OPINION OF ADVOCATE GENERAL TESAURO
delivered on 26 April 1994 *

Mr President,
Members of the Court,

1. This case is concerned with the question whether a compulsory contribution levied by Belgium on the export of potatoes is compatible with Articles 9 and 12 of the Treaty.

2. The basis for the rules at issue is the Law of 27 December 1938, subsequently amended by the Law of 11 April 1983, which established the Nationale Dienst voor Afzet van Land-en Tuinbouwprodukten — NDALTP (National Board for the Sale of Agricultural and Horticultural Products) ('the National Board') whose task is to promote the sale at home and abroad of agricultural, horticultural and fishery products. Under Article 4(c) of that law, the National Board may levy a compulsory contribution in respect of each product or group of products on natural and legal persons who produce, process, transport, sell or market agricultural, horticultural or fishery products.

Pursuant to that provision, the Belgian authorities introduced — by Royal Decree of 15 May 1986, as amended by Royal Decree of 14 July 1987 — compulsory contributions for the purpose of financing the National Board's promotion of sales. Article 4(4) provides, in particular, that a contribution should be levied on potato exporters of BFR 2 per 100 kg of potatoes exported. It is that contribution which is at issue in the present case.

3. Lamaire is a company which trades in potatoes, with a substantial export business. In the course of its business, Lamaire paid with respect to the 1986 and 1987 reference periods the contributions relating to potato exports, provided for by Article 4(4) of the Royal Decree of 15 May 1986. It refused to pay the contribution for the 1988 reference period.

Lamaire subsequently brought legal proceedings, claiming that the contribution itself is incompatible with Articles 9 and 12 of the Treaty and, accordingly, seeking reimbursement of the contributions paid. The court of first instance dismissed the case.

4. The appellate court recognized the prohibition on charges having equivalent effect to import and export duties, enshrined in Articles 9 and 12 of the Treaty, as having direct

* Original language: Italian.

effect. On that basis it decided to stay the proceedings and to ask the Court whether Articles 9 and 12 of the Treaty preclude the levying of a compulsory contribution on the export of an agricultural product, such as the contribution of BFR 2 per 100 kg of potatoes exported, provided for by Article 4(4) of the Royal Decree of 15 May 1986 as amended by the Royal Decree of 14 July 1987.

5. In that connection, it should first of all be recalled that, as the Court has consistently held, the prohibition on charges having equivalent effect to customs duties on imports and exports encompasses 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, even if such a charge is not imposed for the benefit of the State, is not discriminatory or protective in effect or if the product on which the charge is imposed is not in competition with any domestic product. [1]

The Court has also held [2] that such a charge escapes that classification if it relates to a general system of internal dues applied systematically and in accordance with the same criteria to domestic products, and imported or exported products alike, [3] if it represents payment for a service actually and individually rendered to the trader of a sum in proportion to that service [4] or, in certain circumstances, if it is levied on account of inspections carried out for the purpose of fulfilling obligations imposed by Community law. [5]

6. In the present case, it should first be pointed out that it is common ground that the disputed contribution is a pecuniary charge which has been imposed unilaterally by one Member State in respect of a specific product by reason of the fact that it has been exported. Moreover, it follows from the abovementioned judgment in *Sociaal Fonds Diamantarbeiders* that the fact that a compulsory contribution charged on the importation or exportation of goods was levied not on behalf of the State but on behalf of another body separate from the State is quite immaterial for the purposes of deciding whether such a contribution should be classified as a charge having equivalent effect within the meaning of Articles 9 and 12 of the Treaty. Thus the compulsory contribution in respect of the exportation of potatoes, levied on behalf of the National Board pursuant to Article 4(4) of the Belgian Royal Decree of 15 May 1986, must be regarded as a charge having equivalent effect to a customs duty on exports and as such prohibited by Articles 9 and 12 of the Treaty.

7. Secondly, the contribution in dispute does not fall within any of the exceptions envisaged by the case-law cited. In the first place, it is common ground that the contribution in question was not levied on account of

1 — Joined Cases 2 and 3/69 *Diamantarbeiders* v *Brachfeld* [1969] ECR 211.

2 — Case 18/87 *Commission* v *Germany* [1988] ECR 5427.

3 — Case 132/78 *Denkavit* v *France* [1979] ECR 1923.

4 — Case 158/82 *Commission* v *Denmark* [1983] ECR 3573; and Case 340/87 *Commission* v *Italy* [1989] ECR 1483.

5 — Case 46/76 *Bauhuis* v *Netherlands* [1977] ECR 5.

inspections carried out in order to fulfil obligations imposed by Community law. It is also not disputed that the contribution is applied only to *exports* of the product in question and thus does not relate to a general system of *internal* dues applied systematically and in accordance with the same criteria, irrespective of the origin, exporting country or destination of the goods subject to it. Lastly, it is apparent from the order for reference and from the observations submitted to the Court that the purpose of the contribution is to finance generally the National Board's promotion of sales and that the charge does not therefore represent consideration for a 'specific or individual benefit provided to the trader', that is to say, consideration for a 'specific service actually and individually rendered to the trader, in an amount proportionate to that service'. [6]

8. One final point remains to be made. The objective of Articles 9 and 12 of the Treaty is solely to prohibit charges having equivalent effect to customs duties with respect to trade 'between Member States', from which it follows that those provisions do not concern the importation (or the exportation) of products coming from (or destined for) *non-member countries*. [7] It follows that Articles 9 and 12 of the Treaty do not preclude the imposition of a compulsory contribution, such as the contribution at issue, in so far as it is levied on products exported to non-member countries and not to other Member States. In the present case, it is for the national court to ascertain to what extent Lamaire's exports were destined for other Member States or to non-member countries, and thus to establish to what extent Lamaire is liable to pay the contribution.

Conclusion

9. I therefore propose that the Court give the following answer to the question submitted by the national court:

Articles 9 and 12 of the Treaty preclude the levying of a compulsory contribution in respect of the exportation of an agricultural product, such as the charge of BFR 2 per 100 kg of potatoes exported, provided for in Article 4(4) of the Royal Decree of 15 May 1986, as amended by the Royal Decree of 14 July 1987, in so far as that contribution is levied on exports to other Member States.

6 — Case 340/87, cited above.

7 — Case 148/77 *Hansen* v *Hauptzollamt Flensburg* [1978] ECR 1787.