Information on the Court of Justice of the European Communities

1979 – II

I N F O R M A T I O N

on

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

II

1979

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COMPOSITION OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

for the judicial year 1978 to 1979

(as from 7 October 1978)

Order of precedence

H. KUTSCHER, President
J. MERTENS DE WILMARS, President of the First Chamber
LORD A. J. MACKENZIE STUART, President of the Second Chamber
F. CAPOTORTI, First Advocate General
A. M. DONNER, Judge
P. PESCATORE, Judge
H. MAYRAS, Advocate General
M. SØRENSEN, Judge
J.-P. WARNER, Advocate General
G. REISCHL, Advocate General
A. O'KEEFFE, Judge
G. BOSCO, Judge
A. TOUFFAIT, Judge
A. VAN HOUTTE, Registrar

Composition of the First Chamber

J. MERTENS DE WILMARS, President
A. M. DONNER, Judge
A. O'KEEFFE, Judge
G. BOSCO, Judge
H. MAYRAS, Advocate General
J.-P. WARNER, Advocate General

Composition of the Second Chamber

LORD A. J. MACKENZIE STUART, President
P. PESCATORE, Judge
M. SØRENSEN, Judge
A. TOUFFAIT, Judge
F. CAPOTORTI, Advocate General
G. REISCHL, Advocate General

J U D G M E N T S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

Judgment of 6 March 1979

Case 92/78

Simmenthal S.p.A. v Commission of the European Communities

(Opinion delivered by Mr Advocate General Reischl on 24 January 1979)

1. Application for annulment - Admissibility - Natural or legal persons - Act of direct and individual concern to them - Decision addressed to the Member States - Object
(EEC Treaty, Art. 173, second paragraph; Commission Decision No. 78/258)

2. Acts of an institution - Notices of invitations to tender for frozen beef held by the intervention agencies - Legal nature

3. Procedure - Plea of illegality - Acts which may be challenged on the ground of their illegality
(EEC Treaty, Art. 184)

4. Agriculture - Common organization of the markets - Beef and veal - Frozen meat - Importation under total suspension of the levy - "Linking" system - Beneficiaries - Enlargement by the Commission of the category of persons able to take advantage of the system - Illegality
(Regulation No. 805/68 of the Council, Art. 14 as amended by Council Regulation No. 425/77; Commission Regulation No. 585/77, Art. 11a added by Commission Regulation No. 2901/77)

5. Invitations to tender - Procedure - Guarantees of objectivity - Anonymity - Limits

1. A decision taken by the Commission after the national intervention agencies had forwarded to it the tenders which the latter had received in the context of periodic invitations to tender for the sale of frozen beef held by the intervention agencies is of direct and individual concern, within the meaning of the second paragraph of Article 173 of the EEC Treaty, to all the tenderers. Although such a decision, the aim of which is to fix the minimum selling prices applicable in the different Member States, is in fact addressed to the Member States and through them to the intervention agencies it directly determines the fate, be it favourable or unfavourable, of each of the tenders submitted in the context of an invitation to tender.

2. Notices of periodic invitations to tender for the sale of frozen beef held by the intervention agencies are general acts which determine in advance and objectively the rights and obligations of the traders who wish to participate in the invitations to tender which these notices make public.

3. Article 184 of the EEC Treaty gives expression to a general principle conferring upon any party to proceedings the right to challenge, for the purpose of obtaining the annulment of a decision of direct and individual concern to that party, the validity of previous acts of the institutions which form the legal basis of the decision which is being attacked, if that party was not entitled under Article 173 of the Treaty to bring a direct action challenging those acts by which it was thus affected without having been in a position to ask that they be declared void. The field of application of the said article must therefore include acts of the institutions which, although they are not in the form of a regulation, nevertheless produce similar effects and on those grounds may not be challenged under Article 173 by natural or legal persons other than Community institutions and Member States.

4. Under the "linking" system provided for by Article 14 (3) (b) of the basic Regulation No. 805/68 of the Council as amended by Council Regulation No. 425/77 the benefit of the total suspension of the levy on frozen beef imported from non-member countries must be reserved for the beneficiaries defined by the said regulation, namely the processing industry. Therefore Commission Regulation No. 2901/77 is inconsistent with the objective of the new Article 14 of the basic regulation in that it gives persons or undertakings unconnected with the sector of industry for which the benefit of the total suspension of the levy was to be reserved the right to take advantage of this special import system.

5. Although it is true that maintaining anonymity is a precaution, taken under national as well as Community law, in certain kinds of invitations to tender and especially in those which involve the exercise of a discretion in relation to individual tenders, such a precaution seems to be unnecessary in the context of an invitation to tender for the sale of frozen beef held by the intervention agencies, the outcome of which is decided with reference to a price fixed by the Commission after an evaluation of all the tenders received, taking into account the need for a fair apportionment of the aggregate quantity among the undertakings of the different regions of the Community. This must be more especially the case in these proceedings as the identification of the tenders by name is essential in order to prevent the same person submitting two or more tenders.

NOTE

The applicant, the undertaking Simmenthal, instituted proceedings for the annulment of Commission Decision No. 78/258/EEC of 15 February 1978 by fixing the minimum selling prices for frozen beef put up for sale by the intervention agencies in accordance with Regulation (EEC) No. 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the first quarter of 1978.

The applicant, who is supported by the Government of the Republic of Italy, relies in order to establish the invalidity of the contested decision on a number of complaints concerning an infringement of Article 14 of Regulation No. 425/77.

It should be recalled that Regulation No. 805/68 on the common organization of the market in beef and veal provided that certain frozen meat intended for processing should qualify for special import terms consisting of the total or partial suspension of the levy, namely:

(a) a system for the total suspension of the levy on meat intended for the manufacture of certain preserved foods consisting of pure beef and veal and

(b) similar arrangements, the so-called "linking" system, applicable to the other activities of the processing industry which might be rendered conditional on the submission by the importer of a purchase contract for a specified quantity of frozen beef and veal held by an intervention agency.

This system, which is beneficial to manufacturers of preserved food, was made subject to more restrictive conditions by Council Regulation No. 425/77. Article 14 of that regulation provides that with regard to frozen meat intended for processing and listed in the tariff subheadings contained in the annexes to the regulation, "importation under total suspension of levy may be made conditional, as far as necessary, on production of a purchase contract for frozen meat held by an intervention agency".

The detailed provisions for the implementation of that regulation are to be laid down by the Commission in accordance with the "management committee" procedure.

The submissions with regard to substance upon which the applicant relies may be summarized as a complaint of misuse of powers on the part of the Commission in the operation of the so-called "linking" arrangements.

In particular, the applicant relies on:

Improper extension by the Commission of the category of persons qualified to benefit from the arrangements reserved under the basic regulation for the processing industry.

The absence of any requirement as to intended use with regard to meat acquired by such persons from intervention stocks.

Various irregularities with regard to quantities in the detailed provisions laid down by the Commission.

The fixing of differentiated prices for the sale of beef from the intervention stocks of various Member States and, finally, the effect of the system as a whole on the level of minimum prices fixed by Decision No. 78/258.

The applicant also makes submissions as to form concerning the failures to provide a statement of reasons for a number of the contested measures and the lack of anonymity of offers in the context of the tenders held under the provisions in dispute.

The submission concerning the failure to provide a statement of reasons for the establishment by the Commission of the so-called "linking" arrangements

The applicant maintains that Regulation No. 2900/77 cannot be relied upon as a justification for the introduction of the "linking" arrangements in the sector in question which, according to the new basic regulation, merely constitutes an option.

The Commission rightly explained that the objective of this system was to arrive at a reasonable balance between, on the one hand, the interests of the processing industry in the importation of beef and veal at the world market price and, on the other, the requirement of relieving pressure on the market in intervention stocks accumulated in the Community.

When the Commission exercised the power granted pursuant to Regulation No. 425/77, it did not need to provide further justification for the introduction of the "linking" arrangements.

The submission concerning the improper extension of the category of beneficiaries

The applicant complains that the Commission has made eligible to participate in the arrangements for importing beef and veal under suspension of the levy any natural or legal person who for at least 12 months has been carrying on business in the meat and livestock sector and is officially registered in a Member State.

The Italian Government maintains that the wide definition of persons entitled to benefit has rendered the arrangements a cipher and thus eliminated any semblance of the benefit which the Council regulation intended to confer on the processing industries in the sector in question.

The Commission stated in its defence that there was nothing to prevent processors from submitting tenders and effecting their importations directly.

The Court ruled that it is clear from the new Article 14 of the basic Regulation No. 805/68 that the arrangements for importation under total suspension of the levy are intended to benefit only the manufacture of preserved foods of a clearly specified kind. Whilst the aim of the new version of Article 14 is to make the processing industry contribute to the costs of distributing surpluses of beef and veal in the Community by establishing the "linking" arrangements, it none the less remains the case that the benefit of the total suspension of the levy on importations from third countries within the framework of those arrangements must be maintained exclusively for the beneficiaries specified in the Council regulation.

It thus appears that Regulation No. 2901/77 is contrary to the objective of the new Article 14 of the basic regulation, in that it permits access to that particular system of importation to persons or undertakings outside that sector of the industry to which the benefit of the total suspension of the levy was to have been reserved.

The applicant further claims in this connexion that the "linking" arrangements were misapplied by the circumstance that intervention beef acquired under these arrangements can be used as a purchaser wishes.

It cannot be denied that the absence of any restriction on the intended use of intervention beef acquired under the "linking" arrangements can cause a distortion in the operation of the arrangements since the sale of such beef, through an over-wide definition of the category of beneficiaries, can lead to unchecked manipulation of prices by persons who have no direct interest in the processing industry.

This freedom left to purchasers resulted, in the conditions obtaining, in the misapplication of the suspension of the levy laid down in Article 14 of Regulation No. 805/68.

<u>The submission concerning the effect of the system set up by the Commission on the price of goods sold from stocks under the "linking" arrangements</u>

The applicant claims that the system of tenders, bearing in mind the procedures laid down by the Commission, has led to the fixing of excessively high prices for the sale of meat from stocks which has to be bought under the "linking" arrangements by purchasers who wish to benefit from the suspension of the levy on importations of meat originating in third countries.

Consequently the minimum price fixed by the Commission has had the effect of calcelling in part the benefit of the suspension of payment prescribed by the Council regulation.

Although the Commission defended the system of tenders by maintaining that it was necessary to take into account the difficult situation on the Community market the Court of Justice upheld the complaint of the applicant and the Italian Government based on the fact that the unusually high level of ex-stock prices caused the cancellation in part of a benefit which the Council had intended, for clearly specified economic reasons, to be reserved for the processing industry.

<u>The submissions concerning certain quantitative aspects of the "linking" arrangements</u>

The Court of Justice held that the applicant had failed to provide any convincing evidence for finding that the Commission had exceeded its discretionary power in this sphere.

<u>The publicity concerning invitations to tender</u>: complaint rejected

It is clear from the statement of reasons as a whole that Commission Decision No. 78/258/EEC must be annulled to the extent hereinafter specified becuase of its infringement of a rule relating to the application of the Treaty, namely the new Article 14 of Regulation No. 805/68 and because of misuse of powers by the Commission in laying down certain procedures for the implementation of the "linking" arrangements prescribed in the above-mentioned provisions.

In order to ensure legal certainty the individual decision constituted by Decision No. 78/258/EEC of the Commission must be annulled only in so far as it affects the applicants.

It therefore follows that the Commission must reconsider the individual position of the applicant and address a new decision to it, through the competent intervention agency.

The Court ruled as follows:

1. Commission Decision No. 78/258 of 15 February 1978 fixing the minimum selling price for frozen beef put up for sale by the intervention agencies in accordance with Regulation No. 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the first quarter of 1978 is annulled as respects the applicant.

2. The Commission is ordered to pay the costs of the proceedings including those of the intervener, except for the costs of the application for interim measures which are to be borne by the applicant.

