same marketing stage and the chargeable event giving rise to the duty must also be identical in the case of both products. It is therefore not sufficient that the objective of the charge imposed on imported products is to compensate for a charge imposed on similar domestic products — or which has been imposed on those products or a product from which they are derived — at a production or marketing stage prior to that at which the imported products are taxed.

3. A charge which is imposed on meat, whether or not prepared, when it is imported, and in particular on consignments of lard, even though no charge is imposed on similar domestic products, or a charge is imposed on them according to different criteria, in particular by reason of a different chargeable event giving rise to the duty, constitutes a charge having an effect equivalent to a customs duty within the meaning of Articles 9, 12 and 13 of the Treaty.

In Case 132/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal d'Instance, Lille, for a preliminary ruling in the action pending before that court between

DENKAVIT LOIRE S.À.R.L.

and

FRENCH STATE (CUSTOMS AUTHORITIES)

on the interpretation of Articles 9, 12, 13 and 95 of the EEC Treaty and of Regulation No 2759/75 of the Council of 29 October 1975 on the common organization of the market in pigmeat (Official Journal 1975, L 282, p. 1),

THE COURT (First Chamber)

composed of: J. Mertens de Wilmars, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The order for reference and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

The French Law No 77-646 of 24 June 1977 (Journal Officiel de la République Française of 25 June 1977) introduced a charge for the protection of public health and for the organization of the markets in meat (Article 1). This charge is levied when certain animals for slaughter and poultry are slaughtered in private or public slaughter-houses as well as when meat of animals of the same kind, whether or not prepared, is imported into France.

The rate of the charge is fixed by kilogramme net weight of meat for a calendar year on the basis of the guide prices laid down in Article 2 of that law; this rate corresponds in the case of pigs to 0.54% of the Community basic price. Having regard to this guide price, the rate of the charge for the protection of public health and the organization of the markets in meat amounted for the 1977 calendar year to FF 0.034 per kilogramme net weight in the case of pigs, pursuant to the Order of the Minister delegated to Economic Affairs and Finances and of the Minister for Agriculture of 9 August 1977 (Journal Officiel de la République Française of 12 August 1977). Under Article 3 of Law No 77-646, the slaughtering process constitutes the chargeable event giving rise to the charge. Article 4 provides as follows: "The charge for the protection of public health and for the organization of the markets in meat shall be levied on the importation of meat, whether or not prepared, of the animals mentioned in Article 2. It shall be payable by the importer or by the person making the customs declaration when the goods are given customs clearance for release to the market. It shall be levied by the customs authorities. It shall be collected according to the same rules and under the same guarantees as those relating to customs duties."

Article 9 of Order No 77-899 of 27 July 1977 (Journal Officiel de la République Française of 9 August 1977) laying down conditions for the application of Law No 77-646, lists the meat on which the import charge is levied and Article 10 thereof specifies that the charge for the release *inter alia* of lard (tariff heading 15.01) to the market in the customs territory is levied on the net weight of the meat accepted or permitted by the customs authorities, less the weight of the offal.

On 7 October 1977, Denkavit Loire S.à.r.l., the plaintiff in the main action, imported from the Federal Republic of Germany 22 400 kilogrammes of lard intended for the manufacture in France of animal feeding-stuffs. On that occasion, the customs authorities levied a sum of FF 672 as the charge for the protection of public health and for the organization of the markets in meat, in accordance with Law No 77-646 of 24 June 1977.

Taking the view that the levying of that charge was incompatible with Community law and in particular with Articles 9, 12, 13 and 95 of the EEC Treaty and with Regulation No 2759/75 of the Council on the common organization of the market in pigmeat (Official Journal 1975, L 282, p.1) Denkavit brought proceedings against the competent authorities before the Tribunal d'Instance, Lille, for repayment of the sum paid.

