JUDGMENT OF THE COURT
18 February 1986 *

In Case 174/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Justice (Queen's Bench Division, Commercial Court), for a preliminary ruling in the proceedings pending before that court between

Bulk Oil (Zug) AG,

plaintiff,

and

Sun International Limited and Sun Oil Trading Company,

defendants,

on the interpretation of the applicable provisions of Community law in order to assess the validity under Community law of the policy adhered to by the United Kingdom in 1981 regarding quantitative restrictions on the export of crude oil to non-member countries, in particular Israel,

THE COURT

composed of: Lord Mackenzie Stuart, President, K. Bahlmann, President of Chamber, G. Bosco, T. Koopmans, O. Due, Y. Galmot and C. Kakouris, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

* Language of the Case: English.

after considering the observations submitted on behalf of

Bulk Oil, the plaintiff in the main proceedings, by Jeremy Lever, QC, David Vaughan, QC, Michael Mark and Christopher Vajda, instructed by David Maislish, Solicitor of the Supreme Court,

Sun Oil, the defendant in the main proceedings, by Adrian Hamilton, QC, Francis Jacobs, QC, Nicholas Chambers and Peter Brunner, instructed by Shaw & Croft, Solicitors,

the United Kingdom by John Laws, instructed by R. N. Ricks of the Treasury Solicitor's Department, acting as Agent, and by S. Richards, Barrister,

the Commission of the European Communities by its Legal Advisor, John Temple Lang, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 10 December 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By order of 18 May 1984, received at the Court on 4 July 1984, the Commercial Court of the Queen's Bench Division of the High Court of Justice referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of the applicable provisions of Community law with a view to assessing the validity from the point of view of Community law of the policy applied by the United Kingdom in 1981 of quantitative restrictions on the export of crude oil to non-member countries, in particular Israel.

2 Those questions were raised in the course of proceedings between Bulk Oil (Zug) AG (hereinafter referred to as 'Bulk'), a company incorporated under Swiss law, and Sun International Ltd. and Sun Oil Trading Company (hereinafter referred to as 'Sun'), incorporated in Bermuda and in the United States respectively.

3 It is undisputed that since January 1979 it has been United Kingdom policy to authorize the exportation of oil of United Kingdom origin only to Member States of the Community, Member States of the International Energy Agency and countries with which there was before 1979 an 'existing pattern of trade' (specifically, Finland).

4 The United Kingdom policy has never been incorporated in legislation or in any legal measure whatsoever, but has been made public on several occasions by government statements. It was intended to prohibit direct and indirect exports of crude oil to non-member countries other than those referred to above. Oil companies operating in the United Kingdom were informed of the policy and were asked to comply with it. Since 1979 the oil companies, and in particular British Petroleum, have inserted a destination clause in their standard contracts prohibiting buyers from exporting the oil to a destination other than one of the States mentioned above. On 31 January 1979 the United Kingdom provided the Committee of Permanent Representatives of the Member States with a document on its new oil policy.

5 By a contract concluded on 13 April 1981 Sun agreed to sell to Bulk substantial quantities of British North Sea crude oil. The contract contained a destination clause in the following terms: 'Destination: destination free but always in line with exporting countries' government policy . . . '. After Sun had become aware that the destination to which Bulk intended the oil to be delivered was Israel, British Petroleum, the supplier of the oil in question, refused to put the oil on board the ship nominated by Bulk, on the ground that delivery to Israel was contrary to United Kingdom policy, and Sun did likewise. Bulk made a claim against Sun, arguing that it was entitled under the contract to oblige Sun to have the oil loaded for delivery to Israel and asserting that in any event Sun could not rely on United Kingdom policy.

6 The dispute was then referred to arbitration, in particular on the issue whether the United Kingdom policy was in conformity with the provisions of the EEC Treaty

and of the Agreement of 11 May 1975 between the European Economic Community and Israel. In his award dated 8 October 1982 the arbitrator held that the EEC-Israel Agreement did not cover quantitative restrictions on exports but only on imports; that the exportation of crude oil was not within the generally recognized ambit of the Treaty or of that agreement; and that if the United Kingdom policy in question was invalid under Community law, the destination restriction imposed by Sun would also be void and could not be relied on by it against Bulk. In the event, however, the arbitrator held that it was Bulk that was in breach of contract, and in his final award dated 5 May 1983 he assessed the damages due from Bulk to Sun at more than USD 12 million.

