

Brussels, November 1964
P-65/64INFORMATION MEMOSpecial charges on dairy produce in Belgium and Luxembourg incompatible with the EEC Treaty.

The Court of Justice has given judgment in the case brought by the Commission against the Governments of Belgium and Luxembourg (Cases 90 and 91/63).

The Commission objected to the introduction by these Governments in November 1958 (i.e. after the entry into force of the Rome Treaty on January 1, 1958) of a charge for the issue of licences to import certain dairy produce (milk powder, tinned condensed milk, cheeses).

On April 19, 1963, after giving the two Governments an opportunity to present their comments, the Commission issued a reasoned opinion under Article 169, finding that they had infringed Article 12 of the Treaty (which requires Member States to refrain from introducing new customs duties on imports or exports or any charges with equivalent effect within EEC). As these charges were kept in force, the Commission referred the matter to the Court on October 15, 1963.

The respondents submitted that the Commission's case was inadmissible, on the grounds that the Community could not take a matter to court where it had not itself respected the relevant time-limits, namely the establishment of a common market in dairy produce by November 1, 1962, in compliance with the Council's resolution of April 4, 1962. Further, they submitted that Article 12 did not apply to agricultural products until such time as the common agricultural policy was introduced.

Giving judgment on November 13, 1964, the Court affirmed that the Commission's case was in fact admissible and that the Council's failure to fulfil its obligations did not absolve the respondents from their own obligations. The Court thus confirmed its earlier rulings on admissibility, in particular that one party's failure to meet its obligations could not be held to relieve another from meeting his.

On the substance of the case, the Court found that Article 12 was a fundamental rule and that any exception to it must be expressly provided for. Articles 39 to 46 (which deal with the common agricultural policy, and on which the respondents relied to justify the measures taken) contain no provision for waiving Article 12. This Article applies equally, therefore, to measures taken within a national market organization in so far as they constitute customs duties or charges with equivalent effect.

The Court therefore held that the measures in dispute were contrary to Article 12, and rules in favour of the Commission.

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