JUDGMENT OF THE COURT (Sixth Chamber)
3 March 1994 *

In Joined Cases C-332/92, C-333/92 and C-335/92,

REFERENCES to the Court under Article 177 of the EEC Treaty by the Conciliatura di Vercelli and the Pretura Circondariale di Vercelli (Italy) for a preliminary ruling in the proceedings pending before those courts between

Eurico Italia Srl,

Viazzo Srl,

F. & P. SpA

and

Ente Nazionale Risi,

on the interpretation of Articles 40 (3) and 5 of the EEC Treaty and also Article 17 (2) of Council Regulation (EEC) No 1418/76 of 21 June 1976

* Language of the case: Italian.

on the common organization of the market in rice (Official Journal 1976 L 166, p. 1),

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, M. Díez de Velasco, C. N. Kakouris (Rapporteur), F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: M. Darmon,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Eurico Italia Srl, Viazzo Srl and F&P SpA, by Fausto Capelli and Dario Casalini, of the Milan and Vercelli Bar,

— the Ente Nazionale Risi (National Rice Authority, hereinafter called 'the Rice Authority'), by Alberto Santa Maria, of the Milan Bar, Nico Schaeffer, of the Luxembourg Bar, and Giuseppe Pizzonia, of the Reggio di Calabria Bar,

— the Italian Government, by Professor Luigi Ferrari Bravo, Head of the Diplomatic Contentious Legal Affairs Department in the Ministry of Foreign Affairs, acting as Agent, assisted by Ivo M. Braguglia, Avvocato dello Stato,

— the Commission of the European Communities, by Eugenio de March, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Eurico Italia Srl, Viazzo Srl and F&P SpA, the Rice Authority, the Italian Government and the Commission at the hearing on 23 September 1993,

after hearing the Opinion of the Advocate General at the sitting on 17 November 1993,

gives the following

Judgment

1 By three orders of 30 July 1992, which were received at the Court on 4 and 5 August 1992, the Conciliatura (Lay Magistrate's Court) for Vercelli and the Pretura Circondariale (District Magistrate's Court) for Vercelli referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Articles 40 (3) and 5 of the EEC Treaty and also Article 17 (2) of Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice (Official Journal L 166, p. 1), and on 'the basic principles of taxation on the consumption of goods within the Community'.

2 Those questions were raised in the course of three actions brought by the Italian undertakings Eurico Italia Srl (hereinafter referred to as 'Eurico Italia', in Case C-332/92), Viazzo Srl (hereinafter referred to as 'Viazzo', in Case C-333/92) and F&P SpA (hereinafter referred to as 'F&P', in Case C-335/92) against the Rice Authority, concerning a pecuniary charge called 'contract duty', levied by the Authority in pursuance of Italian law, whenever paddy rice produced in Italy is purchased or processed into rice.

3 The Rice Authority, a legal person acting under the supervision of the State, is the Italian intervention agency in the context of the common organization of the market in rice. Its activities also include processing data and research concerning the production or consumption of rice, combating fraud in that area and encouraging and implementing increases in the production and consumption of rice. Those activities are financed by the 'contract duty'.

4 Whenever a contract is concluded for the transfer of Italian paddy rice or, where there is no contract, when Italian paddy rice is processed by the producers themselves, a 'contract duty' is paid by the purchaser or producer, as the case may be.

5 The companies Eurico Italia, Viazzo and F&P purchased some quantities of Italian paddy rice of the 'Ariete' and 'Europa' varieties with a view to processing it into rice and exporting it. In accordance with the rules in force in Italy (Articles 8 and 9 of Royal Decree-Law No 1183 of 11 August 1933), they paid to the Rice Authority 'contract duty' the amount of which came to LIT 1 000 for 100 kilogrammes of paddy rice at the time when the facts of the case took place.

6 Eurico Italia then proceeded to export the rice at issue to Poland and on that account received an export refund, whilst Viazzo and F&P exported processed rice to France and the United Kingdom respectively.

