Case C-90/94

Haahr Petroleum Ltd
v
Åbenrå Havn and Others

(Reference for a preliminary ruling
from the Østre Landsret)

(Maritime transport — Goods duty — Import surcharge)

Summary of the Judgment

1. *Tax provisions — Internal taxation — Import surcharge on port duty — Characterization as an internal tax and not a charge having effect equivalent to a customs duty — Criteria*
(EC Treaty, Arts 9, 12 and 95)

2. *Tax provisions — Internal taxation — Import surcharge on port duty — Discrimination between domestic products and products imported from another Member State — Prohibition — Scope*
(EC Treaty, Art. 95)

3. Tax provisions — Internal taxation — Charges incompatible with Community law — Recovery — Limitation period — Application of national law — Whether permissible — Conditions (EC Treaty, Art. 95)

1. An import surcharge levied on a general goods duty payable for the use of a Member State's commercial ports must be assessed in the light of Article 95 and not Articles 9 to 13 of the Treaty, where the general duty to which the surcharge is added forms part of a general system of internal dues applying systematically to categories of products according to objective criteria applied without regard to the origin of the products and the surcharge is an integral part of the duty itself and is not a separate duty. That last condition is satisfied if the amount of the surcharge is expressed as a percentage of the duty and the surcharge and duty are levied on the same legal basis, at the same time, in accordance with the same criteria and through the same authorities and the revenue raised is paid to the same recipients.

2. It is contrary to Article 95 of the Treaty for a Member State to impose a 40% import surcharge on a general duty levied on goods loaded, unloaded, or otherwise taken on board or landed within its ports or in the deep-water approach channels to its ports where goods are imported by ship from another Member State.

Differential taxation where the criterion for charging a higher rate is the importation itself and where, therefore, domestic products are by definition excluded from the heaviest taxation cannot be regarded as compatible with Community law.

3. Application to a claim for repayment based on breach of Article 95 of a rule of national law under which proceedings for recovery of charges unduly paid are time-barred after a period of five years is not contrary to Community law, even if the effect of that rule is to prevent, in whole or in part, the repayment of those charges.

The laying down of reasonable limitation periods, which is an application of the fundamental principle of legal certainty, cannot be regarded as rendering virtually impossible or excessively difficult the exercise of rights conferred by Community law.