govern in the various Member States matters of form and substance in relation to recovering national taxes which have been paid in contravention of Community law cannot be regarded as incompatible with the provisions of Community law on the establishment of a system ensuring that competition within the Common Market is not distorted.

In Case 811/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Corte di Appello [Court of Appeal], Turin, for a preliminary ruling in the proceedings pending before that court between

AMMINISTRAZIONE DELLE FINANZE DELLO STATO [State Finance Administration]

and

ARIETE S.P.A., Rome,

on the interpretation of Articles 12 *et seq.* and 85 *et seq.* of the EEC Treaty,

THE COURT (Third Chamber)

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart, Judges,

Advocate General: J.-P. Warner
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts and the observations submitted during the written procedure may be summarized as follows:

I — Facts and written procedure

Between 1 July 1968 and 26 February 1972 Ariete S.p.A. imported into Italy from France considerable quantities of milk in bulk for which it was required to pay a total of Lit. 787 890 by way of statistical charges provided for in Article 42 et seq. of the introductory provisions of the Italian customs duties tariff approved by Decree of the President of the Italian Republic No 723 of 26 June 1965, as also the sum of Lit. 51 153 600 by way of health inspection charges provided for in Law No 30 of 23 January 1968 and Law No 1239 of 30 December 1970. On 1 August 1972 Ariete S.p.A. brought an action against the Amministrazione delle Finanze dello Stato in the Tribunale di Torino [Turin Court] seeking repayments of the said sums and alleging that they were incompatible with Community law.

During the proceedings the Amministrazione declared itself ready to repay the statistical charges in compliance with Law No 447 of 24 June 1971 which abolished such charges and in accordance with the principles laid down in Judgment No 183/73 of 18 to 27 December 1973 of the Corte Costituzionale [Constitutional Court] (Giur. Costituz. 1973, I, p. 2401) and in implementation of Circular No 1460/12 of 19 April 1975 issued by the Amministrazione itself.

On the other hand it maintained its point of view that it was not bound to repay the health inspection charges even when, during the proceedings, the Italian Law No 889 of 14 November 1977 abolished those charges in so far as concerned products subject to the common organization of the agricultural markets and after the Corte Costituzionale by Judgment No 163/77 of 20 to 29 December 1977 (Giur. Costituz. 1977, I, 1524) had on the one hand declared Law No 1239/70 of 30 December 1970 on health inspection charges to be unconstitutional in so far as it applied to products referred to in Regulations Nos 804 and 805/68 on the common organization of the markets in milk and beef and veal (Official Journal, English Special Edition 1968 (I), p. 176 and p. 187) and on the other hand had held that Law No 30/1968 of 23 January 1968 had by implication been partially repealed by the said Regulations Nos 804 and 805/68. The Amministrazione alleges in this respect that repayments of charges levied on the basis of national law declared incompatible with Community law, far from removing the disturbance already caused to free movement of goods by the unwarranted levying of those charges would give rise to fresh disequilibrium incompatible with the aims pursued by the Community legal order and in particular in relation

to competition if undertakings were to obtain repayment of those charges after passing on the charges to third parties.

The court in Turin upheld Ariete's claim and the Amministrazione appealed to the Corte di Appello, Turin, which took the view that the case raised problems of the interpretation of Community law and by order dated 9 November 1979 referred the following question to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

"Is the repayment of sums levied by a Member State on a private importer by way of certain import charges compatible with the rules of Community law concerned with the implementation of a system of free competition within the EEC, where the original payment was made before the charges were held, pursuant to the direct applicability of Community law prohibiting the levying of charges having an effect equivalent to customs duties, to be charges having the effect of customs duties and consequently unlawful?"

The order making the reference was lodged at the Court Registry on 10 December 1979.

Written observations pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC were lodged by the respondent to the appeal, represented for such purposes by N. Catalano, of the Rome Bar, by the Italian Government, represented for such purposes by A. Marzano, Avvocato dello Stato, and by the Commission of the European Communities, represented for such purposes by S. Fabro, a member of the Legal Department, acting as Agent.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to refer the case to the Third Chamber and to open the oral procedure without a preparatory inquiry.

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

1. *Ariete S.p.A.*, the respondent to the appeal, confines itself to drawing the attention of the Court to the fact that a similar question has been put by the Italian Corte di Cassazione to the Court by Order No 506/79 of 5 to 28 November 1979 and is the subject of Case 826/79. It refers to the observations submitted by the private party in that case.

