JUDGMENT OF THE COURT
16 JUNE 1966[1]

Federal Republic of Germany v Commission of the European Economic Community[2]

Joined Cases 52 and 55/65

Summary

1. *Customs duties — Charges having equivalent effect — Concept (EEC Treaty, Article 13)*

2. *Customs duties — Charges having equivalent effect — Elimination — Obligations of Member States — Nature (EEC Treaty, Article 13)*

3. *Customs duties — Charges having equivalent effect — Elimination — Time-table — Detailed rules of progression — Powers of the Commission (EEC Treaty, Articles 13 and 14)*

4. *European Economic Community — Legal system of the Community — Community institution — Failure to fulfil its obligations — Member State — Retaliatory measures — Prohibition*

1. The object of the provisions of Article 13 in their entirety is to prohibit all measures by Member States taken by a unilateral decision and not under Community procedures, which, whatever they are called and by whatever means they have been introduced, have, at the time of importation, the same discriminating and protective effects as customs duties.
   Cf. para. 4, summary, Joined Cases 2 and 3/62, [1962] E.C.R. 425.
2. Since Article 13 is a fundamental provision for establishing the free movement of goods, it lays down an essential legal principle and consequently the only possible exceptions are those which on a strict construction of the Article can clearly be allowed.
   Cf. para. 4, summary, Joined Cases 2 and 3/62 [1962] E.C.R. 425.
3. The obligation placed upon the Commission to abolish charges having equivalent effect in accordance with a particular timetable does not preclude it from determining itself the procedure for such progressive abolition.
4. Any possible failure by a Community institution to fulfil its obligations towards other Member States cannot exempt one of them from performing the obligations which are legitimately placed upon it by measures taken in application of the Treaty.
   Cf. para. 1, summary, Joined Cases 90 and 91/63, Rec. 1964, p. 1221.

In Joined Cases 52 and 55/65

FEDERAL REPUBLIC OF GERMANY, represented by Ulrich Everling, Senior Counsellor in the Federal Ministry of Economic Affairs in Bonn, acting as Agent, with

1 — Language of the Case: German.
2 — CMLR.

an address for service in Luxembourg at the Chancery of the Embassy of the Federal Republic of Germany, 3 boulevard Royal,

applicant,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by Hubert Ehring, Legal Adviser of the European Executive, acting as Agent, with an address for service in Luxembourg at the office of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application

(a) *In Case 52/65*
for the annulment of the Commission's directive of 16 June 1965 relating to the determination of the time-table for the abolition of the charge imposed by the Federal Republic of Germany on the importation of sheep for slaughter and mutton originating in other Member States;

(b) *In Case 55/65*
for the annulment of the Commission's directive of 28 July 1965 relating to the determination of the time-table for the abolition of the charge imposed by the Federal Republic of Germany on the importation of all agricultural products and foodstuffs subject to import licences originating in other Member States,

THE COURT

composed of: Ch. L. Hammes, President, (Rapporteur), L. Delvaux and W. Strauß, Presidents of Chambers, A. M. Donner, A. Trabucchi, R. Lecourt and R. Monaco, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts of the case may be summarized as follows:

(a) *Case 52/65*

As the Community has not set up a common organization of the markets in sheep for slaughter and in mutton, trading in these products in the Federal Republic of Germany is subject to the national market regulations laid down in the Law of 25 April 1951 relating to trading in live-stock and meat (Bundesgesetzblatt I, p. 272).

Within the framework of a national plan for food supplies the Federal Minister for Food, Agriculture and Forests determines each year the quantities of these products available from home production and the quantities to be imported in order to meet the total demands. To the extent to which it is necessary arrangements are made inviting importers to tender for imports: imports are subject to licences. The issue of import licences falls within the jurisdiction of the Außenhandelsstelle für Erzeugnisse der Ernährung und Landwirtschaft created by the Law of 17 December 1951 (Bundesgesetzblatt I, p. 967).

For the importation of sheep for slaughter and mutton the Einfuhr- und Vorratsstelle für Schlachtvieh, Fleisch und Fleischerzeugnisse, which is under the jurisdiction of the Federal Minister for Food, Agriculture and Forests, performs the essential tasks of making regulations for the market and for intervention measures.