The customs authorities, for their part, claim that a pecuniary charge such as that levied on imported meat should only be considered to be a charge having equivalent effect if similar national products are not subject to a similar charge. However, the charge, within the domestic system, is also levied on the net weight of meat after slaughter so that domestically produced lard resulting from the processing of pigmeat is subject to the same tax burden as imported lard. The imported product is even subject to a lower tax burden than that levied on the national product in so far as the chargeable weight of the latter includes that of various waste products which have been eliminated for the purposes of obtaining imported lard.

Taking the view that the case raised questions of interpretation of Community law, the Tribunal d'Instance, Lille, by judgment of 25 May 1978 followed by a corrective judgment of 6 July 1978 amending a clerical error in the operative part of the judgment of 25 May 1978 (it is necessary to read "domestic charge" (tax intérieure) instead of "lower charge" (tax inférieure)), referred to the Court of Justice the following questions for a preliminary ruling:

"1. Is it contrary to the prohibition on charges having an effect equivalent to customs duties on imports within the meaning of Articles 9, 12 and 13 of the Treaty establishing the European Economic Community to apply a charge imposed on imports of lard from another Member State intended for use in animal feedingstuffs in order to compensate for the levying of a domestic charge on the slaughter of swine?

2. If the answer to the first question is in the negative: Is the levying of the charge referred to in Question 1 above contrary to the prohibition on tax discrimination under Article 95 of the Treaty?

3. If the reply to Questions 1 and 2 is in the negative: Must the levying of the charge referred to in Question 1 above be considered as contrary to Regulation No 2759/75 of the Council of 29 October 1975 on the common organization of the market in pigmeat?"

The order for reference and the corrective judgment amending it were entered on the Court Register on 12 June and 18 July 1978. In accordance with Article 20. of the Protocol on the Statute of the Court of Justice of the EEC, the plaintiff in the main action and the Commission of the European Communities submitted written observations.

After 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.

By order of 22 November 1978 it decided, in accordance with Article 95 of the Rules of Procedure, to refer the present case to the First Chamber of the Court.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — Observations submitted by the plaintiff in the main action (Denkavit Loire S.à.r.l.)

The plaintiff in the main action recalls first of all that according to the recitals of the preamble to Law No 77-646 and the parliamentary debates relating thereto, the proceeds of the charge for the protection of public health are intended to finance the veterinary and public health inspection carried out by the State on French slaughter-houses (Senate sitting on 16 June 1977, Débats Parlementaires (Parliamentary debates) p. 1403). As for the levying of the charge on imported products, it is considered to be essential in order to compensate for the charge levied on similar domestic products.

The first question

The plaintiff in the main action considers, relying in this respect on the case-law of the Court of Justice, that any pecuniary charge, whatever its purpose, designation and mode of application, which is imposed unilaterally on goods when or 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 Articles 9, 12 and 13 of the Treaty. The position would be different only if the charge in question was the consideration for a benefit provided in fact for the importer representing an amount proportionate to the said benefit or if it related to a general system of internal dues applied systematically in accordance with the same criteria to domestic products and imported products alike (see for example the judgment of 11 October 1973 in Case 39/73, *Rewe-Zentralfinanz GmbH* v *Direktor der Landwirtschaftskammer Westfalen-Lippe* [1973] ECR 1039).

Even if it related to that general system a duty would constitute a charge having an effect equivalent to a customs duty if it appeared to have the sole purpose of financing activities for the specific advantage of domestic products alone so as to make good the charge imposed upon those domestic products (judgment of the Court of Justice of 25 May 1977 in Case 77/76, *Fratelli Cucchi* v *Avez S.p.A.* [1977] ECR 987).

The plaintiff in the main action concludes that, in application of those principles and for the reasons put forward below, the charge for the protection of public health levied on lard does not come within the exceptions laid down by the case-law of the Court of Justice and that it therefore constitutes a charge having an effect equivalent to a customs duty.

