

application in favour of or against those subject to it are independent of any measure of reception into national law.

A legislative provision of national law reproducing the content of a directly applicable rule of Community law can in no way affect direct applicability, or the Court's jurisdiction under the Treaty.

4. In the absence of valid provision to the contrary, repeal of a Regulation does not mean abolition of the private rights it created.
5. A legislative provision of internal law cannot be set up against the direct application, in the legal order of

Member States, of Regulations of the Community and other provisions of Community law without compromising the essential character of Community rules and the fundamental principle that the Community legal system is supreme.

This is particularly true as regards the date from which the Community rule becomes operative and creates rights in favour of private parties.

The freedom of Member States, without express authority, to vary the date on which a Community rule comes into force is excluded by reason of the need to ensure uniform and simultaneous application of Community law throughout the Community.

In Case 34/73

Reference to the Court under Article 177 of the EEC Treaty by the President of the Tribunal of Trieste for a preliminary ruling in the action pending before that court between

F.LLI VARIOLA SPA, Trieste,

and

AMMINISTRAZIONE ITALIANA DELLE FINANZE

on the interpretation of Articles 18 and 20 of Regulation No 19 of the Council of 4 April 1962 on the gradual establishment of a common organization of the market in cereals (OJ of 20 April 1962, p. 933) and of Articles 18 and 21 of Regulation No 120/67 EEC of the Council of 13 June 1967 on the common organization of the market in cereals (OJ of 19 June 1967, p. 2269) and on certain other questions relating to the direct application of these provisions,

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents

of Chambers, A. M. Donner, J. Mertens de Wilmars, H. Kutscher, C. Ó Dálaigh, M. Sørensen (Rapporteur) and Lord Mackenzie Stuart, Judges,

Advocate-General: A. Trabucchi

Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. Article 18 (1) of Regulation No 19 prohibits 'the levying of any customs duty or charge having equivalent effect' on imports coming from Member States as being 'incompatible with the application of the system of intra-Community levies'. Similarly, Article 20 (1) of the Regulation stipulates: 'The application of the system of levies against third countries entails the abolition of the imposition of any customs duty or charge having equivalent effect on imports coming from third countries'. Articles 18 and 20 of Regulation No 19 came into force on 30 July 1962 (see Regulation No 49/62, OJ 1962, p. 1571).

Regulation No 120/67 EEC of the Council prohibits 'the levying of any customs duty or charge having equivalent effect' in the internal trade of the Community (Article 21 (1)) and in trade with third countries (Article 18 (2)). Under Article 33 of the Regulation, 'the system established by this Regulation shall apply from 1 July 1967...'; under the same article, Regulation No 19 was repealed on 1 July 1967.

2. On 15 April 1965, the firm of Variola Brothers imported, *inter alia*, a quantity of cereals from Argentina and, on 27 September 1967, a quantity of cereals from Canada.

On the first importation, the firm was required to pay the following sums to the customs office at Trieste:

- (a) 13 310 lire as administration duty,
- (b) 5 000 lire as statistics duty, and
- (c) 1 500 lire as unloading charge;

and on the second importation, it had to pay:

- (a) 252 850 lire as administration duty,
- (b) 100 000 lire as statistics duty, and
- (c) 30 000 lire as unloading charge.

On 2 January 1973, before the President of the Tribunal of Trieste, the firm commenced proceedings for an injunction against the Administration of Finance in order to obtain repayment of the amounts improperly levied as administration duty, statistics duty and unloading charge. Specifically, the firm contended that the abovementioned duties and charges are in their nature charges having equivalent effect to customs duties which, by virtue of Regulation No 19/62 and 120/67, the

Italian State could no longer impose after 30 July 1962 and that, as they were unlawfully applied, the Italian Government must now refund the amounts involved.

