# JUDGMENT OF THE COURT (Sixth Chamber)
17 July 1997 *

In Joined Cases C-114/95 and C-115/95,

REFERENCES to the Court under Article 177 of the EC Treaty by the Østre Landsret (Denmark) for a preliminary ruling in the proceedings pending before that court between

**Texaco A/S**

and

**Middelfart Havn,**

**Århus Havn,**

**Struer Havn,**

**Ålborg Havn,**

**Fredericia Havn,**

**Nørre Sundby Havn,**

**Hobro Havn,**

**Randers Havn,**

* Language of the case: Danish.

**Åbenrå Havn,**

**Esbjerg Havn,**

**Skagen Havn,**

**Thyborøn Havn,**

and between

**Olieselskabet Danmark a. m. b. a.**

and

**Trafikministeriet,**

**Fredericia Kommune,**

**Køge Havn,**

**Odense Havnevæsen,**

**Holstebro-Struer Havn,**

**Vejle Havn,**

**Åbenrå Havn,**

**Ålborg Havnevæsen,**

**Århus Havnevæsen,**

**Frederikshavn Havn,**

**Esbjerg Havn,**

on the interpretation of Articles 9 to 13, 18 to 29, 84, 86, 90 and 95 of the EEC Treaty, of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1), and of Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ 1986 L 378, p. 4), and of Articles 6 and 18 of the Agreement between the European Economic Community and the Kingdom of Sweden, signed in Brussels on 22 July 1972, concluded and approved on behalf of the Community by Council Regulation (EEC) No 2838/72 of 19 December 1972 (OJ, English Special Edition 1972 (31 December), p. 98),

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray and P. J. G. Kapteyn (Rapporteur), Judges,

Advocate General: F. G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Texaco A/S, by Jan-Erik Svensson, of the Copenhagen Bar,

— Middelfart Havn, Århus Havn, Struer Havn, Ålborg Havn, Fredericia Havn, Nørre Sundby Havn, Hobro Havn, Randers Havn, Åbenrå Havn, and for Fredericia Kommune, Køge Havn, Odense Havnevæsen, Holstebro-Struer Havn, Vejle Havn, Ålborg Havnevæsen, Århus Havnevæsen, by Per Magid, of the Copenhagen Bar,

— Olieselskabet Danmark a. m. b. a., by Andreas Fischer, of the Copenhagen Bar,

— the Trafikministeriet (Danish Ministry of Transport), Esbjerg Havn, Skagen Havn, Thyborøn Havn and Frederikshavn Havn, by Karsten Hagel-Sørensen, of the Copenhagen Bar,

— the Commission of the European Communities, by Hans Peter Hartvig, Legal Adviser, Anders Christian Jessen and Enrico Traversa, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Texaco A/S, represented by Jan-Erik Svensson; of Olieselskabet Danmark a. m. b. a., represented by Andreas Fischer; of Middelfart Havn, Århus Havn, Struer Havn, Ålborg Havn, Fredericia Havn, Nørre Sundby Havn, Hobro Havn, Randers Havn, Åbenrå Havn, Fredericia Kommune, Køge Havn, Odense Havnevæsen, Holstebro-Struer Havn, Vejle Havn, Ålborg Havnevæsen and Århus Havnevæsen, by Per Magid and Jeppe Skadhauge, of the Copenhagen Bar; of the Trafikministeriet, Esbjerg Havn, Skagen Havn, Thyborøn Havn and Frederikshavn Havn, by Karsten Hagel-Sørensen; and of the Commission, represented by Hans Peter Hartvig, Anders Christian Jessen, Enrico Traversa and Richard Lyal, of its Legal Service, acting as Agent, at the hearing on 9 January 1997,

after hearing the Opinion of the Advocate General at the sitting on 27 February 1997,

gives the following

## Judgment

1 By two orders of 24 March 1995, received at the Court on 3 April 1995, the Østre Landsret referred to the Court for a preliminary ruling under Article 177 of the EC Treaty various questions on the interpretation of Articles 9 to 13, 18 to 29, 84, 86, 90 and 95 of the EEC Treaty, of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1), and of Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ 1986 L 378, p. 4), and of Articles 6 and 18 of the Agreement between the European Economic Community and the Kingdom of Sweden, signed in Brussels on 22 July 1972, concluded and approved on behalf of the Community by Council Regulation (EEC) No 2838/72 of 19 December 1972 (OJ, English Special Edition 1972 (31 December), p. 98, 'the EEC/Sweden Agreement').

