

JUDGMENT OF THE COURT (Grand Chamber)

8 November 2005 *

In Case C-293/02,

REFERENCE under Article 234 EC for a preliminary ruling from the Royal Court of Jersey (Channel Islands), made by decision of 5 August 2002, received at the Court on 13 August 2002, in the proceedings

Jersey Produce Marketing Organisation Ltd

v

States of Jersey,

Jersey Potato Export Marketing Board,

and

Top Produce Ltd,

Fairview Farm Ltd,

interveners,

* Language of the case: English.

THE COURT (Grand Chamber),

composed of V. Skouris, President, C.W.A. Timmermans, A. Rosas, J. Malenovský, Presidents of Chambers, J.-P. Puissochet, R. Schintgen, N. Colneric (Rapporteur), S. von Bahr, G. Arestis, A. Borg Barthet, M. Ilešič, J. Klučka and U. Lõhmus, Judges,

Advocate General: P. Léger,

Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 September 2004,

after considering the observations submitted on behalf of:

- Jersey Produce Marketing Organisation Ltd, by T. Le Cocq, Advocate, and M. Sheridan and J. Simor, Barristers,

- the States of Jersey, by S. Nicolle QC, R. Plender QC, W. Bailhache, HM Attorney General for Jersey, and M. Jarvis, Barrister,

- the Commission of the European Communities, by X. Lewis, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 3 May 2005,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Articles 23 EC, 25 EC, 28 EC and 29 EC.

- 2 The reference was submitted in the course of proceedings between, on the one hand, Jersey Produce Marketing Organisation Limited (hereinafter 'JPMO') and, on the other hand, the States of Jersey and the Jersey Potato Export Marketing Board (hereinafter 'the PEMB') concerning the compatibility with Community law of the Jersey Potato Export Marketing Scheme Act 2001 (hereinafter 'the 2001 Act'), enacted by the States of Jersey.

Legal framework

Community legislation

- 3 Article 23(1) EC provides:

'The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.'

4 Under Article 25 EC:

'Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.'

5 Article 28 EC states:

'Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.'

6 In the terms of Article 29 EC:

'Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.'

7 Article 299(4) EC provides:

'The provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible.'

8 Under paragraph 6 of that article:

‘Notwithstanding the preceding paragraphs:

...

(c) this Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.’

9 Article 1 of Protocol No 3 on the Channel Islands and the Isle of Man (OJ 1972 L 73, p. 164, hereinafter ‘Protocol No 3’) annexed to the Act concerning the Conditions of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community and the Adjustments to the Treaties (OJ 1972 L 73, p. 14) (hereinafter ‘the 1972 Act of Accession’) provides:

‘1. The Community rules on customs matters and quantitative restrictions, in particular those of the Act of accession, shall apply to the Channel Islands and the Isle of Man under the same conditions as they apply to the United Kingdom. In particular customs duties and charges having equivalent effect between those territories and the Community as originally constituted and between those territories and the new Member States shall be progressively reduced in accordance with the timetable laid down in Articles 32 and 36 of the Act of accession.

2. In respect of agricultural products and products processed therefrom which are the subject of a special trade regime, the levies and other import measures laid down in Community rules and applicable by the United Kingdom shall be applied to third countries.

Such provisions of Community rules, in particular those of the Act of accession, as are necessary to allow free movement and observance of normal conditions of competition in trade in these products shall also be applicable.

The Council, acting by a qualified majority on a proposal from the Commission, shall determine the conditions under which the provisions referred to in the preceding subparagraphs shall be applicable to these territories.'

- ¹⁰ Council Regulation (EEC) No 706/73 of 12 March 1973 concerning Community arrangements applicable to the Channel Islands and the Isle of Man for trade in agricultural products (OJ 1973 L 68, p. 1), as amended by Council Regulation (EEC) No 1174/86 of 21 April 1986 (OJ 1986 L 107, p. 1), (hereinafter 'Regulation No 706/73') was adopted on the basis of the third subparagraph of Article 1(2) of Protocol No 3. Article 1 provides:

'1. Community rules applicable to the United Kingdom for trade in agricultural products covered by Annex II to the Treaty establishing the European Economic Community and in goods covered by Regulation No 170/67/EEC and Regulation (EEC) No 1059/69, shall apply to the islands, with the exception of rules on refunds and on compensatory amounts granted on exports by the United Kingdom.

2. For the purpose of applying the rules referred to in paragraph 1, the United Kingdom and the islands shall be treated as a single Member State.