Judgment of 6 March 1979

Case 100/78

Claudino Rossi v Caisse de Compensation pour Allocations Familiales des Régions de Charleroi et Namur

(Opinion delivered by Mr Advocate General Capotorti on 1 February 1979)

1. Social security for migrant workers - Family allowances - Grant to person entitled to pension in one Member State - Professional or trade activity of spouse in another Member State - Entitlement to family allowances in that State - Community rule against overlapping - Conditions for application
(Regulation No. 1408/71 of the Council, Art. 79 (3))

2. Social security for migrant workers - Community rules - Purpose - Co-ordination of national schemes - consequences

3. Social security for migrant workers - Family allowances - Grant to person entitled to pension in one Member State - Professional or trade activity carried on in another Member State - Entitlement to family allowances in that State - Community rule against overlapping - Application - Detailed arrangements
(Regulation No. 1408/71 of the Council, Art. 79 (3))

1. Under Article 79 (3) of Regulation No. 1408/71 of the Council, the suspension of the entitlement to family allowances in respect of the dependent children of a father who is in receipt of a pension under the legislation of a Member State is not applicable if the mother has not actually become entitled to those same allowances under the legislation of another Member State by virtue of her pursuit of a professional or trade activity, either because only the father is acknowledged to have the status of head of household or because the conditions for awarding to the mother the right to payment of the allowances have not been fulfilled.

2. The regulations on social security for migrant workers did not set up a common scheme of social security, but allowed different schemes to exist, creating different claims on different institutions against which the claimant possesses direct rights by virtue either of national law alone or of national law supplemented, where necessary, by Community law. The Community rules could not therefore, in the

absence of an express exception consistent with the aims of the Treaty, be applied in such a way as to deprive a migrant worker or his dependants of the benefit of a part of the legislation of a Member State.

3. The rule in Article 79 (3) of Regulation No. 1408/71, which is designed to prevent the overlapping of family allowances, is applicable only to the extent to which it does not, without cause, deprive the persons concerned of the benefit of a part of national legislation. When the amount of the allowance of which payment is suspended in one Member State is greater than that of the allowances received in another Member State by virtue of the pursuit of a professional or trade activity, it is therefore appropriate that the rule against overlapping of benefits should be applied only partially and that the difference between these amounts should be granted in the form of a supplement.

NOTE

The dispute in the main action is between the Caisse de Compensation pour Allocations Familiales des Régions de Charleroi et Namur (compensation fund for family allowances for the regions of Charleroi and Namur), the defendant, and an Italian worker, the father of two children, who, since 11 December 1967, had been in receipt of a Belgian pension paid by the Fonds des Maladies Professionnelles (fund for occupational diseases) in respect of a permenent 100% incapacity for work. In Belgium he received family allowances until 28 February 1973, when he returned to Italy with his family.

On that date the Belgian institution suspended payment of the family allowances on the ground that the wife of the worker was an employed person in Italy in work which made it possible for her to acquire a right to family benefits under Italian law.

The person concerned was also refused family allowances in Italy on the ground that the father is recognized as head of household and no other person can be deemed to have that status when the father is neither invalid nor unemployed.

The first question referred by the Tribunal du Travail (Labour Tribunal), Charleroi, concerns in substance the point whether the Belgian institution must assume responsibility for paying family allowances even if a right exists in Italy by virtue of the pursuit of a professional or trade activity by a member of the family of the person receiving a pension but such right is imperfect owing to a particular feature of Italian legislation.

In its reply the Court ruled that for the purposes of Article 79 (3) of Regulation No. 1408/71 of the Council the suspension of the right to family allowances for the dependent children of a father who is entitled to a pension under the legislation of a Member State

does not apply where the mother has not in fact acquired the right to such allowances under the legislation of another Member State by virtue of the pursuit of a professional or trade activity or because the capacity of head of household is accorded only to the father of the family or, in any event, because the mother does not fulfil the conditions for entitlement to the allowances.

The second question referred by the national court is as follows:

"Assuming that the Italian authority's attitude is no longer justifiable at the present time in view of the principles of equal rights for men and women, should not the Belgian institution award the difference between the amount of the Italian family allowances in order to protect rights acquired under the legislation of the country of last employment and thus prevent unequal treatment of workers who have had to satisfy the same conditions to obtain the pension?"

In its reply the Court ruled that Article 79 (3) applies only to the extent of the sum actually received by virtue of the pursuit of a professional or trade activity.

Judgment of 8 March 1979

Case 129/78

Bestuur van de Sociale Verzekeringsbank Amsterdam v A.E. Lohmann

(Opinion delivered by Mr Advocate General Capotorti on 15 February 1979)

1. Social security for migrant workers - Community rules - Schemes to which they apply - Special schemes for civil servants and persons treated as such - Exclusion
(Regulation No. 1408/71 of the Council, Arts. 1 (j) and 4 (4))

2. Social security for migrant workers - Family allowances for dependent children of pensioners - Pension granted under special scheme for civil servants or persons treated as such - Exclusion from sphere of application of Community rules
(Regulation No. 1408/71 of the Council, Art. 77 (2) (a))

1. The fact that Article 1 (j) of Regulation No. 1408/71 refers only to Article 4 (1) and (2) does not remove the significance of the limitation contained in paragraph (4) of that article, which inter alia excludes from the sphere of application of the regulation special schemes for civil servants and persons treated as such.

2. A pension under the legislation of one Member State only within the meaning of Article 77 (2) (a) of Regulation No. 1408/71 does not include a pension granted under a special scheme for civil servants or persons treated as such.

NOTE

A citizen of the Netherlands, a former local government official in that country, has been in receipt of an invalidity pension from 1 May 1971 pursuant to the Netherlands law on officials' pensions. After moving to Belgium he asked the competent Netherlands institution to grant him family allowances in respect of a daughter who remained in the Netherlands.

He received a negative reply, on the ground that the condition of residence laid down by Article 17 of the law on family allowances for the children of wage-earners and people treated as such was not satisfied.

That led the Centrale Raad van Beroep to refer a series of questions for preliminary rulings on the interpretation of Regulation No. 1408/71. The term "legislation" means at most rules coming within the material scope of Regulation 1408/71 as defined by Article 4 (1) and (4) thereof.

As special schemes for civil servants are excluded from that definition by Article 4 (4), the recipient of a pension to which the regulation is not applicable cannot rely on Article 77 to infer therefrom the existence of certain rights in his favour.

Besides, the regulation itself does not contain any provision which directly creates rights to family allowances.

Judgment of 8 March 1979

Case 130/78

Salumificio di Cornuda SpA v Amministrazione delle Finanze dello State
(Opinion delivered by Mr Advocate General Reischl on 8 February 1979)

Agriculture - Common organization of the market - Beef and veal - Import from non-member countries - Protective measures adopted by a Member State - Commission decision requiring abolition - Direct effect
(Regulation No. 14/64 of the Council, Art. 16 (2); Commission Decision No. 66/474)

Following a Commission decision adopted under Article 16 of Regulation No. 14/64 requiring a Member State to abolish a national protective measure, the Member State concerned is no longer entitled to rely, as against a trader, with regard to an importation occurring after that decision took effect, on the national provisions introduced by virtue of the protective measure which the Commission required to be abolished, even though those provisions were not repealed within the domestic legal order until after the decision of the Commission took effect.

NOTE

In 1978 the Italian Corte di Cassazione referred to the Court of Justice certain questions on the interpretation of a large number of articles in various regulations and decisions of the Council and the Commission on the common organization of the market in beef and veal concerning the abolition of protective measures adopted by Italy in respect of adult bovines and calves.

The file shows that the main action dates from 1966: Only the judgment of the Court on those questions is reported here:

1. Commission Decision No. 66/474/EEC of 28 June 1966 requiring the Italian Republic to abolish the protective measures taken in respect of adult bovine animals and calves took effect independently of Council Decision No. 66/455/EEC of the same date authorizing the Italian Republic to increase the levies applicable to certain imports from third countries in the beef and veal sector.

2. After Commission Decision No. 66/474/EEC the Italian Republic was no longer entitled to bring to bear on a commercial operator, by reason of an importation subsequent to the time at which that decision took effect, national provisions adopted as a safeguard measure which the Commission had required to be abolished, even if those provisions were not repealed in the domestic sphere until a date subsequent to that on which the Commission decision took effect.

3. In accordance with the second paragraph of Article 191 of the EEC Treaty Commission Decision No. 66/474/EEC took effect at the time at which it was notified to the Italian Republic, that is to say, on 28 June 1966.

Judgment of 13 March 1979

Case 86/78

SA des grandes distilleries Peureux v Directeur des Services fiscaux de la Haute-Saône et du territoire de Belfort

(Opinion delivered by Mr Advocate General Mayras on 14 December 1978)

1. References for a preliminary ruling - Interpretation of Community law - Relevance to the proceedings before the national court - Assessment - Jurisdiction of national court

   (EEC Treaty, Art. 177)

2. State monopolies of a commercial character - Internal taxation - Domestic products more heavily burdened than products imported from other Member States - Admissibility

   (EEC Treaty, Arts. 37 and 95)

1. It is for the national court pursuant to the separation of jurisdiction on which Article 177 of the Treaty is based to decide how far the interpretation of Community law is necessary for it to give its judgment.

2. Whether or not a domestic product is subject to a commercial monopoly, neither Article 37 nor Article 95 of the EEC Treaty prohibits a Member State from imposing on that domestic product internal taxation in excess of that imposed on similar products imported from other Member States.

NOTE

The main action, between Distilleries Peureux - the plaintiff - and the French tax authorities, concerns the compatibility with Community law of a charge known as a "soulte" (adjustment) levied by the tax authorities on spirits which, at the request of the producer, are left at the disposal of the producer and thus exempted from the obligation of delivery to the State.

Before the national court the plaintiff claimed reimbursement of the "soulte" which it considered to have been unlawfully levied upon it, and the national court asked the following preliminary question:

> "Is the existence of the French State monopoly for the production of certain potable spirits such as that distilled from Williams pears, involving the levy by the State of a resale adjustment ('soulte de rétrocession') where the sale of such spirits is entrusted to the producer, compatible since 1 January 1975 or subsequently with the provisions of Article 37 of the Treaty of Rome prohibiting any discrimination between nationals of Member States of the EEC in respect of imports and exports ?".

It emerges from French legislation that between 1974 and 1977 a distinction had to be drawn between three categories of nationally-produced spirits: spirits which were free (that is to say not subject to the monopoly), spirits which were reserved to the monopoly and were bought by it, and liberalized spirits (that is to say spirits reserved to the monopoly in principle, but left at the disposal of the producers and in that case subject to payment of the "soulte"). Importation of spirits from abroad is reserved to the State. Pursuant to Article 37 of the Treaty, the Decree of 6 February 1974 put an end to the monopoly on the importation of spirits coming from other Member States and marketed in France. However, the French legislation imposed upon imported spirits usable or potable as such a "surtaxe de compensation" (compensation surcharge) calculated in a similar way to the "soulte" levied on liberalized nationally-produced spirits.

Potable products containing ethyl alcohol and coming from other Member States were exempted from the "surtaxe de compensation" but made subject to a "taxe compensatoire" (compensatory charge) where the minimum selling price of the product in the country of origin was less than the selling price charged in France for the same purpose.

As regards the period after the entry into force of the French Decree of 25 July 1977, and following the judgments given by the Court of Justice on 17 February 1976 in Case 45/75 Rewe [1976] ECR 181 and Case 91/75 Miritz [1976] ECR 217, the Commission took the view that the above-mentioned "taxe compensatoire" was incompatible with the obligation laid down in Article 37 of the Treaty to adjust State monopolies of a commercial character so as to ensure that when the transitional period has ended no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States.

Before the national court, the plaintiff in the main action made the following complaints:

(a) As regards the period between 1974 and 1977, it complained of having been obliged, in respect of the spirits which it produces, to pay a "soulte" on spirits freed at its request from the obligation to reserve them to the monopoly, when similar products imported from other Member States were not subject to a similar charge, or at all events were made subject only to a charge - namely the "tax compensatoire" - which was incompatible with the Treaty and therefore not payable. In the plaintiff's view this situation was contrary to the prohibition on discrimination mentioned in Article 37 of the Treaty.

(b) As regards the period after the entry into force of the Decree of 25 July 1977, it complained of having been obliged to pay a "soulte" on the liberalized spirits which it produced, when similar spirits produced in another Member State escaped that charge, with the result that the plaintiff's products suffered discrimination on the markets of the other Member States to which the plaintiff exported the said products.

The question raised by the Tribunal de Grande Instance de Lure is intended in substance to ascertain:

(a) whether, in so far as it obliges Member States to adjust their commercial monopolies so as to ensure that when the transitional period has ended no discrimination exists between nationals of Member States, Article 37 (1) prohibits domestic products coming under the monopoly from being subjected to taxation to which similar products imported from other Member States are not subject or are subject only to a lesser extent;

(b) whether the said Article 37 (1) prohibits domestic products coming under the monopoly from being made subject to charges or taxation in excess of those imposed on similar products in another Member State, where the domestic product is intended to be exported to that other Member State.

