JUDGMENT OF THE COURT (Fifth Chamber)
9 February 1999 *

In Case C-343/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Pretura Circondariale di Bolzano, Sezione Distaccata di Vipiteno (Italy), for a preliminary ruling in the proceedings pending before that court between

Dilexport Srl

and

Amministrazione delle Finanze dello Stato

on the interpretation of Community law relating to sums paid but not due,

THE COURT (Fifth Chamber),

composed of: J.-P. Puissochet (Rapporteur), President of the Chamber, C. Gulmann, D. A. O. Edward, L. Sevón and M. Wathelet, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: D. Louterman-Hubeau, Principal Administrator,

* Language of the case: Italian.

after considering the written observations submitted on behalf of:

— Dilexport Srl, by Bruno Telchini, of the Bolzano Bar,

— the Italian Government, by Professor Umberto Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by Ivo Maria Braguglia, Avvocato dello Stato,

— the French Government, by Catherine de Salins, Deputy Head of the Legal Directorate, Ministry of Foreign Affairs, and Gautier Mignot, Secretary for Foreign Affairs in the same directorate, acting as Agents,

— the United Kingdom Government, by Lindsey Nicoll, of the Treasury Solicitor's Department, acting as Agent,

— the Commission of the European Communities, by Enrico Traversa, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Dilexport Srl, represented by Bruno Telchini, the Amministrazione delle Finanze dello Stato, represented by Ivo Maria Braguglia, the French Government, represented by Gautier Mignot, the United Kingdom Government, represented by Nicholas Paines, Barrister, and the Commission, represented by Enrico Traversa, at the hearing on 5 March 1998,

after hearing the Opinion of the Advocate General at the sitting on 28 April 1998,

gives the following

Judgment

1 By order of 17 August 1996, supplemented by an order of 28 October 1996, received at the Court on 30 September and 31 October 1996, the Pretura Circondariale (District Magistrate's Court), Bolzano, Vipiteno Division, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty six questions on the interpretation of Community law relating to the recovery of sums paid but not due.

2 Those questions were raised in proceedings between Dilexport Srl (hereinafter 'Dilexport') and the Amministrazione delle Finanze dello Stato (State Finance Administration, hereinafter 'the Administration') concerning reimbursement of the consumption tax on fresh or dried bananas and banana meal (hereinafter 'the consumption tax on bananas').

3 The consumption tax on bananas was introduced in Italy by Law No 986 of 9 October 1964 (GURI No 264 of 27 October 1964, p. 4580).

4 In its judgment in Case 184/85 *Commission* v *Italy* [1987] ECR 2013, the Court held that, by imposing and maintaining in force a tax on fresh bananas which is applicable to bananas originating in other Member States, and in particular to bananas from the French overseas departments, the Italian Republic had failed to fulfil its obligations under the second paragraph of Article 95 of the Treaty. In another judgment of the same date in Case 193/85 *Co-Frutta* v *Amministrazione delle Finanze dello Stato* [1987] ECR 2085, the Court held in addition that the second paragraph of Article 95 of the Treaty precluded the charging of a consumer tax on certain imported fruit where it might protect domestic fruit production.

5 According to the information given to the Court in the course of the proceedings, at the material time the refund of taxes such as the consumption tax on bananas was governed *inter alia* by Article 91 of the Consolidated version of the provisions relating to customs duties, approved by Decree No 43 of the President of the Republic of 23 January 1973 (GURI No 80 of 28 March 1973, hereinafter 'the Consolidated customs legislation') and by Article 19 of Decree-Law No 688 of 30 September 1982 (GURI No 270 of 30 September 1982, p. 7072), converted into law by Law No 873 of 27 November 1982 (GURI No 328 of 29 November 1982, p. 8599, hereinafter 'the 1982 Decree-Law').