...'

- 11 Under Article 3(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1):

'The customs territory of the Community shall comprise:

— the territory of the Kingdom of Belgium,

...

— the territory of the Portuguese Republic,

— the territory of the United Kingdom of Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man.'

National legislation

- 12 It is apparent from the explanations provided by the referring court that the 2001 Act was adopted as a result of growers' complaints regarding their low profit margins on the sale of Jersey Royal potatoes, the island's main outdoor crop which is, for the most part, marketed in the United Kingdom. That situation was

attributable in particular to the competition between the marketing organisations and the growers' inability to negotiate or influence the terms on which those organisations sold their crops. There is said to be a lack of transparency with regard to the terms of business offered by the marketing organisations.

- 13 Paragraph 2 of the 2001 Act defines 'export' as 'the sending for sale of potatoes outside of the Island whether directly or via some other place to a destination in the United Kingdom, the Bailiwick of Guernsey or the Isle of Man for consumption there', and the meaning of 'potato' includes, under that provision, any product produced or derived from potatoes whether consumable or not.

- 14 By virtue of the 2001 Act, producers are prohibited from 'exporting potatoes' unless they are registered with the PEMB and have entered into a marketing agreement with it. For their part, marketing organisations are prohibited from receiving 'potatoes' for 'export' if they are not a party to a current management agreement with the PEMB.

- 15 Under Article 23(1)(a) of the Agricultural Marketing (Jersey) Law 1953 (hereinafter, 'the 1953 Law'), if any person sells or offers to sell or invites an offer to buy any regulated produce in contravention of the provisions of any Scheme he commits an offence for which the maximum penalty is a fine of GBP 200 or imprisonment for up to six months or both.

- 16 In addition, it is clear from Paragraphs 32 to 39 and 56 of the 2001 Act, and from Article 23 of the 1953 Law, that the PEMB is empowered to impose penalties on registered producers in respect of breaches of the marketing agreements into which

they have entered with that body, and, after two breaches, to communicate their identity to the Agriculture and Fisheries Committee of the States of Jersey which can in that case remove those concerned from the register, depriving them of the right to enter into such agreements.

17 According to the observations submitted to the Court by JPMO, the States of Jersey and the PEMB, the marketing agreements which the latter makes with producers must contain, in particular, terms relating to the area of land to be used for cultivation of potatoes for 'export', to the identity of the persons authorised by the PEMB to receive such potatoes, and, further, to the quality and husbandry standards to be met.

18 It is also clear from those observations that the management agreements made between the PEMB and the marketing organisations must, in particular, include terms covering the identity of the producers registered with the PEMB whose potatoes those organisations may market, the quality standards to be attained and the procedures applicable to the 'export' or other handling of potatoes that are surplus to actual or estimated market requirements. Such agreements must also specify the bases upon which the marketing organisation charges producers for its services, charges purchasers of the potatoes, and collects and transmits to the producers the price paid to it by the purchasers. The said agreements must, likewise, identify any factors that may lead that organisation to deal with a third party on a basis other than market price transactions; any performance-related bonuses or penalties which might operate in relation to that organisation; and the advertising or promotional duties to be carried out and expenses incurred by the PEMB or the marketing organisation.

19 According to JPMO, which has not been contradicted on those points by the States of Jersey, it follows, in addition, from the 2001 Act that the PEMB has discretion whether or not to enter into a marketing agreement with a producer or a management agreement with a marketing organisation. Under the same Act the

PEMB is also, among other things, empowered to buy, process, sell and transport potatoes, to promote their production and marketing and cooperation, research or education in connection with them, to lend to any registered producers and to require them to provide statistical information.

- 20 Under Paragraph 24 of the 2001 Act, the PEMB may by resolution require all registered producers to contribute to a special fund intended to cover the PEMB's main costs and expenses and to contribute to reimbursing any losses incurred by the PEMB, irrespective of whether those producers are or are not, at that time, party to a marketing agreement with the PEMB.
- 21 The Commission, in its written observations, and JPMO at the hearing, stated, without being contradicted on that point by the States of Jersey, that that paragraph also provides that the contribution is to be calculated as the PEMB may from time to time elect, either by reference to the weight in tonnes of the potatoes sold by the producer for 'export' or by reference to the area used by him for the production of potatoes during the preceding calendar year.