On the first point

The relationship which must exist between internal taxation imposed on domestic products and the taxation imposed on products imported from other Member States is governed by Article 95 of the Treaty, according to which no Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Since the end of the transitional period, Article 37 has no longer allowed any exceptions to the prohibition laid down in Article 95, which applies in its entirety to the taxation of imported products in relation to domestic products, whether the latter come under a national monopoly or not.

Although Article 95 prohibits each Member State from taxing products imported from other Member States more heavily than domestic products, it does not prohibit domestic products from being taxed more heavily than imported products. This disparity results solely from the characteristics of national laws which have not been harmonized in areas coming within the jurisdiction of the Member States.

The rules laid down in Article 37 concern only activities intrinsically connected with the carrying out of the specific function of the monopoly in question, and are irrelevant to national provisions unrelated to the carrying out of that specific function.

Therefore the Court answered the first limb of the question raised by ruling that, whether or not a domestic product - in particular certain potable spirits - is subject to a commercial monopoly, neither Article 37 nor Article 95 of the Treaty prohibits a Member State from imposing on that domestic product internal taxation of any kind in excess of that imposed on similar products imported from other Member States.

On the second point

If, as emerges from the answer given to the first limb of the question raised, it is open to a Member State to impose upon a domestic product internal taxation in excess of that which it imposes on the similar imported product, whether or not the domestic product comes under a commercial monopoly within that Member State, it is *a fortiori* open to that State to impose upon a domestic product internal taxation in excess of that imposed on the similar product in another Member State.

Disparities of this kind result from the fiscal powers of the Member States, and come neither under Article 95 nor under Article 37 of the EEC Treaty.

The Court ruled that:

Whether or not a domestic product - in particular certain potable spirits - is subject to a commercial monopoly, neither Article 37 nor Article 95 of the EEC Treaty prohibit a Member State from imposing on that domestic product internal taxation in excess of that imposed on similar products imported from other Member States.

Judgment of 13 March 1979

Case 91/78

Hansen GmbH v Hauptzollamt Flensburg

(Opinion delivered by Mr Advocate General Capotorti on 16 January 1979)

1. State monopolies of a commercial character - Provisions of the Treaty - Temporal application
   (EEC Treaty, Art. 37)

2. State monopolies of a commercial character - Exercise of exclusive rights - Measures linked to the grant of an aid - Assessment in the light of Article 37
   (EEC Treaty, Art. 37, 92 and 93)

3. State monopolies of a commercial character - Marketing of a product at an abnormally low resale price - Incompatible with Article 37
   (EEC Treaty, Art. 37)

4. State monopolies of a commercial character - Discrimination - Prohibition - Direct effect
   (EEC Treaty, Art. 37)

5. State monopolies of a commercial character - Provisions of the Treaty - Products imported from third countries - Not applicable
   (EEC Treaty, Art. 37)

6. Association of the overseas countries and territories - Council Decision No. 70/549/EEC - Effects - Goods coming from the countries and territories concerned - Community products subject to a monopoly of a commercial character - Equality of treatment
   (EEC Treaty, Art. 37; Council Decision No. 70/549, Art. 2 (1) and Art. 5 (1))

1. Article 37 of the EEC Treaty remains applicable, following the expiry of the transitional period, wherever, even after the adjustment prescribed in the Treaty, the exercise by a State monopoly of its exclusive rights entails an instance of discrimination or restriction prohibited by that article. In particular, in the case of an activity specifically connected with the exercise by a State monopoly of its exclusive right to purchase, process and sell, the application of Article 37 cannot be excluded.

2. Article 37 of the EEC Treaty constitutes in relation to Articles 92 and 93 of that Treaty a lex specialis in the sense that State measures, inherent in the exercise by a State monopoly of a commercial character of its exclusive right must, even where they are linked to the grant of an aid to producers subject to the monopoly, be considered in the light of the requirements of Article 37.

3. Any practice by a State monopoly which consists in marketing a product with the aid of public funds at an abnormally low resale price compared to the price, before tax, of a product of comparable quantity imported from another Member State is incompatible with Article 37 (1) of the Treaty.

4. Article 37 of the Treaty confers rights, which the national courts must protect, on traders who suffer the financial consequences of discrimination resulting from an abnormal reduction of the resale price charged by a public monopoly through the use of State funds.

5. The sphere of application of Article 37 of the Treaty does not extend to State measures which affect the importation of goods from third countries, since the arrangements for the importation of such products are subject not to the provisions governing the internal market but to those relating to commercial policy.

6. Council Decision No. 70/549 of 29 September 1970 on the Association of the Overseas Countries and Territories with the European Economic Community is intended to place goods originating in the countries and territories concerned on an equal footing with Community products so far as concerns any discriminatory practices on the part of a State monopoly of a commercial character.

NOTE

The Finanzgericht Hamburg referred a series of questions to the Court of Justice for a preliminary ruling on the interpretation of Article 37 of the Treaty, concerning State monopolies of a commercial character, in relation to Articles 92 and 93, concerning aid, and of the Council Decision of 29 September 1970 on the Association of the Overseas Countries and Territories with the European Economic Community, for the purpose of assessing the compatibility with Community law of the taxation of spirits imported into the Federal Republic of Germany following the entry into force on 2 May 1976 of a law amending the Branntweinmonopolgesetz (Law on the spirits monopoly).

The plaintiff in the main action is a producer and distributor of spirits, and it marketed in Germany spirits imported from different places (Italy, Jamaica, Guadeloupe, Indonesia) both inside and outside the Community.

Following the entry into force of the Law of 2 May 1976, spirits were made subject to a spirits tax of DM 1 650 per hectolitre of wine spirit, which was applicable uniformly although under different designations to both home-produced and imported spirits.

According to the plaintiff, the equality of treatment is merely apparent. In fact, in spite of the uniform increase in the rate of taxation by the Law of 2 May 1976, the effect of the system in practice is to make imported spirits bear the cost of the massive subsidies granted to home-produced spirits, and thus the conditions are fulfilled under which the Court held that an internal charge can be classified as a charge having an effect equivalent to a custom duty prohibited by the Treaty even if it appears to be non-distriminatory (judgment in Cases 77/76, Cucchi, and 105/76, Interzuccheri, [1977] ECR 987 and 1029).

The plaintiff claims that this practice is nothing other than the continuation of the privileges of the spirits monopoly and that this justifies the application of Article 37 of the Treaty, according to which Member States shall refrain from introducing any new measure which is contrary to the principle of the prohibition of any discrimination between nationals of Member States or which restricts the scope of the articles dealing with the abolition of customs duties between Member States.

The German tax administration, the defendant in the main action, argues that the spirits monopoly was so adjusted that henceforward it no longer fulfils any function other than that of a national market

organization, that it no longer either controls or guides the importation of spirits, and that the indirect connexion between the levying of the charge on imports and the financing of a national economic activity does not suffice to give that charge the character of unlawful taxation or aid.

In substance the first question asks whether, where a State measure connected with the operation of a national monopoly of a commercial character affects the free movement of goods, such measure may escape the prohibition on discrimination laid down in Article 37 of the Treaty because it contains _inter alia_ an aid within the meaning of Articles 92 and 93.

Article 37 requires not the total abolition of State monopolies of a commercial character, but only the adjustment of them so as to ensure the removal of any discrimination between nationals of Member States.

National monopoly practices cannot be used to reconstitute customs protection or quantitative restrictions in intra-Community trade.

In the present case, which concerns an activity specifically connected with the exercise by a national monopoly of its exclusive rights regarding the purchase, processing and sale of spirits, application of Article 37 cannot be excluded.

Comparison of Article 37 with Articles 92 and 93 shows that those provisions pursue an identical aim: to prevent the two kinds of intervention by a Member State - through the action of a State monopoly or through the grant of aid - from distorting the conditions of competition or giving rise to discrimination.

A measure which is implemented through a public monopoly and which is capable at the same time of being regarded as an aid within the meaning of Article 92 is consequently subject cumulatively to the provisions of Article 37 and to those concerning State aids. The Court therefore answered this first question by ruling that:

> "Article 37 of the EEC Treaty constitutes a _lex specialis_ in relation to Articles 92 and 93 of that Treaty in the sense that State measures pertaining to the exercise of exclusive rights by a State monopoly of a commercial character must be considered in the light of the requirements of Article 37, even where those measures are linked to the grant of an aid to producers coming within the monopoly."

The second question asks, first, whether Article 37 prohibits an increase in tax on consumption where that increase, not discriminatory in itself, is adjusted in such a way that the additional revenue thus raised is intended to compensate for the losses caused to a State monopoly by its being obliged to pay producers a guaranteed purchase price which is higher than the market resale price. In other words, can the coupling of an aid system with the transactions of a State monopoly constitute a breach of the prohibitions laid down in Article 37 ?

The Court answered by ruling that any practice by a national monopoly which consists in marketing a product such as spirits with the aid of public funds at an abnormally low resale price compared to the price before tax of spirits of comparable quality imported from another Member State is incompatible with Article 37 (1) of the EEC Treaty.

The second question also seeks to ascertain whether Article 37 has the effect of directly conferring rights upon all those who would be adversely affected by the price policy applied on the market by a State monopoly in the circumstances described by the national court. In the present case, the national court can easily effect comparisons between selling prices and import prices, and any discriminatory effect in favour of domestic production and to the detriment of imported products can be established with all the precision required.

In answer to this question, the Court ruled that "Article 37 of the EEC Treaty confers rights, which the national courts must protect, on a person who suffers the financial consequences of discrimination resulting from an abnormal reduction of the resale price charged by a public monopoly through the use of State funds".

The last part of the second question asks whether Article 37 of the Treaty also applies to measures which affect the importation of goods from non-Member countries.

The place occupied by Article 37 in the system of the Treaty shows that it is intended to promote freedom of movement within the Community and maintenance of normal conditions of competition between the economies of the Member States.

Therefore the answer should be that "the sphere of application of Article 37 of the EEC Treaty does not extend to measures which affect the importation of goods from non-Member countries".

The national court's third question inquires into the scope of Article 2 of Council Decision No. 70/549/EEC of 29 September 1970 on the Association of the Overseas Countries and Territories with the EEC, which provides that products originating in the countries and territories in question shall, on importation into the Community, be admitted "free of customs duties and charges having equivalent effect".

The Court answered this third question by ruling that "Council Decision No. 70/549 of 29 September 1970 on the Association of the Overseas Countries and Territories with the European Economic Community - subject to the reservation that its applicability to the facts of the case is verified by the national court - is intended to place goods originating in the countries and territories concerned on an equal footing with Community products so far as concerns any discriminatory practices on the part of a State monopoly of a commercial character".

Judgment of 13 March 1979

Case 119/78

SA des grandes distilleries Peureux v Directeur des Services fiscaux de la Haute-Saône et du territoire de Belfort

(Opinion delivered by Mr Advocate General Mayras on 14 December 1978)

1. References for a preliminary ruling - Jurisdiction of the Court - Limits

   (EEC Treaty, Art. 177)

2. Quantitative restrictions - Measures having equivalent effect - Concept

   (EEC Treaty, Art. 30)

3. Quantitative restrictions - Measures having equivalent effect - State monopolies of a commercial character - Raw material originating in or coming from another Member State - Distillation for the purpose of making products reserved for the monopoly - Prohibition - Exemption of raw material of national origin - Unlawfulness

   (EEC Treaty, Arts. 9, 10, 30 and 37)

1. Although the Court has no jurisdiction under Article 177 of the Treaty to rule on the compatibility of a national provision with Community law, it may nevertheless, having regard to the particulars supplied by the national court, extract from the wording of the question the factors relating to the interpretation of Community law.

2. In prohibiting between Member States measures having an effect equivalent to quantitative restrictions on imports Article 30 of the Treaty covers all trading rules of Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade.

3. A national provision prohibiting the distillation, for the purpose of manufacturing products reserved to a national commercial monopoly, of raw materials coming from other Member States constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty and a discrimination regarding the conditions under which goods are procured and marketed within the meaning of Article 37 (1) of the Treaty, where the prohibition does not apply to identical raw materials produced within the national territory.

   There are no grounds for drawing a distinction between products duly put into free circulation in another Member State after having been imported from a third country and products originating in that Member State.