7 Bulk appealed against the award to the High Court of Justice; by order of the Commercial Court of the Queen's Bench Division dated 18 May 1984, that court decided to refer the following questions to the Court of Justice for a preliminary ruling:

1. (a) Did the Agreement of 11 May 1975 between the European Economic Community and the State of Israel ('the Agreement') as adopted by Council Regulation No 1274/75 ('the Regulation') upon its proper construction:

   (i) preclude the imposition of new quantitative restrictions or measures having equivalent effect on exports between the United Kingdom and Israel and if so

   (ii) preclude the imposition of the same on the export of crude oil from the United Kingdom to Israel;

   (iii) otherwise preclude the inclusion in a contract between two individuals of a provision which prevented the export of crude oil from the United Kingdom to Israel during the period April 1981 to July 1981 inclusive ('the relevant period')?

   (b) Do the provisions of Council Regulation No 2603/69 affect this answer?

2. If so, would a measure in the form of a policy ('the policy') held to have been adopted by the United Kingdom of precluding the export of North Sea crude oil to countries other than Member States of the EEC, countries in the International Energy Agency and countries with which there was, at the time of the introduction of the policy, an existing pattern of trade, and so precluding the

direct export of North Sea crude oil to Israel, have been justified under Article 11 of the Agreement and the Regulations in the circumstances ruling at the relevant period? And would such a measure have constituted a means of arbitrary discrimination or a disguised restriction on trade between the contracting parties under that Article?

3. If relevant in the light of the answers to Questions 1 and 2:

   (a) Do the relevant provisions of the Agreement and the Regulations have direct effect so as to enable an individual to rely on them;

   (b) Can an individual rely on them against another individual at all;

   and

   (c) Can an individual rely on them against another individual in circumstances where the two individuals in question have entered into a contractual arrangement, a condition of which requires compliance with the policy of a Member State which contravenes those provisions?

4. If relevant in the light of the answers to Questions 1, 2 and 3 having regard to Council Regulation No 2603/69, was the adoption of the policy incompatible with the EEC Treaty either wholly or in so far as it sought to affect or preclude the export of crude oil from the United Kingdom to Israel because the Treaty precluded the United Kingdom from adopting such a policy either:

   (i) at all, or

   (ii) without having notified to, consulted with and [or gained the approval of the Commission and] or the Council of the Ministers of the European Communities?

5. If the adoption of such a policy was incompatible with the Treaty:

   (a) Do the relevant provisions of the Treaty have direct effect so as to enable an individual to rely on them?

   (b) Can an individual rely on them against another individual at all?

   and

(c) Can an individual rely on them against another individual in circumstances where the two individuals in question have entered into a contractual arrangement, a condition of which requires compliance with the policy of a Member State which contravenes those provisions?

6. Are the answers to the foregoing questions affected by the fact that no objection has been expressed about the legality of the policy by either the Council of Ministers or the Commission of the European Communities?

The reply to be given to the first part of the first question (1 (a))

8 By that question the national court asks in essence whether the Agreement of 11 May 1975 between the European Economic Community and the State of Israel must be interpreted as prohibiting the United Kingdom from implementing a policy imposing new quantitative restrictions or measures having equivalent effect on exports to Israel.

9 It should first be pointed out that the implementation of a policy whose specific object is to impose quantitative restrictions on exports to non-member countries must be regarded as a measure having an effect equivalent to such restrictions. Such a policy or practice does not escape the prohibitions laid down by Community law simply because it is not incorporated in decisions binding on undertakings. Even measures adopted by the government of a Member State which do not have binding effect may be capable of influencing the conduct of undertakings in that State and thus of frustrating the aims of the Community (see the judgment of the Court of 24 November 1982 in Case 249/81 *Commission* v *Ireland* [1982] ECR 4005).

10 The object of the Agreement of 20 May 1975 between the Community and the State of Israel (Official Journal, L 136, p. 1) was the progressive abolition of the main obstacles to trade between the parties and the promotion of commercial reciprocity. Article 3 lays down the principle that no new customs duty on imports or charge having equivalent effect and no new quantitative restriction on imports or measure having equivalent effect is to be introduced in trade between the Community and Israel. Article 4 provides that no new customs duty on exports or charge having equivalent effect is to be introduced in trade between the Community and Israel.