(a) It is not consideration for a benefit provided in fact

Since the charge in question is, in the view of the legislature, to make good the charge levied on national production, it is not therefore consideration for any activity carried out by the authorities.

(b) It is not a charge relating to a general system of internal dues

The result of the fact that the charge for the protection of public health is levied on the slaughter of French-produced pigs whilst a charge at the same rate is levied on importation is that national products and imported products are not charged to tax in accordance with the same criteria. In the judgment of 5 February 1976 in Case 87/75 (*Conceria Daniele Bresciani* v *Amministrazione Italiana delle Finanze* [1976] ECR 129) the Court considered that "the fact that the domestic production is, through other charges, subjected to a similar burden matters little unless those charges and the duty in question are applied according to the same criteria". The

judgment of 28 June 1978 in Case 70/77 *(Simmenthal S.p.A.* v *Amministrazione delle Finanze dello Stato* [1978] ECR 1453) stated this criterion and it was held that the charges must be levied at the same stage of marketing. In the present case, a domestic charge on swine (tariff heading 02.01 of the Common Customs Tariff) cannot therefore justify the levying of an import charge on lard (tariff heading 15.01 of the Common Customs Tariff).

The plaintiff in the main action adds that in the judgment of 17 February 1976 in Case 45/75 *(Rewe-Zentrale des Lebensmittel-Großhandels GmbH* v *Hauptzollamt Landau/Pfalz* [1976] ECR 181) the Court acknowledged that "the fact that the domestic product and the imported product are or are not classified under the same heading in the Common Customs Tariff constitutes an important factor in this assessment".

(c) Double taxation

The plaintiff in the main action observes finally that imported lard comes from animals which, in the Member State, have also been subject to a pecuniary charge on slaughter so that the levying of the charge for the protection of public health on the lard in France constitutes double taxation creating discrimination against the imported products.

(d) Purpose of the charge

According to the plaintiff in the main action, the proceeds of the charge for the protection of public health are, as follows from the recitals of the preamble to Law No 77-646, completely and exclusively intended to finance public activities for the benefit of national production. Therefore, because of its protective nature, the charge in question must be classified as a charge having an effect equivalent to a customs duty. It is therefore necessary to answer the first question as follows:

"The prohibition on charges having an effect equivalent to customs duties on imports in accordance with Articles 9, 12, and 13 of the Treaty prevents the levying by a Member State of a charge imposed on imports of lard from another Member State intended for use in animal feeding-stuffs in order to compensate for the levying of a domestic charge on the slaughter of swine."

The second question

Relying, in the alternative, on Article 95 of the Treaty, the plaintiff in the main action claims that since the imported products and the domestic products are not classified under the same tariff heading of the Common Customs Tariff the charge in question is not therefore applied to them systematically in accordance with the same criteria. The customs authorities therefore wrongly maintained before the national court, referring to the judgment of the Court of Justice of 22 June 1976 in Case 127/75 *(Bobie Getränkevertrieb GmbH* v *Hauptzollamt Aachen-Nord* [1976] ECR 1079) that the charge in question is compatible with Article 95, because that case involved a tax imposed on the same product (beer) in both cases.

On the other hand, even if there were a similarity between the domestic product and the imported product, the application of the uniform rate of FF 0.034 per kilogramme on both domestically produced pig carcasses and on imported lard leads to tax discrimination against the imported product because the value per kilogramme of a whole pig is much greater than that of lard and imported lard must accordingly bear a charge to tax to compensate for a domestic charge which is not borne by

French produced lard but rather by French produced pigmeat.