The main proceedings and the questions referred for a preliminary ruling

- 22 JPMO and Top Produce Ltd, respectively the applicant and the first intervener in the main proceedings, are two of the four marketing organisations operating on Jersey. Together they handle about 80% of the exports of Jersey Royal potatoes to the United Kingdom. The second intervener in the main proceedings and Top Produce Ltd's parent company, Fairview Farm Ltd, is one of some 80 producers of Jersey Royal potatoes on the island.

23 Before the referring court, JPMO, Top Produce Ltd and Fairview Farm Ltd claim, first, that although the 2001 Act purports only to regulate exports to the United Kingdom, it could, contrary to Articles 28 EC and 29 EC, have actual or potential restrictive effects on trade between the Member States. In particular, the 2001 Act applies not only to direct exports to the United Kingdom, but also to the sending of potatoes to another Member State for processing or straightforward transit prior to being forwarded to the United Kingdom.

24 The referring court considered in that regard that the expression ‘directly or via some other place’ in Paragraph 2 of the 2001 Act serves only to ensure that no distinction is made, in so far as the application of that legislation is concerned, between potatoes transported on ferries travelling directly to the United Kingdom and those transported via ports in France or another State. That court therefore held that the 2001 Act does not apply to situations where potatoes are sent to another Member State for processing, for example washing, packaging or bagging, for onward transmission to the United Kingdom for sale and consumption there. According to the referring court, the only remaining question, therefore, submitted in that regard is whether the 2001 Act contravenes Article 29 EC by reason of the fact that it applies to potatoes sent directly from Jersey to the United Kingdom which travel via another Member State but without leaving the carrying vessel.

25 Secondly, JPMO, Top Produce Ltd and Fairview Farm Ltd submit that the 2001 Act also infringes Articles 23 EC, 25 EC, 28 EC and 29 EC, because it has the effect of hampering trade between Jersey and the United Kingdom.

26 Those companies submit that those provisions apply to such trade by virtue of Protocol No 3 and, in particular, Article 1(1) thereof. In addition, even if Jersey and

the United Kingdom are to be treated as a single Member State for the purposes of applying Articles 23 EC, 25 EC, 28 EC and 29 EC, those provisions are also intended to govern trade between two territories of the same Member State (see, in particular, Case C-163/90 *Legros and Others* [1992] ECR I-4625; Joined Cases C-363/93 and C-407/93 to C-411/93 *Lancry and Others* [1994] ECR I-3957, and Joined Cases C-485/93 and C-486/93 *Simitzi* [1995] ECR I-2655).

- 27 In the main proceedings, the payment of levies to the PEMB and the imposition of penalties for breach of the 2001 Act constitute charges having an effect equivalent to customs duties prohibited by Article 25 EC. Furthermore, the scheme established by the 2001 Act, by making the opportunity to trade subject to registration and to entering into marketing and management agreements such as those which it prescribes, gives rise to obstacles to imports and exports prohibited by Articles 28 EC and 29 EC.
- 28 The States of Jersey and the PEMB object that, as follows particularly from Article 299 EC, Article 1 of Protocol No 3 and Article 1(2) of Regulation No 706/73, the trade in potatoes between Jersey and the United Kingdom is purely internal to that Member State with no connection to the situations envisaged by Articles 23 EC, 25 EC, 28 EC and 29 EC. The above-cited judgments in *Legros and Others*, *Lancry and Others* and *Simitzi* did not concern Articles 28 EC and 29 EC, while the levies in question in those cases applied without distinction to the internal and external trade of a Member State.
- 29 In addition, Articles 23 EC and 25 EC cannot apply to the main proceedings, since the levies and penalties laid down by the 2001 Act are not respectively imposed or inflicted by reason of the fact that the goods crossed a frontier.

30 It is in those circumstances that the Royal Court of Jersey decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘1. Is a statutory Scheme such as that which regulates the export of potatoes from Jersey to the United Kingdom to be considered as a measure having an effect equivalent to quantitative restrictions on exports, contrary to Article 29 EC, by reason of the fact that potatoes sent directly from Jersey to the United Kingdom may travel via another Member State but without leaving the carrying vessel?

2. Is a statutory Scheme such as that regulating the export of potatoes from Jersey to the United Kingdom to be considered incompatible with Articles 23 EC, 25 EC, 28 EC and 29 EC in so far as it may affect trade between that island and the United Kingdom (together with Guernsey and the Isle of Man) or may entail the imposition of charges arising in connection with such trade?’