NOTE

In this case, involving the same parties in the main action as Case 86/78, the Tribunal de Grande Instance, Lure, referred a question for a preliminary ruling on the interpretation of Articles 10 and 37 as well as of the other provisions of the Treaty relating to the free movement of goods.

This question is raised in the context of a dispute which arose in 1976 between the plaintiff in the main action and the competent French administrative authorities concerning the plaintiff's right to import oranges steeped in alcohol into France from Italy, where they were in free circulation, for the purpose of distilling them.

When the plaintiff informed the administrative authorities that it intended to import that product for the purpose of distilling it, the administrative authorities replied that nothing prevented the plaintiff from importing it but that the plaintiff would not obtain authorization to distil it, since Article 268 of Annex II to the Code Général des Impôts prohibited such a request from being granted, in the following terms: "Distillation of spirits from any imported raw material with the exception of fresh fruit other than apples, pears or grapes shall be prohibited".

The plaintiff challenged the compatibility of the prohibition laid down by the said Article 268 with Community law, and brought the case before the Tribunal de Grande Instance, Lure, which, before giving judgment, referred a question in the following terms:

> "Is the prohibition in France on the distillation of spirits from any imported raw material, with the exception of fresh fruit other than apples, pears and grapes, compatible with Articles 10 and 37 or any other provision of the Treaty of Rome on the free movement and circulation of products coming from non-member countries, in particular as regards the distillation of spirits from oranges steeped in alcohol coming from Italy ?".

The Court answered by ruling that a national provision prohibiting the distillation of spirits reserved to a national commercial monopoly from raw materials coming from other Member States constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty and a discrimination regarding the conditions under which goods are procured and marketed within the meaning of Article 37 (1) of the Treaty, where the prohibition does not apply to identical raw materials produced within national territory.

There are no grounds for drawing a distinction between products duly put into free circulation in another Member State after having been imported from a non-member country and products originating in that Member State.

Judgment of 20 March 1979

Case 139/78

Giovanni Coccioli v Bundesanstalt für Arbeit
(Opinion delivered by Mr Advocate General Reischl on 21 February 1979)

1. Social security for migrant workers - Unemployment - Benefits - Retention of entitlement to benefits during stay in another Member State - Period of three months - Extension - Request made after expiration of period - Extension permissible
(Regulation No. 1408/71 of the Council, Art. 69(2))

2. Social security for migrant workers - Unemployment - Benefits - Retention of entitlement to benefits during stay in another Member State - Period of three months - Extension - Discretion of national authorities
(Regulation No. 1408/71 of the Council, Art. 69(2))

1. An extension of the period referred to in Article 69 (2) of Regulation No. 1408/71 is permissible even when the request is made after the expiration of that period.

2. Article 69 (2) of Regulation No. 1408/71 does not restrict the freedom of the competent services and institutions of the Member States to take into consideration, with a view to deciding upon any extension of the period laid down by that regulation, all factors which they regard as relevant and which are inherent both in the individual situation of the workers concerned and in the exercise of effective control.

NOTE

Article 69 of Regulation No. 1408/71 provides that a migrant worker who is wholly unemployed may retain his entitlement to benefits for three months in the host country if he goes to another Member State in order to seek employment there.

In exceptional cases, this period may be extended by the competent services or institutions.

Mr Coccioli, an Italian national residing in the Federal Republic of Germany, received unemployment benefits from 13 December 1976.

In the course of December 1976 the plaintiff returned to Italy in search of employment. In the locality to which he returned there were no prospects of work for him, either at the time when he returned or in the succeeding weeks.

On 16 March 1977 he became ill and was declared unfit for work until 14 May 1977.

When Mr Coccioli returned to Germany on 15 May 1977 his request for unemployment benefits was refused by the Arbeitsamt (Employment Bureau) on the ground that an extension by way of exception of the period of three months could not be made since the plaintiff's stay in Italy had ceased to be justified by his search for work long before he became unfit for work.

The case prompted the Sozialgericht (Social Court) Hildesheim to refer two preliminary questions to the Court of Justice.

The first question was whether an extension of the period of three months was admissible if the application for extension was made after the expiry of that period.

Under Regulation No. 1408/71 the time-limit may be extended "in exceptional cases" by the competent institutions.

Certain "exceptional cases" may preclude the return of the unemployed person to the competent State within the prescribed period but also the submission of the application for an extension before the expiry of that period.

The Court ruled that the period referred to in Article 69 (2) of Regulation No. 1408/71 may be extended even if the application is submitted after the expiry of that period.

The second question is whether the Community provisions, by entitling the worker to go to another Member State to seek work, confer upon him an advantage in comparison with a worker who remains in the competent Member State in that the former is released for three months from the requirements of remaining available for the employment services of the competent State and of the control procedure organized therein.

The Court ruled that this provision does not limit the right of the competent services and institutions of Member States to take into consideration in deciding whether there should be any extension of the time-limit laid down by the regulation all factors which they consider relevant both to the individual situation of the workers concerned and to the exercise of effective control.

Judgment of 22 March 1979

Case 134/78

Firma E. Danhuber v Bundesanstalt für landwirtschaftliche Marktordnung
(Opinion delivered by Mr Advocate General Reischl on 6 March 1979)

1. Measures adopted by an institution - Regulation - Duty to state reasons - Extent

   (EEC Treaty, Art. 190)

2. Agriculture - Common organization of market - Beef and veal - Imports from non-member countries - Protective measures - Substitution for "EXIM" procedure of system linking imports with sales from intervention - Transitional provisions - Validity

   (Commission Regulation (EEC) No. 76/76, Art. 11)

1. The requirements of Article 190 of the Treaty are satisfied when the statement of the reasons on which a regulation adopted by an institution is based explains in essence the measure in question; a statement of the reasons on which a regulation is based cannot be required to cover specifically all the often very numerous details which may be contained in such a measure.

2. Consideration of the question raised has disclosed no factors of such a kind as to affect the validity of Article 11 of Commission Regulation (EEC) No. 76/76 setting up a system linking imports of beef and veal products effected by way of protective measures with the sale of beef held by intervention agencies.

NOTE

The plaintiff in the main action contested the validity of Article 11 of Regulation No. 76/76 setting up a system linking imports of beef and veal products effected by way of protective measures with the sale of beef held by intervention agencies.

The dispute turns on the fixing of the levy applicable to imports into the Community at 50.32 units of account per 100 kg of beef and veal in the form of carcases instead of 43 units of account per 100 kg. The Court, giving a ruling on the questions referred to it by the Hessisches Finanzgericht, replied that consideration of the question submitted has disclosed no factor of such a kind as to affect the validity of Article 11 of Regulation No. 76/76.

Judgment of 22 March 1979

Case 145/78

A.P. Augustijn v Staatssecretaris van Verkeer en Waterstaat
(Opinion delivered by Mr Advocate General Mayras on 15 February 1979)

Transport - Common policy - Road haulage operator - Admission to the occupation - Condition of professional competence - Definitive exemption - Discretionary power of the Member States
(Council Directive No. 74/561, Art. 4 (2))

Article 4 (2) of Council Directive No. 74/561 which by way of exception and in certain duly justified special cases authorizes the Member States to grant definitive exemption from the condition of professional competence for the operation of a transport undertaking only to such persons as possess at least three years' practical experience in the day-to-day management of the said undertaking, does not cover the case of a person who does not have the intention of continuing to operate the same undertaking. However, that provision must not be understood to mean that it does not allow the competent authorities in the Member States to take the view that a definitive exemption from the condition of professional competence may be granted in the case of two partners who, having both acquired at least three years' practical experience in the day-to-day management of the same undertaking, decide to carry it on in the form of two new undertakings.

NOTE

The administrative appeal section of the Hoge Raad (Supreme Court) of the Netherlands referred to the Court of Justice a number of preliminary questions on the interpretation of Council Directive No. 74/561/EEC on admission to the occupation of road haulage operator in national and international operations.

Those questions were raised in the course of an action concerning the decision of the Secretary of State for Transport, Water Control and Construction granting the appellant exemption from the requirement of professional competence within the meaning of Netherlands legislation whilst limiting that exemption to the period until 1 January 1980.

The Council directive prescribes inter alia that natural persons or undertakings wishing to engage in the occupation of road haulage operator are to satisfy the condition as to professional competence - cf. question p. 1/2.

This action prompted the national court to submit to the Court of Justice a series of questions to which the Court replied with the following ruling:

1. The provisions of Article 3 (4) of Council Directive No. 74/561/EEC permit Member States to enact legislation whereby the existence of professional competence shall be ascertained by the acquisition of a certificate, on the basis of appropriate professional experience for a time which the Member States shall establish or by a combination of those two systems.

2. Article 4 (2) of the directive applies exclusively to the cases, described in paragraph (1), of the death or physical or legal incapacity of the natural person engaged in the occupation of transport operator or satisfying the provisions as to professional capacity.

3. Article 5 (2) applies only to persons who benefit in pursuance of Article 4 (2) from the definitive exemption on the ground that they possess at least three years' practical experience in the day to day management of the undertaking.

4. "Physical ... incapacity" within the meaning of Article 4 (1) of the directive is not to be interpreted as covering attainment of an age at which a person is deemed to be no longer capable of carrying on business.

Judgment of 22 March 1979

Case 146/78

A.J. Wattenberg v Staatssecretaris van Verkeer en Waterstaat

(Opinion delivered by Mr Advocate General Mayras on 15 February 1979)

1. Transport - Common policy - Road haulage operator - Admission to the occupation - Condition of professional competence - Establishment - Detailed rules - Discretionary power of the Member States

   (Council Directive No. 74/561, Art. 3 (4))

2. Transport - Common policy - Road haulage operator - Admission to the occupation - Condition of professional competence - Definitive exemption - Specific cases

   (Council Directive No. 74/561, Art. 4 (2))

3. Transport - Common policy - Road haulage operator - Engagement in the occupation - Authorization before 1 January 1978 - Condition of professional competence - Proof - Exemption - Transitional provision - Scope

   (Council Directive No. 74/561, Art. 5 (2))

4. Transport - Common policy - Road haulage operator - Admission to the occupation - Condition of professional competence - Provisional exemption - Specific cases - Physical incapacity - Concept

   (Council Directive No. 74/561, Art. 4 (1))

1. The provisions of Article 3 (4) of Council Directive No. 74/561 allow Member States to adopt regulations under which the professional competence of persons seeking to engage in the occupation of road haulage operator is established either by the acquisition of a diploma or on the basis of appropriate practical experience for a period to be determined by the Member States, or by a combination of both.

2. Article 4 (2) of Directive No. 74/561 allows definitive exemption from the condition of professional competence to operate a transport undertaking to be granted in exceptional cases, but this is only within the limits laid down and in the situations referred to in Article 4 (1), that is to say in duly justified special cases in the event of the death

of physical or legal incapacity of the natural person engaged in the occupation of transport operator.

3. The provision in Article 5 (2) of Directive No. 74/561 that those persons who, after 31 December 1974 and before 1 January 1978 were authorized to engage in the occupation of haulage operator without having to funish proof of their professional competence must do so before 1 January 1980, may not be invoked against persons entitled under Article 4 (2) of that directive to the definitive exemption from the condition of professional competence on the ground that they possess at least three years' practical experience in the day-to-day management of the undertaking.

4. "Physical incapacity" within the meaning of Article 4 (1) of Directive No. 74/561 may not be taken to mean the attainment of an age at which a person is decreed no longer to be capable of working.

For the Note, please see Case 145/78 supra.

Judgment of 27 March 1979

Case 143/78

Jacques de Cavel v Luise de Cavel

(Opinion delivered by Mr Advocate General Warner on 22 February 1979)

1. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments - Sphere of application - Matters excluded - "Rights in property arising out of a matrimonial relationship" - Concept
(Convention of 27 September 1968, second paragraph of Art. 1)

2. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments - Sphere of application - Provisional measures ordered in the course of proceedings for divorce - Exclusion - Conditions
(Convention of 27 September 1968, second paragraph of Art. 1)

3. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments - Sphere of application - Distinction between provisional and definitive measures - None
(Convention of 27 September 1968, Arts. 1 and 24)

1. The term "rights in property arising out of a matrimonial relationship", within the meaning of the second paragraph of Article 1 of the Convention, includes not only property arrangements specifically and exclusively envisaged by certain national legal systems in the case of marriage but also any proprietary relationships resulting directly from the matrimonial relationship or the dissolution thereof.