Independently of the customs formalities, the importers have to offer the products in question for sale to the Einfuhr- und Vorratsstelle. This organization is authorized to buy the products offered for sale without being under any obligation to do so. If it does not avail itself of the right to take the products, they cannot be put on the market or used in any other way inside the territory of the Federal Republic of Germany. If the Einfuhr- und Vorratsstelle accepts responsibility for the products which it is offered, it can buy them, should the market situation make this necessary, in accordance with the directives of the Federal Minister for Food, Agriculture and Forests with the object of creating stocks to ensure a steady flow of supplies and to eliminate as far as possible fluctuations of supplies on the market. The Einfuhr- und Vorratsstelle can also, and this is the normal practice, permit the importer itself to introduce the products by formally accepting responsibility for them and putting them on the home market; when it grants such permits, it can make use of its right to subject them to certain conditions, for example by stating when the products are to be delivered, in which regions they are to be distributed and how they are to be used.

Acceptance by the Einfuhr- und Vorratsstelle of responsibility for the products is an essential condition precedent to their importation and their clearance by customs.

In order to meet its administrative expenses the Einfuhr- und Vorratsstelle is entitled to levy on importers a charge of 0.40 DM per 100 kg on products offered to it for purchase. Under the Regulation for charges by the Einfuhr- und Vorratsstelle of 3 September 1951 (Bundesanzeiger, No 178, 1951), as amended by Regulation of 16 August 1957 (Bundesanzeiger, No 159, 1957) the rates are fixed at 0.15 DM per 100 kg of sheep for slaughter and at 0.25 DM per 100 kg for mutton.

On 16 June 1965 the Commission of the European Economic Community sent the applicant a directive 'referring to the determination of the time-table for the abolition of the charge imposed by the Federal Republic of Germany on the importation of sheep for slaughter and mutton originating in other Member States'. This directive was brought to the notice of the Federal Government by a letter from the Commission of 18 June 1965: it was published in the Official Journal of the European Communities No 120 of 5 July 1965, p. 2074/65.

The directive calls upon the applicant to abolish the charges in question by successive

reductions (60% on 1 January 1966, 100% at the latest by the date when the customs duties applied between Member States have to be abolished.)

(b) *Case 55/65*

In the Federal Republic of Germany the Außenhandelsstelle für Erzeugnisse der Ernährung und Landwirtschaft, later reorganized and named 'Bundesamt für Ernährung und Forstwirtschaft' and entrusted with certain additional tasks, was exercising at the time when the present dispute arose certain centralized administrative functions, which are described below, whenever agricultural products were imported and exported.

It was the central agency authorized to issue import and export licences for agricultural products which had not been liberalized; there was a restriction on the amounts of such products to be imported and in addition the Außenhandelsstelle carried out checks whenever liberalized products were imported. Its main task was to issue import licences to the extent necessary having regard to the provisions applying at that time to a limited number of agricultural products, for which there were still no common organizations of the markets. The main products consisted of certain feedingstuffs, sheep and mutton, fish, vegetable oils and fats, sugar, seeds, cut flowers, wines, various kinds of fruit and vegetables as well as preserved fruit and vegetables.

The work carried out by the Außenhandelsstelle when issuing import licences included a large number of formalities which varied according to the product and the procedure for granting the licence. In general import licences were granted following an invitation to tender. Before publishing an invitation to tender the Außenhandelsstelle had to ascertain to what extent there were any existing trade agreements providing opportunities for importation. It also ascertained whether any additional imports could be authorized without damaging the legitimate interests of domestic producers. Having decided the amount of products to be covered by the invitation to tender the Außenhandelsstelle had to decide what procedure for calling for tenders should be adopted. The procedure to be adopted depended upon the number of persons who were likely to tender, on whether the number of tenders would exceed the import quota, on the trade customs of the various types of businesses interested in tendering which had to be taken into account, whether the imports would be spread over a relatively long period, whether an accumulation of the product within a short period of time combined with a saturation of the domestic market was to be feared and what other economic data ought to be taken into consideration.

It was after considering these points that the Außenhandelsstelle eventually adopted the following procedures *inter alia* for inviting tenders, which had nevertheless to be adapted to the economic necessities of the moment and so arranged that in dealing with the amounts authorized importers could enjoy the maximum possible commercial freedom: procedures covering the reference period, renewal of licences, visas, unloading checks, final offers, the imposing of special conditions, invitations to tender when all licences are granted, invitations to tender with no restrictions, special procedures (imports for trade fairs, small imports, making goods available for the home markets, special purposes)

In the case of all the applications for the grant of import licences, whatever the procedure it adopted, the Außenhandelsstelle scrutinized them to ascertain whether they had been submitted in accordance with the formalities and within the prescribed time-limit and whether they complied with the conditions applicable to invitations to tender or to the special procedure (justification of the application); if necessary it checked the evidence in support of the application.