2 Those questions were raised in proceedings between Texaco A/S and Olieselskabet Danmark a. m. b. a. ('Olieselskabet') respectively, two limited companies registered in Denmark which import refined petroleum products such as diesel and petrol and, in Texaco's case, solid fuel into a number of commercial ports concerning the charging by those ports of an import surcharge of 40% which until 31 March 1990 was levied in Denmark in addition to goods duties on all imported goods loaded, unloaded, or otherwise taken on board or landed within Danish commercial ports or in the deep-water approach channels to those ports.

3 In Denmark, authorization to establish a commercial port, that is to say, a harbour used for the commercial transport of goods, vehicles and persons, is granted by the Minister for Transport. In accordance with the system of ownership and control, a

distinction may be drawn between ports under local authority control, which are independent bodies answerable to the local authority, the port of Copenhagen, which has its own special legal status, the State-owned ports, operated by the Ministry of Transport, and private ports, which are operated by their owners in accordance with the conditions laid down in the relevant authorization.

4 Part of the ports' revenue comes from duties paid for their use by users. Thus shipping and goods duties must be paid for berthing, and for embarking and disembarking goods, vehicles or persons. Special duties are charged for the use of cranes, warehouses and storage facilities.

5 Under Law No 239 of 12 May 1976 on commercial ports (*Lovtidende* A of 1976, p. 587, 'the 1976 Law'), which applied until 31 December 1990, the competent minister, now the Minister for Transport, was responsible for setting the rate of shipping and goods duties after negotiations with the management of the commercial ports. It was ministerial practice to calculate the rates on the basis of the economic conditions obtaining in the 22 provincial ports regarded as being the most important in terms of commercial traffic volume and to set them so as to enable the ports to cover their operating and maintenance expenditure and to ensure a reasonable degree of self-financing for necessary extensions and modernization.

6 The shipping and goods duties were set out in regulations for each port drawn up in accordance with the common regulations prepared by the competent minister for all commercial ports.

7 Under the regulations applicable at the material time, shipping duty was payable by all ships and craft and all floating installations berthing in the port or in the deep-water approach channels. It was calculated as a fixed amount according to deadweight tonnage or gross registered tonnage either each time the vessel put into

port or as an amount payable monthly. Vessels of under 100 deadweight or gross registered tonnes were exempt from payment of shipping duty.

8 Goods duty was payable on all goods loaded, unloaded, or otherwise taken on board or landed within the port or in the deep-water approach channels. It represented a certain amount per tonne. There were exemptions and special rates for certain goods. In accordance with the rules, goods duty was to be paid by the vessel or its local agent before the ship's departure, but was ultimately borne by the recipient and sender respectively of the goods from whom reimbursement could be claimed.

9 During the period relevant to the cases in the main proceedings, a surcharge of 40% was added to the goods duty levied on goods imported from abroad. It is clear from the orders for reference that that import surcharge of 40% was introduced in the context of a general adjustment to the level of port duties made in 1956 in the light of a report by the committee on rates of duty for ports and bridges set up by the Ministry of Public Works in 1954.