3. By order of 12 January 1973, the President of the Tribunal of Trieste decided to defer judgment and to request the Court of Justice to give a preliminary ruling under Article 177 of the Treaty on the following questions:

1. Whether the meaning of 'charge having equivalent effect' in Articles 18 and 20 of Regulation 19/62 and Article 18 and 21 of Regulation 120/67 is the same as in Articles 9 *et seq.* of the Treaty.
2. Whether a tax (or pecuniary burden) which is imposed solely on imported goods — whether coming from Member countries or from third countries — by reason solely of the fact that they are unloaded in national ports, constitutes a charge having equivalent effect within the meaning of Articles 9 *et seq.* of the Treaty and is therefore prohibited by Articles 18 and 20 of Regulation 19/62 and Articles 18 and 21 of Regulation 120/67 in the case of importation of cereals either from Member countries or from third countries.
3. Whether Articles 18 and 20 of Regulation 19/62 and Articles 18 and 21 of Regulation 120/67 must be considered rules directly applicable within the legal order of the Member States.
4. Whether on the basis of Article 189 of the Treaty the insertion of the abovementioned provisions into the legal order of the Member States — which would arise in general from the national law ratifying the EEC Treaty — must be held to have been effected in particular also by means of individual internal enactments which reproduce the content of the Community provisions.

5. Whether, if Question 4 is answered in the affirmative, the individual national enactments — which have the same content as the directly applicable Community provisions — have the effect of subjecting the matter dealt with by the the Community Regulations to the national legislation, consequently excluding the jurisdiction of the Court of Justice to give judgment on any infringements committed.
6. Whether the direct applicability of Articles 18 and 20 of Regulation 19/62 has conferred on private parties subjective rights which national courts must protect.
7. Whether, if Question 5 is answered in the affirmative, such subjective rights still remain intact and have not ceased to have effect from 1 July 1962 (or from any other date) following the entry into force of Regulation 120/67 which replaced Regulation 19/62.
8. Whether by an enactment of law enacted subsequently to the entry into force of the Community provision, a Member State can modify 'ad libitum' the date from which the prohibition on imposing charges having equivalent effect, envisaged by Articles 18 and 20 of Regulation 19/62 and Articles 18 and 21 of Regulation 120/67, is effective.

It is clear from the preamble to the order in which the President of the Tribunal of Trieste referred these questions to the Court that

- Question No 2 refers to the fiscal charge on unloading imposed by Royal Decree No 1592 of 21 December 1921 and by Article 27 of Law No 82 of 9 February 1962;
- on the question of the duty for administrative services and the statistics duty, the Tribunal refers to the judgments of the Court in Cases 24/68 and 8/70 in which these duties were held to be charges having equivalent effect to a customs duty;

- the Tribunal wishes to know whether the prohibition on imposing and maintaining charges having equivalent effect on imports of cereals, coming from member countries or from third countries, became effective from 30 July 1962, the date when Regulation No 19/62 came into force, or only from 1 July 1967, the date when Regulation No 120/67 came into force;
- Question No 5 refers to the fact that the provisions of Regulation No 19/62 were applied to the Italian State by Decree Law No 955 of 30 July 1962 and the provisions of Regulation No 120/67 by Decree Law No 59 of 20 February 1968;
- Question No 8 refers to the fact that by a Law of 1971 (Law No 447 of 24 June 1971) the Italian State decided
 - (a) to abolish administration duties on imports from member countries as from 1 July 1968 and
 - (b) to abolish administration and statistics duties on imports from third countries only as from 1 August 1971.

4. The order of the President of the Tribunal of Trieste was registered at the Court of Justice on 27 February 1973.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on behalf of the Commission of the European Communities by its legal adviser, Mrs W. Donaviscardini, on 7 June 1973 and on 13 June 1973 by Professor G. M. Ubertzzi and Mr F. Capelli on behalf of the defendant in the main action.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

The oral observations of the defendant in the main action and of the Commission were made at the hearing on 12 July 1973.

The Advocate-General delivered his opinion at the hearing on 26 September 1973.

II — Observations presented before the Court

These observations may be summarized as follows:

1. On admissibility of the application

The *Variola company* maintains that there can be no doubt about the admissibility of the reference. According to Article 177 of the Treaty, a reference is not conditional on the existence of defended proceedings before the national court. The latter can, therefore, ask for a preliminary ruling in the case of summary proceedings, such as those brought to obtain an injunction under Articles 633 *et seq.* of the Italian code of civil procedure. This contention is confirmed by decisions of the Court, particularly the judgment delivered in Case 43/71 (*Politi v Italian Ministry of Finance*, Rec. 1971).