The Außenhandelsstelle levied charges whenever, having regard to the stage reached in the liberalization of trade, it still had to grant import licences.

The rate of the charges, which at the time of the entry into force of the EEC Treaty on 1 January 1958 was 0.2% of the value of the amount of products covered by the import licence—for a series of products which, as a general rule, are imported as goods in bulk

the rate was only 0.02%—was reduced from 1 April 1958 to 0.15% or 0.015% respectively.
On 28 July 1965 the Commission of the European Economic Community sent the applicant a directive 'referring to the determination of the time-table for the abolition of the charge imposed by the Federal Republic of Germany on the importation of all agricultural products and foodstuffs subject to import licences originating in other Member States'. This directive was notified to the Federal Republic by a letter from the Commission of 29 July 1965; it was published in the Official Journal of the European Communities No 143 of 7 August 1965, pp. 2437–2438/65.
The directive calls upon the applicant to abolish the charges in question by successive reductions (60% on 1 January 1966, 100% at the latest by the date when the customs duties between Member States have to be abolished).

II — Conclusions of the parties

The *applicant* claims that the Court should:

(a) *In Case 52/65*

annul the directive of the Commission of the European Economic Community of 16 June 1965 addressed to the Federal Republic of Germany;

(b) *In Case 55/65*

annul the directive of the Commission of the European Economic Community of 28 July 1965 addressed to the Federal Republic of Germany;

(c) *In both Cases*

order the defendant to pay the costs.'

The *defendant* contends in both cases that the Court should:
'dismiss the application and order the defendant to pay the costs.'

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

A — *Ultra vires actions and infringement of the Treaty*

The applicant emphasizes that the disputed directives are based on Articles 13 and 14 of the EEC Treaty, pursuant to which the Commission may issue directives to determine the time-table for the abolition of charges having an effect equivalent to customs duties charged on imports between Member States. In doing so it must be guided by the rules laid down in Article 14 (2) and (3); it therefore only has in this respect power to determine the time-table for the abolition by Member States of the charges having equivalent effect to customs duties on imports. According to the applicant the charges which are the subject of the disputed directives and which are levied on importers availing themselves of the services of the Einfuhr- und Vorratstelle (Case 52/55) and the Außenhandelsstelle (Case 55/65) are not charges having an effect equivalent to custome duties on imports. The defendant has therefore no authority to issue such directives and has exceeded its powers, since under the first paragraph of Article 189 of the EEC Treaty, it may only issue directives in accordance with the provisions of the Treaty.
At the same time through a mistaken interpretation of Articles 13 and 14 of the Treaty on which it bases the contested directives it has infringed the Treaty.
It is clear both from national law and the decisions of the Court that it is not enough for an import to be linked to some obligatory financial payment to establish that there is a charge having an effect equivalent to a customs duty within the meaning of Article 13(2); it is necessary, on the contrary, to take into consideration the reason, the objective and also the amount and the effects of this obligatory financial payment. The Treaty does not have in mind any general effect; it is necessary to be able to establish that the charge has 'the effect of a customs duty' in the sense that its object is either protection or discrimination.
The effect of an import duty is the protection of national production or, in the exceptional case of a revenue-producing import duty, the collection of a sufficiently large amount of revenue to play a significant part in the

financing by a state of its expenditure. On the other hand the purpose and effect of an administrative charge is to offset the financial costs of certain special operations by the administration which have to be performed for specific reasons; it has an entirely different object from that of protection and discrimination which is the feature of a customs duty.

A considerations of all these various distinguishing criteria for the examination of the charges levied by the Einfuhr- und Vorratsstelle and by the Außenhandelsstelle establishes that they are levied for a specific service undertaken by the administration and are not a measure having the same effect as a customs duty.

The Einfuhr- und Vorratsstelle levies this charge because under the German system for the organization of the markets for sheep for slaughter and for mutton, the importer has to enter into an agreement with the Einfuhr- und Vorratsstelle that he will accept responsibility for delivery of the products. For this purpose the Einfuhr- und Vorratsstelle has in each case to carry out various investigations and take various decisions; it therefore renders services to the importer in consideration of which the charge in question is levied.