11 Article 11 provides that 'the Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public

morality, public policy or public security, the protection of human, animal or plant life or health, the protection of national treasures of artistic, historic or archeological value, the protection of industrial and commercial property, or rules relating to gold or silver. Such prohibitions or restrictions must not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Contracting Parties.'

12 Under Article 12 of the Agreement actions of undertakings or of States tending to restrict competition are incompatible with the proper functioning of the Agreement in so far as they may affect trade between the Community and Israel. Finally, Article 25 (1) of the Agreement provides that 'the Contracting Parties shall refrain from any measure likely to jeopardize the attainment of the objectives of the Agreement'.

13 Bulk argues that the conclusion of the EEC-Israel Agreement was the second Community action with regard to Israel in the context of the common commercial policy provided for by the Treaty, after the adoption of Regulation No 2603/69 of 20 December 1969 establishing common rules for exports (Official Journal, English Special Edition 1969 (II), p. 590), and that the exercise by a Member State of any power in that field without Community authorization is therefore precluded. Examination of the preamble to the Agreement and of Article 1 shows, according to Bulk, that the Community occupied the field of trade relations between the EEC and Israel exhaustively. That field covers restrictions both on exports and on imports, and includes trade in crude oil. Furthermore, the prohibition on the exportation of British oil to Israel is 'likely to jeopardize the attainment of the objectives of the Agreement' contrary to the provisions of Article 25 (1) of that Agreement. Finally the agreements and concerted practices implied by the United Kingdom policy, in particular the inclusion of a destination clause in all contracts, is contrary to Article 12 (1) of the EEC-Israel Agreement.

14 Sun, the United Kingdom and the Commission, on the other hand, argue that the EEC-Israel Agreement concerns only restrictions on imports and contains no provision prohibiting quantitative restrictions on exports or measures having equivalent effect. It cannot be inferred from its preamble or from any of its provisions, including Articles 1 and 11, that so important a clause should be understood to have been intended by the Contracting Parties. That argument, they say, is

confirmed by comparison with other association agreements which expressly prohibit quantitative restrictions on exports and by the case-law of the Court, in particular the judgment of 11 October 1979 in Case 225/78 (*Procureur de la République* v *Bouhelier and Others* [1979] ECR 3151).

15 Article 3 of the Agreement expressly prohibits any new quantitative restriction on imports or measure having equivalent effect. With regard to exports, on the other hand, Article 4 simply prohibits the introduction of new customs duties or charges having equivalent effect. Neither that article nor any other provision of the EEC-Israel Agreement expressly prohibits quantitative restrictions on exports or measures having equivalent effect in trade between the Community and Israel.

16 Furthermore, as the Court has already held in interpreting analagous provisions of a similar agreement, in its judgment of 11 October 1979 (*Bouhelier*) referred to above, it cannot be inferred from Article 11, ambiguous though it may be, that a clause prohibiting quantitative restrictions on exports should be understood to have been intended by the Contracting Parties. As Sun, the United Kingdom and the Commission correctly contend, therefore, it must be concluded that the Agreement lays no obligation on the Community or on the Member States with regard to the introduction or abolition of quantitative restrictions on exports or measures having equivalent effect.

17 Since quantitative restrictions on exports do not fall within the scope of the Agreement between the Community and the State of Israel the argument that the Agreement deprived the Member States of their power to introduce such restrictions must be rejected, and the question whether measures imposing quantitative restrictions on exports are compatible with Articles 11, 12, and 25 (1) of the EEC-Israel Agreement is irrelevant.

18 It follows in addition that no answer need be given to Questions 1 (a) (ii) and 1 (a) (iii) of the national court, which were raised only in the event that the EEC-Israel Agreement should have been interpreted as prohibiting the Member States from introducing new quantitative restrictions on their exports to Israel or measures having equivalent effect.

19 The answer to the first part of the question must therefore be that the Agreement of 20 May 1975 between the European Economic Community and the State of

Israel does not prohibit the imposition of new quantitative restrictions or measures having equivalent effect on exports from a Member State to Israel.

The reply to be given to the second part of the first question (1 (b))

20 By this question the national court asks in essence whether Regulation No 2603/69 must be interpreted as permitting the implementation of a policy such as that in issue with regard to oil exports.