2. Judicial decisions authorizing provisional protective measures - such as the placing under seal or the freezing of the assets of the spouses - in the course of proceedings for divorce do not fall within the scope of the Convention as defined in Article 1 thereof if those measures concern or are closely connected with either questions of the status of the persons involved in the divorce proceedings or proprietary legal relations resulting directly from the matrimonial relationship or the dissolution thereof.

3. In relation to the matters covered by the Convention, no legal basis is to be found therein for drawing a distinction between provisional and definitive measures.

NOTE

The Bundesgerichtshof referred to the Court of Justice a question on the interpretation of Article 1 of the Brussels Convention. That provision excludes from the scope of the Convention the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession. The dispute in the

main action concerns the enforcement in the Federal Republic of Germany of an order made by the judge of family matters at the Tribunal de Grande Instance, Paris, authorizing, as a protective measure in divorce proceedings pending between the parties, the putting under seal of furniture, effects and other objects in the flat at Frankfurt am Main belonging to the parties and the freezing of the assets and accounts of the respondent at two banking establishments in that city.

The application for an order for enforcement was dismissed by the German courts and the case was brought before the Bundesgerichtshof which referred the following question to the Court of Justice:

"Is the Convention of the European Community of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters inapplicable to an order made by a French judge of family matters simultaneously with proceedings for the dissolution of marriage pending before a French court for putting under seal and freezing assets, since it relates to proceedings incidental to an action concerning personal status or rights in property arising out of a matrimonial relationship?".

The Commission and the appellant in the main action argue that the answer should be that the proceedings referred to fall within the scope of the Convention, whilst the Governments of the United Kingdom and of the Federal Republic of Germany and the respondent contend that the answer should be that the Convention is inapplicable.

The Convention applies to "civil and commercial matters", but certain matters are excluded from its scope including "the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession".

Disputes relating to the assets of spouses in the course of proceedings for divorce may, depending on the circumstances, concern: (1) questions relating to the status of persons; or (2) proprietory legal relationships between spouses resulting directly from the matrimonial relationship or the dissolution thereof; or (3) proprietory legal relations existing between them which have no connexion with the marriage. Whereas disputes of the latter category fall within the scope of the Convention, those relating to the first two categories must be excluded therefrom. These considerations are applicable to measures relating to the property of spouses whether they are provisional or definitive in nature.

In answer to the question referred to it, the Court ruled:

"Judicial decisions authorizing provisional protective measures - such as the placing under seal or the freezing of the assets of the spouses - in the course of proceedings for divorce do not fall within the scope of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as defined in Article 1 thereof if those measures concern or are closely connected with either questions of the status of the persons involved in the divorce proceedings or proprietary legal relations resulting directly from the matrimonial relationship or the dissolution thereof".

Judgment of 28 March 1979

Case 90/78

Granaria BV v Council and Commission of the European Communities
(Opinion delivered by Mr Advocate General Capotorti on 7 March 1979)

1. Action for damages - Application - Lack of precise details as regards the extent of the damage - Admissibility - Conditions
(EEC Treaty, Art. 178; Rules of Procedure, Art. 38 (1))

2. Action for failure to act - Natural and legal persons - Measure requested - Regulation - Inadmissibility
(EEC Treaty, third paragraph of Art. 175)

1. When an action for damages is brought before the Court under Article 178 of the Treaty and the legal basis of the Community's liability is disputed, the desirability of making the procedure more economical may lead the Court to give a decision at an early stage of the proceedings on the question whether the conduct of the institutions has been such as to entail the liability of the Community, reserving consideration of questions relating to causality, as well as those concerning the nature and extent of the damage, for a later stage. Consequently the incomplete nature of an application in which the applicant merely states that he has sustained pecuniary damage as a result of Community rules, reserving the right to give details of the extent thereof at a later stage, need not necessarily make it inadmissible.

2. An application made under Article 175 of the Treaty by a natural or legal person when the only legal instrument which would allow satisfaction of the claim made on the Council or the Commission would be a regulation - a measure which cannot be described, by reason either of its form or of its nature, as an act which could be addressed to such a person within the meaning of the third paragraph of Article 175 - must be dismissed as inadmissible.

NOTE

The Netherlands company Granaria B.V. claimed that the Court should, on the one hand, declare pursuant to Article 175 of the EEC Treaty that the Council and/or the Commission, in contravention of their obligations, have failed to address to Granaria an act which it had requested and, on the other hand, order the Community to compensate the applicant for damage allegedly caused to it by the defendant institutions.

These claims originate in the fact that upon the entry into force of Regulation No. 1125/74, on 12 August 1974, the grant of the production refunds for quellmehl which Granaria had received after undertaking production of it in 1972 came to an end and was re-introduced only in respect of quellmehl intended for bread-making.

In support of its claims, Granaria relied upon the judgment of the Court in Joined Cases 117/76 Ruckdeschel and 16/77 Diamalt [1977] ECR 1753, in which it was held that the relevant provisions of certain regulations were incompatible with the principle of equality in so far as they provided for quellmehl and pre-gelatinized starch to receive different treatment in respect of production refunds for maize used in the manufacture of these two products.

The action as a whole is essentially designed to obtain compensation for the damage which Granaria allegedly suffered as a result of being refused the grant of the refunds claimed.

On the substance of the action for damages, Granaria claims that the Community is liable because the abolition of production refunds for quellmehl gave rise to a legal situation which the Court declared illegal for breach of the principle of equality; but in the joined cases cited above, the Court found that the principle of equality was breached to the detriment of quellmehl producers only where the quellmehl is used in its ordinary purpose for human consumption.

In this case, the parties have not raised any fresh matters capable of altering this finding.

The institutions responsible for implementing the production refund system within the framework of the common organization of the market were entitled to require that the person claiming the benefit of the refunds should prove that the product is used for the purposes to which that system relates. In the present case, Granaria did not supply such proof. It follows that the Community is not liable to Granaria, and that consequently the application must be dismissed as unfounded in so far as it is based on the second paragraph of Article 215 of the Treaty.

The application for failure to take action based on Article 175 of the Treaty was declared inadmissible.

The Court dismissed the application and ordered the applicant to pay the costs.

Judgment of 28 March 1979

Case 158/78

P. Biegi v Hauptzollamt Bochum

(Opinion delivered by Mr Advocate General Mayras on 8 March 1979)

1. Common Customs Tariff - Classification of goods - Several tariff headings - Choice - Discretion of Commission
   (Regulation No. 97/69 of the Council)

2. Common Customs Tariff - Classification of goods - Conditions for classification - Specification by regulation - Legislative nature - No retroactive effect

3. Common Customs Tariff - Classification of goods - Boned or boneless poultry cuts - Classification in subheading 02.02 BI - Criteria

4. Common Customs Tariff - Agricultural products - Classification - Tariff headings - Different applications according to nature of charges - Not permissible

1. Regulation No. 97/69 of the Council has conferred on the Commission, acting in co-operation with the customs experts of the Member States, a wide discretion as to the choice between two or more headings of the Common Customs Tariff in which a given product might be classified, subject only to the reservation that provisions adopted by the Commission shall not amend the text of the tariff.

2. A regulation specifying the conditions for classification in a tariff heading or subheading is of a legislative nature and cannot have retroactive effect.

3. Boned or boneless poultry cuts come under Common Customs Tariff subheading 02.02 BI, and regardless of the manner in which they are presented, the way in which they were produced, the use to which they are to be put and/or their commercial value, they do not constitute offals within the meaning of subheading 02.02 C so long as they essentially consist of muscle or fragments of muscle comprising only a small proportion of tendons, fat and fibrous tissue.

4. In the absence of express provisions it would be inappropriate for the headings of the Common Customs Tariff to be applied differently for one and the same product depending on whether the classification is for the imposition of customs duties, the application of the rules of common organizations of the market or of the system of monetary compensatory amounts.

NOTE The Finanzgericht (Finance Court) Münster referred a certain number of questions to the Court concerning the validity and effect in time of Commission Regulation No. 1669/77 on the classification of goods under Common Customs Tariff subheading 02.02 B I. These questions were raised in the context of a dispute between an importer and the German customs authorities over the classification of boned or boneless poultry cuts in the Common Customs Tariff.

The Court ruled that:

1. Consideration of the first question raised has disclosed no factor of such a kind as to affect the validity of Commission Regulation No. 1669/77 of 25 July 1977;

2. Commission Regulation No. 1669/77 of 25 July 1977 does not bind national courts which have to define the tariff classification of goods imported before its entry into force;

3. Boned or boneless poultry cuts come under Common Customs Tariff subheading 02.02 B I, and regardless of the manner in which they are presented, the way in which they were produced, the use to which they are to be put and/or their commercial value, they do not constitute offals within the meaning of subheading 02.02 C so long as they essentially consist of muscle or fragments of muscle comprising only a small proportion of tendons, fat and fibrous tissue;

4. The criteria for the tariff classification of products coming under Common Customs Tariff subheading 02.02 are, for the purposes also of the imposition of levy and the application of monetary compensatory amounts, those which result from the rules of interpretation of the Tariff and its nomenclature.

Judgment of 28 March 1979

Case 175/78

Regina v Vera Ann Saunders

(Opinion delivered by Mr Advocate General Warner on 8 March 1979)

Freedom of movement for workers - Restrictions in pursuance of penal legislation - Situations domestic to a Member State - Community law - Not applicable

(EEC Treaty, Art. 48)

The application by an authority or court of a Member State to a worker who is a national of that same State of measures which deprive or restrict the freedom of movement of the person concerned within the territory of that State as a penal measure provided for by national law by reason of acts committed within the territory of that State is a wholly domestic situation which falls outside the scope of the rules contained in the EEC Treaty on freedom of movement for workers.

NOTE

The question is raised by the Crown Court at Bristol in the context of criminal proceedings concerning in particular the consequences of the infringement, by a person of British nationality who had pleaded guilty to a charge of theft at a previous stage in those proceedings, of an undertaking accepted by her to proceed to Northern Ireland and not to return to England or Wales within three years.

The national court, on the basis that the accused was a worker within the meaning of Article 48 of the Treaty, wished to know whether the principle of freedom of movement for workers as laid down in Article 48 of the Treaty, in particular in so far as it entails the right for a worker, subject to limitations justified inter alia on grounds of public policy and public security, to move freely within the territory of Member States so as to accept offers of employment actually made and to stay there for the purpose of employment, may be relied upon by a national of a Member State residing in that State for the purpose of opposing the application of measures which restrict his freedom of movement within the territory of Member States so as to accept offers of employment actually made and to stay there for the purpose of employment,, may be relied upon by a national of a Member State residing in that State for the purpose of opposing the application of measures which restrict his freedom of movement within the territory of that Member State or his freedom to establish himself in that State in any place he chooses.

The Court emphasized that the determination of Article 48 is connected with the general principle expressed in Article 7 of the Treaty, which prohibits any discrimination on grounds of nationality.

The provisions of the Treaty on freedom of movement for workers cannot be applied to situations which are wholly internal to a Member State, in other words, where there is no factor connecting them to any of the situations envisaged by Community law.

The Court ruled that:

"The application by an authority or court of a Member State to a worker who is a national of that same State of measures which deprive or restrict the freedom of movement of the person concerned within the territory of that State as a penal measure provided for by national law by reason of acts committed within the territory of that State is a wholly domestic situation which falls outside the scope of the rules contained in the EEC Treaty on freedom of movement for workers".

Judgment of 28 March 1979

Case 179/78

Procureur de la République v Michelangelo Rivoira and others

(Opinion delivered by Mr Advocate General Warner on 15 March 1979)

1. Free movement of goods - Principle - Derogations - Safeguard clause of Article 115 of the Treaty - Products originating in non-member countries - Free circulation in one Member State - Importation into another Member State - Licence - Legality - Conditions

   (EEC Treaty, Arts. 30 and 115)

2. Quantitative restrictions - Measures having equivalent effect - Products in free circulation - Country of origin - Indication - Requirement of importing Member State - Legality - Conditions

   (EEC Treaty, Arts. 30 and 115)

1. Only Article 115 of the Treaty gives the Commission the power to authorize the Member States to take protective measures, inter alia in the form of derogations from the principle of free movement of goods, for products originating in non-member countries and put into free circulation in one of the Member States. Except where the substantive and procedural conditions laid down in that provision are fulfilled, a Member State cannot therefore make the introduction into its territory of goods put into free circulation in another Member State subject to the requirement of an import licence.