The charges are levied by the Außenhandelsstelle für Erzeugnisse der Ernährung und Landwirtschaft because in the present state of the common agricultural policy the importation of a certain number of agricultural products originating in other Member States is still restricted and, as a result, subject to the grant of import licences The grant or refusal of import licences is the final outcome of various investigations and other operations performed by the Außenhandelsstelle for the purpose of applying the system of restricted imports, which is still necessary for the time being and moreover authorized by the EEC Treaty. The charges in question levied by the Außenhandelsstelle are the consideration for the administrative work arising out of the applications lodged by importers.

The fact that the work of the administration in this field is also performed in the public interest does not change the nature of these charges. The argument that even the regulations on which the operations giving rise to the charges are based must procure a personal benefit for the interested party is wrong. The interest which an individual derives from the steps taken by the administration consists of the removal of all obstacles to the importation of the products, which makes it necessary for the administration to take these steps; it is legitimate to impose a charge on the individual concerned in consideration of the tasks undertaken by the administration which are in his interest.

The applicant also maintains that the charges in question in the present case do not have an effect equivalent to a customs duty because their actual effects are not comparable with those of a customs duty; they cannot contribute to the protection of the domestic market or, as a fiscal tax does, produce a considerable amount of revenue for the general finances of the state.

It appears from the small amounts raised by these charges that they do not on any reckoning have an effect equivalent to a customs duty in the sense that anyone can seriously maintain that they are intended to protect home-produced products or give them a competitive advantage over imported products; on the contrary the modest amount raised by them shows that they consist only of the consideration in money to cover the costs arising out of the particular operations of the administration.

Similarly the ultimate amount and the destination of the yield from these charges prove that, unlike a fiscal tax, they are not financial payments of some importance, however small that may be, intended to reduce the state's general expenditure. The principle that the cost of the special tasks which the administration has to perform must be covered explains the meaning and at the same time the limitations of the charges levied, which, in conformity with their very nature, are to be regarded as the consideration given to the administration for those tasks.

The applicant submits that the charges which have been called in question are not according to their nature customs duties nor, having regard to the amount actually collected and to their objectives, do they have an effect equivalent to a customs duty. When the defendant issued the contested directives it infringed the Treaty and ex-

ceeded its powers.

The *defendant* replies that in its judgment of 14 December 1962 in Joined Cases 2 and 3/62 the Court held that 'a charge having equivalent effect within the meaning of Articles 9 and 12, whatever it is called and whatever its mode of application, may be regarded as a duty imposed unilaterally either at the time of importation or subsequently, and which, if imposed specifically upon a product imported from a Member State to the exclusion of a similar domestic product, has, by altering its price, the same effect upon the free movement of products as a customs duty'. The charges referred to in the contested directives fall within this definition.

The application of the provisions of the Treaty to charges having an effect equivalent to customs duties does not depend upon the reasons for the charge or on its object, its rate or the ways and means used for levying it or on the use to which the money collected will be put; the only criterion laid down in the Treaty, to the exclusion of all others, is the effect of the said charges. By effect is meant the effect which the charges have on the free circulation of goods; it is unnecessary whether it was intended to achieve other principal or subsidiary aims in addition to this effect.

The only effect common to all customs duties, which is essential for a charge to qualify as such, is the imposition of a charge leading to an increase in the price of the imported products but not of the like goods produced on the home market. By prohibiting charges having an effect equivalent to customs duties the Treaty clearly indicated that all charges having this effect must be abolished.

If a charge, which finances and therefore makes possible an administrative activity, increases, as in this case, the price of imported products and therefore discriminates against them with reference to the domestic production which it protects, it is a charge having an effect equivalent to a customs duty and, as such, is prohibited by the Treaty.

With regard to the amount raised by the charges, the defendant submits that a charge has the same effect on the free circulation of goods as a customs duty, because it increases the price of imported products. It is true that the change in the price of an imported product caused by an import charge is proportionally smaller if the rate of the import charge on importation is small; but for all that the increase is not completely eliminated. An upper limit to such price increases, below which import duties would be permitted, is incompatible with the system of the Treaty, which prohibits customs duties without laying down any restrictions on their amount.