21 Article 1 of Regulation No 2603/69 of the Council of 20 December 1969 establishing common rules for exports (Official Journal, English Special Edition 1969 (II), p. 590) provides that 'the exportation of products from the European Economic Community to third countries shall be free, that is to say, they shall not be subject to any quantitative restriction, with the exception of those restrictions which are applied in conformity with the provisions of this Regulation'. Article 10 states that 'until such time as the Council, acting by a qualified majority on a proposal from the Commission, shall have introduced common rules in respect of the products listed in the Annex to this Regulation, the principle of freedom of export from the Community as laid down in Article 1 shall not apply to those products'. The products listed in the annex include, under headings 27.09 and 27.10, crude oil and petroleum oils.

22 Bulk submits that Article 113 of the Treaty and Regulation No 2603/69 preclude a Member State from adopting and maintaining, without specific authorization, a policy prohibiting the exportation of oil to certain non-member countries, including Israel.

23 On the basis of an analysis of the judgments of the Court in the area of common commercial policy Bulk argues that in that field the Community has exclusive competence, and a Member State may adopt a measure only if specifically authorized to do so by the Community. The common commercial policy covers measures restricting exports to non-member countries, whether these are quantitative restrictions or measures having equivalent effect. The United Kingdom Government's policy was a measure of commercial policy intended to regulate exports of crude oil to non-member countries and it directly influenced the conduct of undertakings. The Community did not specifically authorize the United Kingdom policy.

24 In Bulk's view, Article 10 of Regulation No 2603/69 does not amount to such authorization. It is clear from an analysis of the preamble to Regulation No 2603/69 and of the provisions of that regulation taken as a whole that Article 10 only derogated from the principle of freedom to export to non-member countries laid down in Article 1 with regard to certain products in order to prevent the old national export restrictions relating to the products listed in the annex from becoming invalid at the end of the transitional period. Those provisions were not intended to give, nor did they have the effect of giving, Member States a free hand to introduce new restrictions on exports, even for a product included in the annex to the regulation. Exports of crude oil therefore remained within the field of application of Regulation No 2603/69 and thus of the common commercial policy, as is confirmed, moreover, by the adoption of Council Regulation No 1934/82 of 12 July 1982, which amended Regulation No 2603/69 and established new rules for exports of crude oil (Official Journal L 211, p. 1).

25 Bulk infers from that that if, contrary to Bulk's submissions, the Council had purported to allow the Member States a free hand to impose new export restrictions on any product listed in the annex to Regulation No 2603/69, such a provision would be void as incompatible with the Treaty and in particular Article 113.

26 Referring to well-established case-law of the Court, Sun, the United Kingdom and the Commission are agreed that the Community alone has the power to legislate with regard to exports to non-member countries. In the sphere of commercial policy, therefore, the principle remains that Member States may adopt national measures only if specifically authorized to do so by the Community institutions.

27 They consider, however, that Regulation No 2603/69 is a measure implementing Article 113 with regard to exports to non-member countries. Although Article 1 of the regulation lays down the general principle that such exports should be free, Article 10 clearly states that that principle of freedom of export does not apply to the products listed in the annex to the regulation, including oil. Regulation No 2603/69 therefore permitted Member States which had imposed quantitative restrictions on exports of one of the products listed in the annex to alter those restrictions and adopt new ones until such time as the Council should adopt common rules for those products, as envisaged by Article 10 of the regulation.

28 According to these parties that argument is supported by an analysis of Council Regulation No 1934/82, referred to above, which was intended, according to its preamble, to 'clarify' the scope of Articles 1 and 10 of Regulation No 2603/69. Article 1 of Regulation No 1934/82 provides that the principle of freedom of export from the Community does not apply, for all the Member States, to a single product, crude oil, 'in view in particular of the international commitments entered into by certain Member States.' Under that regulation, therefore, all the Member States, whether or not they have restricted exports of oil in the past, are free to do so and were already free to to do so under Regulation No 2603/69.

29 It should be recalled that according to Article 113 (1) of the Treaty the common commercial policy is to be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade.

30 Furthermore, as the Court stated in its Opinion of 11 November 1975 (Opinion 1/75, [1975] ECR 1355), 'it cannot be accepted that in a field covered by export policy and more generally by the common commercial policy the Member States should exercise a power concurrent to that of the Community, in the Community sphere and in the international sphere. . . . To accept that the contrary were true would amount to recognizing that, in relations with third countries, Member States may adopt positions which differ from those which the Community intends to adopt, and would thereby distort the institutional framework, call into question the mutual trust within the Community and prevent the latter from fulfilling its task in the defence of the common interest.'