7 Believing that they ought to be reimbursed for the 'contract duty' by reason of those exports, the three companies each instituted proceedings 'per decreto ingiuntivo' (for an order) before the Vercelli Conciliatura and Pretura Circondariale. The substance of their claim was that they were suffering discrimination in comparison with other Community traders because the 'contract duty' was not reimbursed. In that connection they pointed out that non-reimbursement of the 'contract duty' involved a reduction, for Eurico Italia, in the amount of the Community refund that had been paid to it and an increase, for Viazzo and F&P, in their costs, which made them less competitive. That discrimination was, they claimed, incompatible with the principle set out in Article 40 (3) of the Treaty and the principles of taxation on consumption within the Community.

8 The Vercelli Conciliatura and Pretura Circondariale considered that the outcome of those cases depended on the interpretation of the Treaty and of the abovementioned Regulation (EEC) No 1418/76, and decided to stay the proceedings and refer to the Court the following questions for a preliminary ruling:

In Case C-332/92:

'1. Do the provisions of the second paragraph of Article 40 (3) in conjunction with Article 5 of the Treaty of Rome impose an obligation on the Italian State or the Rice Authority, as an agency distinct from the State, to reimburse to

traders in thesector in question the pecuniary charge (contract duty) imposed on paddy rice produced in Italy, where the rice yielded by that paddy rice has not been marketed in Italy, but has been exported by those traders to other countries?

2. Can it be said that non-reimbursement of the pecuniary charge (contract duty) referred to above, in the event of the export from Italy to non-member countries of the rice yielded by paddy rice produced in Italy and subject to that contractduty constitutes not only an infringement of the prohibition of discrimination imposed by the second paragraph of Article 40 (3) of the Treaty of Rome, but also an infringement of Article 17 (2) of Regulation (EEC) No 1418/76 inasmuch as it involves a reduction, only for exporters of rice produced in Italy, of the amount of the Community refund which, by virtue of that last provision, must be the same for the whole Community?'

In Cases C-333/92 and C-335/92:

'1. Do the provisions of the second paragraph of Article 40 (3) in conjunction with Article 5 of the Treaty of Rome impose an obligation on the Italian State or the Rice Authority, as an agency distinct from the State, to reimburse to traders in the sector in question the pecuniary charge (contract duty) imposed on paddy rice produced in Italy, where the rice (or husked rice) yielded by that paddy rice has not been consumed in Italy, but has been exported by those traders to other countries of the European Community?

2. Can it be said that non-reimbursement of the pecuniary charge (contract duty) referred to above, in the event of the export from Italy to other Community

countries of the rice (or husked rice) yielded by paddy rice produced in Italy and sub-ject to that contract duty constitutes not only an infringement of the prohibition of discrimination imposed by the second paragraph of Article 40 (3) of the Treaty of Rome, but also an infringement of the basic principles of taxation on the consumption of goods within the European Community, according to which the charges imposed by a Member State on domestic products are reimbursed to exporters, when those products leave the territory of the Member State concerned?'

9 By order of the President of 14 September 1992, the three cases were joined for the purposes of the oral procedure and the judgment, in accordance with Article 43 of the Rules of Procedure.

Admissibility

10 The Rice Authority claims in the first place that the questions submitted should be declared inadmissible on the ground that it has been prevented, by the lack of an *inter partes* procedure before the national courts making the references, from raising various objections which might have avoided this procedure for a preliminary ruling.

11 It is apparent from the decisions of the Court that it may well be in the interests of the proper administration of justice for a preliminary question not to be referred until after an *inter partes* hearing. Nevertheless, it must be recognized that the existence of an *inter partes* hearing does not appear among the conditions required to implement the procedure under Article 177 of the Treaty and that it is for the

national court alone to assess the need to hear the defendant before making an order for reference (see the judgment in Case C-10/92 *Balocchi* [1993] ECR I-5105, paragraphs 13 and 14).

12 Secondly, the Rice Authority contends that, according to Italian procedural law on the one hand, the national courts have no jurisdiction *ratione materiæ* to hear and determine the issues in the main proceedings, and that, on the other hand, the proceedings for an order brought during those actions are inadmissible, since that procedure can only lead to the giving of judgment against one party and not to the finding that a debt exists, which is what the claims of the plaintiffs in the main proceedings are actually seeking to establish. It follows that if a court has no jurisdiction, under domestic law, or where the application in the main proceedings must be declared inadmissible, the national court is prevented from referring a question to the Court for a preliminary ruling.