2. *The Italian Government* also confines itself to referring to the observations which it lodged in the aforesaid Case 826/79.

3. *The Commission* observes in the first place that "there was no justification for the charges levied". It refers in particular to the judgments of 14 December 1972 in Case 29/72 *S.p.A. Marimex* [1972] ECR 1309 and 19 June 1973 in Case 77/72 *Capolongo*, [1973] ECR 611, and to the Italian domestic measures and judgments referred to in the order making the reference.

As to the arguments of the Amministrazione to the effect that repayment of charges levied on the basis of a national provision contrary to Community law rather than eliminating disturbances already produced would create fresh economic disequilibrium so

disregarding the aims pursued by the Community legal order and that such repayment would mean inflated and unexpected profit to the traders concerned, the Commission contends that appreciation of such arguments would require thorough economic analysis. Since no study of that kind has been completed or even started, it must be concluded that the arguments are purely theoretical without any connexion with economic reality. The disequilibria which the repayment of the charges wrongly levied might cause in Community trade are purely hypothetical and impossible to quantify so that they cannot be taken into account.

As to the fact that the burden of the charge has been passed on to their buyers by the undertakings who have discharged it, that is a purely economic matter which is certainly not peculiar to the present case. The economic situation, whatever it may be, cannot influence the answer to the problem of law raised by the obligation to repay charges levied contrary to Community law. All other considerations are subsidiary. In any case the national court has sole jurisdiction to decide any question of unlawful enrichment of the undertaking which obtains repayment and that court can consider the question only in the light of municipal law since there is no such rule known to Community law.

If it were nevertheless necessary to pick out a rule of Community law in the matter it would be necessary to refer to the general principles of law and the Commission observes in this respect that reimbursement of sums paid but not owed is "automatic in all Member States save Denmark". It follows that the obligation to reimburse charges wrongly levied is automatic save in exceptional cases (which the present is not) where equity imposes an obligation to place limits on reimbursement.

As to the fact that the duties in question were levied before they were declared unlawful, the Commission points out that according to the established case-law of the Court of Justice Article 13 (2), providing for the abolition of charges having equivalent effect, is directly applicable as from the end of the transitional period. Further, since it relates to the agricultural sector where on the occasion of the establishment of the various organizations of the market the regulations in the matter have provided pursuant to Article 43 of the Treaty for the abolition of charges having equivalent effect during the transitional period, the prohibition on levying charges having equivalent effect has for the present purposes its origin in Article 22 of Regulation No 804/68 which took effect from 29 July 1968.

Relying in particular on the judgment of the Court of 4 April 1968 in Case 34/67, *Gebrüder Lück* [1968] ECR 245, the judgment of 19 December 1968 in Case 13/68, *Salgoil* [1968] ECR 453 and the judgment of 15 July 1964 in Case 6/64, *Costa* v *ENEL* [1964] ECR 585, the Commission concludes that the national

court must seek in municipal law for the means enabling it to apply Community law most effectively. It proposes that the question put to the Court of Justice should be answered as follows:

"The Community provisions and in particular Article 22 of Regulation (EEC) No 804/68 mean that parties have the right to obtain repayment of sums wrongly levied as charges having an effect equivalent to customs duties (in the present case statistical charges and health inspection charges) from the time when such charges were abolished as a result of the entry into force of the aforesaid regulation (29 July 1968). Repayment of such sums to those who have paid them is not incompatible with Community provisions for achieving a system of free competition within the EEC".

III — Oral procedure

At the sitting held on 5 June 1980 the respondent in the main action, represented by N. Catalano of the Rome Bar, the Commission of the European Communities, represented by Mr Fabro, a member of its Legal Department, acting as Agent, and the Italian Government, represented by I. M. Braguglia, Avvocato dello Stato, acting as Agent, submitted oral argument.

The Advocate General delivered his opinion at the same sitting.

Decision

1 By order dated 9 November 1979, received at the Registry of the Court of Justice on 10 December 1979, the Corte d'Appello, Turin, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty the following question on the interpretation of Community law:

"Is the repayment of sums levied by a Member State on a private importer by way of certain import charges compatible with the rules of Community law concerned with the implementation of a system of free competition within the EEC, where the original payment was made before the charges were held, pursuant to the direct applicability of Community law prohibiting the levying of charges having an effect equivalent to customs duties, to be charges having the effect of customs duties and consequently unlawful?"