31 It must therefore be concluded, as the Court held in its judgment of 15 December 1976 (Case 41/76, *Donckerwolke* v *Procureur de la République*, [1976] ECR 1921), that since full responsibility in the matter of commercial policy was transferred to the Community by Article 113 (1) measures of commercial policy of a national character are only permissible after the end of the transitional period by virtue of specific authorization by the Community.

32 Article 1 of Regulation No 2603/69 lays down the general rule that exports from the Community to non-member countries are free, that is to say, not subject to

quantitative restrictions, with the exception of those applied in accordance with the provisions of that regulation. Article 10 of the regulation limits the scope of that principle on a transitional basis with regard to certain products, until such time as the Council shall have established common rules applicable to them; it provides that the principle of freedom of export from the Community does not apply to the products listed in the annex, including oil.

33 It must therefore be held, as Sun, the United Kingdom and the Commission have argued, that Article 10 of Regulation No 2603/69 and the annex to that regulation constitute a specific authorization permitting the Member States to impose quantitative restrictions on exports of oil to non-member countries, and there is no need to distinguish in that regard between previously existing quantitative restrictions and those which are subsequently introduced.

34 With regard to Bulk's argument that such an interpretation of Article 10 of Regulation No 2603/69 would mean that that provision was void on grounds of incompatibility with Article 113 of the Treaty, it should indeed be recalled that in its Opinion of 4 October 1979 (Opinion 1/78, [1979] ECR 2871) the Court stated that 'where the organization of the Community's economic links with non-member countries may have repercussions on certain sectors of economic policy such as the supply of raw materials to the Community or price policy, as is precisely the case with the regulation of international trade in commodities, that consideration does not constitute a reason for excluding such objectives from the field of application of the rules relating to the common commercial policy. Similarly, the fact that a product may have a political importance by reason of the building-up of security stocks is not a reason for excluding that product from the domain of the common commercial policy.'

35 It should be pointed out, however, that in that Opinion the Court was concerned only with the prohibition of a general exclusion, as a matter of principle, of certain products from the field of application of the common commercial policy and not with the Council's discretion to exclude, on a transitional basis, certain products from the common rules on exports.

36 Having regard to the discretion which it enjoys in an economic matter of such complexity, in this case the Council could, without contravening Article 113,

provisionally exclude a product such as oil from the common rules on exports to non-member countries, in view in particular of the international commitments entered into by certain Member States and taking into account the particular characteristics of that product, which is of vital importance for the economy of a State and for the functioning of its institutions and public services.

37 The answer to the second part of the first question must therefore be that Regulation No 2603/69 of the Council of 20 December 1969 establishing common rules for exports does not prohibit a Member State from imposing new quantitative restrictions or measures having equivalent effect on its exports of oil to non-member countries.

The reply to be given to the second and third questions

38 It follows from the foregoing that there is no need to reply to the second and third questions of the national court.

The reply to be given to the fourth and fifth questions

39 In view of the replies given to the questions considered above, these questions must be understood essentially as requesting the Court's assistance on the following two points of law:

(i) Was the United Kingdom prohibited from adopting a policy such as that in question by any other provisions of the Treaty?

(ii) Was it necessary for such a policy to be notified to or approved by the Community institutions before its implementation, and if so, what are the consequences?

These two aspects will be dealt with successively.

The interpretation of the other provisions of the Treaty

40 Bulk submits first of all that the United Kingdom policy is contrary to Article 34 of the Treaty. The effect of the policy is to prohibit not only direct exports of crude oil to destinations not permitted by the United Kingdom but also exports to other Member States where the oil might be re-exported to such a destination. The

destination clause included in all British contracts therefore constitutes an obstacle to trade within the Community.

41 It must be pointed out that, as the Court held in its judgment of 8 November 1979 (Case 15/79, *Groenveld* v *Produktschap voor Vee en Vlees*, [1979] ECR 3409), Article 34 of the Treaty 'concerns national measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for the domestic market of the State in question at the expense of the production or of the trade of other Member States'.