Relying upon the Community legislation on the levies and sluice-gate prices applicable to imports from third countries, and in particular on Regulation No 2754/73 of the Commission of 10 October 1973 (Official Journal 1973, L 284, p. 13), the plaintiff in the main action considers that the objective value of lard in the Community is deemed not to exceed 32% of that of whole pig carcasses. These are therefore the circumstances referred to in the judgment of 22 March 1977 in Case 74/76 *(Ianelli & Volpi S.p.A.* v *Ditta Paolo Meroni* [1977] ECR 557) in which the prohibition laid down in Article 95 of the Treaty is infringed where in the case of the imported product alone factors for assessment are taken into consideration which are likely to increase the value of the imported product *vis-à-vis* the corresponding domestic product.

It is therefore necessary to give the following answer to the second question:

"The levying of a charge imposed on imports on lard from another Member State intended for use in animal feeding-stuffs — *a fortiori* if that charge is levied at a rate calculated on the Community basic price for pig carcasses — in order to compensate for the levying of a domestic charge on the slaughter of swine infringes the prohibition on tax discrimination laid down in Article 95 of the Treaty."

The third question

The plaintiff in the main action, recalling that according to the wording of Law No 77-646 that law concerns the introduction of a charge for the protection of public health and for the organization of the markets in meat, takes the view that lard, an agricultural product of first-stage processing within the meaning of Article 38 (1) of the Treaty and, as such, listed in Annex II to the Treaty, falls within the scope of Regulation No 2759/75 of the Council on the common organization of the market in pigmeat, so that a national organization of the market is illegal. The plaintiff in the main action then appraises the legality of the levying of the charge in question, examines in detail the price system in the pigmeat sector and concludes that the charge in question jeopardizes the uniform price system within the Community because it is added to the price level reached at the stage of "pig carcasses on the hook" only in the case of imported products and not in the case of national production.

If the Court replies to the first and second questions in the negative, it proposes that the third questions referred to the Court for a preliminary ruling should be answered as follows:

"It is contrary to Regulation (EEC) No 2759/75 of the Council on the common organization of the market in pigmeat to levy a charge imposed on imports of lard from another Member State intended for use in animal feeding-stuffs in order to compensate for the levying of a domestic charge on the slaughter of swine."

B — Observations submitted by the Commission

Having recalled the facts which gave rise to the proceedings and analysed the procedure before the national court, the Commission observes as regards the law that the first and third questions merge and that the second is an extension of the first and is subsidiary to it.

The first and third questions

According to the Commission, the concept of a charge having an effect

equivalent to a customs duty should, having regard to the case-law of the Court of Justice, be analysed from two points of view:

1. first of all the charge as a whole regardless of the nature of the imported products which bear the charge;

2. then more precisely by analysing the charge in so far as it is imposed on lard.

1. The nature of the charge in question considered as a whole

Since the charge in question is levied on the importation of meat the Commission examines the legal mode of application and the economic effects of the charge in relation to meat which is, when imported, at the same stage as that at which it is levied within the national system on domestically produced meat.

(a) The legal mode of application

The charge in question seems, according to the Commission, to be an internal due applied systematically, in the same way and at an identical rate to national products and imported products. Since the charge is imposed on meat solely by reason of its importation it is not in fact a fee for a veterinary and public health inspection and, in the view of the national legislature, the levying of the charge on imports is intended to prevent any discrimination between national producers and importers of the same products. In spite of that it is necessary to ask whether the charge in question must not be considered as a charge having an effect equivalent to a customs duty in the light of the case-law of the Court, in particular in the judgment of 25 May 1977 in Case 77/76 *(Fratelli Cucci* v *Avez S.p.A.* [1977] ECR 987), because the charge in question has the sole purpose of financing activities for the specific advantage of domestic products. Relying *inter alia* on the parliamentary debates, the Commission considers that however genuine the link was from a political point of view between the introduction of the charge and the financing of activities for the protection of public health and the improvement of the markets, that link nevertheless does not correspond to any duty legally safeguarded and is, from a strict point of view of budgetary technique, non-existent. Moreover, even if the transactions relating to the organization of the markets which are envisaged are taken into consideration it must be stated that these correspond far more to the interests of the general public than to the individual interests of breeders and producers of meat. The Commission concludes in this respect that it is impossible to state that the charge in question has the sole purpose of financing activities for the specific benefit of domestic products charged to tax so that the charge on those products is made good in full.