Both in its judgment of 14 December 1962 in Joined Cases 2 and 3/62 and in its Judgment of 13 November 1964 in Joined Cases 90 and 91/63 the Court laid down the principle that Article 12 is a fundamental provision and that any exceptions must be specified clearly and umambiguously in its text. The low yield from the charges in question or the fact that these charges are levied because of administrative tasks undertaken in connexion with imports and have as their object the financing of those tasks can only be put forward as reasons justifying an exception to the provisions relating to charges having an effect equivalent to customs duties, that is to say, an exception not only to the obligation in Article 12 not to introduce any new customs duties but also to the provisions governing the abolition of existing charges having an effect equivalent to customs duties. The exception which the applicant seeks to establish in relation to the charges levied by reason of certain administrative operations in connexion with imports is therefore also in breach of the principles which have been consistently laid down in the decisions of the Court. No provision of the Treaty can be interpreted in such a way as to exempt from the application of the provisions relating to charges having an effect equivalent to customs duties a charge levied because of administrative tasks undertaken in connexion with imports. It is even more obvious that the Treaty does not contain any provision providing clearly and unambiguously for such an exception.

The defendant submits that the effect of the obligation in the Treaty to abolish progressively before the end of the transitional period charges on imports is that no charges can any longer be imposed relating to the

formalities and procedures to which imports may be subject, unless similar charges are imposed on domestic production. This in no way conflicts with the right of Member States to keep these formalities and procedures in being. They fulfil their purpose whether or not they give rise to the levy of any charges.

The defendant takes the view that the control of imports by granting import licences is in the public interest and that the obligation placed on importers to apply before the importation of any goods for an import licence, which is connected with their control, is not a service performed for the personal benefit of the importers. The permission to import amounts to no less than compliance with the principle of the free movement of goods, a freedom which the Member States have to maintain gratuitiously by virtue of the Treaty. This permission cannot be regarded as a service provided by the administration which would procure a personal benefit for the importer and in respect of which a charge could be levied.

B — *Misuse of powers and infringement of the Treaty*

The *applicant* submits that, even if the disputed charges were admitted to be charges having an effect equivalent to customs duties on imports, the circumstances in which the contested directives were issued show that in dealing with them the Commission committed a misuse of powers which is also an infringement of the Treaty, and in particular of Articles 13 and 14.

The applicant believes that it can establish that the defendant has clearly, for the time being, restricted the application of Article 13 (2) to some of the Member States or, at least, in determining the time-tables, has not acted in a lawful and methodical way, and that it is impossible to accept that such a differentiation was necessary in the circumstances.

It is clear that charges similar to those called in question in this case are levied by most of the Member States. The applicant takes the view that the defendant had no right either to intervene in this incomplete and unpremeditated way against some only of the Member States or to select some facts at random and ignore others, even if the view were accepted that the charges in question fall within Article 13 (2) of the EEC Treaty. When the defendant issues directives, it 'shall be guided by the rules contained in Article 14 (2) and (3) and by the directives issued by the Council pursuant to Article 14 (2)'. This provision does not refer only to the time-table for reductions by stages; on the contrary the Treaty in a general way draws a close comparison between the reduction of charges having an effect equivalent to customs duties and a reduction of these customs duties as between Member States. It is one of the most important principles applicable to the abolition of customs duties as between Member States that it must be accomplished in a uniform way in all the Member States and in accordance with a definite system. It would be incompatible with the principles governing the establishment of a customs union if the abolition of domestic customs duties were effected in accordance with rules which varied in the case of each Member State. It follows from this that the procedure laid down by Article 14 is based on the idea of reductions of the same amount in all customs duties between Member States being effected according to a fixed time-table, so that as they are progressively reduced the customs union between Member States comes into being in accordance with a time-table applicable to all Member States.

The Commission is under a duty to adapt the time-table for the reduction of charges having an effect equivalent to customs duties to the time-table for the abolition of the customs duties themselves, according to the principles applicable for their abolition and to adopt a uniform solution for all Member States.

If on the other hand, and without any justifiable reason, the defendant only draws up a time-table for the abolition of certain charges, selected at random, by some but not all of the Member States including the applicant, it makes an improper use of the powers conferred upon it by Articles 13 and 14, because it treats certain facts in a particular way without bothering to find out whether there are other similar facts, which

it should have considered at the same time in the context of the tasks with which it has been entrusted.