The questions referred for a preliminary ruling

The second question

31 By its second question, with which it is appropriate, as suggested both by JPMO and the Commission, to deal first, the referring court wishes to ascertain whether Articles 23 EC, 25 EC, 28 EC and 29 EC are to be interpreted as precluding a scheme such as that implemented by the 2001 Act.

- 32 In order to reply to that question, it is necessary, first of all, to decide whether those provisions of the EC Treaty are applicable to goods such as those covered by the 2001 Act, namely potatoes grown on Jersey and products produced or derived therefrom whether consumable or not.
- 33 If that is the case, it will then be necessary to determine whether, for the purposes of the application of those provisions of the Treaty, trade in such goods between Jersey and the United Kingdom must be treated as if it were trade in goods between Member States, as JPMO maintained, or whether, for the purposes of such application, Jersey and the United Kingdom must be treated as if they formed a single Member State, as the States of Jersey argued.
- 34 Once that second aspect has been clarified, it will be necessary, lastly, to ascertain whether those same provisions of the Treaty are to be interpreted as precluding a scheme with characteristics such as those of the 2001 Act.

The application of Articles 23 EC, 25 EC, 28 EC and 29 EC to goods such as those covered by the 2001 Act

- 35 As set forth in Article 1(1) of Protocol No 3, the Community rules on customs matters and quantitative restrictions are to apply to the Channel Islands and the Isle of Man under the same conditions as they apply to the United Kingdom. Those rules include, in particular, Articles 23 EC, 25 EC, 28 EC and 29 EC.

36 The said Article 1(1) makes no distinction according to the nature of the goods concerned. Therefore, the rules to which it refers are to be applied to all the goods usually covered by them. Since agricultural products listed in Annex II to the EEC Treaty (now Annex I to the EC Treaty) are not subject to any particular treatment in that regard, they fall within the scope of that paragraph.

37 Article 1(2) of Protocol No 3 cannot affect that conclusion. Under that provision, in respect of agricultural products and products processed therefrom which are the subject of a special trade regime, the levies and other import measures laid down in Community rules and applicable by the United Kingdom are to be applied to third countries. Such provisions of Community rules as are necessary to allow free movement and observance of normal conditions of competition in trade in these products are also made applicable. In both those cases, the provisions concerned are to be applicable under conditions to be determined by the Council.

38 The said Article 1(2) reflects, essentially, a concern to take proper account of the fact that, within the Community, agricultural products fall under the Common Agricultural Policy and may be subject in that regard to a certain number of specific rules. It is in view of that fact that Article 1(2) provides for the adoption of the measures judged necessary to ensure the proper operation of the regime put in place as regards the Channel Islands and the Isle of Man, in particular by making certain of those rules applicable to those territories.

39 On the other hand, that provision cannot be interpreted as meaning that the application of Articles 23 EC, 25 EC, 28 EC and 29 EC to agricultural products is

subject to the adoption of such measures by the Council or to the existence, within the Community, of a common organisation of the markets in the sectors concerned.

40 In that regard, it is also appropriate to point out that, according to the Court's settled case-law, the absence of a common organisation of the market in a particular agricultural sector is irrelevant to the application of Articles 28 EC and 29 EC to trade in that sector's goods; the Court has held that such was particularly the case as regards the Member States which adhered to the Community by virtue of the 1972 Act of Accession (see, precisely in relation to the potato sector, Case 68/76 *Commission v France* [1977] ECR 515, paragraphs 17 to 21; Case 231/78 *Commission v United Kingdom* [1979] ECR 1447, paragraphs 12 to 18; and Case 288/83 *Commission v Ireland* [1985] ECR 1761, paragraph 23).

41 It follows from all the foregoing that Articles 23 EC, 25 EC, 28 EC and 29 EC are applicable to potatoes grown on the Island of Jersey and to products derived from them on that island, which are also covered by the 2001 Act.

The question whether the territory of the United Kingdom, the Channel Islands and the Isle of Man can be treated as the territory of a single Member State for the purposes of the application of Articles 23 EC, 25 EC, 28 EC and 29 EC

42 The referring court explained in the context of a previous case that Jersey is a semi-autonomous dependency of the British Crown, which is represented on Jersey by the Lieutenant Governor. The United Kingdom Government, on behalf of the Crown, is responsible for defence and international relations (see, in that regard, Case C-171/96 *Pereira Roque* [1998] ECR I-4607, paragraph 11).

