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INFORMATION MEMO

RULING BY COURT OF JUSTICE ON EFFECT OF ARTICLE 12 OF EEC TREATY
IN MUNICIPAL LAW

On February 5 the Court of Justice gave an interlocutory ruling in the case of N.V. Algemene Transport- en Expeditieonderneming Van Gend en Loos. Article 177 of the EEC Treaty provides that where a point of law is raised before a court of one of the Member States the Court of Justice is competent to give a ruling.

In a dispute before a Dutch administrative tribunal of final appeal on fiscal matters (Tariiefcommissie) a Dutch company (N.V. Van Gend en Loos) contended that the taxation authorities of the Netherlands had infringed Article 12 of the EEC Treaty in applying a duty of 8% on ureaformaldehyde imported by the company from the Federal Republic of Germany, since this was a higher rate of duty than had been in force on January 1, 1958.

Invoking Article 177 the Dutch tribunal applied to the Court of Justice for an interlocutory ruling on:

- 1) whether Article 12 has an internal effect, i.e. whether the nationals of Member States, relying on this Article, can claim individual rights that must be upheld by the domestic courts, and if this is so
- 2) whether the Dutch government, by imposing the 8% duty in the circumstances described, had increased the duty applicable at the time the EEC Treaty came into force or whether this was a reasonable adjustment which, although arithmetically speaking an increase, was not to be deemed an infringement of Article 12.

Written comments had been submitted, in pursuance of Article 20 of the Protocol on the Statute of the Court, by the parties, the Commission and the Belgian, Dutch and German governments.

The Advocate-General moved for a ruling that Article 12 was without effect in municipal law. It contained only an obligation as between Member States. On the second point the Advocate-General submitted that the increase in the duty was unlawful.

Declaring itself competent in the two matters referred to it the Court gave its ruling on February 5, 1963. On the first point it found that Article 12 had direct effects and created individual rights for those affected that must be upheld by the domestic courts.

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2-
PP/500/63-E
P/4/63-E

On the second question the Court, while making no pronouncement as to the practical application of customs legislation in the case in point, held that a new arrangement of the customs tariff whereby a product would fall under a heading subject to a higher duty could be deemed an increase of the kind prohibited by Article 12.

The award of costs will be a matter for the "Tariefcommissie".

N.B. The above is not to be considered an official report.