreted with a view to calling in question legal relationships established in good faith (*Legros and Others*, paragraph 30, and Case C-104/98 *Buchner and Others* [2000] ECR I-3625, paragraph 39).

38 In this respect, the Court found in *Legros and Others* that, on grounds of overriding considerations of legal certainty, the Treaty provisions relating to charges having an effect equivalent to customs duties on imports could not be relied on in support of claims for refunds of charges such as dock dues paid before the date of that judgment (16 July 1992), except by claimants who had, before that date, initiated legal proceedings or raised an equivalent claim.

39 Now, the tax in question — as a tax imposed on the crossing of a territorial boundary within a Member State — must be treated as a charge of the same kind as the dock dues at issue in *Legros and Others*. It may, therefore, be conceded that until 16 July 1992 the Comune di Carrara could reasonably believe that the duty in question was in conformity with Community law.

40 The same considerations of legal certainty must therefore apply here and consequently the temporal limitation set by the Court in *Legros and Others* must also be held to apply to claims for refunds of sums levied by way of the tax at issue in the main proceedings.

41 In contrast, there are no grounds for limiting the effects of this judgment after 16 July 1992, the date of the judgment in *Legros and Others*. After that date, the Comune di Carrara must in fact have been aware that the contested duty was incompatible with Community law.

42 In conclusion, it must be stated that the provisions of the Treaty relating to charges having an effect equivalent to customs duties cannot be relied on in support of claims for refunds of sums levied by way of the tax at issue before 16 July 1992, except by claimants who had, before that date, initiated legal proceedings or raised an equivalent claim.

Costs

43 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) rules as follows:

1. **A tax proportionate to the weight of goods, levied in one municipality of a Member State only and imposed on one class of goods when those goods are transported beyond the territorial boundaries of that municipality, constitutes a charge having effect equivalent to a customs duty on exports within the meaning of Article 23 EC, despite the fact that it is imposed also on goods the final destination of which is within the Member State concerned.**

2. **Article 23 EC cannot be relied on in support of claims for refunds of sums levied by way of the marble tax before 16 July 1992, except by claimants who had, before that date, initiated legal proceedings or raised an equivalent claim.**

Signatures.