- 43 Jersey does not form part of the United Kingdom. It is, for the purposes of Article 299(4) EC, a territory for whose external relations that Member State is responsible.
- 44 Notwithstanding Article 299(4) EC, by virtue of which the Treaty's provisions are to apply to such territories, Article 299(6)(c) EC provides that that Treaty is to apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the 1972 Act of Accession. The particular regime referred to by that provision is set out in Protocol No 3.
- 45 It is appropriate, first of all, to recall that the Court has previously stated that, just as the distinction between Channel Islanders and other citizens of the United Kingdom cannot be likened to the difference in nationality between the nationals of two Member States, neither, because of other aspects of the status of those Islands, can relations between the Channel Islands and the United Kingdom be regarded as similar to those between two Member States (*Pereira Roque*, cited above, paragraphs 41 and 42).
- 46 It must be observed, next, that it is stated in Article 1(1) of Protocol No 3 that the Community rules on customs matters and quantitative restrictions are to apply to the Channel Islands and the Isle of Man 'under the same conditions as they apply to the United Kingdom'.

- 47 Such wording suggests that, for the purposes of the application of those Community rules, the United Kingdom and the Islands are, as a rule, to be regarded as a single Member State.
- 48 The same is true of the statement in the first subparagraph of Article 1(2) of Protocol No 3, which refers to the levies and other import measures laid down in Community rules 'and applicable by the United Kingdom'.
- 49 It may be noted in that regard that such a construction of Article 1 of Protocol No 3 has also been applied by the Community legislature.
- 50 It is thus clear from Article 3(1) of Regulation No 2913/92 that the territory of the United Kingdom and of the Channel Islands and the Isle of Man forms, together, a part of the Community customs territory.
- 51 Likewise, Article 1(1) and (2) of Regulation No 706/73 state that the Community rules the extension of which to those islands is provided for by those paragraphs are those 'applicable to the United Kingdom' and that for the purpose of such application 'the United Kingdom and the islands shall be treated as a single Member State'.
- 52 Contrary to JPMO's suggestion, the statement in Article 1(1) of Protocol No 3 that customs duties and charges having equivalent effect are, in accordance with the timetable laid down in the 1972 Act of Accession, to be progressively reduced

between those same islands ‘and the Community as originally constituted’ and between those islands ‘and the new Member States’ does not preclude such a construction.

53 In view, particularly, of the abovementioned statement in the same provision that the Community rules in question are to be applied to the Channel Islands and to the Isle of Man ‘under the same conditions as they apply to the United Kingdom’, the reference in that provision to the ‘new Member States’ must be understood as referring to the Kingdom of Denmark and Ireland, to the exclusion of the United Kingdom. That conclusion is, moreover, supported by the fact that that reference appears, as has just been pointed out, in a sentence the sole purpose of which is to provide for the progressive reduction of customs duties and charges having equivalent effect which existed at the time of the 1972 accession. It is common ground that at that time trade in goods between the United Kingdom and those islands was not subject to customs duties.

54 It is clear from all the preceding points that, for the purposes of the application of Articles 23 EC, 25 EC, 28 EC and 29 EC, the Channel Islands, the Isle of Man and the United Kingdom must be treated as one Member State.

Articles 23 EC and 25 EC

55 It is settled case-law that any pecuniary charge, 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 (see, in particular, Joined Cases 2/69 and 3/69 *Sociaal Fonds voor de Diamantarbeiders* [1969] ECR 211, paragraph 18; Case 158/82 *Commission v Denmark* [1983] ECR 3573, paragraph 18; Case C-130/93 *Lamaire* [1994] ECR I-3215, paragraph 13; Joined Cases C-441/98 and C-442/98 *Michailidis* [2000] ECR I-7145, paragraph 15, and Case C-234/99 *Nygård* [2002] ECR I-3657, paragraph 19).

⁵⁶ It is otherwise only if the charge in question constitutes payment for a service actually rendered in an amount proportionate to that service or if it relates to a general system of internal dues applied systematically and in accordance with the same criteria to domestic products and imported and exported products alike, or again, subject to certain conditions, if it is levied on account of inspections carried out for the purpose of fulfilling obligations imposed by Community law (see, in particular, *Commission v Denmark*, cited above, paragraph 19, and *Lamaire*, cited above, paragraph 14).