6 Under Article 91 of the Consolidated customs legislation, 'A taxpayer shall be entitled to reimbursement of the sums overpaid by reason of errors of calculation made at the time of assessment or of the application of a duty other than that prescribed by the customs tariff for the goods described at the time of certification (by the customs authorities), provided that he makes application for it within a non-extendible time-limit of five years from the date of payment and the application is accompanied by the original receipt proving payment'.

7 Article 19 of the 1982 Decree-Law provides,

'Any person who, even before the entry into force of this decree, has paid customs import duties, manufacturing taxes, consumption taxes or State duties which were not due shall be entitled to reimbursement of the sums paid if he provides documentary proof that the charge in question was not passed on, in any manner whatsoever, to other persons, except in the case of clerical error'.

8 The Commission stated, without being contradicted, that, according to the interpretation adopted by the Corte Suprema di Cassazione (Supreme Court of Cassation), Article 91 of the Consolidated customs legislation is not applicable to claims for repayment based on an alleged infringement of a statutory provision, which are subject to the limitation period of 10 years laid down for actions for recovery of sums paid but not due by Article 2946 of the Italian Civil Code.

9 The consumption tax on bananas was abolished by Article 32 of Law No 428 of 29 December 1990 laying down provisions for the fulfilment of obligations deriving from Italy's membership of the European Communities (Community law for 1990) (GURI, Ordinary Supplement No 10 of 12 January 1991, p. 1, hereinafter 'the 1990 Law'), which entered into force on 27 January 1991.

10 Article 29 of that Law introduces new rules on 'repayment of taxes recognised to be incompatible with the Community rules'.

11 According to that article,

'1. The five-year time-bar laid down in Article 91 of the Consolidated version of the provisions relating to customs duties, approved by Presidential Decree No 43 of 23 January 1973, shall be deemed to apply to all claims and actions which may be brought for the refund of sums paid in connection with customs operations. That period, and also the limitation period laid down in Article 84 of the same instrument, shall be reduced to three years as from the 90th day following the entry into force of this Law.

2. Customs import duties, manufacturing taxes, consumption taxes, the tax on sugar and State duties levied under national provisions incompatible with Community legislation shall be repaid unless the amount thereof has been passed on to others.

3. Article 19 of Decree-Law No 688 of 30 September 1982, converted, after amendment, into Law No 873 of 27 November 1982, shall apply where the taxes collected are not provided for by the Community legal order.

4. A claim for repayment of the duties and taxes referred to in paragraphs 2 and 3 above must, where the sum concerned has contributed to the income of the undertaking, also be notified to the tax office which received the tax return for the year in question, failing which it shall be inadmissible.

...

7. Paragraph 2 shall apply to the reimbursement of sums paid before the date of entry into force of this Law.

8. Paragraph 4 shall apply from the fiscal year in which this Law enters into force.'

12 According to the observations of the Commission and of the Italian Government, which have not been challenged on this point, Article 29(1) of the 1990 Law must, according to the Corte Suprema di Cassazione, be interpreted as meaning that the three-year time-limit mentioned in it cannot have retroactive effect.

13 According to the national court, Article 29(2) of that Law is interpreted or applied by the Italian courts to the effect that, in order to resist the reimbursement of customs duties or taxes paid but not due, the administration may rely on the presumption that such duties and taxes are normally passed on to third parties.

14 It is clear from the order for reference and the order supplementing it that Dilexport paid to the revenue authorities the sum of ITL 6 945 756 in respect of con-

sumption tax on bananas for the import in 1988 of a consignment of bananas released into free circulation in another Member State through the Brenner customs office (Italy).

15 Considering that sum to have been wrongly paid, in that the tax in question was contrary to the second paragraph of Article 95 of the Treaty, that company applied to the Administration for reimbursement, but without success. It then sought an order from the Pretura Circondariale di Bolzano, Vipiteno Division, requiring the Administration to repay it the sum in question together with interest thereon as from the date of payment.