10 According to that committee, the increase considered necessary in the rates of duty should apply to both shipping and goods duties, but had 'to be made in such a way that its objective (increasing income for the ports) is not jeopardized through commercial traffic being totally or partially diverted from the ports with the result that goods are instead conveyed by road or rail'. The committee on rates of duty for ports and bridges therefore proposed, so far as goods duty was concerned, 'to concentrate on the turnover of foreign goods inasmuch as the greater part of the goods which are imported into Denmark are most naturally transported by sea and the danger that this business will be diverted from ports merely if the goods duty is increased can therefore to some extent be discounted'. The committee

also considered that 'the most appropriate solution [was] that the extra revenue to be generated through goods duty should be derived exclusively from an increase in the duty on imported goods', since the duty on imported goods such as fertilizers and feedstuffs for agriculture and raw materials for industry was lower than duty on finished products and an increase in duty on those imports would therefore have a much more limited effect on those sectors than an increase in duty on exports. Finally, the risk of domestic traffic deserting the ports in favour of land transport led the committee on rates of duty for ports and bridges to suggest, on the one hand, exempting small craft from the proposed increase in shipping duty and, on the other, allowing vessels of up to 100 tonnes the lower rates usually allowed in respect of vessels of less than 100 tonnes.

11 The import surcharge of 40% was abolished by the Minister for Transport with effect from 1 April 1990.

12 The products imported by Texaco and Olieselskabet come essentially from non-member countries with which the Community has concluded free-trade agreements, but also from non-member countries which do not have any free-trade agreement with the Community. In Texaco's case, those products are imported through the ports of Middelfart, Århus, Struer, Esbjerg, Ålborg, Skagen, Fredericia, Nørre Sundby, Hobro, Randers, Åbenrå and Thyborøn. The ports of Esbjerg, Skagen and Thyborøn are State-owned ports and the others are under local authority control. In Olieselskabet's case, the goods are imported through the ports of Fredericia, Køge, Odense, Holstebro-Struer, Vejle, Åbenrå, Ålborg, Århus, Frederikshavn and Esbjerg. The last two are State-owned ports, the other eight being under local authority control. Texaco and Olieselskabet had to pay the relevant goods duty on all their imports, and in addition the import surcharge of 40%.

13 By application lodged on 30 April 1993 at the Østre Landsret, Texaco sought an order for the defendant ports to repay it the part of the goods duty which represented the import surcharge of 40% levied between 1 May 1988 and 31 March 1990, totalling approximately DKR 3.2 million.

14 By application lodged on 25 June 1993 at the same court, Olieselskabet sought an order for the ports, jointly and severally with the Ministry of Transport, to repay it the import surcharges levied between 1 January 1988 and 1 April 1990, totalling approximately DKR 2.5 million, and sought a declaration that they should acknowledge their obligation to repay the surcharges levied from 1 July 1977 to 31 December 1987, for which period it had not yet proved possible to quantify the whole sum levied.

15 In support of their applications, Texaco and Olieselskabet put forward various arguments concerning the incompatibility of the import surcharge with Community law, in particular with Articles 9 to 13, 18 to 29, 86, 90 and 95 of the Treaty and Articles 6 and 18 of the EEC/Sweden Agreement and of the agreement concluded by the Community with the Kingdom of Norway (see Council Regulation (EEC) No 1691/73 of 25 June 1973 concluding an Agreement between the European Economic Community and the Kingdom of Norway and adopting provisions for its implementation, OJ 1973 L 171, p. 1).

16 The defendant ports and the Ministry of Transport denied that the import surcharge was incompatible with those provisions of Community law and claimed, in particular, that since it was not levied on goods as such but as payment for services provided by the ports, the surcharge ought to be assessed in the light of Article 84(2) of the EEC Treaty, concerning transport, and of Regulation No 4055/86.

17 In the alternative, the ports under local authority control claimed that, if the surcharge were found to be incompatible with Community law, the Ministry of Transport, being responsible for setting duties, should be required to indemnify them for any amount they might be ordered to refund or to pay by way of compensation for the duties imposed. Both the State-owned ports and the Ministry of Transport argued that it does not follow directly from Community law that a Member State which has set or approved a duty which is found to be incompatible with Community law is obliged to refund it. In their view, it is for domestic law,

and consequently the national court, to decide whether, in the circumstances, the State is required to indemnify the ports under local authority control for any sum which they might be ordered to repay.