⁵⁷ In this case, the referring court wishes to be able to determine whether the mandatory contributions which the PEMB may impose under the 2001 Act, and the financial penalties applicable to producers and marketing organisations which contravene the scheme introduced by that act, are capable of constituting charges having an effect equivalent to customs duties within the meaning of Articles 23 EC and 25 EC.

⁵⁸ As regards, first, the contributions which can be imposed by the PEMB on potato producers registered under the 2001 Act scheme, it is clear from the arguments presented to the Court that the amount thereof may be fixed by the PEMB either by reference to the quantities of potatoes produced by the party concerned which were

actually exported to the United Kingdom, or by reference to the areas used by that party for potato production.

59 It is appropriate to observe, at the outset, that the obligation to register with the PEMB under the scheme established by the 2001 Act and, therefore, the obligation to pay any contributions decided upon by that body, are imposed on all Jersey potato producers who export their produce or have it exported to the United Kingdom.

60 A contribution imposed on the producers thus registered which is calculated by the PEMB by reference to the quantities of potatoes produced by the party concerned and exported from Jersey to the United Kingdom certainly constitutes a pecuniary charge levied by reason of such exports, which applies to them exclusively without relating to a general system of internal dues applied systematically and in accordance with the same criteria, irrespective of the origin, exporting country or destination of the goods subject to it, and which does not represent consideration for a specific or individual benefit provided to the trader, in an amount proportionate to that service (see, by analogy, *Lamaire*, paragraph 19).

61 The States of Jersey, however, argued that since the 2001 Act governs only 'exports' of potatoes from Jersey to the United Kingdom for consumption in that Member State and that it therefore applies only to situations forming part of a Member State's internal trade, Articles 23 EC and 25 EC are not applicable to this case.

- 62 In that regard, it is appropriate to point out that, in paragraph 32 of its judgment in *Lancry and Others*, cited above, the Court ruled that a charge proportional to their customs value, levied by a Member State on all goods entering a region within that State, constitutes a charge having equivalent effect to a customs duty on imports not only in so far as it is levied on goods entering that region from other Member States, but also in so far as it is levied on goods entering that region from another part of the same State.
- 63 In paragraphs 26 and 27 of its judgment in *Simitzi*, cited above, the Court held, moreover, that the same reasoning had to apply in the case of a charge levied on goods despatched from one region to other regions of the same State, before concluding that ad valorem charges levied by a Member State on goods despatched from one region solely to other regions of the same State constituted charges having an effect equivalent to customs duties on exports.
- 64 The Treaty sought, in that regard, to give general scope and effect to the rule on the elimination of customs duties and charges having equivalent effect in order to ensure the free movement of goods. The customs union necessarily implies that the free movement of goods should be ensured between Member States and, in more general terms, within the customs union (see Case C-30/01 *Commission v United Kingdom* [2003] ECR I-9481, paragraphs 52 and 53).
- 65 In this case, it must be observed, first, that, in view particularly of the conclusion reached in paragraph 54 of this judgment, a contribution such as that in issue in this case which is calculated by the PEMB by reference to the quantities of potatoes produced by the party concerned and exported from Jersey to the United Kingdom certainly constitutes a charge imposed on goods despatched from one region to

another in the same Member State. Second, it must be added that even though the 2001 Act covers, according to its wording, only potatoes despatched to the United Kingdom for consumption there, that does not rule out the possibility that such potatoes, once within the United Kingdom, might then be re-exported to other Member States, with the result that the contribution in question may be levied on goods which, after having passed through the United Kingdom in transit, are in fact exported to other Member States.

66 In this case, the possible development of such a pattern of re-exports from the United Kingdom to the other Member States is certainly conceivable given that, as appears from the information provided to the Court, almost all the Jersey Royal potatoes grown on Jersey are traditionally exported to the United Kingdom.

67 It follows from all the foregoing that a contribution such as that at issue in this case, calculated by the PEMB by reference to the quantities of potatoes produced by the party concerned and exported to the United Kingdom, contravenes Articles 23 EC and 25 EC.

68 By contrast, if the PEMB chooses to impose a contribution calculated by reference to the areas used for the cultivation of potatoes, without distinguishing between potatoes consumed on the Island and those exported, it would not appear, in principle, that such a payment can constitute a pecuniary charge levied by reason of the fact that the potatoes are exported.

69 The Commission has, it is true, contended that such contributions are intended to finance, in general, the PEMB's various activities, which are themselves primarily

aimed at the arrangements governing potato exports from Jersey to the United Kingdom. Such a circumstance does not, however, warrant the conclusion that those contributions must be characterised as charges having an effect equivalent to a customs duty prohibited by Article 25 EC.