2 That question arose in proceedings between the Amministrazione delle Finanze dello Stato and Ariete S.p.A. in which the latter sought the recovery of statistical charges and health inspection charges paid between 1 February 1968 and 26 February 1972 on the import of milk from France.

3 It is not in dispute that the charges in question constitute charges having an effect equivalent to customs duties and that the prohibition on imposing them in intra-Community trade arises with effect from 1 November 1964 (Regulation No 82/64 of 30 June 1964, Journal Officiel 1964, p. 1626) from Articles 12 (1) and 32 of Regulation No 13/64 of the Council of 5 February 1964 on the progressive establishment of a common organization of the markets in milk and milk products (Journal Officiel 1964, p. 549), replaced with effect from 29 July 1968 by Regulation No 804/68 of the Council on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176).

4 It appears from the order making the reference that the question put to the Court concerns in particular the case of charges having an effect equivalent to customs duties which were paid voluntarily without reservation for a long period by the traders concerned on the assumption common to them and to the national authorities that they were not open to criticism from the point of view of their compatibility with Community law. The incompatibility became apparent only gradually at a later date as a result of the interpretation given by the Court of Justice to the concept of charge having an effect equivalent to customs duties, which led the Court for the first time to classify statistical charges in that way in its judgment of 1 July 1969 (Case 24/68 *Commission* v *Italian Republic* [1969] ECR 193) and to classify health inspection charges similarly in its judgment of 14 December 1972 (Case 29/72 *Marimex* v *Italian Finance Administration* [1972] ECR 1309).

5 According to the established case-law of the Court the prohibition on the levying of charges having an effect equivalent to customs duties, whether it has its origin in the general rule contained in Article 13 of the Treaty with effect from 1 January 1970, at the end of the transitional period, or in the special provision of Article 12 of Regulation No 13/64 with effect, as regards the products referred to by the regulation, from 1 November 1964, has a direct effect in the relations between the Member States and their

subjects throughout the Community as from the date provided for the implementation of the provisions in question. As the Court stated in its judgment of 9 March 1978 in Case 106/77, *Amministrazione delle Finanze dello Stato* v *Simmenthal S.p.A.* [1978] ECR 629, at p. 643, rules of Community law must be fully and uniformly applied in all the Member States from the date of their entry into force and for so long as they continue in force.

6 The interpretation which, in the exercise of the jurisdiction conferred upon it by Article 177, the Court of Justice gives to a rule of Community law clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force. It follows that the rule as thus interpreted must be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions enabling an action relating to the application of that rule to be brought before the courts having jurisdiction are satisfied.

7 As the Court recognized in its judgment of 8 April 1976 in Case 43/75 *Gabrielle Defrenne* v *Société Anonyme Belge de Navigation Aérienne Sabena* [1976] ECR 455, it is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order and in taking account of the serious effects which its judgment might have, as regards the past, on legal relationships established in good faith, be moved to restrict for any person concerned the opportunity of relying upon the provision as thus interpreted with a view to calling in question those legal relationships.

8 Such a restriction may, however, be allowed only in the actual judgment ruling upon the interpretation sought. The fundamental need for a general and uniform application of Community law implies that it is for the Court of Justice alone to decide upon temporal restrictions as regards the effects of the interpretation which it gives.

9 It is necessary, however, to observe that where the consequence of a rule of Community law is to prohibit, on the dates and with the effects described above, the levying of national charges or dues, the safeguard of the rights conferred upon subjects by the direct effect of such a prohibition does not necessarily require a uniform rule common to the Member States relating to the formal and substantive conditions to which the contesting or recovery of those very diverse national charges is subject.

10 A comparison of the national systems shows that the problem of disputing charges which have been unlawfully claimed or the refunding of charges paid but not owed is settled in different ways in the various Member States, and even within a single Member State, according to the various kinds of taxes or charges in question. In certain cases, objections or claims of this type are subject to specific procedural conditions and time-limits under the law with regard both to complaints submitted to the tax authorities and to legal proceedings.

11 In other cases, claims for repayment of charges which were paid but not owed must be brought before the ordinary courts, mainly in the form of claims for the recovery of overpayments. Such actions are available for varying lengths of time, in some cases for the limitation period laid down under the general law, with the result that Member States involved may be faced with an accumulation of claims for a considerable amount where certain national tax provisions have been found to be incompatible with the requirements of Community law.