13 In that regard, it is necessary to recall, as the Court held in its judgment in Case 65/81 *Reina* v *Landeskreditbank Baden-Württemberg* [1982] ECR 33, paragraph 7, that in view of the distribution of functions between itself and the national courts, it is not for the Court to determine whether the decision whereby a matter is brought before it was taken in accordance with the rules of national law governing the organization of the courts and their procedure.

14 The Rice Authority contends thirdly that the existence of a precedent such as the judgment in Case 2/73 *Riseria Luigi Geddo* v *Ente Nazionale Risi* [1973] ECR 865, which resolves the problems raised by the disputes in the main proceedings, prohibited the national courts from bringing the matter before the Court again, except to state the reasons for which the interpretation previously given by the Court ought to be amended.

15 In that connection, it must be borne in mind that, irrespective of the fact that the questions that gave rise to the answers in the abovementioned *Geddo* judgment are not identical to those raised in these present cases, Article 177 of the Treaty always allows a national court, if it considers it desirable, to refer questions of interpretation to the Court again (see the judgment in Joined Cases 28/62, 29/62 and 30/62 *Da Costa en Schaake* [1963] ECR 31).

16 The Rice Authority points out also that the questions referred are not relevant to the outcome of the main proceedings. It maintains that, having regard to the negligible amount of money at stake, the cases in the main proceedings are 'test' cases brought before the national courts for the sole purpose of obtaining a decision from the Court.

17 In that connection, the Court must reply that it has consistently held that it is solely for the national courts before which actions are brought, and which must bear the responsibility for the subsequent judicial decision, to determine in the light of the special features of each case both the need for a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court. Dismissal of a request from a national court is possible where it is plainly apparent that the interpretation of Community law or the consideration of the validity of a Community rule, requested by that court, has no bearing on the real situation or on the subject-matter of the case in the main proceedings (see in particular the judgment in Case C-67/91 *Asociación Española de Banca Privada and Others* [1992] ECR I-4785, paragraphs 25 and 26). Such is not, however, the case in the cases at issue in the main proceedings.

18 Finally, the Rice Authority contends that the questions submitted seek in reality to have the Court declare that the national rules on 'contract duty' are incompatible with Community law, something which does not fall within the jurisdiction of the Court when it is giving a preliminary ruling.

19 In that connection it must be recalled that the Court has consistently held that, in the context of the application of Article 177 of the Treaty, it has no jurisdiction to decide whether a national provision is compatible with Community law. The Court may, however, extract from the wording of the questions formulated by the national court, and having regard to the facts stated by the latter, those elements which concern the interpretation of Community law for the purpose of enabling that court to resolve the legal problems before it (see the judgment in Cases C-149/91 and C-150/91 *Sanders Adour et Guyomarc'h Orthez Nutrition Animale* [1992] ECR I-3899, paragraph 10).

Substance

Question 1, common to the three cases

20 In their first question, the national courts seek in essence to ascertain whether the second paragraph of Article 40 (3) and Article 5 of the Treaty are to be interpreted as meaning that non-reimbursement of an internal tax imposed only on domestic products, when they are purchased or processed, and designed to build up a fund to promote national production creates, where the said products are exported to a Member State or a non-member country, discrimination against those traders who bear the burden of that charge.

21 It must be observed at the outset that whether the rice was exported to a Member State of the Community or to a non-member country has no bearing on the reply to be given to the first question.

22 As to Article 5 of the Treaty, it must be borne in mind that the wording of that provision is so general that it cannot be applied independently where the situation under consideration is governed by a specific provision of the Treaty, such as the second paragraph of Article 40 (3), as it is in the case at issue in the main proceedings (see judgment in Joined Cases C-78/90 to 83/90 *Compagnie Commerciale de l'Ouest and Others* [1992] ECR I-1847, at paragraph 19). Consequently, it is not necessary to give a ruling on the first question, in so far as it refers to Article 5 of the Treaty.

23 The plaintiffs in the main proceedings point out that traders buying paddy rice produced in Italy or producers processing it into rice are discriminated against because the result of the Italian rules on 'contract duty' is to subject paddy rice produced in Italy to rules different from those applying to rice not produced in Italy.

24 It must be observed that the traders purchasing or processing Italian paddy rice benefit from the services provided by the Rice Authority, which are described above at paragraph 3, and of which 'contract duty' forms the counterpart. It follows that those traders do not suffer any discrimination in comparison with traders who, by obtaining their supplies on another market, are not subject to the said duty, but do not benefit from the services of the Rice Authority either.