(b) The economic effects of the charge in question

The Commission considers that if the economic effects and the impact which it may have on trade are taken into account, the charge in question has restrictive effects identical to those of a customs duty or a charge having equivalent effect.

According to the Commission this becomes clear if the charge provided for in Law No 77-646 of 24 June 1977 is compared with the charges which it replaces, in other words, the public health charges and charges for inspections and stamps which were the subject-matter of the law which was repealed, Law No 65-543 of 8 July 1965

on the conditions necessary for the modernization of the market in meat (Journal Officiel de la République Française of 9 July 1965). There is a very close relationship between the public health charges laid down by those two laws as regards both their objective and their structure and detailed rules. The Commission therefore considers that in spite of the amendment introduced in the new enactment, the analysis of the charge laid down in the 1965 law applies equally to the charge laid down in the 1977 law.

However, the public health charge referred to in Article 5 of the Law of 8 July 1965 and Article 15 of the Finance Law for 1966 (Law No 65-997 of 29 November 1965 — Journal Officiel de la République Française of 30 November 1965) was, according to the Commission, in the category of fees for veterinary and public health inspection charged on the occasion of the crossing of the frontier which were considered by the Court as charges having an effect equivalent to customs duties. Furthermore, as Council Directive No 64/433 of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (Official Journal, English Special Edition 1963 to 1964, p. 185) established a system of veterinary and public health inspections in the consignor Member State, an inspection of that meat upon importation — where it does not already itself constitute a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 *et seq.* of the treaty because it is systematic or unjustified (judgment of the Court of Justice of 25 January 1977 in Case 46/76, *W.J.G. Bauhuis* v *The Netherlands State* [1977] ECR 5) — is supplementary and a fee charged on the occasion of that inspection cannot be compared with the public health charge imposed domestically.

For those reasons, the Commission considered that the fee levied under the 1965 laws quoted above was in the nature of a charge having an effect equivalent to a customs duty and initiated against France the procedure for a declaration that a Member State has failed to fulfil an obligation under the Treaty provided for under Article 169 of the EEC Treaty.

Applying those criteria to the charge at issue, the Commission considers that although its legal appearance is that of an internal due its impact on trade is identical to that of a charge having an equivalent effect. Relying upon the fundamental nature of the freedom of movement of goods, the Commission takes the view that it is necessary to take into account the actual effect rather than its formal characteristics and it therefore tends to consider that the charge in question must be classified as a charge having an effect equivalent to a customs duty.

2. The charge in question levied on lard

Even if it were necessary to acknowledge that the charge in question is an internal due, this can only apply to imported meat at a stage of production similar to that at which domestically produced meat is itself subject to charge (see the judgments in the *Bresciani* and *Rewe* cases mentioned above.)

According to the Commission, the case-law of the Court of Justice makes it impossible to compare the charge on imported lard with the charge levied on pigmeat upon slaughter, first because the two products are different in nature and do not come under the same tariff headings of the Common Customs Tariff (pigmeat comes under tariff heading 02.01 A III and lard comes under tariff heading 15.01 A) and secondly because the products are not from the point of view of consumers similar products which meet the same requirements.

The Commission concludes that the charge in question cannot in any case be a charge relating to a general system of domestic taxation where it is levied on imports of lard from the other Member States and that such a charge must therefore be considered, so far as lard is concerned, as a charge having an effect equivalent to a customs duty.

The second question

The Commission takes the view that the reply given to the first and the third questions makes the second question on the interpretation of Article 95 of the Treaty purposeless.