2. For an importing Member State to require an indication of the country of origin for products put into free circulation in another Member State is not incompatible with the prohibition of all measures having an effect equivalent to quantitative restrictions on imports. Such a requirement would however fall under the prohibition contained in Article 30 of the Treaty if the importer were required to declare with regard to origin, something other than what he knows or may reasonably be expected to know, or if the omission or inaccuracy of the declaration were to attract penalties disproportionate to the nature of the contravention.

   In this respect, where it is established that a false declaration has been made in relation to an importation which, in itself, could not be the subject of a prohibition or restriction, it would in particular be disproportionate for the importing Member State to apply without distinction criminal penalties provided in respect of false declarations made in order to effect prohibited imports.

NOTE

The main action concerns the importation into France in 1970 and 1971 of prohibited goods by the Italian firm Rivoira, in this case table grapes of Spanish origin.

The French court referred the following questions to the Court of Justice for a preliminary ruling:

1. According to the Community provisions applicable in 1970 and 1971 did the fact that France had lawfully determined a bilateral quota of Spanish grapes imported into France between 1 July and 31 December of each of those years give to France the right to prohibit in respect of the same periods the importation of the same Spanish grapes from Italy where they had been in free circulation without France having previously requested and obtained authorization from the Commission of the EEC in Brussels under Article 115 of the Treaty?

2. If Question 1 is answered in the negative did the fact that the Spanish grapes imported into France from Italy during the above-mentioned periods were declared to be Italian entitle France to consider such declaration as an infringement of the French customs law involving criminal penalties provided for by the customs code in respect of false declarations made in order to effect prohibited imports?

The Court answered by ruling that:

1. In 1970 and 1971 a Member State did not have the right to prohibit the importation of table grapes of Spanish origin but coming from another Member State in which that product was in free circulation without previously having requested and obtained authorization from the Commission in accordance with Article 115 of the Treaty;

2. Although the fact that Spanish grapes imported into France from Italy have been declared as being of Italian origin may in appropriate cases give grounds for the application of the criminal penalties provided against false declarations, it would be disproportionate to apply without distinction the criminal penalties provided in respect of false declarations made in order to effect prohibited imports.

Judgment of 28 March 1979

Case 222/78

I.C.A.P. v Walter Beneventi

(Opinion delivered by Mr Advocate General Mayras on 13 March 1979)

1. References for preliminary ruling - Court of Justice - National courts or tribunals - Respective jurisdiction
(EEC Treaty, Art. 177)

2. Agriculture - Common organization of the market - Sugar - Price formation machinery - Exclusive Community powers - Intervention of Member States - Prohibition - Breach - Rights of individuals
(Regulation No. 3330/74 of the Council)

3. Customs duties - Charges having equivalent effect - Concept - Internal taxation - Distinction
(EEC Treaty, Arts. 9, 13 (2) and 95)

1. Within the framework of the procedure under Article 177 of the Treaty, it is not for the Court to apply the Community rules which it has interpreted to national measures or situations. On the other hand it is incumbent upon the national courts to decide whether or not the Community rule as interpreted by the Court under Article 177 applies to the facts and measures which are brought before them for their assessment.

2. Under Regulation (EEC) No. 3330/74 the Community is, in the absence of express derogation, alone competent to adopt specific measures involving intervention in the machinery of price formation, in particular by limiting the effects of an alteration in the level of Community prices, whether as regards intervention prices or the rate of exchange of the national currency in relation to the unit of account; an infringement in this respect of Regulation (EEC) No. 3330/74 may be the subject of proceedings before the national courts brought by any natural or legal person whose stocks have been subject to the national measure.

3. A duty falling within a general system of internal taxation applying to domestic products as well as to imported products according to the same criteria can constitute a charge having an effect equivalent to a customs duty on imports only if it has the sole purpose of financing activities for the specific advantage of the taxed domestic product, if the taxed product and the domestic product benefiting from it are the same, and if the charges imposed on the domestic product are made good in full.

NOTE

The main action concerns the legality of contributions paid to the fund for the equalization of sugar prices required under a decision of the Comitato Interministeriale dei Prezzi (Interdepartmental Committee on Prices). The Pretore di Reggio Emilia asked whether in the light of the case-law of the Court of Justice, certain provisions of that decision were compatible with Community law. Since the questions raised had formed the subject-matter of an earlier judgment by the Court (judgment of 25 May 1977 in Case 77/76 Cucchi v Avez [1977] ECR 987) the Court ruled, repeating the aforesaid judgment, that:

1. Under Regulation (EEC) No. 3330/74 the Community is, in the absence of express derogation, alone competent to adopt specific measures involving intervention in the machinery of price formation, in particular by, limiting the effects of an alteration in the level of Community prices, whether as regards intervention prices or the rate of exchange of the national currency in relation to the unit of account; an infringement in this respect of Regulation (EEC) No. 3330/74 may be the subject of proceedings before the national courts brought by any natural or legal person whose stocks have been subject to the national measure.

2. A duty falling within a general system of internal taxation applying to domestic products as well as to imported products according to the same criteria can constitute a charge having an effect equivalent to a customs duty on imports only if it has the sole purpose of financing activities for the specific advantage of the taxed domestic product, if the taxed product and the domestic product benefiting from it are the same, and if the charges imposed on the domestic product are made good in full.

Judgment of 29 March 1979

Case 113/77

NTN Toyo Bearing Cy Ltd and others v Council of the European Communities
(Opinion delivered by Mr Advocate General Warner on 14 February 1979)

1. Application for annulment - Conditions for admissibility - Natural or legal persons - Decision in the form of a regulation - Decision of individual concern to applicant

   (EEC Treaty, second paragraph of Art. 173)

2. Application for annulment - Conditions for admissibility - Natural or legal persons - Decision in the form of a regulation - Decision of direct concern to applicant

   (EEC Treaty, second paragraph of Art. 173)

3. Common commercial policy - Measures to protect trade - Measures to be adopted in case of dumping - Acceptance of undertaking from exporters to revise prices - Termination of procedure - Definitive imposition of anti-dumping duty - Illegality (Regulation No. 459/68 of the Council - as amended by Regulation No. 2011/73 of the Council - Arts. 14, 15 and 17)

4. Common commercial policy - General regulation implementing Article 113 of the EEC Treaty - Derogation by a regulation applying rules to specific cases - Illegality

   (EEC Treaty, Art. 113)

5. Common commercial policy - Measures to protect trade - Measures to be adopted in case of dumping - Collection of amounts secured by way of provisional duty - Introduction of definitive anti-dumping duty - Mandatory concomitant action

   (Regulation No. 459/68 of the Council - as amended by Regulation No. 2011/73 of the Council - Art. 17)

1. A natural or legal person is individually concerned by a provision of a regulation where that provision in fact constitutes a collective decision relating to named addressees.

2. The fact that the implementation of a provision contained in a regulation necessitates implementing measures adopted by the national authorities does not prevent such provision from being of direct concern to the natural or legal persons to

whom it applies where such implementation is purely automatic. This is even more the case where implementation is effected in pursuance not of intermediate national rules but of Community rules alone.

3. It follows from Article 14 of Regulation No. 459/68 of the Council that the acceptance by the Commission of an undertaking from the exporter or exporters to revise their prices entails the termination of the anti-dumping procedure. It is accordingly unlawful for an anti-dumping procedure to be terminated on the one hand by such an acceptance and on the other hand by a decision adopted by the Council under Article 17 of the same regulation involving the definitive collection of the amount which, in pursuance of Article 15 of the Regulation, has been determined by the Commission by way of provisional anti-dumping duty and security for which has been provided by the exporter or exporters concerned.

   The arguments as to the effectiveness of this combination for the purpose of monitoring the observance of the undertaking and being able to penalize any infringement of it cannot be accepted since the provisions of the regulation and in particular those of Article 14 (2) (d) provide that in such a case the Commission must recommence the examination of the facts in accordance with Article 10.

4. The Council, having adopted a general regulation with a view to implementing one of the objectives of Article 113 of the Treaty, cannot derogate from the rules thus laid down in applying those rules to specific cases without interfering with the legislative system of the Community and destroying the equality before the law of those to whom that law applies.

5. It follows from the wording of Article 17 of Regulation No. 459/68 that a decision to collect the amounts secured by way of provisional duty may be adopted only at the same time as the imposition of a definitive anti-dumping duty.

   It follows in particular that the Commission may propose a decision to collect the amounts secured only if it proposes "Community action", in other words, the introduction of a definitive anti-dumping duty.

Judgment of 29 March 1979

Case 118/77

Import Standard Office (ISO) v Council of the European Communities
(Opinion delivered by Mr Advocate General Warner on 14 February 1979)

1. Application for annulment - Conditions for admissibility - Natural or legal persons - Decision in the form of a regulation - Decision of individual concern to applicant

   (EEC Treaty, second paragraph of Art. 173)

2. Application for annulment - Conditions for admissibility - Natural or legal persons - Decision in the form of a regulation - Decision of direct concern to applicant

   (EEC Treaty, second paragraph of Art. 173)

3. Common commercial policy - Measures to protect trade - Measures to be adopted in case of dumping - Acceptance of undertaking from exporters to revise prices - Termination of procedure - Definitive imposition of anti-dumping duty - Illegality (Regulation No. 459/68 of the Council - as amended by Regulation No. 2011/73 of the Council - Arts. 14, 15 and 17)

4. Common commercial policy - General regulation implementing Article 113 of the EEC Treaty - Derogation by a regulation applying rules to specific cases - Illegality

   (EEC Treaty, Art. 113)

5. Common commercial policy - Measures to protect trade - Measures to be adopted in case of dumping - Collection of amounts secured by way of provisional duty - Introduction of definitive anti-dumping duty - Mandatory concomitant action

   (Regulation No. 459/68 of the Council - as amended by Regulation No. 2011/73 of the Council - Art. 17)

1. A natural or legal person is individually concerned by a provision of a regulation where that provision, although drafted in general terms, in fact constitutes a collective decision.

2. The fact that the implementation of a provision contained in a regulation necessitates implementing measures adopted by the national authorities does not prevent such provision from being of direct concern to the natural or legal persons to whom it applies where such implementation is purely automatic. This is even more the case where implementation is effected in pursuance not of intermediate national rules but of Community rules alone.

3. It follows from Article 14 of Regulation No. 459/68 of the Council that the acceptance by the Commission of an undertaking from the exporter or exporters to revise their prices entails the termination of the anti-dumping procedure. It is accordingly unlawful for an anti-dumping procedure to be terminated on the one hand by such an acceptance and on the other hand by a decision adopted by the Council under Article 17 of the same regulation involving the definitive collection of the amount which, in pursuance of Article 15 of the regulation, has been determined by the Commission by way of provisional anti-dumping duty and security for which has been provided by the exporter or exporters concerned.

   The argument as to the effectiveness of this combination for the purpose of monitoring the observance of the undertaking and being able to penalize any infringement of it cannot be accepted since the provisions of the regulation and in particular those of Article 14 (2) (d) provide that in such a case the Commission must recommence the examination of the facts in accordance with Article 10.

4. The Council, having adopted a general regulation with a view to implementing one of the objectives of Article 113 of the Treaty, cannot derogate from the rules thus laid down in applying those rules to specific cases without interfering with the legislative system of the Community and destroying the equality before the law of those to whom that law applies.

5. It follows from the wording of Article 17 of Regulation No. 459/68 that a decision to collect the amounts secured by way of provisional duty may be adopted only at the same time as the imposition of a definitive anti-dumping duty.

   It follows in particular that the Commission may propose a decision to collect the amounts secured only if it proposes "Community action", in other words, the introduction of a definitive anti-dumping duty.