The same principles would be applicable even if it were impossible to infer from Article 14 that the time-table for the abolition of charges must be essentially the same for all Member States. The principle of non-discrimination is so elementary and is a doctrine of such fundamental importance applying to all governmental measures in Member States that it is a general legal principle forming part of Community law by which the Community institutions are bound. Infringement of this principle is a legal infringement which must lead to the annulment of the contested directives.

The *defendant* replies that an investigation which it carried out showed that in 1961 the import duties which have to be taken into account in applying Article 13(2), because they were already in existence when the Treaty entered into force and were not an essential part of the market organizations of Member States for agricultural products, produced a very small yield. It is for this reason that the best way of eliminating the import duties, for which the directives had to be issued in accordance with Article 13 (2), appeared to be to proceed in two stages. The obvious result of adopting this method is that a percentage must be chosen for the first reduction which is higher than the percentage laid down in Article 14 for the first reduction of customs duties. Consequently it was also necessary to fix a later date for the reduction than the date for the first reduction of customs duties provided by Article 14, since, if this procedure were not adopted, the abolition of import charges having an effect equivalent to customs duties would be achieved more rapidly than the abolition of the customs duties themselves. The Commission determined the time-table for the abolition of import charges having an effect equivalent to customs duties after taking these considerations into account. In doing so it proceeded in accordance with the last sentence of Article 13(2).

The Commission divided into two categories the charges which have to be taken into account when applying Article 13(2).

The first includes import charges on one or more specified products and does not apply to any other products; the second, which is much more limited, covers import charges which are levied in the same way and at the same rate on all products. The charges in the first category impede the movement of goods and distort competition to a greater extent than those in the second, since their effect is only offset to a lesser extent by fixing an exchange rate corresponding to the total import and export charges in the first category had to create a pattern for the other directives which had to be issued under Article 13(2).

The directives adopted so far by the Commission were not issued simultaneously but in succession. The directives which still have to be adopted must be issued in the same way. This procedure does not call in question the principle of equality of treatment of Member States which must at all times be observed. Bearing this principle in mind, the decisive question is not in fact the date when the directives provided for by Article 13(2) were issued but at what date and to what extent the import charges in question have to be abolished on the basis of these directives.

The defendant puts forward the view that, even if the Commission had restricted the application of Article 13(2) to one or more of the Member States and had only called upon those Member States to abolish import charges without arranging for the abolition of similar import charges by the other Member States, there would have been no reason to complain on that account of any legal infringement or a misuse of powers inherent in the directives which it had issued. If the methods adopted to abolish an import duty laid down in a directive of the Commission conform to the provisions of Article 13(2) and have not been dictated by extraneous considerations to ensure compliance with the law, any proceedings against that directive under Article 173 are in any event unfounded. A directive whereby a Community institution calls upon a Member State to remove an obstacle to the free movement of goods, services and capital or of persons can only be challenged on the ground that a similar directive has not been issued for the abolition of a similar obstacle by another Member State by bringing proceedings for

failure to act under Article 175.

IV — Procedure

The applications against the directives of the Commission of 16 June and 28 July were lodged by the Federal Republic of Germany on 23 August and 5 October 1965 respectively.
The procedure followed the normal course.

The Court, upon hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, decided that no preparatory inquiry was necessary.
By an order of 7 February 1966 the Court decided that for the purposes of the oral procedure the cases should be joined.
The parties presented oral argument at the hearing on 23 March 1966.
The Advocate-General delivered his opinion at the hearing on 4 May 1966.

Grounds of judgment

Applications 52/65 and 55/65 are related and can therefore be decided by one and the same judgment.

Admissibility

The defendant has not called in question the admissibility of the applications and no grounds exist for the Court to raise the matter of its own motion.

The substance of the case

With regard to the subject-matter of Application 55/65 directed against the Commission's directive of 28 July 1965, the applicant government does not deny that the charges levied by the Außenhandelsstelle für Erzeugnisse der Ernährung und Landwirtschaft called, since the entry into force of the Law of 24 August 1965, 'Bundesamt für Ernährung und Forstwirtschaft', on the importation of certain 'liberalized' products are charges having an effect equivalent to customs duties.[1]

The Court takes note of this fact.