42 That is not true of a policy such as that in question. Such a policy, which applies only to exports to certain non-member countries, does not specifically affect exports to other Member States and is not intended to provide a particular advantage for national production or for the domestic market of the Member State in question.

43 Bulk further argues that the destination clause included in the British contracts, which incorporates by reference the United Kingdom Government's policy, is contrary to Article 85 of the Treaty. That is to say, the agreements and concerted practices which resulted from the United Kingdom policy, in particular the insertion of a destination clause in all contracts, were agreements between undertakings which were intended to restrict or distort competition within the Common Market and which affected trade between Member States. The United Kingdom policy thus authorizes and even requires oil companies to infringe Article 85 of the Treaty, contrary to Articles 3 (f), 5 and 85 of the Treaty.

44 As has just been stated, a measure such as that in question which is specifically directed at exports of oil to a non-member country is not in itself likely to restrict or distort competition within the common market. It cannot therefore affect trade within the Community and infringe Articles 3 (f), 5 and 85 of the Treaty.

45 The answer to the first part of the question must therefore be that Articles 34 and 85 of the Treaty, upon their true construction, do not prevent a Member State from adopting a policy restricting or prohibiting exports of oil to a non-member country on the basis of Article 10 of Regulation No 2603/69.

The obligation to provide information, to give notice or to seek prior approval

46 Bulk argues first of all that Title II of Regulation No 2603/69, entitled 'Community information and consultation procedure', and Title III of the regulation, entitled 'Protective measures', required the United Kingdom, under Articles 4, 6, 7 and 8 of the regulation in particular, which should be read in conjunction with Article 113 of the Treaty, to inform the Community authorities and obtain their consent before implementing the policy in question.

47 Secondly, with regard to the Member States' obligation to give prior notice, Bulk refers to the judgments of the Court on fisheries questions, in particular the judgments of 4 October 1979 (Case 141/78, *France* v *United Kingdom*, [1979] ECR 2923), 10 July 1980 (Case 32/79, *Commission* v *United Kingdom*, [1980] ECR 2403) and 5 May 1981 (Case 804/79, *Commission* v *United Kingdom*, [1981] ECR 1045). It points out that on 6 July 1981 the Commission had submitted to the Council a proposal for an amendment to Regulation No 2603/69 deleting crude oil from the annex to that regulation, except in the case of France. It follows by analogy that during a period when the Council was in the course of formulating a common policy in a field reserved by the Treaty to the Community, the United Kingdom could not implement a unilateral measure without first consulting the Commission. Only the Commission, under Articles 5 and 155 of the Treaty, had the power to authorize that measure or to raise objections or reservations with which the United Kingdom would have been obliged to comply.

48 Thirdly, Bulk argues that Article 4 of the Council Decision of 9 October 1961 (Official Journal, English Special Edition 1959-1962, p. 84) and subparagraph 2 (b) of Part B of the Annex to the Council Decision of 25 September 1962 (Official Journal, English Special Edition 1959-1962, p. 269) require the Member States to give prior notice to the Community authorities and to consult with them before adopting any measure amending the rules governing exports to non-member countries.

49 Bulk considers that a national court must give direct effect to the invalidity of measures adopted in breach of the obligations referred to above. Inasmuch as the sole object of the disputed clauses was to implement the United Kingdom policy, an individual may, in proceedings against another individual before a national court, plead that they are void.

50 Sun and the United Kingdom, on the other hand, argue that in the absence of an express provision requiring notification, consultation or prior approval no implied obligation can be held to exist. Regulation No 2603/69 itself constitutes a Community authorization permitting Member States to adopt unilaterally, and without any prior consultation, quantitative restrictions on exports to non-member countries of products listed in the annex. Furthermore, the Council decisions of 1961 and 1962 referred to above lapsed at the end of the transitional period, that is to say, on 31 December 1969. The analogy with the judgments of the Court regarding fisheries policy is entirely false since in that field several legal provisions had imposed an express obligation to notify or to seek the prior approval of the Community institutions. Finally, and in any event, even if there were an obligation of consultation or of notification, the failure to comply with it would have no direct effect in civil proceedings between individuals.

51 For its part the Commission submits that the competence conferred on the Member States by Regulation No 2603/69, pending the adoption of a Community policy, is subject in particular to Council Decisions of 9 October 1961 and 25 September 1962, requiring consultation on all changes in national rules applicable to exports to non-member countries. The Commission considers that the document provided by the United Kingdom to the Permanent Representatives Committee on 31 January 1979 did not entirely fulfil the United Kingdom's obligation to supply information under Article 4 of the Council Decision of 9 October 1961, in view of the identity of the body to which the information was provided, the incomplete nature of the document and the fact that the document was provided only the day after the policy was adopted.

