

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'Keefe

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".

On 7 October 1977 the Plaintiff imported from the Federal Republic of Germany and cleared through customs at Lille a consignment of 22 400 kgs of lard intended for the manufacture of a product used mainly for feeding young calves. The lard was of CCT Heading 15.01, which comprises "Lard, other pig fat and poultry fat, rendered or solvent-extracted".

The Plaintiff was required to pay on that importation a sum of FF 672 in respect of a "tax for the protection of public health and for the organization of the markets in meat" ("taxe de protection sanitaire et d'organisation des marchés des viandes") introduced by a French Statute, No 77-646, of 24 June 1977. In the proceedings before the Tribunal d'Instance the Plaintiff seeks to recover that sum with interest, on the ground that the imposition of that tax on lard imported from another Member State was contrary to Community law. The sum at stake is small, but we are told on behalf of the Plaintiff that this is a test case, the outcome of which will determine that of other cases both pending and future.

The tax in question was, it appears, instituted in substitution for two taxes previously imposed by French legislation, a "public health tax" ("taxe sanitaire") and an "inspection and stamp tax" ("taxe de visite et de poinçonnage"), the compatibility of which with Community law had been challenged by the Commission under Article 169 of the EEC Treaty.

Article 1 of Statute No 77-646 provides that the tax thereby instituted is to be levied in private slaughterhouses and on imports for the benefit of the State, and in public slaughterhouses for the benefit, in prescribed proportions, of the State and of the local authorities owning them.

Article 2 provides that the rate of the tax is to be fixed annually per kg net weight of meat on the basis of certain prescribed guide prices.

Article 3 deals with the levying of the tax on meat from animals slaughtered in France. It provides that the tax is to be paid by or for the account of the owner of each slaughtered animal at the time of its slaughter; that the slaughtering process constitutes the chargeable event ("le fait générateur de la taxe"); and that the tax shall be assessed and collected in the same way as VAT.

Article 4 on the other hand deals with imports. It provides that the tax shall be charged on the importation of meat, whether or not prepared; that it shall be payable by the importer or other person entering the goods, at the time of their clearance for home use; that it shall be levied by the customs authorities; and that it shall be assimilated to customs duties for purposes of collection and of all legal proceedings.

A Decree, No 77-899, of 27 July 1977 lays down certain detailed provisions for the implementation of the Statute.

Articles 1 to 6 of that Decree prescribe how the net weight of meat is to be established for the purposes of levying the tax in French slaughterhouses. In the case of swine, Article 3 provides that the net weight shall be that of the slaughtered animal, bled and gutted, with the tongue, bristles, hooves and genital organs removed, but including the head and trotters. Article 6 requires weighing to take place within an hour of the animal having been stunned and provides for certain deductions to be made from the actual net weight found.

Articles 9 and 10 of the Decree deal with imports. Article 9 lists, by reference to

CCT Headings, the imported products on which the tax is to be charged. That list not only includes meat, fresh, chilled, frozen, salted, in brine, dried or smoked, as well as pig and poultry fat not rendered or solvent-extracted (again fresh, chilled, frozen, salted, in brine, dried or smoked), all of which products are comprised in various Headings in Chapter 2 of the CCT (entitled "Meat and Edible Meat Offals"); it also includes the products of Heading 15.01, to which I have already referred, and certain products of Headings 16.01 and 16.02 such as sausages and other prepared and preserved meats. Article 10 provides for the tax to be assessed on the net weight of the meat less any offal and for products of headings 16.01 and 16.02 consisting of meats of different species of animals for which the rates of tax differ to be taxed at the lowest relevant rate.

Decree No 77-899 was itself followed by a ministerial Order ("Arrêté") dated 9 August 1977 stating the rates at which the tax should be charged for the year 1977. For meat from swine the rate was to be 0.034 FF per kg. The rate actually charged by the Customs office at Lille on the importation here in question appears to have been, owing to a mistake, only 0.03 FF per kg, but nothing turns on that.