The submission of the *Commission* on this point is substantially the same as that advanced by the *Variola company*. In addition, the *Commission* points out that Questions 4 and 5 do not seem to have a bearing on the provisions in dispute because, at least as regards the prohibition against imposing on imports from third countries charges having equivalent effect to customs duties, these provisions have not been incorporated in the internal measures referred to by the national court. It is nevertheless conceivable that the national court was uncertain whether incorporation of certain provisions of Community Regulations in domestic implementing instruments did not have the effect of subordinating everything within the scope of Community control to national legislation.

2. On the substance

On Questions 1 and 2

According to the *Variola company*, the fiscal charge on unloading possesses all the characteristics of a charge having equivalent effect to a customs duty. The company cites the judgment in Case 24/67 (*Commission v Italy*, Rec. 1969). The charge was imposed on the goods imported for the sole reason that they had entered the territory of the State. Any suggestion that this charge might constitute consideration for services rendered is without foundation. In fact, in relation to all national products without exception, goods are unloaded in the ports of the State without payment of any charge being required. Furthermore, the State renders no discernible service in allowing unloading of imported goods in Italian ports.

The *Commission* submits that the concept of charge having equivalent effect has already been clearly defined by the Court: see judgments in Cases 24/68, already cited, and 2 and 3/69 (*Sociaal Fonds voor de Diamantarbeiders v Brachfeld and Sons and Chougol Diamond Co.*, Rec. 1969).

The *Commission* has considered whether the concept of a charge having equivalent effect within the meaning of Article 20 of Regulation No 19 and Article 18 of Regulation No 120/67 is the same as that in Article 21 of the latter Regulation. It has come to the conclusion that, even if the intention behind them is different in each case, the prohibition on levying charges having equivalent effect to customs duties has the same meaning whether applied in the context of intra-Community trade or of trade with third countries.

The *Commission* submits that the Court has already laid down that, in Regulations concerning the organization of the agricultural markets, the concept of 'charge having equivalent effect' has the same meaning as in Article 9 *et seq.* of the Treaty, without distinguishing in

any way between rules to be applied within the Community and those applicable to third countries (see judgments in Case 43/71, already cited, and in Case 84/71, *Marimex v Italian Ministry of Finance*, Rec. 1972).

Recalling that, under the terms of Article 177 of the Treaty, the Court cannot apply Community rules to a specific case, the *Commission* maintains that the Court can nevertheless rule that a charge imposed for unloading goods coming from abroad — only on imported goods, therefore, and not on national products — constitutes a pecuniary charge affecting foreign goods owing to the fact that they have crossed the frontier. Imposed unilaterally, such a charge would, on the basis of criteria laid down by the Court, undoubtedly constitute a charge having equivalent effect to a customs duty. The *Commission* maintains that, even though the Court has not excluded the possibility that a monetary charge may represent consideration for a service rendered by the public administration, the effect of decisions taken by the Court is to make identification of a charge as in fact constituting consideration of this kind dependent on satisfying extremely strict criteria. In the *Commission's* view, these criteria are not satisfied in the present case. The *Commission* believes that, in the light of these criteria, the unloading charge can be considered as financing the work of maintaining the ports, but this does not amount to a concrete benefit in which it is possible to place a value. Importers certainly have an interest in seeing the ports maintained in good condition, but this interest is not peculiar to importers because it is common to all industrial concerns, including those trading in national products.

On Questions 3 and 6

The *Variola company* contends that the provisions of the Regulations cited in the application contain all the features entitling them, on the basis of decisions

of the Court, to be regarded as directly applicable. The provisions are expressed in clear and precise terms, they are not subject to reservations or conditional on subsequent action by Member States or Community institutions, and they are outside the discretionary powers of Member States.

The *Commission* believes that both the spirit and the letter of the provisions in question make them operative within the legal order of each Member State. As the obligation is laid upon Member States not to levy customs duties or charges having equivalent effect, private parties have the corresponding right not to pay charges whose nature or effect is that of a customs duty. Like all subjective rights, these personal rights enjoy the protection of the law in the national courts.