25 The plaintiffs in the main proceedings also claim that the application of 'contract duty' is discriminatory, because it involves an infringement of Community rules on the fixing of uniform prices and export refunds. They point out in that connection that in so far as the Community institutions do not take 'contract duty' into account when fixing the price of rice and the amount of export refunds, the consequence for Italian businesses is an increase in costs and therefore a reduction in competitiveness.

26 That argument starts from the assumption that the 'contract duty' applied to Italian paddy rice is merely a charge which increases costs for Italian businesses. As has been stated earlier, that duty forms the counterpart to the services provided for businesses by the Rice Authority.

27 On the basis of the foregoing considerations, the answer to the first question must be that the second paragraph of Article 40 (3) of the Treaty is to be interpreted as meaning that non-reimbursement of an internal tax imposed only on domestic products when they are purchased or processed and which is intended to build up a fund to promote national production does not, where those products are exported, create discrimination against the traders who bear the burden of the charge.

Question 2, Case C-332/92

28 In this question, the national court seeks essentially to ascertain whether the abovementioned Article 17 (2) of Regulation (EEC) No 1418/76, concerning export refunds, is to be interpreted as meaning that, where the product in question is exported, it precludes non-reimbursement to the exporter of a tax having the features mentioned above.

29 According to the plaintiffs in the main proceedings, the fact that 'contract duty' is not reimbursed when rice produced in Italy is exported to a non-member country actually entails a reduction in the amount of the Community refund paid, to the prejudice of businesses supplying themselves with Italian rice. In consequence, paragraph 2 of the operative part of the judgment in *Geddo*, mentioned above, is incomplete, in so far as the Court recognized by implication the right of traders to obtain reimbursement of the duty.

30 In *Geddo* the Court ruled that such a tax could only be contrary to the provisions of the regulation concerning export refunds if it appeared to be a means of reducing the amount of such refunds.

31 It must be borne in mind that the tax designed to build up the Rice Authority's budget affects purchasers of paddy rice produced in Italy on the completion of a sale contract and producers themselves when they undertake the processing of the rice. That pecuniary charge is therefore applied to Italian rice regardless of whether the latter is exported or consumed within the country.

32 It follows that contract duty has no connection with export refunds, because it is payable when the product is not exported. It has no connection with the amount of the refunds either and no direct bearing on the working of the mechanisms provided for by Regulation No 1418/76.

33 Consequently, the answer to the second question submitted in Case C-332/92 must be that Article 17 (2) of Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice, which concerns export refunds, is to be interpreted as meaning that it does not preclude non-

reimbursement of a tax possessing the features mentioned above to the exporter of the product in question, unless that tax appears to be a means of reducing the amount of the export refunds.

Question 2, Cases C-333/92 and C-335/92

34 In this question, the national court seeks essentially to ascertain whether the basic principles of taxation on the consumption of goods within the Community preclude non-reimbursement to exporters of a tax having the features of 'contract duty', where the product subject to the said tax is exported to another Member State.

35 It must be pointed out in that connection that, regardless of whether such principles exist, a tax with the features of 'contract duty', as described above, does not constitute a tax on consumption but rather, as the Commission rightly observes, a parafiscal charge.

36 It follows that there is no need to give an answer to the second question in Cases C-333/92 and C-335/92.

Costs

37 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not

recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national courts, the decision on costs is a matter for those courts.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Vercelli Conciliatura and the Vercelli Pretura Circondariale by orders of 30 July 1992, hereby rules:

1. **The second paragraph of Article 40 (3) of the Treaty is to be interpreted as meaning that non-reimbursement of an internal tax imposed only on domestic products when they are purchased or processed and which is intended to build up a fund to promote national production does not, where those products are exported, create discrimination against the traders who bear the burden of the charge;**

2. **Article 17 (2) of Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice, which concerns export refunds, is to be interpreted as meaning that it does not preclude non-reimbursement of a tax possessing the features mentioned above to the**

exporter of the product in question, unless that tax appears to be a means of reducing the amount of the export refunds.

Mancini Díez de Velasco Kakouris

Schockweiler Kapteyn

Delivered in open court in Luxembourg on 3 March 1994.

R. Grass
Registrar

G. F. Mancini
President of the Sixth Chamber