The first submission of Application 55/65 is directed against the contested directive only in so far as it relates to the charges levied on the importation of a limited number of products which have not been 'liberalized', originating in other Member States, namely certain feedingstuffs, sheep and mutton, fish, vegetable oils and fats, sugar, seeds, cut flowers, wines, various kinds of fruit and vegetables as well as preserved fruit and vegetables.[1]

The first submission

The Federal Republic of Germany claims that the charges levied on the one hand by the Einfuhr- und Vorratsstelle für Schlachtvieh, Fleisch und Fleischerzeugnisse

1 — Paragraph amended pursuant to an order of the Court of 13 July 1966.

at the time of importation of sheep for slaughter and mutton, and on the other hand by the Bundesamt für Ernährung und Forstwirtschaft on the importation of the beforementioned products, which have not been 'liberalized', are not charges having an effect equivalent to import duties but are in this case administrative charges in consideration for tasks undertaken by the administration in the interest and at the request of an individual and by no means have the discriminatory and protective or fiscal effects of customs duties.

For this reason it is alleged that the Commission did not have the power to order their abolition and to determine by means of a directive the time-table for such abolition.

Under the terms of Article 13 (2) of the EEC Treaty charges having an effect equivalent to customs duties on imports, in force between Member States, shall be progressively abolished by them during the transitional period and the Commission shall determine by means of directives the time-table for such abolition, being guided by the rules contained in Article 14 (2) and (3) and by the directives issued by the Council pursuant to Article 14 (2).

The obligation placed on Member States by Article 13 (2) to abolish progressively charges having an effect equivalent to customs duties is the logical and necessary complement of the obligation to abolish progressively customs duties on imports laid down in paragraph (1) of this Article.

The question whether certain charges have an effect equivalent to customs duties cannot be determined according to the criteria and differences, often uncertain and sometimes contradictory, derived from the laws and doctrine relating to the finances of each Member State.

This question must on the contrary be considered in the light of the objectives of the Treaty.

It is necessary in particular to consider whether the charges in question have an effect equivalent to customs duties and whether they therefore have the characteristics which led the authors of the Treaty to adopt as one of the fundamental principles of the Common Market the prohibition of customs duties.

The object of the provisions of Article 13 in their entirety is to prohibit all measures by Member States taken by a unilateral decision and not under Community procedures, which, whatever they are called and by whatever means they have been introduced have, at the time of importation, the same discriminatory and protective effects as customs duties.

Since Article 13 is a fundamental provision for establishing the free movement of

goods, it lays down an essential legal principle and consequently the only possible exceptions are those which on a strict construction of the Article can clearly be allowed.

In this case the disputed charges are charges levied by the Federal Republic of Germany on the actual importation of goods and specifically on certain products originating in the other Member States.

They may therefore have the effect of increasing to some extent the price of the imported products on which they are levied.

The applicant government submits however that they do not have the same effect as a customs duty, because, since they represent the consideration for a specific service provided by the administration for the benefit of and at the request of importers, they do not have a discriminatory effect on the products imported.

The service provided by the administration consists of the various investigations and tasks necessary to alleviate the effects of the quantitative restrictions which the Federal Republic of Germany, acting within its powers, has established on the free importation of the products in question.

The benefit which the importer obtains from the operations of the administration in respect of which the disputed charges are levied is the permission to market the products in question in the Federal Republic.

The imported products themselves enjoy no direct or indirect advantage on the German market.

For this reason the disputed charges have a discriminatory effect on the imported products, which, however small it may be, is equivalent to that of a customs duty.

The Commission was therefore legally entitled, in application of Article 13 (2), to order the abolition of these charges and to determine by means of directives the time-table for such abolition.

The first submission is unfounded.

The second submission

The applicant government submits in the alternative, in the event of the Court's holding that the disputed charges are charges having an effect equivalent to customs duties, that the disputed directives are defective because they infringe the Treaty and amount to a misuse of powers.

It is alleged that when the Commission issued the directives addressed to the Federal Republic of Germany it abused its powers and infringed Article 14 of the Treaty and the principle of equality of treatment which is of fundamental importance for the establishment of a customs union.

Article 14 which lays down the rules by which the Commission must be guided in order to determine the time-table for the abolition of charges having an effect equivalent to customs duties places upon it the obligation, on the one hand, to adopt for this purpose a procedure on closely similar lines to the one for the reduction of the customs duties themselves and, on the other hand, to deal in the same way with comparable situations in all the Member States.