On Questions 4 and 5

The *Variola company* maintains that the questions put by the Tribunal of Trieste refer to a matter which is a serious form of infringement by the Italian Government of Community rules. In Italy, the practice is to implement directly applicable Community rules by means of domestic legislation incorporating the Community provisions in their entirety. This method, in Italy, is subject to very grave risks. Every time an Italian Court is called upon to apply a Community enactment, it has also to reckon with a domestic legal enactment, necessarily subsequent to the other as it reproduces the EEC text, which means that every departure from this text creates a conflict between the Community rule and the subsequent national rule; moreover, the existence of the national legal rule may, when there is doubt, encourage the court to refuse to seek a preliminary ruling from the Court of Justice on the ground that it is only required to interpret the internal rule.

The *Commission* contends that the practice of reproducing the text of directly applicable Community rules in

instruments of internal law creates confusion even if the national legislature did not intend to exclude the direct and independent application of Community Regulations. National courts no longer know which rule to follow, that of the Community Regulation or that of the corresponding national legislation. Even if it were a question of rules whose texts are identical, the choice of one rather than the other would not be without importance:

- (a) the date of entry into force could be different;
- (b) a preliminary interpretation of the Community rules by the Court would no longer be necessary.

This practice has already been expressly condemned by the Court of Justice (Judgment No 39/72, *Commission v Italy*, not yet published).

On Question 7

With regard to the date on which the subjective rights recognized by Community Regulations were brought into being, the *Variola company* maintains that the prohibition on levying charges having equivalent effect was continued without modification by Regulation No 120/67, which wholly superseded Regulation No 19/62, and that the prohibition has been maintained without interruption since 30 July 1962.

The *Commission* agrees.

On Question 8

In the *Variola company's* view, it is clear that the answer to this question can only be found by resolving the conflict between the Community rules and Articles 1 and 2 of the Italian Law No 447 of 1971. The question raises the issue of the importance of the dates fixed by domestic law for subjective rights which owe their existence to Community rules and which, once they have arisen, obviously cannot suffer diminution, since Community law prevails over national law. On this point, the Court's

judgment can only confirm, as firmly and unreservedly as possible, the supremacy of Community law even over a contrary enactment of later date.

The *Commission* points out that the issue is not a new one as it was raised in Case 84/71 (*Marimex v Italian Ministry of Finance*, cited above) specifically in regard to this very Law No 447 abolishing the statistics duty and the duty for administrative services. The Court settled the question by deciding that, as provided under Article 189 of the Treaty, Regulations are effective against any legislative measure which is incompatible with them, even if of later

date. The Commission accepts that express repeal of previous national rules which are incompatible with directly applicable Community law can be of use, and even desirable from the point of view of legal certainty, but this must be a mere formality without any practical effect. If the instrument of repeal is calculated to produce different results from those envisaged by Community rules, such as, for example, in the present case, on the question when rights are acquired under them, a conflict arises which can only be resolved on the basis of the principle that Community law prevails over national law.

Grounds of judgment

- 1 By order of 12 January 1973, lodged with the Registry on 27 February 1973, the President of the Tribunal of Trieste asked the Court for a preliminary ruling on the interpretation of Regulation No 19 of the Council of 4 April 1962 and Regulation 120/67/EEC of 13 June 1967 on the common organization of the market in cereals and on certain questions relating to the direct effect of the rules of Community law in the legal order of Member States.

On the first question

- 2 In the first question, the Court is asked to declare whether the concept of charges having equivalent effect to customs duties, referred to in Articles 18 and 20 of Regulation No 19/62 and in Articles 18 and 21 of Regulation No 120/67, is the same as that referred to in Article 9 *et seq.* of the Treaty.
- 3 The provisions of the Treaty prohibiting Member States, in the context of trade within the Community, from levying charges having equivalent effect to customs duties is designed to ensure the free movement of goods within the Community.