The Commission therefore suggests that the following answer should be given to the questions referred for a preliminary ruling:

"The levying by a Member State by reason of importation of a charge on meat and meat-based products and in particular on lard from the other Member States which has the characteristics of the French charge for the protection of public health and for the organization of the markets in meat is contrary to the prohibition on charges having an effect equivalent to customs duties laid down in Articles 9 and 13 of the Treaty."

III — Oral procedure

At the hearing on 22 February 1977, the plaintiff in the main action, represented by Mr Veroone, Advocate at the Lille Bar, the French Government, represented by Mr Sidre, and the Commission of the European Communities, represented by its Agents, Mr Amphoux and Mr Beschel, presented oral argument.

In its observations submitted during the oral procedure, the French Government claimed, on the one hand, that the charge for the protection of public health introduced by Law No 77-646 of 24 June 1977 is not contrary to Article 9 *et seq.* of the EEC Treaty because it forms part of a general system of internal dues and, on the other, that it is not in breach of Article 95 of the Treaty because it has never been maintained that a French product similar to lard benefits from a more favourable tax arrangement.

The Advocate General delivered his opinion at the hearing on 29 March 1979.

Decision

1 By judgment of 25 May 1978, received at the Court on 12 June and completed by a corrective judgment of 6 July 1978, received at the Court on 18 July 1978, the Tribunal d'Instance, Lille, referred to the Court of Justice under Article 177 of the EEC Treaty three questions on the interpretation of Articles 9, 12 and 13 of the Treaty (first question) and Article 95 of the Treaty (second question) and of Regulation No 2759/75 of the Council of 29 October 1975 on the common organization of the market in pigmeat (third question).

2 These questions have been raised within the context of a dispute between the French customs authorities and a French cattle-feed manufacturer who imported a consignment of lard from the Federal Republic of Germany; the reply to those questions should enable the national court to decide whether the above-mentioned provisions of Community law prohibit the levying on that consignment, when it is imported, of a charge introduced by the French Law No 77-646 of 24 June 1977 introducing a charge for the protection of public health and for the organization of the markets in meat and abolishing the public health charge and the charge for inspections and stamps (Journal Officiel de la République Française of 25 June 1977, p. 3399).

3 It follows from the information on the file transmitted by the national court that the charge in question is levied on the one hand on the meat of certain animals slaughtered in French slaughterhouses and, from animals of the same kind.

4 As regards meat slaughtered on French territory, the chargeable event giving rise to that charge is the slaughtering operation and the charge is levied in public or private slaughterhouses for the account, as the case may be, of the State or of local authorities or groups of local authorities which own slaughterhouses, when the animals listed in Article 2 of the law are slaughtered, the rate being fixed per kilogramme net weight of meat per calendar year and the charge being payable by the owners of animals slaughtered with a view to the sale thereof. As regards imported meat, Article 4 of the Law provides that the charge "is imposed on the importation of the meat, whether or not prepared, of the animals mentioned in Article 2" and that it is payable by the importer or by the person making the customs declaration when the goods are given customs clearance for release to the market. It is collected according to the same rules and under the same guarantees as those relating to customs duties.

5 Under Order No 77-899 of 27 July 1977 (Journal Officiel de la République Française of 9 August 1977, p. 4136) laying down conditions for the application of Law No 77-646, the charge, as regards indigenous products, is imposed on fresh meat on the basis of the net weight of the meat as defined in Articles 2 to 5 of the order. As regards imported products, the charge is imposed on a certain number of meat-based preparations and the fats listed

in Article 9 of the order by reference to tariff heading or subheading numbers of the Common Customs Tariff as well as on fresh meat. Lard and other pig fat are referred to in particular under tariff heading 15.01. The charge is imposed on the net weight of the meat — in the present case the lard — and the amount thereof is identical per kilogramme to that of the charge imposed on indigenous pigmeat when it is slaughtered.