52 However, the Commission takes the view that, supposing the United Kingdom to have failed to fulfil its obligation under the decision of 9 October 1961 to give prior notice of its policy, the obligation to notify is not a rule of Community law which has direct effect in the sense of the Court's judgment of 15 July 1964 (Case

6/64, *Costa* v *ENEL*, [1964] ECR 585), since the 1961 decision does not oblige the Member State to obtain or even to seek approval for the measures which it envisages. Even after the consultations provided for by the decision the Member State remains free, subject to its other obligations under Community law, to adopt whatever policy it thinks appropriate. Such a failure to notify therefore does not affect the validity of the United Kingdom policy in the light of Community law.

53 As a preliminary point the Court considers that even if the various provisions referred to create obligations for the Member States to provide information or to give notice, it has not been asked by the national court whether such an obligation was fulfilled in this case and the order of the national court does not provide sufficient information to enable it to decide that question.

54 The discussion in the preliminary reference procedure must therefore be restricted to two questions which will be examined successively: the existence of an obligation to provide information, to give notice or to seek prior approval; the legal consequences with regard to the proceedings before the national court of a failure to fulfil that obligation.

The existence of an obligation to provide information, to give prior notice or to seek prior approval

55 First of all, an examination of Regulation No 2603/69 itself shows that none of its provisions imposes on the Member States an obligation to provide information or to give prior notice of measures regarding products to which Article 10 applies, that is to say, products not covered by the principle of freedom of export. On the one hand, the procedures laid down in Title III of the regulation, entitled 'Protective measures', are by definition not applicable to the products to which Article 10 applies. On the other hand, with regard to Title II of the regulation, only Article 2 requires Member States to give notice to the Commission, but the procedure provided for there is linked to the adoption of protective measures under Title III and cannot therefore concern the products to which Article 10 applies.

56 Secondly, it must be pointed out that the reference to the judgments of the Court regarding fisheries matters and conservation measures taken by the Member States is not relevant. None of the conditions for the application of those judgments is met in this case: an obligation on the part of the Council to adopt a policy on a fixed date; the Council's inability to comply with that obligation; the existence of a

Commission communication approved by the Council under which, in the absence of common rules, national measures can be taken only in so far as they are strictly necessary in order to achieve the desired objective, they are not discriminatory, they comply with the Treaty and the Commission's approval has been sought. Bulk's argument in this regard cannot therefore be upheld.

57 However, at the material time any Member State contemplating the amendment of its rules governing exports to non-member countries was under an obligation to provide information beforehand to the other Member States and to the Commission, under the combined provisions of the Council decisions of 9 October 1961 and of 25 September 1962, already referred to, and Council Decision No 69/494/EEC of 16 December 1969 on the progressive standardization of agreements concerning commercial relations between Member States and third countries and on the negotiation of Community agreements (Official Journal, English Special Edition 1969 (II), p. 603). Article 4 of the Council Decision of 9 October 1961 provides that 'A Member State contemplating changes in the state of its liberalization in relation to third countries shall give the other Member States and the Commission prior notice thereof. In such cases, prior consultations shall be held at the request of a Member State or of the Commission, except in urgent cases, where consultations shall take place after the event.'

58 It is true that that decision, as the references in its preamble show, is based only on Article 111 of the Treaty, regarding the formulation of the common commercial policy during the transitional period. However, Article 1 of the Council Decision of 25 September 1962 provides that 'the programme of action in matters of common commercial policy set out in the Annex to this Decision, in particular the objectives set out therein and the procedures laid down for their attainment, is hereby approved'. Under heading B of the annex, 'Standardization of export rules', it is stated that 'after the transitional period has ended, export policy must likewise be based on uniform principles (Article 113)' and that 'the consultation procedure introduced by the Council Decision of 9 October 1961 will apply to any measure amending the rules governing exports to third countries currently in force in any of the Member States'. It appears therefore that although it was itself based on Article 111 of the Treaty the Council Decision of 25 September 1962 expressly extended the Member States' obligation to provide prior information beyond the end of the transitional period.