The provisions of the Regulations on the organization of the agricultural market have the same purpose insofar as, in regard to trade within the

Community, they forbid the levying of any customs duty or charge having equivalent effect, and also the purpose of ensuring uniform arrangements at the external frontiers of a country, insofar as they impose a similar prohibition in regard to imports from third countries.

There is no consideration which could justify different interpretations of the concept of 'charge having equivalent effect' as it appears in Article 9 *et seq.* of the Treaty, on the one hand, and Articles 18 and 20 of Regulation No 19/62 and Articles 18 and 21 of Regulation No 120/67, on the other.

O n t h e s e c o n d q u e s t i o n

- 4 In the second question, the Court is asked to declare whether a charge imposed solely on imported goods (whether coming from member countries or from third countries) solely because they have been unloaded in the national ports constitutes a 'charge having equivalent effect to customs duties', which is prohibited under the abovementioned provisions of the Regulations.
- 5 The file discloses that the present case is concerned with the charge designated 'unloading charge' in Article 27 of the Italian Law No 82 of 9 February 1963 on the subject of maritime charges and duties levied on goods coming from abroad and unloaded in the ports, roadsteads and wharves of the State pending final or temporary importation.

For cereals, this disembarkation duty amounts to 30 lire per metric ton.

Income from the duty is devoted to the provision and maintenance of port installations.

- 6 The prohibition of all customs duties and charges having equivalent effect covers any charge levied at the time or by reason of importation and which, specifically affecting the imported product and not the home-produced product, has the same restrictive effect on the free movement of goods as a customs duty.

The levying of such a charge, however small, together with the administrative formalities which it occasions, constitute an obstruction of the free movement of goods.

O n Q u e s t i o n s 3 a n d 6

- 7 In the third and sixth questions, the Court is asked whether the provisions of Articles 18 and 20 of Regulation No 19/62 and of Articles 18 and 21 of Regulation No 120/67 are to be considered as rules directly applicable in Member States, thus conferring rights on private parties which the national courts must protect.
- 8 By the second paragraph of Article 189 of the Treaty, a Regulation 'shall have general application' and 'shall be directly applicable in all Member States'.

Accordingly, owing to its very nature and its place in the system of sources of Community law, a Regulation has immediate effect and, consequently, operates to confer rights on private parties which the national courts have a duty to protect.

The answer to the question must therefore be in the affirmative.

O n Q u e s t i o n s 4 a n d 5

- 9 In the fourth and fifth questions, the Court is, in effect, asked to determine whether the disputed provisions of the Regulations can be introduced into the legal order of Member States by internal measures reproducing the contents of Community provisions in such a way that the subject-matter is brought under national law, and the jurisdiction of the Court is thereby affected.
- 10 The direct application of a Regulation means that its entry into force and its application in favour of or against those subject to it are independent of any measure of reception into national law.

By virtue of the obligations arising from the Treaty and assumed on ratification, Member States are under a duty not to obstruct the direct applicability inherent in Regulations and other rules of Community law.

Strict compliance with this obligation is an indispensable condition of simultaneous and uniform application of Community Regulations throughout the Community.

- 11 More particularly, Member States are under an obligation not to introduce any measure which might affect the jurisdiction of the Court to pronounce on any question involving the interpretation of Community law or the validity of an act of the institutions of the Community, which means that no procedure is permissible whereby the Community nature of a legal rule is concealed from those subject to it.

Under Article 177 of the Treaty in particular, the jurisdiction of the Court is unaffected by any provisions of national legislation which purport to convert a rule of Community law into national law.

On Question 7

- 12 In the seventh question, the Court is invited to declare whether the rights conferred on private parties under Articles 18 and 20 of Regulation No 19/62 remained valid after Regulation No 120/67 came into force.
- 13 Article 33 of Regulation No 120/67 provides that the arrangements set out therein were effective from 1 July 1967 and that Regulation No 19/62 was repealed with effect from the same date.

In the absence of valid provision to the contrary, repeal of a Regulation does not mean abolition of the individual rights which it has created.

Moreover, the prohibitions, contained in Articles 18 and 20 of Regulation No 90/62, against States levying charges having equivalent effect to customs duties, were repealed by Articles 18 and 21 of Regulation No 120/67.