12 It follows from the judgments of 16 December 1976 in the *REWE* and *Comet* cases (Case 33/76 and Case 45/76 [1976] ECR 1989 and 2043 respectively) that, applying the principle of cooperation laid down in Article 5 of the EEC Treaty, it is the courts of the Member States which are entrusted with ensuring the legal protection which subjects derive from the direct effect of the provisions of Community law. In the present state of Community law and in the absence of Community rules concerning the contesting or the recovery of national charges which have been unlawfully demanded or wrongfully levied, it is for the domestic legal system of each Member State to designate the courts having jurisdiction and determine the procedural conditions governing actions at law intended to safeguard the

rights which subjects derive from the direct effect of Community law, it being understood that such conditions cannot be less favourable than those relating to similar actions of a domestic nature and that under no circumstances may they be so adapted as to make it impossible in practice to exercise the rights which the national courts have a duty to protect.

13 It should be specified in this connexion that the protection of rights guaranteed in the matter by the Community legal order does not require an order for the recovery of charges improperly levied to be granted in conditions such as would involve an unjustified enrichment of those entitled.

14 The system of protection which subjects thus have as a result of the direct effect of the provisions of Community law in conjunction with the special features of national laws which govern in the various Member States matters of form and substance in relation to challenging national taxes or recovering those which have been paid without being owed cannot be regarded as incompatible with the provisions of Community law on the establishment of a system ensuring that competition within the Common Market is not distorted.

15 Those provisions have basically been given specific form on the one hand in the rules applying to undertakings (Articles 85 to 90 of the EEC Treaty) and on the other hand in those on aids granted by States (Articles 90 to 94 of the EEC Treaty). The first cannot apply in the relations between undertakings and the revenue authorities of the Member States when the revenue exercises its power to create new taxes. As regards the latter rules, the Court ruled in its judgment of 27 March 1980 in Case 61/79 *Amministrazione delle Finanze dello Stato* v *Denkavit Italiana S.r.l.* [1980] ECR at paragraph 32 that the duty of the authorities of a Member State to repay to tax-payers who apply for such repayment charges or dues which were not payable because they were incompatible with Community law, does not constitute an aid within the meaning of Article 92 of the EEC Treaty.

16 It is necessary to point out in addition that all the traders in each Member State who have paid national taxes which were not owed because they were incompatible with Community law are on an equal footing as regards their opportunity for claiming their rights so that there can be no question in the

matter of distorting competition. On the other hand it is true that those opportunities differ from one Member State to the other in accordance with the different national laws. Such differences, especially in rules relating to challenging national levies, cannot be regarded as discriminatory or, *a fortiori*, as likely to distort competition where, as stated above, the national law is applied in a non-discriminatory manner as compared with proceedings aimed at settling cases of the same kind but of a purely national character and where the procedural conditions do not make it impossible in practice to exercise the rights given by Community law.

17 It is therefore right to answer the question put by the Corte d'Appello, Turin, that it is for the legal order of each Member State to lay down the conditions in which taxpayers may contest taxation wrongly levied because of its incompatibility with Community law or claim repayment thereof, provided that those conditions are no less favourable than the conditions relating to similar applications of a domestic nature and that they do not make it impossible in practice to exercise the rights conferred by the Community legal order. There is nothing from the point of view of Community law to prevent national courts from taking account, in accordance with their national law, of the fact that it has been possible for charges unduly levied to be incorporated in the prices of the undertaking liable for the charge and to be passed on to its purchasers.

The bringing of such actions for the recovery of such sums is not contrary to the provisions of Community law on the establishment of a system ensuring that competition is not distorted in the Common Market.

Costs

18 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since the proceedings are, so far as the parties to the main action are concerned, in the nature of a step in the action before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Corte d'Appello, Turin, by order of 9 November 1979, hereby rules:

It is for the legal order of each Member State to lay down the conditions in which taxpayers may contest taxation wrongly levied because of its incompatibility with Community law or claim repayment thereof, provided that those conditions are no less favourable than the conditions relating to similar applications of a domestic nature and that they do not make it impossible in practice to exercise the rights conferred by the Community legal order.

There is nothing from the point of view of Community law to prevent national courts from taking account, in accordance with their national law, of the fact that it has been possible for charges unduly levied to be incorporated in the prices of the undertaking liable for the charge and to be passed on to purchasers.

The bringing of such actions for the recovery of such sums is not contrary to the provisions of Community law on the establishment of a system ensuring that competition is not distorted in the Common Market.

Kutscher Mertens de Wilmars Mackenzie Stuart

Delivered in open court in Luxembourg on 10 July 1980.

A. Van Houtte
Registrar

H. Kutscher
President