16 In its order for reference, the national court indicated that the very wording of Article 29 of the 1990 Law prompted doubts as to its compatibility with Community law, as interpreted by the Court in particular in Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595 and Case 240/87 *Deville* v *Administration des Impôts* [1988] ECR 3513 and that those doubts were confirmed both by the Commission's observations in Case C-125/94 *Aprile* v *Amministrazione delle Finanze dello Stato* [1995] ECR I-2919 and by the way in which those provisions were applied in practice.

17 It was for those reasons that the Vipiteno Magistrate stayed proceedings and referred the following six questions to the Court for a preliminary ruling:

'1. Must Community law be interpreted as precluding the adoption by a Member State of a provision such as Article 29 of Italian Law No 428 of 29 December 1990 which makes the repayment of charges levied in breach of Community law subject to limitation periods or time-limits and to conditions as to proof which are different from and more restrictive than those laid down in the general rules of civil law? In particular, with regard to the principle that the procedural conditions for exercising the right to reimbursement established by national law "may not be less favourable than those relating to similar actions of a domestic nature",

what is to be understood by the expression "similar actions of a domestic nature"?

2. Do the fundamental principles of the Community order preclude the introduction by a Member State — in a limited manner and with reference only to a specific sphere consisting of a homogenous category of fiscal levies made up in particular of charges linked to the Community order — of special derogating provisions to restrict and limit the right to recovery of sums unduly paid, thus derogating from the general conditions for recovery of sums unduly paid laid down in Article 2033 of the Civil Code? In particular, may the principle of non-discrimination be understood in a restrictive sense, and may it thus be considered that a provision of a Member State such as the second paragraph of Article 29 of Law No 428 of 29 December 1990 complies with that principle, simply because the conditions laid down therein for reimbursement of fiscal charges linked to Community law, although restrictive in comparison with the general rules of ordinary law, are however less onerous in comparison with the special conditions for reimbursement laid down in the third paragraph of Article 29?

3. Do the abovementioned fundamental principles of the Community order preclude the adoption by a Member State — after numerous judgments of the Court declaring various charges relating to customs duties on imports, manufacturing taxes, consumer taxes, sugar premium and State taxes to be incompatible with Community law — of a procedural provision such as Article 29 of Law No 428, which specifically reduces the possibilities of bringing proceedings for recovery of charges which were wrongly levied in breach of Community law?

4. Is such a law as that — supposedly introduced in order to bring national law into line with the precepts of the Court of Justice — which was passed three and a half years late following the Court judgments in question, thus further unjustly enriching the State responsible for the delay, compatible with Community law and, in particular, with the Court's findings as to unacceptable requirements of proof in Case 199/82 *San Giorgio*, cited above? In particular,

are the interpretation andapplication of Article 29 compatible with Community law, on the basis of the assumption that, "it being a well-known fact that consumer taxes are passed on", presumptive evidence is deemed to be sufficient proof of passing on and therefore for the claim for reimbursement to be dismissed?

5. In consequence, is it compatible with Community law for the national court or its expert witness to establish that charges have been passed on, relying on those mere presumptions, which are claimed to be evidence open to assessment by the court, thus systematically excluding applications for reimbursement, as is happening in practice, with the result that the debtor Administration never acknowledges that it has to make repayment?

6. May a rule such as that laid down in the fourth and eighth paragraphs of Article 29, establishing procedural formalities (for example, the requirement to notify particular departments of the debtor authority) which were never contemplated in previous cases of reimbursement considered under the relevant general rules, be introduced and may it be interpreted with retrospective effect?

18 The wording of those questions, as clarified by the grounds of the order for reference and the supplementary order, shows that the national court is querying whether a Member State may, without infringing Community law,

— make actions for the reimbursement of taxes contrary to Community law, such as the consumption tax on bananas, subject to less favourable conditions than those laid down for the recovery of sums paid but not due in proceedings between individuals (first and second questions);

— thereby change — rendering them more restrictive — the conditions for reimbursement applicable to those taxes after the judgments of the Court which found them to be incompatible with Community law (third question);

— subject, in particular, the reimbursement of those taxes to a condition, such as the requirement that the tax has not been passed on to third parties, which the plaintiff is deemed not to fulfil (fourth and fifth questions);

— impose a specific requirement of notification of the claim for reimbursement of those taxes to the tax authorities, which, if not fulfilled, renders the claim inadmissible (sixth question).

The jurisdiction of the national court

19 In response to the preliminary observation of the Italian Government to the effect that the national court manifestly lacks jurisdiction to entertain the main proceedings, it must be borne in mind that in its judgment in Case 65/81 *Reina* v *Landeskreditbank Baden-Württemberg* [1982] ECR 33, paragraph 7, the Court laid down the principle that it is not for the Court to determine whether the decision whereby a matter is brought before it was taken in accordance with the rules of national law governing the organisation of the courts and their procedure. It must therefore abide by the decision from a court of a Member State in so far as it has not been overturned in any appeal procedures provided for by national law (see Case C-10/92 *Balocchi* v *Ministero delle Finanze* [1993] ECR I-5105, paragraphs 16 and 17).

The first and second questions

20 By its first and second questions, the national court seeks essentially to ascertain whether Community law precludes national provisions such as those at issue in the main proceedings from making the reimbursement of customs duties or taxes contrary to Community law subject to less favourable conditions than those laid down for actions between individuals for the recovery of sums paid but not due.

21 Dilexport and the Commission suggest that this question should be answered in the affirmative. They point out that, according to the case-law of the Court (see, in particular, Case 33/76 *Rewe* v *Landwirtschaftskammer Saarland* [1976] ECR 1989 and Case 45/76 *Comet* v *Produktschap voor Siergewassen* [1976] ECR 2043), although the reimbursement of customs duties or taxes contrary to Community law may be pursued only under the substantive and formal conditions laid down by the relevant national law, the fact nevertheless remains that those conditions must not be less favourable than those governing similar domestic claims. They submit that, under Italian law, the reimbursement of taxes levied in breach of a provision is subject to the rules for actions for recovery of sums paid but not due between individuals with the result that, by making the reimbursement of the taxes contrary to Community law subject to less favourable rules, Article 29 of the 1990 Law infringes the principle of non-discrimination laid down by the Court.

22 While taking the same view as Dilexport and the Commission as to the principles deriving from the case-law of the Court, the Italian, French and United Kingdom Governments propose, on the contrary, that the question be answered in the negative. In their view, the actions mentioned in Article 29 of the 1990 Law would not appear to be subject to less favourable conditions, in particular as regards limitation periods, than actions for the reimbursement of direct and indirect taxes, which are similar to them.

23 It should be borne in mind that, according to settled case-law of the Court, the right to a refund of charges levied in a Member State in breach of rules of Com-

munity law is the complement of 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 domestic charges, as interpreted by the Court of Justice (*San Giorgio*, cited above, paragraph 12; Case 309/85 *Barra* v *Belgium and Another* [1998] ECR 355, paragraph 17, and Case C-62/93 *BP Supergaz* v *Greek State* [1995] ECR I-1883, paragraph 40). The Member State is therefore required in principle to repay charges levied in breach of Community law (Joined Cases C-192/95 to C-218/95 *Comateb and Others* v *Directeur Général des Douanes et Droits Indirects* [1997] ECR I-165, paragraph 20).

24 However, the Court has also observed on several occasions that the problem of disputing charges which have been unlawfully claimed or refunding charges which have been paid when not due 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 that kind 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. In other cases, claims for repayment of charges which were paid but not due must be brought before the ordinary courts, mainly in the form of actions for refund of sums paid but not owed, such claims being available for varying lengths of time, in some cases for the limitation period laid down under the general law (see, most recently, Case C-228/96 *Aprile* v *Amministrazione delle Finanze dello Stato* [1998] ECR I-7141, paragraph 17).

25 This diversity between national systems derives mainly from the lack of Community rules on the refund of national charges levied though not due. In such circumstances, 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 Community law, provided, first, that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and, second, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (see, most recently, Case C-231/96 *Edis* v *Ministero delle Finanze* [1998] ECR I-4951, paragraphs 19 and 34, Case C-260/96 *Ministero delle Finanze* v *SPAC* [1998] ECR I-4997, paragraph 18, and Case C-228/96 *Aprile*, cited above, paragraph 18).

26 As regards the latter principle, the Court has recognised that it is compatible with Community law to lay down reasonable time-limits for bringing proceedings in the interests of legal certainty, which protects both the taxpayer and the administration concerned (*Rewe*, cited above, paragraph 5, and *Comet*, cited above, paragraphs 17 and 18, and Case 61/79 *Denkavit Italiana* [1980] ECR 1205, paragraph 23; see also Case C-261/95 *Palmisani* v *INPS* [1997] ECR I-4025, paragraph 28, and Case C-90/94 *Haahr Petroleum* v *Åbenrå Havn and Others* [1997] ECR I-4085, paragraph 48). Such time-limits are not liable to render virtually impossible or excessively difficult the exercise of rights conferred by Community law. In that regard, a time-limit of three years under national law, reckoned from the date of the contested payment, appears reasonable (*Edis*, cited above, paragraph 35, *SPAC*, cited above, paragraph 19, and Case C-228/96 *Aprile*, cited above, paragraph 19).

27 Observance of the principle of equivalence implies, for its part, that the procedural rule at issue applies without distinction to actions alleging infringements of Community law and to those alleging infringements of national law, with respect to the same kind of charges or dues. That principle cannot, however, be interpreted as obliging a Member State to extend its most favourable rules governing reimbursement to all actions for repayment of charges or dues levied in breach of Community law (*Edis*, cited above, paragraph 36, *SPAC*, cited above, paragraph 20 and Case C-228/96 *Aprile*, cited above, paragraph 20).

28 Thus, Community law does not preclude the legislation of a Member State from laying down, alongside a limitation period applicable under the ordinary law to actions between private individuals for the recovery of sums paid but not due, special detailed rules, which are less favourable, governing claims and legal proceedings to challenge the imposition of charges and other levies. The position would be different only if those detailed rules applied solely to actions based on Community law for the repayment of such charges or levies (*Edis*, cited above, paragraph 37, *SPAC*, cited above, paragraph 21, and Case C-228/96 *Aprile*, cited above, paragraph 21).

29 In this case, the first point to note is that a time-limit of the kind provided for in Article 29(1) of the 1990 Law cannot be regarded as applying only to actions based on Community law (see Case C-228/96 *Aprile*, cited above, paragraph 22).

30 Next, even though it applies only to actions based on Community law, a provision like Article 29(2) of the 1990 Law, which allows the repayment of duties which have not been passed on to other persons, is not, as far as the principle of equivalence is concerned, less favourable than the provisions applicable to actions based on national law. In that respect, Article 29(3) retains in force, as regards actions for repayment based on national law, the conditions previously applied under Article 19 of the 1982 Decree-Law.

31 Further it is clear from the information given to the Court by the Italian Government that the limitation period of three years, which applies to all actions for reimbursement of sums paid in respect of customs operations, is the same as that which, under Italian legislation, applies to actions for repayment of numerous indirect taxes (Case C-228/96 *Aprile*, cited above, paragraph 29), the subject-matter of which may be regarded, if not as identical, at least as closely comparable to that of the actions at issue in the main proceedings.

32 However, it falls ultimately to the national court to satisfy itself, first, that more favourable detailed rules would not have been applicable if the contested tax had been found to be incompatible not, as in this case, with a rule of Community law but with a rule of domestic law and, second, that the detailed rules which apply do not in practice make it impossible or excessively difficult to exercise the rights conferred by Community law.

33 In those circumstances, the answer to the first and second questions must be that Community law does not preclude national provisions from making repayment of customs duties or taxes contrary to Community law subject to less favourable time-limits and procedural conditions than those laid down for actions between private

individuals for recovery of sums paid but not due, provided that those conditions apply in the same way to actions for repayment which are based on Community law and to those based on national law and do not make it impossible or excessively difficult to exercise the right to repayment.

The third question

34 By its third question, the national court asks whether Community law precludes the adoption by a Member State, following judgments of the Court declaring duties or charges to be contrary to Community law, of provisions which render the conditions for repayment of those duties and charges less favourable than those which would otherwise have been applied.

35 The Commission points out that, in *Deville*, cited above, the Court held that Community law precluded the adoption by a national legislature, following a judgment of the Court declaring a charge contrary to the Treaty, of provisions specifically reducing the possibility of obtaining a refund of those charges. It does not exclude the possibility that this might be the case in the main proceedings, but considers that it is for the national court to examine that point.

36 The French Government, for its part, submits that the Member States are free to lay down and amend, even retroactively, detailed rules for actions for the repayment of duties and taxes, even after judgments have been given by the Court of Justice, provided that those rules are not discriminatory or liable to render impossible or excessively difficult in practice the exercise by taxpayers of the rights conferred on them by Community law. In particular, it is necessary to make sure that reduction of the limitation period does not have the effect of suddenly rendering inadmissible actions for repayment which could properly have been brought under

the old legislation or, in any event, that taxpayers have had a reasonable period in which to safeguard their rights.

37 It should be borne in mind that, in *Barra*, cited above, paragraph 19, the Court held that Community law precludes a national legislative provision which restricts repayment of a duty held to be contrary to the Treaty by a judgment of the Court solely to plaintiffs who brought an action for repayment before delivery of the judgment. Such a provision simply deprives natural and legal persons who do not meet that condition of the right to obtain repayment of amounts paid but not due and therefore renders the exercise of the rights conferred on them by Community law impossible.

38 Similarly, in *Deville*, cited above, the Court held that a national legislature may not, subsequent to a judgment of the Court from which it follows that certain legislation is incompatible with the Treaty, adopt a procedural rule which specifically reduces the possibilities of bringing proceedings for repayment of charges levied though not due under that legislation.

39 It is clear from those judgments that a Member State may not adopt provisions making repayment of a tax held to be contrary to Community law by a judgment of the Court, or whose incompatibility with Community law is apparent from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those which would otherwise be applied to repayment of the tax in question (*Edis*, cited above, paragraph 24).

40 In the present case, it is sufficient to point out that the Court has already held in paragraphs 29 and 31 of its judgment of 17 November 1998 in *Aprile*, cited above, that the contested provision, although reducing the time-limit within which repayment may be claimed of sums paid but not due in respect of the consumption tax on bananas, applies to all sums paid in relation to customs operations which it makes subject to rules on time-limits and limitation periods that are the same for a

whole range of internal charges and taxes. The Court has thus held that a provision such as Article 29 of the 1990 Law is compatible with Community law.

41 In those circumstances, the legislation at issue cannot be regarded as a measure intended specifically to limit the consequences of the findings made by the Court in its judgments concerning the consumption tax on bananas.

42 Moreover, as the Court held in its judgment of 17 November 1998 in *Aprile*, cited above, paragraph 28, the provision at issue sets a time-limit which is sufficient to guarantee the effectiveness of the right to reimbursement. It is clear from the written observations and oral argument presented to the Court that the Italian courts, including the Corte Suprema di Cassazione itself, have interpreted that provision as allowing proceedings to be instituted within the three years following its entry into force. In those circumstances, that provision cannot be regarded as having retroactive effect.

43 The answer to the third question must therefore be that Community law does not preclude the adoption by a Member State, following judgments of the Court declaring duties or charges to be contrary to Community law, of provisions which render the conditions for repayment applicable to those duties and charges less favourable than those which would otherwise have been applied, provided that the duties and charges in question are not specifically targeted by that amendment and the new provisions do not make it impossible or excessively difficult to exercise the right to repayment.

The fourth and fifth questions

44 By its fourth and fifth questions, the national court seeks to ascertain whether Community law precludes a Member State from making repayment of customs duties and taxes contrary to Community law subject to a condition, such as the requirement that such duties or taxes have not been passed on to third parties, which the plaintiff must show he has satisfied.

45 According to Dilexport and the Commission, those questions should be answered in the affirmative. They point out that the Court held, in particular in *San Giorgio*, cited above, that Community law precludes presumptions or rules of evidence intended to place upon the taxpayer the burden of establishing that the charges unduly paid have not been passed on to other persons or special limitations concerning the form of the evidence to be adduced, such as the exclusion of any kind of evidence other than documentary evidence. The French Government, which observes that the wording of Article 29(2) of the 1990 Law contains no rule concerning the onus of proof, states that, if the national legislation must be interpreted in the sense indicated by the national court, it shares that view.

46 The Italian Government maintains that, contrary to what is stated by the national court, Article 29(2) of the 1990 Law is consistently interpreted by the Corte Suprema di Cassazione as meaning that the administration bears the burden of proving that the duty or tax at issue has been passed on to third parties, on the basis of evidence that is admissible under national law, such as serious, precise and consistent presumptions or experts' reports prepared by accountants.

47 It should be borne in mind that, as the Court has held, Community law does not prevent a national legal system from disallowing repayment of charges which have been levied but were not due where to do so would entail unjust enrichment of the recipients. There is nothing in Community law, therefore, to prevent courts from taking account, under their national law, of the fact that the charges levied but not due have been incorporated in the price of the goods and thus passed on to the

purchasers. Therefore, national legislative provisions which prevent the reimbursement of taxes, duties and charges levied in breach of Community law cannot be regarded as contrary to Community law in principle, where it is established that the person required to pay such charges has actually passed them on to other persons (*San Giorgio*, cited above, paragraph 13, *Comateb and Others*, cited above, paragraph 21, and Case 68/79 *Just* v *Ministry for Fiscal Affairs* [1980] ECR 501, paragraph 26).

48 On the other hand, any rules of evidence which have the effect of making it virtually impossible or excessively difficult to secure repayment of charges levied in breach of Community law are incompatible with Community law. That is so particularly in the case of presumptions or rules of evidence intended to place upon the taxpayer the burden of establishing that the charges unduly paid have not been passed on to other persons or of special limitations concerning the form of the evidence to be adduced, such as the exclusion of any kind of evidence other than documentary evidence (*San Giorgio*, cited above, paragraph 14, and Joined Cases 331/85, 376/85 and 378/85 *Bianco and Girard* v *Directeur Général des Douanes et Droits Indirects* [1988] ECR 1099, paragraph 12).

49 In this case, Article 29(2) of the 1990 Law provides that the duties and taxes mentioned therein are to be reimbursed where they are incompatible with Community legislation, unless the burden thereof has been passed on to other persons.

50 The Italian Government and the national court, however, differ as to the way in which that provision is interpreted by the national courts.

51 It should be borne in mind that the Court has no jurisdiction to interpret national law (see, *inter alia, Deville*, cited above, paragraph 17) and that it is for the national court alone to determine the precise scope of national laws, regulations or administrative provisions (see, to that effect, Case C-347/89 *Eurim-Pharm* [1991] ECR

I-1747, paragraph 15, and Joined Cases C-132/91, C-138/91 and C-139/91 *Katsikas* v *Konstandinidis, Skreb and Schroll* v *Stauereibetrieb Paetz* [1992] ECR I-6577, paragraph 39).

52 If, as the national court considers, there is a presumption that the duties and charges unlawfully levied or collected when not due have been passed on to third parties and the plaintiff is required to rebut that presumption in order to secure repayment of the charge, the provisions in question must be regarded as contrary to Community law.

53 If, on the other hand, as the Italian Government maintains, it is for the administration to show, by any form of evidence generally accepted by national law, that the charge was passed on to other persons, the provisions in question are not to be considered contrary to Community law.

54 The answer to the fourth and fifth questions must therefore be that Community law precludes a Member State from making repayment of customs duties and taxes contrary to Community law subject to a condition, such as the requirement that such duties or taxes have not been passed on to third parties, which the plaintiff must show he has satisfied.

The sixth question

55 By its sixth question, the national court seeks to ascertain whether Community law precludes the imposition, in the case of claims for the repayment of customs duties or taxes contrary to Community law, of the requirement which, if not fulfilled, renders the claim inadmissible, that notice thereof is to be given to the tax authority which received the tax return of the person concerned for the year in question.

56 The Italian Government has objected that the question is inadmissible because the national court has not explained its relevance to the case. Suffice it to note, in that regard, that according to settled case-law of the Court of Justice, the national court is best placed to assess the need for a preliminary ruling in order to give its judgment (see, to that effect, Case C-228/96 *Aprile*, cited above, paragraph 11).

57 Dilexport maintains that the procedural requirement contained in Article 29(4) and (8) of the 1990 Law is both discriminatory and retroactive. At the hearing, however, Dilexport conceded that, according to the recent decisions of the Corte Suprema di Cassazione mentioned in point 59 of the Advocate General's Opinion, the obligation in question did not apply to tax years preceding the entry into force of the 1990 Law.

58 The Commission and the Governments which have submitted observations to the Court consider, for their part, that the requirement of giving notice of the claim to the tax office which received the tax return of the person concerned is not in breach of the Community principle of equivalence.

59 It appears, in that connection, that Article 29(4) of the 1990 Law applies to all the duties and charges mentioned in paragraphs (2) and (3) of that article, whether the claim for repayment is based on national law or on Community law.

60 The contested measure, which, the parties agree, no longer appears capable of being applied retroactively, consequently does not have the effect of depriving the persons concerned of the benefit of the practical application of Community law or of making their position less favourable than if they were seeking repayment of duties or taxes contrary to domestic law.

61 The answer to the sixth question must therefore be that Community law does not preclude the imposition, in the case of claims for repayment of customs duties or taxes contrary to Community law, of the non-retroactive requirement which, if not fulfilled, renders the claim inadmissible, that notice thereof is to be given to the tax authority which received the tax return of the person concerned for the year in question.

Costs

62 The costs incurred by the Italian, French and United Kingdom Governments and by the Commission of the European Communities, which have submitted their observations to the Court, are not recoverable. As these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions submitted to it by order of 17 August 1996, supplemented by an order of 28 October 1996, by the Pretura Circondariale di Bolzano, Vipiteno Division, hereby rules:

1. Community law does not preclude national provisions from making repayment of customs duties or taxes contrary to Community law subject to less favourable time-limits and procedural conditions than those laid down for

actions between private individuals for recovery of sums paid but not due, provided that those conditions apply in the same way to actions for repayment which are based on Community law and to those based on national law and do not make it impossible or excessively difficult to exercise the right to repayment.

2. **Community law does not preclude the adoption by a Member State, following judgments of the Court declaring duties or charges to be contrary to Community law, of provisions which render the conditions for repayment applicable to those duties and charges less favourable than those which would otherwise have been applied, provided that the duties and charges in question are not specifically targeted by that amendment and the new provisions do not make it impossible or excessively difficult to exercise the right to repayment.**

3. **Community law precludes a Member State from making repayment of customs duties and taxes contrary to Community law subject to a condition, such as the requirement that such duties or taxes have not been passed on to third parties, which the plaintiff must show he has satisfied.**

4. **Community law does not preclude the imposition, in the case of claims for repayment of customs duties or taxes contrary to Community law, of the non-retroactive requirement which, if not fulfilled, renders the claim inadmissible, that notice thereof is to be given to the tax authority which received the tax return of the person concerned for the year in question.**

Puissochet Gulmann Edward

Sevón Wathelet

Delivered in open court in Luxembourg on 9 February 1999.

R. Grass

Registrar

J.-P. Puissochet

President of the Fifth Chamber