70 As regards, secondly, the financial penalties that may be imposed on traders for contravening the provisions of the 2001 Act, the only purpose of which is to ensure the effective application of those provisions, these cannot be separated from those provisions, to which they are ancillary.

71 However, those financial penalties are connected neither to the provisions of the 2001 Act relating to the contribution nor to other provisions which might provide for a charge having an effect equivalent to customs duties within the meaning of Article 25 EC.

Article 29 EC

72 It is important to point out, at the outset, that the 2001 Act, which applies to 'exports' of potatoes and potato products, does not seem to include any measure which might be allied to a restriction on imports of any kind, with the result that it is not necessary, in this case, to interpret Article 28 EC.

73 As regards Article 29 EC, it is appropriate to note that, according to settled case-law, that provision covers measures which have as their specific object or effect the

restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade, in such a way as to provide a particular advantage for national production or for the domestic market of the State in question, at the expense of the trade or production of other Member States (see, *inter alia*, Case 15/79 *Groenveld* [1979] ECR 3409, paragraph 7, and Case C-3/91 *Exportur* [1992] ECR I-5529, paragraph 21).

74 In this case, it is common ground that the obligations imposed by the 2001 Act are specifically intended to regulate the export trade in potatoes to the United Kingdom, whereas the produce intended for consumption on the Jersey market escapes the provisions of that Act.

75 In particular, the 2001 Act prohibits Jersey producers from offering for export or exporting their potatoes to United Kingdom markets, unless they are registered with the PEMB and have entered into a marketing agreement with it which determines, in particular, the areas which may be planted with crops for export as well as the identity of those authorised to acquire those crops. Non-compliance with those obligations is subject to penalties and may give rise, in case of re-offending, to suspension of the right to be registered and, as a result, of the right to export. The 2001 Act likewise prohibits all marketing organisations from exporting potatoes to United Kingdom markets, also subject to criminal penalties, unless they are party to a management agreement with the PEMB determining, in particular, the identity of the sellers from whom it is permissible for them to obtain their supplies.

76 It is, first of all, clear that such legislation is, by its very nature, likely to interfere with the patterns of exports of potatoes grown in Jersey to the United Kingdom markets.

Its effect is thus to establish a difference in treatment between Jersey's domestic trade and its export trade to the United Kingdom in such a way as to provide a particular advantage for the island's production or its domestic market, in this case at the expense of the United Kingdom's trade.

77 In the latter regard, it is clear, in particular, from the information provided by the referring court, that the purpose underlying the adoption of the 2001 Act was to remedy the complaints of Jersey Royal potato producers who considered themselves to be victims of a lack of transparency and excessive competition between marketing organisations and who regarded as insufficient the profit margins they made from their produce; as is common ground, that produce is for the most part intended for export to the United Kingdom market.

78 The 2001 Act's effect as an obstacle to exports to the United Kingdom was not, moreover, denied by the States of Jersey which argued merely in that regard that since, first, only such exports were affected by the 2001 Act and, second, trade between Jersey and the United Kingdom had to be treated as a Member State's domestic trade for the purposes of applying Articles 28 EC and 29 EC, those provisions were not applicable to such legislation.

79 In that connection, it is appropriate, however, to observe that such an analysis disregards the fact, already noted in paragraph 65 of this judgment, that, even though the 2001 Act covers, according to its wording, only potatoes despatched to the United Kingdom for consumption there, there is nothing to rule out the possibility that such potatoes, once within the United Kingdom, might then be re-exported to other Member States.

80 It follows that the restrictions introduced by the 2001 Act with regard to Jersey Royal potatoes despatched to the United Kingdom, the main effect of which, as has been pointed out in paragraphs 75 and 76 of this judgment, is to restrict such patterns of export, are, ultimately, also likely to be an obstacle to the export of those goods to other Member States and to have, with regard to the latter's markets, the same negative effect as that observed in respect of the United Kingdom market.

81 As stated in paragraph 66 of this judgment, the development, in the United Kingdom, of such a pattern of re-exports to other Member States of Jersey Royal potatoes from Jersey is certainly conceivable, given that almost all Jersey Royal potatoes are exported from Jersey to the United Kingdom and that the scheme put in place by the 2001 Act concerning the arrangements in respect of that market contributes to the maintenance of such a situation. It is appropriate, in particular, to point out in the latter regard that the marketing agreements concluded between the PEMB and registered growers must specify in advance the areas to be used for the cultivation of potatoes for export to the United Kingdom.