The Commission, however, in breach of this provision and of the principle of equality of treatment, made a limited use of its powers, without attempting to prepare a plan or to be consistent, in a number of cases selected arbitrarily in certain Member States, and failed to deal with similar situations arising in other Member States.

Under the terms of Article 13 (2) the Commission has the power to determine the time-table for the abolition of charges having an effect equivalent to customs duties and 'shall be guided' for this purpose by the rules contained in Article 14 (2) and (3).

In order to determine this time-table it issues directives, which are binding on the Member States to which they are addressed so far as the objective which they lay down is concerned, but which leave the choice of the means and formalities for attaining that objective to be made by the national authorities.

According to Article 13 (1) import duties shall be progressively abolished by Member States 'in accordance with Articles 14 and 15'.

The rules relating to the time-table for the abolition of charges having equivalent effect in Article 14 (2) and (3) are thus less strict than those for the abolition of the customs duties themselves.

Although it is true that the abolition by the Commission of charges having an effect equivalent to customs duties and of customs duties should to some extent be harmonized, nevertheless the procedure adopted in this case cannot be regarded as amounting to an infringement of the Treaty.

Moreover the obligation placed upon the Commission to abolish charges having equivalent effect in accordance with a particular time-table does not preclude it from determining itself the procedure for such progressive abolition.

With regard to the complaint of misuse of powers by the Commission the applicant government has not established that the Commission has used its powers for a purpose other than that for which they were conferred upon it.

Moreover the Treaty establishing the European Economic Community imposes obligations upon all those persons to whom it applies, determines the extent of the powers, rights and obligations of these subjects and fixes the procedures for imposing sanctions in the event of any infringement.

Any possible failure by the Commission to fulfil its obligations towards other Member States cannot exempt one of them from performing the obligations which are legitimately placed upon it by measures taken in application of the Treaty.

If, in breach of the Treaty, the Commission were to fail to perform its task in calling attention by means of directives to obligations which certain Member States have to fulfil, any other Member State could invite it to take the necessary measures and, if necessary, apply to the Court for a ruling that there had been an infringement.

The complaints put forward by the Government of the Federal Republic of Germany against the contested decisions are not therefore capable of leading to the annulment of those directives.

The second submission must therefore be rejected.

Costs

Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. The applicant has failed in its submissions and must be ordered to bear the costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 5, 9, 12, 13, 14, 15, 173, 175 and 189;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby:

1. **Dismisses Applications 52 and 55/65;**

2. **Orders the Federal Republic of Germany to pay the costs.**

Hammes Delvaux Strauß

Donner Trabucchi Lecourt Monaco

Delivered in open court in Luxembourg on 16 June 1966.

A. Van Houtte — Registrar

Ch. L. Hammes — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 4 MAY 1966[1]

Mr President,
Members of the Court,

The subject-matter of these proceedings, upon which I give my opinion today, is mainly the interpretation of Articles 13 and 14 of the EEC Treaty, more precisely the definition of the expression 'charges having an effect equivalent to customs duties' (hereinafter referred to in its abridged form as: 'charges having equivalent effect'). The Court has already in an earlier case (Joined Cases 2 and 3/62) had to construe this expression in connexion with a charge which was levied in Belgium and Luxembourg on the granting of import licences for gingerbread. Now this expression is once more disputed and in the two following sets of circumstances.

Case 52/65

Trade in sheep for slaughter and mutton (for which so far no common organization of the markets has been set up) is subject in the Federal Republic of Germany under the Gesetz über den Verkehr mit Vieh und Fleisch of 25 April 1951 (Bundesgesetzblatt I, 272) to a national marketing organization. In accordance with this law the Federal Minister for Food, Agriculture and Forests determines each year in his annual national plan for food supplies what quantities of a particular product are available from the home market and how much must be imported to meet the demand for it. In accordance with this plan invitations to tender for importation are organized. The Einfuhr- und Vorratsstelle für Schlachtvieh, Fleisch und Fleischerzeugnisse, an organization subject to public law (which is under the authority of the Federal Minister for Food, Agriculture and Forests who has power to issue directions to it) is made responsible for imports. The respective importers have to offer the products in question to it for sale. If it does not exercise its right to purchase the goods, they cannot be sold or used in any way on the domestic market. If, on the other hand, the Einfuhr- und Vorratsstelle does exercise its right to buy the products, it can acquire the goods either through a storage contract or, also by means of a contract, by formally taking

1 — Translated from the German.