18 Those were the circumstances in which the Østre Landsret decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

In Case C-114/95:

'1. Must the compatibility with Community law of a 40% surcharge on a general goods duty, which is levied by a Member State when goods are imported by ship from another Member State, be assessed in the light of

A: — Articles 9 to 13 of the EEC Treaty, if necessary in conjunction with Articles 18 to 29 and Council Regulation No 2658/87 adopted pursuant thereto, or

— Article 95 of the Treaty?

or in so far as it is assumed that the case relates to services in respect of which consideration is paid, under

B: — Article 84 of the EEC Treaty and Council Regulation No 4055/86 on freedom to provide services, or

— Articles 90 and 86 of the EEC Treaty on abuse of a dominant position, in which connection the question arises as to whether Council Regulation No 4056/86 is relevant for determining whether the surcharge is compatible with Community law?

2. Is it consistent with the Community-law provision(s) specified in the reply to Question 1 that a 40% surcharge on a general goods duty should be levied on imports of goods by ship from another Member State?

3. Will the reply to Question 2 be the same if the goods are imported by ship into a Member State from a non-member country with which the European Economic Community has an agreement containing provisions corresponding to Articles 6 and 18 of the agreement between the Kingdom of Sweden and the European Economic Community, and the determination is made in the light of such a (free-trade) agreement?

4. Will the reply to Question 2 be the same if the goods are imported into a Member State directly from a non-member country with which the European Economic Community does not have a (free-trade) agreement?'

In Case C-115/95:

'1. Must the compatibility with Community law of a 40% surcharge on a general goods duty, which is levied by a Member State when goods are imported by ship from another Member State, be assessed in the light of

A: — the Treaty rules on the Customs Union, including Articles 9 to 13, if necessary in conjunction with Articles 18 to 29 and Council Regulations No 950/68 and No 2658/87 adopted pursuant thereto, or

— Article 95 of the Treaty?

or

B: — Article 84 of the Treaty and Council Regulation No 4055/86 on freedom to provide services, or

— Articles 90 and 86 of the Treaty on abuse of a dominant position, in which connection the question arises as to whether Council Regulation No 4056/86 is relevant for determining whether the surcharge is compatible with Community law?

2. Is it consistent with the Community-law provision(s) specified in the reply to Question 1 that a 40% surcharge on a general goods duty should be levied on imports of goods by ship from another Member State?

3. Will the reply to Question 2 be the same if the goods are imported by ship into a Member State from a non-member country with which the European Economic Community has an agreement containing provisions corresponding to Articles 6 and 18 of the agreement between the Kingdom of Sweden and the European Economic Community, and the determination is made in the light of such a (free-trade) agreement?

4. Will the reply to Question 2 be the same if the goods are imported into a Member State directly from a non-member country with which the European Economic Community does not have a (free-trade) agreement?

5. Does it follow from Community law that a Member State which has imposed or approved a duty contrary to Community law is liable to repay the duty, even though the proceeds of the duty have been allocated to independent operators subject to local authority control?

6. In view of the fact that it follows from the established case-law of the Court of Justice that the repayment of duties levied in breach of Community law must have regard to the substantive and formal requirements laid down in national legislation, and that the Court of Justice held at paragraph 12 of its judgment in Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595 that entitlement to the repayment of charges levied by a Member State contrary to the rules of Community law is a consequence of, and an adjunct to, the rights conferred on individuals by the Community provisions prohibiting charges having an effect equivalent to customs duties or, as the case may be, the discriminatory application of internal taxes, the following question arises: must the case-law of the Court of Justice be understood as meaning that Community law contains an unconditional obligation to repay duties which, according to the replies to Questions 1 to 4, may be contrary to Community law, but that this obligation is such that the detailed conditions for the actual processing of the claim for repayment are subject, within certain limits laid down in the case-law of the Court of Justice, to relevant national legislation?

7. If it is held that the 40% surcharge on the general goods duty is contrary to Community law, including (free-trade) agreements entered into, is it compatible with Community law for a limitation period laid down in national law for repayment claims to run from an earlier point in time than that from which the Member State in question discontinued the duty which was contrary to Community law?'

19 By order of 11 May 1995, the President of the Court decided to join the two cases for the purposes of the written and oral procedure and the judgment.