It follows from this that the rights created in favour of private parties under Articles 18 and 20 of Regulation No 19/62 remained in force, without interruption, after Regulation No 120/67 came into effect.

On Question 8

- 14 In the eighth question, the Court is asked to declare whether, by a legislative provision enacted after entry into force of the Regulations in dispute, a

Member State can change the date from which the prohibition of charges having equivalent effect becomes operative.

It is clear from the file that this question is occasioned by the Italian Law No 447 of 24 June 1971 under which were abolished the statistics duty and the administrative services duty which, in its Judgements of 1 July 1961 in Case 24/68 (Rec. 1969) and of 18 November 1970 in Case 8/70 (Rec. 1970), the Court declared to be incompatible with Community provisions prohibiting the levying of duties having equivalent effect to customs duties.

The Italian law provides that abolition takes effect only from the date on which the law came into force, viz. 1 August 1971, except for the administrative services duty levied on goods imported from other Member States, which was abolished with effect from 30 June 1968.

- 15 A legislative provision of internal law could not be set up against the direct effect, in the legal order of Member States, of Regulations of the Community and other provisions of Community law, including the prohibition, under Articles 9 *et seq.* of the Treaty, of charges having equivalent effect to customs duties, without compromising the essential character of Community rules as such and the fundamental principle that the Community legal system is supreme.

This is particularly true as regards the date from which the Community rule becomes operative and creates rights in favour of private parties.

The freedom of each Member State to vary, in relation to itself and without express authority, the date on which a Community rule comes into force is excluded by reason of the need to ensure uniform and simultaneous application of Community law throughout the Community.

Costs

- 16 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable, and as these proceedings are a step in the action pending before a national court, the decision on costs is a matter for that court.

On those grounds,

Upon hearing the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the observations of the Commission of the European Communities and the Variola company;

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Article 177;

Having regard to Regulation No 19 of the Council of 4 April 1962 on the gradual establishment of a common organization of the market in cereals, especially Articles 18 and 20;

Having regard to Regulation No 120/67/EEC of the Council on the common organization of the markets in cereals, especially Articles 18, 21 and 33;

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT,

in answer to the questions referred to it by the President of the Tribunal of Trieste by order of 12 January 1973, hereby rules:

O n Q u e s t i o n 1

1. The concept of 'charge having equivalent effect' under Articles 18 and 20 of Regulation 19/62 and Articles 18 and 21 of Regulation No 120/67 must be taken to have the same meaning as in Articles 9 et seq. of the Treaty.

O n Q u e s t i o n 2

2. A charge which is imposed exclusively on imported goods solely because they have been unloaded in the national ports constitutes a 'charge having equivalent effect to a customs duty' and is accordingly prohibited so far as the importation of cereals is concerned, whether from other member countries or third countries, under Articles 18 and 20 of Regulation No 19/62 and Articles 18 and 21 of Regulation No 120/67.

O n Q u e s t i o n s 3 a n d 6

3. The provisions of Articles 18 and 20 of Regulation No 19/62 and of Articles 18 and 21 of Regulation No 120/67 prohibiting Member States from levying any charge having equivalent effect to customs duties are directly applicable in the legal order of Member States and accordingly confer rights on private parties which the national courts must protect.

O n Q u e s t i o n s 4 a n d 5

4. A legislative measure under national law which reproduces the text of a directly applicable rule of Community law cannot in any way affect such direct applicability, or the Court's jurisdiction under the Treaty.

O n Q u e s t i o n 7

5. The rights created in favour of private parties under Articles 18 and 20 of Regulation No 19/62 remained in force, without interruption, after Regulation No 120/67 came into effect.

O n Q u e s t i o n 8

6. The direct effect of Articles 18 and 20 of Regulation No 19/62 and of Articles 18 and 21 of Regulation No 120/67 prevails against any national legislative measure purporting to change the date from which these provisions became operative.

Lecourt	Monaco	Pescatore	Donner	Mertens de Wilmars
Kutscher	Ó Dálaigh	Sørensen	Mackenzie Stuart	

Delivered in open court in Luxembourg on 10 October 1973.

A. Van Houtte
Registrar

R. Lecourt
President