Judgment of 29 March 1979

Case 119/77

Nippon Seiko K.K. and others v Council and Commission of the European Communities

(Opinion delivered by Mr Advocate General Warner on 14 February 1979)

1. Application for annulment - Conditions for admissibility - Natural or legal persons - Decision in the form of a regulation - Decision of individual concern to applicant

   (EEC Treaty, second paragraph of Art. 173)

2. Application for annulment - Conditions for admissibility - Natural or legal persons - Decision in the form of a regulation - Decision of direct concern to applicant

   (EEC Treaty, second paragraph of Art. 173)

3. Common commercial policy - Measures to protect trade - Measures to be adopted in case of dumping - Acceptance of undertaking from exporters to revise prices - Termination of procedure - Definitive imposition of anti-dumping duty - Illegality

   (Regulation No. 459/68 of the Council - as amended by Regulation No. 2011/73 of the Council - Arts. 14, 15 and 17)

4. Common commercial policy - General regulation implementing Article 113 of the EEC Treaty - Derogation by a regulation applying rules to specific cases - Illegality

   (EEC Treaty, Art. 113)

5. Common commercial policy - Measures to protect trade - Measures to be adopted in case of dumping - Collection of amounts secured by way of provisional duty - Introduction of definitive anti-dumping duty - Mandatory concomitant action

   (Regulation No. 459/68 of the Council - as amended by Regulation No. 2011/73 of the Council - Art. 17)

6. Action for damages - Annulment of a measure adopted by the defendant institution - Adoption of the disputed measure illegal by reason of acceptance of the applicant's undertaking - Action for damages in reliance upon unlawfulness of undertaking - Dismissal

   (EEC Treaty, Arts. 178, 215)

1. A natural or legal person is individually concerned by a provision of a regulation where that provision, although drafted in general terms, in fact constitutes a collective decision relating to named addressees.

2. The fact that the implementation of a provision contained in a regulation necessitates implementing measures adopted by the national authorities does not prevent such provision from being of direct concern to the natural or legal persons to whom it applies where such implementation is purely automatic. This is even more the case where implementation is effected in pursuance not of intermediate national rules but of Community rules alone.

3. It follows from Article 14 of Regulation No. 459/68 of the Council that the acceptance by the Commission of an undertaking from the exporter or exporters to revise their prices entails the termination of the anti-dumping procedure. It is accordingly unlawful for an anti-dumping procedure to be terminated on the one hand by such an acceptance and on the other hand by a decision adopted by the Council under Article 17 of the same regulation involving the definitive collection of the amount which, in pursuance of Article 15 of the regulation, has been determined by the Commission by way of provisional anti-dumping duty and security for which has been provided by the exporter or exporters concerned.

   The argument as to the effectiveness of this combination for the purpose of monitoring the observance of the undertaking and being able to penalize any infringement of it cannot be accepted since the provisions of the regulation and in particular those of Article 14 (2) (d) provide that in such a case the Commission must recommence the examination of the facts in accordance with Article 10.

4. The Council, having adopted a general regulation with a view to implementing one of the objectives of Article 113 of the Treaty, cannot derogate from the rules thus laid down in applying those rules to specific cases without interfering with the legislative system of the Community and destroying the equality before the law of those to whom that law applies.

5. It follows from the wording of Article 17 of Regulation No. 459/68 that a decision to collect the amounts secured by way of provisional duty may be adopted only at the same time as the imposition of a definitive anti-dumping duty.

   It follows in particular that the Commission may propose a decision to collect the amounts secured only if it proposes "Community action", in other words, the introduction of a definitive anti-dumping duty.

6. When the Court has annulled a measure which the defendant institution could not legally adopt inasmuch as it had accepted an undertaking from the applicant, the latter cannot rely upon the alleged unlawfulness of its undertaking in order to call in question the liability of the Community.

Judgment of 29 March 1979

Case 120/77

Koyo Seiko Co. Ltd and others v Council and Commission of the European Communities

(Opinion delivered by Mr Advocate General Warner on 14 February 1979)

1. Application for annulment - Conditions for admissibility - Natural or legal persons - Decision in the form of a regulation - Decision of individual concern to applicant

   (EEC Treaty, second paragraph of Art. 173)

2. Application for annulment - Conditions for admissibility - Natural or legal persons - Decision in the form of a regulation - Decision of direct concern to applicant

   (EEC Treaty, second paragraph of Art. 173)

3. Common commercial policy - Measures to protect trade - Measures to be adopted in case of dumping - Acceptance of undertaking from exporters to revise prices - Termination of procedure - Definitive imposition of anti-dumping duty - Illegality

   (Regulation No. 459/68 of the Council - as amended by Regulation No. 2011/73 of the Council - Arts. 14, 15 and 17)

4. Common commercial policy - General regulation implementing Article 113 of the EEC Treaty - Derogation by a regulation applying rules to specific cases - Illegality

   (EEC Treaty, Art. 113)

5. Common commercial policy - Measures to protect trade - Measures to be adopted in case of dumping - Collection of amounts secured by way of provisional duty - Introduction of definitive anti-dumping duty - Mandatory concomitant action

   (Regulation No. 459/68 of the Council - as amended by Regulation No. 2011/73 of the Council - Art. 17)

1. A natural or legal person is individually concerned by a provision of a regulation where that provision, although drafted in general terms, in fact constitutes a collective decision relating to named addressees.

2. The fact that the implementation of a provision contained in a regulation necessitates implementing measures adopted by the national authorities does not prevent such provision from being of direct concern to the natural or legal persons to whom it applies where such implementation is purely automatic. This is even more the case where implementation is effected in pursuance not of intermediate national rules but of Community rules alone.

3. It follows from Article 14 of Regulation No. 459/68 of the Council that the acceptance by the Commission of an undertaking from the exporter or exporters to revise their prices entails the termination of the anti-dumping procedure. It is accordingly unlawful for an anti-dumping procedure to be terminated on the one hand by such an acceptance and on the other hand by a decision adopted by the Council under Article 17 of the same regulation involving the definitive collection of the amount which, in pursuance of Article 15 of the regulation, has been determined by the Commission by way of provisional anti-dumping duty and security for which has been provided by the exporter or exporters concerned.

   The argument as to the effectiveness of this combination for the purpose of monitoring the observance of the undertaking and being able to penalize any infringement of it cannot be accepted since the provisions of the regulation and in particular those of Article 14 (2) (d) provide that in such a case the Commission must recommence the examination of the facts in accordance with Article 10.

4. The Council, having adopted a general regulation with a view to implementing one of the objectives of Article 113 of the Treaty, cannot derogate from the rules thus laid down in applying those rules to specific cases without interfering with the legislative system of the Community and destroying the equality before the law of those to whom that law applies.

5. It follows from the wording of Article 17 of Regulation No. 459/68 that a decision to collect the amounts secured by way of provisional duty may be adopted only at the same time as the imposition of a definitive anti-dumping duty.

   It follows in particular that the Commission may propose a decision to collect the amounts secured only if it proposes "Community action", in other words, the introduction of a definitive anti-dumping duty.

Judgment of 29 March 1979

Case 121/77

Nachi Fujikoshi Corporation and others v Council of the European Communities

(Opinion delivered by Mr Advocate General Warner on 14 February 1979)

1. Application for annulment - Conditions for admissibility - Natural or legal persons - Decision in the form of a regulation - Decision of individual concern to applicant

   (EEC Treaty, second paragraph of Art. 173)

2. Application for annulment - Conditions for admissibility - Natural or legal persons - Decision in the form of a regulation - Division of direct concern to applicant

   (EEC Treaty, second paragraph of Art. 173)

3. Common commercial policy - Measures to protect trade - Measures to be adopted in case of dumping - Acceptance of undertaking from exporters to revise prices - Termination of procedure - Definitive imposition of anti-dumping duty - Illegality

   (Regulation No. 459/68 of the Council - as amended by Regulation No. 2011/73 of the Council - Arts. 14, 15 and 17)

4. Common commercial policy - General regulation implementing Article 113 of the EEC Treaty - Derogation by a regulation applying rules to specific cases - Illegality

   (EEC Treaty, Art. 113)

5. Common commercial policy - Measures to protect trade - Measures to be adopted in case of dumping - Collection of amounts secured by way of provisional duty - Introduction of definitive anti-dumping duty - Mandatory concomitant action

   (Regulation No. 459/68 of the Council - as amended by Regulation No. 2011/73 of the Council - Art. 17)

1. A natural or legal person is individually concerned by a provision of a regulation where that provision, although drafted in general terms, in fact constitutes a collective decision relating to named addressees.

2. The fact that the implementation of a provision contained in a regulation necessitates implementing measures adopted by the national authorities does not prevent such provision from being of direct concern to the natural or legal persons to whom it applies where such implementation is purely automatic. This is even more the case where implementation is effected in pursuance not of intermediate national rules but of Community rules alone.

3. It follows from Article 14 of Regulation No. 459/68 of the Council that the acceptance by the Commission of an undertaking from the exporter or exporters to revise their prices entails the termination of the anti-dumping procedure. It is accordingly unlawful for an anti-dumping procedure to be terminated on the one hand by such an acceptance and on the other hand by a decision adopted by the Council under Article 17 of the same regulation involving the definitive collection of the amount which, in pursuance of Article 15 of the regulation, has been determined by the Commission by way of provisional anti-dumping duty and security for which has been provided by the exporter or exporters concerned.

   The argument as to the effectiveness of this combination for the purpose of monitoring the observance of the undertaking and being able to penalize any infringement of it cannot be accepted since the provisions of the regulation and in particular those of Article 14 (2) (d) provide that in such a case the Commission must recommence the examination of the facts in accordance with Article 10.

4. The Council, having adopted a general regulation with a view to implementing one of the objectives of Article 113 of the Treaty, cannot derogate from the rules thus laid down in applying those rules to specific cases without interfering with the legislative system of the Community and destroying the equality before the law of those to whom that law applies.

5. It follows from the wording of Article 17 of Regulation No. 459/68 that a decision to collect the amounts secured by way of provisional duty may be adopted only at the same time as the imposition of a definitive anti-dumping duty.

   It follows in particular that the Commission may propose a decision to collect the amounts secured only if it proposes "Community action", in other words, the introduction of a definitive anti-dumping duty.

NOTE

The note for this series of anti-dumping cases is based on Cases 119 and 120/77.

Anti-dumping measures

The framework of the legislation

Regulation No. 495/68 of the Council of 5 April 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the EEC lays down the detailed rules and the procedure for the arrangement of anti-dumping measures. The EEC system complies with the anti-dumping code of the General Agreement on Tariffs and Trade (GATT).

Article 2 of the regulation specifies that in order to be subjected to an anti-dumping duty, (a) a product must be dumped; and (b) its introduction into Community commerce must cause or threaten to cause material injury to an established Community industry or materially retard the setting-up of such an industry.

Article 3 defined the concept of dumping, providing that the "price of the product when exported to the Community is less than the comparable price ... in the exporting country of origin". Article 4 limits the concept of injury.

Under Article 15 of Regulation No. 459/68, the Commission may take "provisional action" consisting in fixing a (percentage of) anti-dumping duty in respect of which payment is not claimed but importers must provide security to that amount, "collection of which shall be determined by the subsequent decision of the Council under Article 17".

Anti-dumping duties are imposed by regulation.

Facts

On 15 October 1976, the Committee of the European Bearing Manufacturers' Associations (FEBMA) submitted a complaint to the Commission concerning dumping by Japanese roller bearing manufacturers. The Commission carried out an official anti-dumping investigation which led it to impose a provisional anti-dumping duty of 20% on ball bearings and tapered roller bearings originating in Japan. For the products manufactured by Nachi Fujikoshi Corporation and Koyo Seiko Company Limited the percentage was fixed at 10%. In the meantime the Commission carried out an investigation at the European subsidiaries of the Japanese companies.

After an investigation in Japan at the four major producers, who signed on 20 June 1977 undertakings that they would increase prices, the Council on 26 July 1977 adopted definitive measures by issuing Regulation No. 1778/77 concerning the application of the anti-dumping duty on ball bearings and tapered roller bearings, originating in Japan. Article 1 of that regulation imposes a definitive anti-dumping duty of 15% whose application is however suspended. Article 2 orders the Commission, in collaboration with the Member States, to monitor the undertakings given by the major Japanese producers to revise their prices. Article 3 of the said regulation (adopted pursuant to the basic Regulation No. 459/68) provides that the amounts secured by way of provisional duty in respect of products manufactured by NSK and three other named manufacturers shall be definitively collected to the extent that they do not exceed the rate of duty fixed in this regulation.

The subject-matter of the dispute

The applicants brought this action against Council Regulation No. 1778/77, claiming that on the one hand they had undertaken no longer to have recourse to practices considered unacceptable by the Commission and, on the other, that the dumping complained of had not been sufficiently established in law and in accordance with the requirements both of the rules of the General Agreement on Tariffs and Trade and of the Community rules.

The action is primarily for the annulment of Regulation No. 1778/77, in the alternative for its annulment in so far as it affects the applicants and, in the further alternative, for the annulment only of Article 3 of the regulation.

By the same application, the applicants claimed under Articles 178 and 215 of the Treaty that the Council and the Commission should be ordered to make good the damage allegedly suffered by the subsidiaries.