## Questions 1 and 2

20 By its first two questions, which it is appropriate to consider together, the national court seeks clarification, first, of the notion of a charge having an effect equivalent to a customs duty contained in Articles 9 to 13 of the Treaty, and of the notion of discriminatory internal taxation referred to in Article 95 of the Treaty, where a Member State levies an import surcharge of 40% on goods imported by ship from another Member State in addition to the general goods duty payable on all goods loaded, unloaded, or otherwise taken on board or landed within the ports of the first Member State or in the deep-water approach channels to those ports. Secondly, it asks whether such a surcharge is prohibited by Regulation No 4055/86 or by Articles 86 and 90 of the Treaty.

21 With regard to the first part of those questions, it is sufficient to note that in its judgment of this date in Case C-90/94 *Haahr Petroleum* [1997] ECR I-4085 the Court ruled that both the general goods duty and the import surcharge, which forms an integral part of the duty, are covered by Article 95 of the Treaty which precludes the imposition by a Member State of such a surcharge on goods imported by ship from another Member State.

22 Since the import surcharge is contrary to Article 95 of the Treaty, it is unnecessary to give a ruling on the interpretation of Regulation No 4055/86 or of Articles 86 and 90 of the Treaty. mentioned in the second part of the first and second questions.

23 That being so, the answer to be given to the first two questions must be that 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.

## The third questions

24 By its third questions the national court is asking in substance whether an import surcharge such as that at issue in the main proceedings is also contrary to Community law in so far as it is applicable to goods imported from a non-member country with which the Community has concluded an agreement containing provisions similar to those in Articles 6 and 18 of the EEC/Sweden Agreement.

25 Article 6(1) of the EEC/Sweden Agreement provides: 'No new charge having an effect equivalent to a customs duty on imports shall be imposed in trade between the Community and Sweden.' Under Article 6(3), existing charges having equivalent effect were to be abolished by 1 July 1977.

26 The first paragraph of Article 18 of the EEC/Sweden Agreement provides: 'The Contracting Parties shall refrain from any measure or practice of an internal fiscal nature establishing, whether directly or indirectly, discrimination between the products of one Contracting Party and like products originating in the territory of the other Contracting Party.'

27 In order to answer the national court's questions, it should first be noted that Case C-163/90 *Administration des Douanes et Droits Indirects* v *Legros and Others* [1992] ECR I-4625 established that the term 'charge having an effect equivalent to a customs duty on imports' used in Article 6 of the EEC/Sweden Agreement must be interpreted in the same way as the same term appearing in Articles 9 to 13 of the Treaty.

28 Next, in Case 104/81 *Hauptzollamt Mainz* v *Kupferberg* [1982] ECR 3641 and Case C-312/91 *Metalsa* [1993] ECR I-3751, concerning provisions identical to the first paragraph of Article 18 of the EEC/Sweden Agreement appearing in agreements of the same kind concluded with the Portuguese Republic and the Austrian Republic respectively, the Court stated that interpretations given to Article 95 of the Treaty could not be applied by way of simple analogy to an agreement on free trade, with the result that the relevant provisions in such an agreement had to be interpreted, not only according to their terms, but also in the light of the objective which they pursued in the system of free trade established by the agreement.

29 The purpose of the EEC/Sweden Agreement, like that of the free-trade agreements at issue in *Kupferberg* and *Metalsa*, is to create a system of free trade in which restrictive trade rules are eliminated in respect of virtually all trade in products originating in the territory of the contracting parties, in particular by abolishing customs duties and charges having equivalent effect and eliminating quantitative restrictions and measures having equivalent effect.

30 Seen in that context, Article 18 seeks to ensure that the liberalization of trade in goods through the abolition of customs duties and charges having equivalent effect and quantitative restrictions and measures having equivalent effect is not rendered nugatory by fiscal practices of the contracting parties. That would be so, as the Court expressly stated in paragraph 25 of *Kupferberg*, if the imported products of one party were taxed more heavily than similar domestic products appearing with them on the market of the other party.