59 Finally, Article 15 of the Council Decision of 16 December 1969 provides that 'the Council Decision of 9 October 1961 concerning a consultation procedure in respect of the negotiation of agreements concerning commercial relations between Member States and third countries is hereby amended to the extent to which it is inconsistent with this Decision'. That decision, which applied from 1 January 1970, did not contain any provisions contrary to Article 4 of the decision of 9 October 1961; it must therefore be regarded as having maintained in force, if that were necessary, the obligation of Member States to inform the Commission and the other Member States of any contemplated changes in rules regarding exports to non-member countries.

60 It therefore follows from the combined provisions of the three Council decisions referred to above that even after the end of the transitional period and the adoption of Regulation No 2603/69 Member States were obliged to inform the other Member States and the Commission before making any changes in their rules on exports to non-member countries.

The consequences of a failure on the part of a Member State to give prior notice

61 A Member State which fails to give prior notice, delays in doing so or does so in an inadequate manner fails to fulfil its obligations under the combined provisions of the Council decisions of 9 October 1961, 25 September 1962 and 16 September 1969.

62 It must be pointed out, however, that that obligation, to which all the Member States are subject under the provisions referred to, concerns only the institutional relationship between a Member State and the Community and the other Member States. In proceedings before national courts between natural or legal persons such persons cannot attack a policy or measure adopted by a Member State on the basis that that Member State has failed to fulfil its obligation to inform the other Member States and the Commission beforehand. Such a failure therefore does not create individual rights which national courts must protect.

63 The answer to the fourth and fifth questions must therefore be that:

(i) Article 4 of the Council Decision of 9 October 1961, in conjunction with the Council Decision of 25 September 1962 and Article 15 of the Council Decision of 16 September 1969, requires a Member State contemplating a change in the state of liberalization of its exports to non-member countries to give prior notice to the other Member States and the Commission.

(ii) A Member State which fails to give prior notice, delays in doing so or does so in an inadequate manner fails to fulfil its obligations under the Council decisions referred to; that failure does not, however, create individual rights which national courts must protect.

The reply to be given to the sixth question

64 In this question the national court asks whether the fact that neither the Council nor the Commission challenged the legality of the policy adopted by the United Kingdom affects the reply to be given to the preceding questions.

65 As the parties to the main proceedings, the United Kingdom and the Commission have argued, the reply must be that the fact that no Community institution challenges the legality of a policy adopted by a Member State cannot in itself have any effect on the compatibility with Community law of a policy such as that at issue or, consequently, on the reply to be given to the questions raised by the national court.

Costs

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

On those grounds,

THE COURT,

in answer to the questions referred to it by the Commercial Court of the Queen's Bench Division of the High Court of Justice, by order of 18 May 1984, hereby rules:

(1) The Agreement of 20 May 1975 between the European Economic Community and the State of Israel does not prohibit the imposition of new quantitative restrictions or measures having equivalent effect on exports from a Member State to Israel.

(2) Regulation No 2603/69 of the Council of 20 December 1969 establishing common rules for exports does not prohibit a Member State from imposing new quantitative restrictions or measures having equivalent effect on its exports of oil to non-member countries.

(3) Articles 34 and 85 of the Treaty, upon their true construction, do not prevent a Member State from adopting a policy restricting or prohibiting exports of oil to a non-member country, on the basis of Article 10 of Regulation No 2603/69.

(4) Article 4 of the Council Decision of 9 October 1961, in conjunction with the Council Decision of 25 September 1962 and Article 15 of the Council Decision of 16 September 1969, requires a Member State contemplating a change in the state of liberalization of its exports to non-member countries to give prior notice to the other Member States and the Commission.

A Member State which fails to give prior notice, delays in doing so or does so in an inadequate manner fails to fulfil its obligations under the Council decisions referred to; that failure does not, however, create individual rights which national courts must protect.

(5) The fact that no Community institution challenges the legality of a policy adopted by a Member State cannot in itself have any effect on the compatibility

with Community law of a policy imposing quantitative restrictions on exports of oil to non-member countries or, consequently, on the reply to be given to the questions raised by the national court.

Mackenzie Stuart Bahlmann Bosco

Koopmans Due Galmot Kakouris

Delivered in open court in Luxembourg on 18 February 1986.

P. Heim
Registrar

A. J. Mackenzie Stuart
President