The questions referred to this Court by the Tribunal d'Instance, which reflect the contentions advanced before the Tribunal on behalf of the Plaintiff, are these:

"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 to imports from another Member State of lard intended for use in animal feeding stuffs a tax to compensate for the levying of an internal tax on the slaughter of swine?

2. If the answer to Question 1 is in the negative, is the levying of the tax referred to in that Question contrary to the prohibition of tax discrimination under Article 95 of the Treaty?
3. If the answers to Questions 1 and 2 are in the negative, should the levying of the tax referred to in Question 1 be held contrary to Council Regulation No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat?"

The Commission invited us to consider the question whether the tax instituted by Statute No 77-646 was as a whole compatible with Community law. That is however a much wider question than any asked by the Tribunal d'Instance. Nor is it a question that needs to be answered in order to enable the present case to be decided. I therefore propose to leave it aside, and to consider only the compatibility with Community law of the imposition of the tax on lard imported from other Member States.

As to that the crucial fact is, in my opinion, that the tax is not imposed on lard produced in France.

On behalf of the French Government it was submitted that that was immaterial because such lard was extracted from carcasses that had borne the tax at the slaughterhouse, so that the tax should properly be regarded as a single tax

chargeable uniformly on domestic and imported products. It was chargeable at the same rate on the same basis (net weight) in both cases. The French Government concluded that the tax formed part of the general internal taxation system of France and could not be considered a charge having an effect equivalent to a customs duty.

The conclusion makes it unnecessary to express any view on a subsidiary argument that was put forward on behalf of the Plaintiff on Question 1, to the effect that, since charges are made in most countries for public health inspections at slaughterhouses, the extension of the tax to imports was likely to lead to double taxation.

It has however been held by this Court that for an impost to be regarded as forming part of the general internal taxation system of a Member State, and not, in so far as it affects imports, as a charge having an effect equivalent to a customs duty, it must be levied on domestic products and on imports according to the same criteria and at the same stage of production. The circumstance that domestic products may be subjected to a burden similar to that affecting imports in some other way is not enough. See in particular Case 87/75 the *Bresciani* case [1976] 1 ECR 129 (paragraph 11 of the Judgment). Manifestly lard produced by rendering or by solvent-extraction is not at the same stage of production as the carcass of a freshly slaughtered pig.

I am therefore of the opinion that the Plaintiff and the Commission are right in saying that the imposition of the tax here in question on imports of lard from other Member States was incompatible with the provisions of the Treaty forbidding charges having an effect equivalent to customs duties on trade between Member States.

The conclusion also makes it unnecessary to express a view on an alternative submission made on behalf of the Plaintiff on that Question, which rested on the principle laid down in a number of Judgments of the Court that a duty falling within a general system of internal taxation applying to domestic products as well as to imported products can constitute a charge having an effect equivalent to a customs duty on imports if it has the sole purpose of financing activities for the specific advantage of the taxed domestic product. The Plaintiff submitted, on the strength of what was said in the "Exposé des Motifs" of the Bill for Statute No 77-646 and in the course of the debates on that Bill in the French Parliament, that the revenue from the tax here in question was to be used wholly and exclusively to finance activities benefiting French meat production, namely the creation of detailed records of French cattle herds, the grading and marking of carcasses and the supervision of slaughterhouses by the State. The Commission expressed doubt as to the soundness of the submission, partly because, whatever the French Parliament may have been told, there was no legal requirement that the revenue from the tax should be devoted to those activities and partly because they appeared to be activities conducted in the general public interest rather than in the specific interests of meat producers.

Be that as it may, I am, for the reason I stated earlier, of the opinion that, in answer to Question I in the Order for Reference, Your Lordships should rule that the imposition on imports of lard from another Member State of a tax to compensate for the levying of an internal tax on the slaughter of swine is contrary to the prohibition of charges having an effect equivalent to customs duties under Articles 9, 12 and 13 of the EEC Treaty.

If that is correct, Questions 2 and 3 do not arise.