31 In the light of those objectives, and having regard to its terms, Article 18 of the EEC/Sweden Agreement must therefore be interpreted as imposing on the contracting parties a rule against discrimination in matters of taxation, which is dependent only on a finding that the products affected by a particular system of taxation are of like nature, and which prohibits discrimination arising from any measure or practice having a direct or indirect effect on the way in which taxes imposed on the other contracting party's products are determined, applied or collected.

32 The fact remains that a goods duty which, as the Court held in paragraphs 20 to 24 of *Haahr*, 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, constitutes an internal measure of a fiscal nature within the meaning of Article 18 of the EEC/Sweden Agreement, and that application to imported products alone of a surcharge in addition to the duty payable on domestic and imported products is contrary to the prohibition of discrimination laid down in that provision.

33 In the light of the foregoing considerations, the answer to the third questions must be that an import surcharge, such as that at issue in the main proceedings, is also contrary to Community law where it is applicable to goods imported from a non-member country with which the Community has concluded an agreement containing provisions similar to those of Article 18 of the EEC/Sweden Agreement.

## The fourth questions

34 By its fourth questions, the national court asks in essence whether Community law also precludes the imposition of that import surcharge where goods are imported into a Member State directly from a non-member country with which the Community has not concluded an agreement.

35 The Court has consistently held that Article 95 of the Treaty applies only to products from the Member States and, where appropriate, to goods originating in non-member countries which are in free circulation in the Member States. It follows that that provision is not applicable to products imported directly from non-member countries (see, in particular, Case C-130/92 *OTO* v *Ministero delle Finanze* [1994] ECR I-3281, paragraph 18).

36 For trade with non-member countries, as far as internal taxation is concerned, the Treaty does not include any rule analogous to that laid down in Article 95 (Case 148/77 *Hansen* v *Hauptzollamt Flensburg* [1978] ECR 1787, paragraph 23, and *OTO*, paragraph 20).

37 Consequently, the answer to the fourth questions must be that Community law does not preclude the imposition by a Member State of an import surcharge such as that at issue in the main proceedings where goods are imported directly from a non-member country with which the Community has not concluded an agreement.

**Question 5 in Case C-115/95**

38 By this question, the national court seeks to ascertain whether Community law requires a Member State which has imposed or approved a duty contrary to Community law to repay the duty, even where the proceeds of the duty have been allocated to independent operators subject to local authority control.

39 The fact that a tax or levy is collected by a body governed by public law other than the State or is collected for its benefit and is a charge which is special or appropriated for a specific purpose cannot prevent its falling within the field of

application of Article 95 of the Treaty (see Case 74/76 *Iannelli* v *Meroni* [1977] ECR 557, paragraph 19) or, where appropriate, the prohibition laid down in that provision.

40 Entitlement to the repayment of charges levied by a Member State contrary to the rules of Community law is a consequence of, and an adjunct to, the rights conferred on individuals by the Community provisions prohibiting such charges. The Member State is therefore in principle required to repay charges levied in breach of Community law (Joined Cases C-192/95 to C-218/95 *Comateb and Others* [1997] ECR I-165, paragraph 20).

41 However, the Court has also consistently held that, in the absence of Community rules governing a matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from the direct effect of Community law; however, such rules must not be less favourable than those governing similar domestic actions or render virtually impossible or excessively difficult the exercise of rights conferred by Community law (see *inter alia* Case C-312/93 *Peterbroeck* v *Belgian State* [1995] ECR I-4599, paragraph 12, and the cases cited).

42 Consequently, in a case such as that before the national court, whether the action for recovery of the sum unduly paid should lie against the independent operators subject to local authority control to whom the proceeds of the duty have been allocated or against the State which has imposed or approved the duty or, where appropriate, against both, is a matter for national law to determine, subject to the two conditions set out above.

43 In the circumstances, the answer to the fifth question must be that, where a Member State has imposed or approved a duty contrary to Community law, it

is required in principle to repay the duty levied in breach of Community law. If the proceeds of the duty have been allocated to independent operators subject to local authority control, it is not contrary to Community law for the action for repayment of those duties to lie against such operators, provided that the rules governing such actions are not less favourable than those governing similar domestic actions and are not so framed as to render virtually impossible or excessively difficult the recovery of duty unduly paid.