82 The States of Jersey also argued in written observations that the scheme put in place by the 2001 Act is not disproportionate in relation to the objective pursued, which is to promote fairness and transparency in the relationship between producers and marketing organisations.

83 In that regard, it is sufficient, however, to point out that such objectives may in any event be pursued by other means which, in contrast to those used in the 2001 Act, do not involve the introduction of measures having an effect equivalent to a quantitative restriction on exports prohibited by Article 29 EC.

84 It is appropriate, finally, to add that a contribution imposed on producers by the PEMB by reference to the areas which they use for growing potatoes would be contrary to Community law to the extent to which it serves to finance the activities of that body thus held to be contrary to Article 29 EC (see Case 222/82 *Apple and Pear Development Council* [1983] ECR 4083, paragraphs 32 and 33).

85 It follows from all the foregoing that the replies to the second question must be as follows:

The combined provisions of Article 29 EC and Article 1 of Protocol No 3 are to be interpreted as precluding legislation such as that at issue in the main proceedings which:

- on the one hand, prohibits, with penalties imposed for non-compliance, Jersey producers from offering for export or exporting their potatoes to the United Kingdom market unless they are registered with a body such as the PEMB and have entered into a marketing agreement with it for the purpose of determining, in particular, the areas which may be planted with crops for export as well as the identity of those authorised to acquire those crops, and,

- on the other hand, prohibits, also with penalties imposed for non-compliance, all marketing organisations from effecting such exports unless they are party to a management agreement with that same body for the purpose of determining, in particular, the identity of the sellers from whom it is permissible for them to obtain their supplies.

The combined provisions of Articles 23 EC and 25 EC and Article 1 of Protocol No 3 are to be interpreted as precluding legislation such as that at issue in the main proceedings which confers on a body such as the PEMB the power to impose on Jersey potato producers a contribution, the amount of which is fixed by reference to the quantities of potatoes produced by the parties concerned and exported to the United Kingdom.

Community law precludes a contribution levied under the same conditions, the amount of which, however, is fixed by such a body by reference to the agricultural area used by the parties concerned for growing potatoes, to the extent to which the income therefrom serves to finance activities undertaken by that body contrary to Article 29 EC.

The first question

- ⁸⁶ Since, as stated in the reply to the second question referred, Article 29 EC is to be interpreted as precluding legislation such as the 2001 Act in so far as its provisions affect exports from Jersey to the United Kingdom, it is not necessary to reply separately to the first question. It is evident that the interpretation given applies, irrespective of whether the goods thus exported are despatched directly to the United Kingdom or whether they might pass in transit through a port situated in another Member State.

Costs

- 87 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Grand Chamber) hereby rules:

1. **The combined provisions of Article 29 EC and Article 1 of Protocol No 3 on the Channel Islands and the Isle of Man annexed to the Act concerning the Conditions of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and the Adjustments to the Treaties are to be interpreted as precluding legislation such as that at issue in the main proceedings which:**
 - **on the one hand, prohibits, with penalties imposed for non-compliance, Jersey producers from offering for export or exporting their potatoes to the United Kingdom market unless they are registered with a body such as the Jersey Potato Export Marketing Board and have entered into a marketing agreement with it for the purpose of determining, in particular, the areas which may be planted with crops for export as well as the identity of those authorised to acquire those crops, and,**

- **on the other hand, prohibits, also with penalties imposed for non-compliance, all marketing organisations from effecting such exports unless they are party to a management agreement with that same body for the purpose of determining, in particular, the identity of the sellers from whom it is permissible for them to obtain their supplies.**
2. **The combined provisions of Articles 23 EC and 25 EC and Article 1 of Protocol No 3 are to be interpreted as precluding legislation such as that at issue in the main proceedings which confers on a body such as the Jersey Potato Export Marketing Board the power to impose on Jersey potato producers a contribution, the amount of which is fixed by reference to the quantities of potatoes produced by the parties concerned and exported to the United Kingdom.**
 3. **Community law precludes a contribution levied under the same conditions, the amount of which, however, is fixed by such a body by reference to the agricultural area used by the parties concerned for growing potatoes, to the extent to which the income therefrom serves to finance activities undertaken by that body contrary to Article 29 EC.**

[Signatures]