6 In its first question the national court asks whether it is "contrary to the prohibition on charges having an effect equivalent to customs duties on imports within the meaning of Articles 9, 12 and 13 of the Treaty establishing the European Economic Community to apply a charge imposed on the imports of lard from another Member State intended for use in animal feeding-stuffs in order to compensate for the levying of a domestic charge on the slaughter of swine". This question asks in substance whether the concept of a charge having an effect equivalent to a customs duty — which is prohibited in intra-Community trade — extends to a national charge of the kind referred to by the national court, in so far as that charge is imposed on products imported from other Member States when they are imported, and in particular on those coming within tariff heading 15.01 (lard and other pig fat . . .).

7 As the Court has acknowledged several times, and in particular in its judgment of 25 January 1977 in Case 46/76, *W. J. G. Bauhuis* v *The Netherlands State* [1977] ECR 5, any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on 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 an equivalent effect within the meaning of Articles 9, 12, 13 and 16 of the Treaty. Such a charge however escapes that classification if it constitutes the consideration for a benefit provided in fact for the importer or exporter representing an amount proportionate to the said benefit. It also escapes that classification if it relates to a general system of internal dues supplied systematically and in accordance with the same criteria to domestic products and imported products alike, in which case it does not come within the scope of Articles 9, 12, 13 and 16 but within that of Article 95 of the Treaty.

8 It is however appropriate to emphasize that in order to relate to a general system of internal dues, the charge to which an imported product is subject must impose the same duty on national products and identical imported

products at the same marketing stage and that the chargeable event giving rise to the duty must also be identical in the case of both products. It is therefore not sufficient that the objective of the charge imposed on imported products is to compensate for a charge imposed on similar domestic products — or which has been imposed on those products or a product from which they are derived — at a production or marketing stage prior to that at which the imported products are taxed. To exempt a charge levied at the frontier from the classification of a charge having equivalent effect when it is not imposed on similar national products or is imposed on them at different marketing stages or, again, on the basis of a different chargeable event giving rise to duty, because that charge aims to compensate for a domestic fiscal charge applying to the same products — apart from the fact that this would not take into account fiscal charges which had been imposed on imported products in the originating Member State — would make the prohibition on charges having an effect equivalent to customs duties empty and meaningless.

9 It is therefore necessary to reply to the first question that a charge which is imposed on meat, whether or not prepared, when it is imported, and in particular on consignments of lard, even though no charge is imposed on similar domestic products, or a charge is imposed on them according to different criteria, in particular by reason of a different chargeable event giving rise to the duty, constitutes a charge having an effect equivalent to a customs duty within the meaning of Articles 9, 12 and 13 of the Treaty.

10 The other two questions have been submitted by the court making the reference only if the Court of Justice rules that a charge of the kind referred to escapes the classification of a charge having an effect equivalent to a customs duty. It follows that the reply to those questions has, having regard to the reply given to the first question, become purposeless.

Costs

11 The costs incurred by the Government of the French Republic and by the Commission of the European Communities, which submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, 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 (First Chamber)

in answer to the questions referred to it by the Tribunal d'Instance, Lille, by judgment of 25 May 1978 completed by a corrective judgment of 6 July 1978, hereby rules:

A charge which is imposed on meat, whether or not prepared, when it is imported, and in particular on consignments of lard, even though no charge is imposed on similar domestic products, or a charge is imposed on them according to different criteria, in particular by reason of a different chargeable event giving rise to the duty, constitutes a charge having an effect equivalent to a customs duty within the meaning of Articles 9, 12 and 13 of the EEC Treaty.

Mertens de Wilmars O'Keeffe Bosco

Delivered in open court in Luxembourg on 31 May 1979.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 29 MARCH 1979

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling by the Tribunal d'Instance of Lille.

The Plaintiff in the proceedings before that Court is the SARL Denkavit Loire, which carries on business at Montreuil Bellay in the Département of Maine-et-Loire as a manufacturer of animal feeding stuffs. The Defendant is the French State, in the form of the "Administration des Douanes".