## Questions 6 and 7 in Case C-115/95

44 By its sixth and seventh questions, which it is appropriate to consider together, the national court asks in substance whether Community law imposes an unconditional obligation to repay duty levied in breach of Article 95 of the Treaty or of a provision corresponding to Article 18 of the EEC/Sweden Agreement and, in particular, whether it is contrary to Community law for a national limitation period for claims for repayment of such duties to run from an earlier point in time than that from which the duties were discontinued.

45 It follows from the judgment in Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595, paragraph 12, cited by the national court, that while entitlement to the repayment of charges levied by a Member State contrary to the rules of Community law is a consequence of, and an adjunct to, the rights conferred on individuals by the Community provisions prohibiting such charges, as Community law stands at present repayment may be sought only within the framework of the conditions as to both substance and form laid down by the various national laws applicable thereto, provided always that those conditions may not be less favourable than those governing similar domestic actions or render virtually impossible or excessively difficult the exercise of rights conferred by Community law.

46 Next, the Court has held, at paragraph 48 of *Haahr*, that the laying down of reasonable limitation periods, which is an application of the fundamental principle of legal certainty, satisfies the two conditions referred to above and, in particular, cannot be regarded as rendering virtually impossible or excessively difficult the exercise of rights conferred by Community law, even if the expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought.

47 The judgment in Case C-208/90 *Emmott* [1991] ECR I-4269 does not invalidate that conclusion.

48 In paragraph 17 of that judgment, the Court expressly recounted the principle that the fixing of reasonable time-limits which, if unobserved, bar proceedings, satisfies the conditions laid down in the decisions referred to. It was only because of the particular nature of directives and having regard to the specific circumstances of that case that the Court held, in paragraph 23, that until such time as a directive has been properly transposed into domestic law, a Member State may not rely on an individual's delay in initiating proceedings against it in order to protect rights conferred upon him by the provisions of the directive and that a period laid down by national law within which proceedings must be initiated cannot begin to run before that time.

49 Since the claims for repayment referred to in the national court's questions are not based on the direct effect of a provision of a directive incorrectly transposed into domestic law, but rather on that of a provision of the Treaty or of a free-trade agreement such as the EEC/Sweden Agreement, the answer to be given to the sixth and seventh questions must be that it is not contrary to Community law for a national limitation period applicable to claims for repayment of duties levied in breach of Article 95 of the Treaty or a provision similar to Article 18 of the EEC/Sweden Agreement to start to run from an earlier point in time than that from which the duties were discontinued.

## Costs

50 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Østre Landsret by two orders of 24 March 1995, hereby rules:

1. **It is contrary to Article 95 of the EEC 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.**

2. **Such an import surcharge is also contrary to Community law where it is applicable to goods imported from a non-member country with which the Community has concluded an agreement containing provisions similar to those of Article 18 of the agreement between the European Economic Community and the Kingdom of Sweden, signed in Brussels on 22 July 1972, concluded and approved on behalf of the Community by Council Regulation (EEC) No 2838/72 of 19 December 1972.**

3. **Community law does not preclude the imposition by a Member State of such an import surcharge on goods imported directly from a non-member country with which the Community has not concluded an agreement.**

4. **Where a Member State has imposed or approved a duty contrary to Community law, it is required in principle to repay the duty levied in breach of Community law. If the proceeds of the duty have been allocated to independent operators subject to local authority control, it is not contrary to Community law for the action for repayment of those duties to lie against such operators, provided that the rules governing such actions are not less favourable than those governing similar domestic actions and are not so framed as to render virtually impossible or excessively difficult the recovery of duty unduly paid.**

5. **It is not contrary to Community law for a national limitation period applicable to claims for repayment of duties levied in breach of Article 95 of the Treaty or a provision similar to Article 18 of the agreement concluded between the European Economic Community and the Kingdom of Sweden to run from an earlier point in time than that from which the duties were discontinued.**

Mancini Murray Kapteyn

Delivered in open court in Luxembourg on 17 July 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber