JUDGMENT OF THE COURT (Second Chamber)

8 June 2006 *

In Case C-517/04,

REFERENCE for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 15 December 2004, received at the Court on 20 December 2004, in the proceedings

Visserijbedrijf D.J. Koornstra & Zn. vof

v

Productschap Vis,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J. Makarczyk, R. Silva de Lapuerta (Rapporteur), P. Kūris and J. Klučka, Judges,

* Language of the case: Dutch.

Advocate General: C. Stix-Hackl,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 19 January 2006,

after considering the observations submitted on behalf of:

— Visserijbedrijf D.J. Koornstra & Zn. vof, by E.J. Rotshuizen, advocaat,

— Productschap Vis, by P.C.H. van Schooten, advocaat,

— the Netherlands Government, by H.G. Sevenster, C.A.H.M. ten Dam and C.M. Wissels, acting as Agents,

— the Greek Government, by G. Kanellopoulos and M. Tassopoulou, acting as Agents,

— the Commission of the European Communities, by M. van Beek and F. Clotuche-Duvieusart, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 March 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 25 EC and 90 EC.

2 The reference was submitted in the course of proceedings between Visserijbedrijf D.J. Koornstra & Zn. vof ('Koornstra') and the Productschap Vis (Fish Marketing Board) concerning the charge levied on Koornstra by the latter for landing shrimp in Denmark in the financial year 2000.

Legal context

3 The Productschap Vis is a Dutch trade association governed by public law for operators who catch fish and prepare it, processing it if necessary, in order to obtain products which are fit for human or animal consumption, and who market fish and products obtained from fish which are fit for human consumption, with or without processing.

4 Article 2(1) of the 2000 Regulation on the financing of shrimp sieves and peelers at fish auctions (Verordening financiering garnalenzeven en garnalenkrakers visafslagen 2000; the 'Regulation') provides:

'An operator who transports shrimp with a Dutch fishing vessel shall, starting from the first Monday following the date of entry into force of this Regulation, pay on the shrimp he has landed and sold for human consumption, to and for the benefit of the "Productschap", a charge of [NLG] 0.01 per kg.'

5 Article 3(1) of the same regulation lays down that the revenue from the charge is intended to finance the purchase by the 'Productschap' of shrimp sieves and peelers and their installation and maintenance.

The main proceedings and the questions referred for a preliminary ruling

6 Koornstra is an operator which lands shrimp with the fishing vessel *Elizabeth*. According to its statement of 1 August 2002, Koornstra landed 52 984 kg of shrimp during the financial year 2000, of which 28 774 kg were sold at auction in the Netherlands and 24 210 kg were delivered directly to Denmark to be marketed there.

7 Under Article 2(1) of the Regulation, the Productschap Vis, by decision of 19 September 2002, levied a charge of EUR 109.86 on Koornstra in respect of those 24 210 kg of shrimp.

8 Koornstra lodged an objection against that decision by letter of 25 October 2002.

9 By decision of 19 March 2003 ('the contested decision'), the Productschap Vis dismissed Koornstra's objection.

10 By application of 25 April 2003, Koornstra brought an appeal against the contested decision before the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry). Since it had doubts as to the compatibility of the charge laid down in Article 2(1) of the Regulation (the 'charge in dispute') with Community law, that court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is a charge, such as the charge in dispute, levied on an operator in a Member State for landing shrimp with a fishing vessel registered in that Member State and used to finance shrimp sieves and peelers in that Member State consistent with Community law and, in particular, with Articles 25 EC and 90 EC, if the charge is also payable on shrimp landed by such an operator elsewhere in the Community?

(2) Is the answer to this question affected by any of the following:

(a) where the shrimp are caught;

(b) whether, after being landed elsewhere in the Community, the shrimp are transported to the Member State in which the fishing vessel is registered;

(c) whether, after the shrimp have been landed elsewhere in the Community, payment for sieving and peeling is made in that place also?'

The questions

11 By its questions, which should be considered together, the national court is essentially asking whether a charge such as that at issue in the main proceedings may constitute a charge having an effect equivalent to customs duties within the meaning of Article 25 EC or discriminatory internal taxation prohibited by Article 90 EC.

12 The first point to be noted is that the provisions relating to charges having equivalent effect and those relating to discriminatory taxation cannot be applied together, so that the same charge cannot, under the system established by the Treaty, belong to both those categories at the same time (Case C-347/95 *UCAL* [1997] ECR I-4911, paragraph 17; Case C-355/00 *Freskot* [2003] ECR I-5263, paragraph 39; and Joined Cases C-34/01 to C-38/01 *Enirisorse* [2003] ECR I-14243, paragraph 59).

13 It is thus necessary to examine, first, whether the charge in dispute can be characterised as a charge having an effect equivalent to customs duties on exports within the meaning of Articles 23 EC and 25 EC. If that is not the case, it will be necessary to ascertain, second, whether that charge constitutes discriminatory internal taxation prohibited by Article 90 EC.

14 In the case in the main proceedings, it is common ground that the charge in dispute is not levied by reason of the fact that the goods cross the frontier of the Member State concerned, but is systematically and uniformly imposed on shrimp landed with any Dutch fishing vessel, whether they are intended for the national market or for export, and that the revenue from that charge is used to finance the purchase, installation and maintenance, by the Productschap Vis, of shrimp sieves and peelers.

15 It is settled case-law that any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 23 EC and 25 EC, even though such pecuniary charge is not levied for the benefit of the State (*UCAL*, paragraph 18; Case C-72/03 *Carbonati Apuani* [2004] ECR I-8027, paragraph 20; and Case C-293/02 *Jersey Produce Marketing Organisation* [2005] ECR I-9543, paragraph 55).

16 However, such a charge constitutes internal taxation within the meaning of Article 90 EC, rather than a charge having an effect equivalent to a customs duty, if it relates to a general system of internal dues applied systematically to categories of products in accordance with objective criteria irrespective of the origin or destination of the products (Case C-234/99 *Nygård* [2002] ECR I-3657, paragraph 19, and *Carbonati Apuani*, paragraph 17).

17 In that connection, it also follows from the Court's case-law that, for the purposes of the legal characterisation of a charge levied on national products processed or marketed on the national market and on national products exported in an unprocessed state in accordance with identical criteria, it may be necessary to take into account the purpose for which the revenue from the charge is applied (*Nygård*, paragraph 21).

18 Thus, if the revenue from such a charge is intended to finance activities for the special advantage of the national products processed or marketed on the national market, it may follow that the charge imposed on the basis of the same criteria nevertheless constitutes discriminatory taxation in so far as the fiscal burden on products processed or marketed on the national market is neutralised by the advantages which the charge is used to finance whilst the charge on the products exported in an unprocessed state constitutes a net burden (*Nygård*, paragraph 22).

19 In that regard, if the advantages stemming from the use of the revenue from a charge forming part of a general system of internal charges applying systematically to national products processed and marketed on the national market and to products exported in an unprocessed state fully offset the burden borne by the national product processed and marketed on the national market when it is placed on the market, that charge constitutes a charge having an effect equivalent to a customs duty, contrary to Articles 23 EC and 25 EC. On the other hand, if the advantages accruing to the national products processed and marketed on the national market from the use of the revenue generated by the charge offset only partially the burden borne by those products, such a charge will constitute a breach of the prohibition of discrimination laid down by Article 90 EC (*Nygård*, paragraph 23).

20 If those advantages for national production processed or marketed on the national market fully offset the burden borne by that production, the charge levied on the

product must, being a charge having an effect equivalent to a customs duty, be regarded as unlawful in its entirety; if on the contrary those advantages only partly offset the burden borne by national products processed or marketed on the national market, the charge levied on exported national products, which is legal in principle, will have to be prohibited to the extent to which it offsets that burden and reduced proportionally (see, to that effect, *UCAL*, paragraph 23, and *Nygård*, paragraph 42).

21 The criterion of whether the burden is offset, in order to be usefully and correctly applied, presupposes a check, during a reference period, on the financial equivalence of the total amounts levied on national products processed or marketed on the domestic market in connection with the charge in question and the advantages afforded exclusively to those products (Case C-28/96 *Fricarnes* [1997] ECR I-4939, paragraph 27, and *Nygård*, paragraph 43).

22 Having regard to the principles just referred to, it is therefore for the national court to ascertain that national products processed or marketed on the national market do not in fact derive an exclusive benefit or a proportionally greater benefit than exported national products from the services of the body to which the charge in dispute accrues, which might offset wholly or in part the burden constituted by that charge (see, to that effect, *UCAL*, paragraph 26, and *Fricarnes*, paragraph 29).

23 It is apparent from the order for reference that the sieving and peeling equipment financed by the charge in dispute is of benefit only to operators transporting shrimp to the Netherlands.

24 Moreover, the national court also considers it established that, although subject to the charge in dispute, the operators landing shrimp in other Member States with Dutch fishing vessels do not benefit from that equipment.

25 Accordingly, the charge in dispute imposes a heavier burden on products intended for export than that borne by products intended for the Dutch market.

26 Therefore, should it be established that the advantages stemming from the use of the revenue from the charge in dispute fully offset the burden borne by operators landing, with Dutch fishing vessels, shrimp intended for processing or marketing on the national market, the application of that charge to products intended for export would constitute a charge having an effect equivalent to a customs duty, contrary to Articles 23 EC and 25 EC, and would have to be regarded as unlawful in its entirety. On the other hand, if the advantages accruing to the national products processed or marketed on the national market from the use of the revenue generated by that charge offset only partially the burden borne by those products, such a charge would constitute a breach of the prohibition on discrimination laid down by Article 90 EC.

27 That assessment is not affected by where the shrimp are caught, the fact that, after being landed in another Member State, they are subsequently transported to the State in which the fishing vessel is registered or the fact that, after the shrimp have been landed in another Member State, payment for sieving and peeling is made in that latter State also.

28 Having regard to the foregoing considerations, the answer to the questions referred for a preliminary ruling must be that a charge levied by an association governed by public law of a Member State, on the basis of identical criteria, on national products intended for the national market or for export to other Member States constitutes a charge having an effect equivalent to an export duty, prohibited by Articles 23 EC and 25 EC, if the revenue from that charge is used to finance activities which benefit only the national products intended for the national market and the advantages stemming from the use of the revenue from that charge fully offset the burden borne by those products. On the other hand, if the advantages accruing to the national products processed or marketed on the national market from the use of the revenue generated by that charge offset only partially the burden borne by those products, such a charge would constitute a breach of the prohibition on discrimination laid down by Article 90 EC.

Costs

29 Since 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

A charge levied by an association governed by public law of a Member State, on the basis of identical criteria, on national products intended for the national market or for export to other Member States constitutes a charge having an effect equivalent to an export duty, prohibited by Articles 23 EC and 25 EC, if

the revenue from that charge is used to finance activities which benefit only the national products intended for the national market and the advantages stemming from the use of the revenue from that charge fully offset the burden borne by those products. On the other hand, if the advantages accruing to the national products processed or marketed on the national market from the use of the revenue generated by that charge offset only partially the burden borne by those products, such a charge would constitute a breach of the prohibition on discrimination laid down by Article 90 EC.

[Signatures]