The substance of the action for annulment

As regards Articles 1 and 2 of Regulation No. 1778/77 at issue, the applicants claim in substance that the basic Regulation No. 459/68 does not permit a definitive anti-dumping duty to be imposed at the same time as undertakings by the producers concerned to revise prices are accepted.

The defendant institutions and the intervener reply that the contested regulation was based not only on the basic regulation but also on Article 113 of the Treaty, which authorizes the Council to take measures to protect trade in case of dumping and gives the Council the power to adopt an ad hoc regulation independently of the provisions of Regulation No. 459/68.

Analysis of the basic Regulation No. 459/68 led the Court to find that it is unlawful for one and the same anti-dumping procedure to be terminated on the one hand by the Commission's accepting an undertaking from the exporter or exporters to revise their prices and, on the other, by the simultaneous imposition on the part of the Council, at the proposal of the Commission, of a definitive anti-dumping duty. The undertakings given by the applicants were considered to be "acceptable" by the Commission. Those undertakings were referred to by the Council as valid, existing undertakings. The combination of measures which are by their very nature contradictory would be incompatible with the system laid down in the basic regulation.

As regards the action in so far as it is directed against Article 3 of Regulation No. 1778/77 (definitive collection of amounts secured by way of provisional duty to the extent to which they do not exceed the rate of duty fixed in the regulation), it follows from the texts that the Commission can propose a decision to collect the amounts secured only if it proposes "Community action", that is to say the introduction of a definitive anti-dumping duty. This would seem to have been the intention of the Council when it provided that the amounts secured were to be "definitively collected to the extent that they do not exceed the rate of duty fixed in this regulation". The application is therefore well founded in this respect as well. It should however be observed, said the Court, that the annulment of Regulation No. 1778/77 in no way affects the undertakings given by the major Japanese producers by which those producers undertook to revise their prices so as to eliminate the margin of dumping.

The action for damages

The applicants allege that they have suffered damage as a result of Community action and they claim compensation for it. They claim that they have had to pay certain specified amounts as provisional anti-dumping duty and incur other expenditure.

The applicants have succeeded in their action for annulment because of the undertaking given by NSK and accepted by the Commission. Therefore they cannot rely upon the alleged unlawfulness of that undertaking in order to raise the question of the liability of the Community.

The Court:

1. Annulled Council Regulation No. 1778/77 of 26 July 1977 concerning the application of the anti-dumping duty on ball bearings and tapered roller bearings, originating in Japan;

2. Dismissed the action for damages;

3. (a) Ordered the defendants to bear their own costs, all the costs in connexion with the application for the adoption of interim measures in this case and two thirds of the costs of the main action incurred by the applicants, except for those caused by the intervention;

   (b) Ordered the intervener FEBMA to bear its own costs and two thirds of those incurred by the applicants on account of its intervention.

Several other Japanese firms and their subsidiaries in Europe brought actions for the annulment of Council Regulation No. 1778/77 of 26 July 1977 concerning the application of the anti-dumping duty on ball bearings and tapered roller bearings, originating in Japan.

Judgment of 29 March 1979

Case 118/78

C.J. Meijer BV v Department of Trade, Ministry of Agriculture, Fisheries and Food and Commissioners of Customs and Excise

(Opinion delivered by Mr Advocate General Mayras on 22 November 1978)

Accession of the new Member States to the European Communities - Act of Accession - Agriculture - Provisions relating to the elimination of quantitative restrictions - Derogation in Article 60 (2) - Legal nature - Special provisions within the meaning of Article 9 (2) - No

Article 60 (2) of the Act of Accession cannot be regarded as a special provision within the meaning of the reservation set out in Article 9 (2) of that Act with the result that by virtue of the latter provision its application terminated at the end of 1977.

NOTE

The main action is between a Netherlands company which exported potatoes and the competent authorities in the United Kingdom, and it relates to the refusal of the latter to permit the entry of a consignment of potatoes which arrived in Great Britain on 6 January 1978.

In this case the Court ruled that:

"Article 60 (2) of the Act of Accession cannot be regarded as a special provision within the meaning of the reservation set out in Article 9 (2) of that Act with the result that by virtue of the latter provision its application terminated at the end of 1977".

See also Case 231/78.

Judgment of 29 March 1979

Joined Cases 131 and 150/78

Firma Kurt Becher v Bundesanstalt für landwirtschaftliche Marktordnung
(Opinion delivered by Mr Advocate General Reischl on 8 March 1979)

1. Agriculture - Common organization of the markets - Cereals - Levy - Calculation - Factors to be taken into consideration - Marketing costs - Flat-rate determination thereof
(Regulation No. 120/67/EEC of the Council, Art. 13 (1))

2. Agriculture - Common organization of the markets - Cereals - Common wheat and sorghum - Threshold price - Fixing thereof - Regulations (EEC) Nos. 1173/75 and 1427/74 of the Council - Validity

1. The marketing costs which must be taken into consideration for the calculation of the amount of the levy include those expenses inherent in the procedures and formalities of import which every importer must inevitably incur as well as the normal expense of transporting the imported goods to the wholesale stage at Duisburg. Moreover, in accordance with the general system of levies introduced by Regulation No. 120/67/EEC, marketing costs should not be calculated on the basis of costs actually incurred by the importer for a specific delivery which are largely dependent upon decisions made by the importer but should be calculated at a flat rate in relation to those expenses which an importer of the products in question must inevitably incur in respect of the importation.

2. Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulation No. 1173/75 of the Council in so far as it relates to common wheat or of Regulation No. 1427/74 of the Council in so far as it relates to sorghum.

NOTE (In Case 131/78)

Is Regulation No. 1173/75 of the Council of 28 April 1975 fixing the threshold prices for cereals for the 1975/76 marketing year null and void and therefore inapplicable in so far as it relates to common wheat because it infringes Article 5 (1) of Regulation No. 120/67 of the Council of 13 June 1967, as last amended by Regulation No. 85/75?

(In Case 150/78)

Is Council Regulation No. 1427/74 of 4 June 1974 fixing the threshold prices for cereals for the 1974/75 marketing year, in so far as it relates to sorghum, invalid and consequently inapplicable because it infringes Article 5 (1) of Regulation No. 120/67 of the Council of 13 June 1967, as last amended by Regulation No. 1125/74?

These questions were raised in the context of two actions in which the plaintiff challenged the rates of levy fixed in advance for the months of August, September and October 1975 as well as July, August and September 1974 by the German intervention agency, the defendant in the main action, in the licences which it delivered for the importation into the Community of certain quantities of common wheat (in 1975) and sorghum (in 1974).

The plaintiff argued that the levies at issue had been set at too high a level, because the aforementioned regulation under which the levies were calculated fixed the threshold price incorrectly owing to insufficient account being taken of the overheads incurred by the importer, in disregard of the objectives laid down in Regulation No. 120/67 of the Council of 13 June 1967 on the common organization of the market in cereals.

In answer to the questions referred to it, the Court ruled that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulation No. 1173/75 of the Council in so far as it relates to common wheat, or of Council Regulation No. 1427/74 in so far as it relates to sorghum.

Judgment of 29 March 1979

Case 231/78

Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Opinion delivered by Mr Advocate General Mayras on 6 March 1979)

1. Accession of the new Member States to the European Communities - Act of Accession - Interpretation - Criteria - Principle of equality as between the Member States

2. Agriculture - National organization of the market - Transitional period - Expiry - Provisions relating to the elimination of quantitative restrictions - Full effect
   (EEC Treaty, Articles 30 et seq., 38 and 40)

3. Accession of the new Member States to the European Communities - Act of Accession - Agriculture - Provisions relating to the elimination of quantitative restrictions - Derogation in Article 60 (2) - Legal nature - Special provision within the meaning of Article 9 (2) - No
   (Act of Accession, Articles 9 (2) and 60 (2))

1. The provisions of the Act of Accession must be interpreted having regard to the foundations and the system of the Community, as established by the Treaty.

   In a matter as essential for the proper functioning of the Common Market as the elimination of quantitative restrictions, the Act of Accession cannot be interpreted as having established for an indefinite period in favour of the new Member States a legal position different from that laid down by the Treaty for the original Member States.

2. After expiry of the transitional period the operation of a national market organization can no longer prevent full effect being given to the provisions of the Treaty relating to the elimination of quantitative restrictions and all measures having equivalent effect, the requirements of the markets concerned in this respect thenceforward becoming the responsibility of the Community institutions.

3. The provision in Article 60 (2) of the Act of Accession which allows the new Member States to apply to products covered on the date of accession by a national organization of the market quantitative restrictions and measures having equivalent effect until a common organization of the market is implemented for these products, constitutes a transitional measure the application of which shall terminate at the end of 1977. It cannot be regarded as a "special provision" within the meaning of the reservation set out in Article 9 (2) of the Act of Accession, such a reservation relating only to special provisions which are clearly delimited and determined in time and not to a provision such as Article 60 (2) which refers to an uncertain future event.

NOTE

The action seeks a declaration that the United Kingdom of Great Britain and Northern Ireland failed to fulfil an obligation under the EEC Treaty by not repealing or amending the provisions of its national law with regard to restrictions on the importation of main-crop potatoes before the end of 1977, the time-limit laid down in Article 9 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties (Act of Accession), annexed to the Treaty of Accession.

Before its accession to the Community, there existed in the United Kingdom a national organization of the market in potatoes comprising <u>inter alia</u> a control on imports and exports of main-crop potatoes. Under Article 9 of the Act of Accession the restrictions on the importation of potatoes had to be brought to an end by the end of 1977. Nevertheless, on 28 December 1977, the British Ministry of Agriculture announced that the ban on imports of potatoes into the United Kingdom would continue until further notice.

The United Kingdom, supported by the French Republic, intervening in the case, submitted that under Article 60 (2) of the Act of Accession it was entitled to maintain the quantitative restrictions referred to until the implementation of a common organization of the market for potatoes. Article 60 (2) of the Act of Accession provides:

"2. In respect of products not covered, on the date of accession, by a common organization of the market, the provisions of Title 1 concerning the progressive abolition of charges having equivalent effect to customs duties and of quantitative restrictions and measures having equivalent effect shall not apply to those charges, restrictions and measures if they form part of a national market organization on the date of accession".

Article 60 unquestionably constitutes a derogation from Article 42 of the Act of Accession which provides for the abolition of quantitative restrictions as from the date of accession and the abolition of measures having an effect equivalent to such restrictions by 1 January 1975 at the latest.

Article 9 of the Act lays down the general rule, and is in the following terms:

"(1) In order to facilitate the adjustment of the new Member States to the rules in force within the Communities, the application of the original Treaties and acts adopted by the institutions shall, as a transitional measure, be subject to the derogations provided for in that act.

(2) Subject to the dates, time-limits and special provisions provided for in this act, the application of the transitional measures shall terminate at the end of 1977".

The Court emphasized that the importance of the prohibition on quantitative restrictions and all measures having equivalent effect between Member States precludes any broad interpretation of the reservations or derogations in that connexion provided for in the Act of Accession.

The Court of Justice held in its judgment of 2 December 1974 in Case 48/74 Charmasson that after the expiry of the transitional period the operation of a national market organization can no longer prevent full effect being given to the provisions of the Treaty relating to the elimination of quantitative restrictions and all measures having equivalent effect, the requirements of the market concerned in this respect thenceforward becoming the responsibility of the Community institutions. The expiry of the transitional period laid down by the Treaty meant that, from that time, those matters and areas explicitly attributed to the Community came under Community jurisdiction, so that if it were still necessary to have recourse to special measures, these could no longer be determined unilaterally by the Member States concerned, but had to be adopted within the framework of the Community system designed to ensure that the general interest of the Community would be protected.

The Court:

1. Declared that the United Kingdom of Great Britain and Northern Ireland had failed to fulfil an obligation under the Treaty, in particular Article 30 thereof, together with the Act of Accession, by not repealing or amending before the end of 1977 the provisions of its national law which had the effect of restricting imports of potatoes;

2. Ordered the defendant to pay the costs, except those arising from the intervention;

3. Ordered the parties to bear their own costs arising from the intervention.

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GENERAL INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

COMPLETE LIST OF PUBLICATIONS

I. Information on current cases (for general use)

1. List of Hearings of the Court

The list of hearings is drawn up each week; it is liable to be modified and should therefore only be regarded as a general guide. The list is available on request from the Court Registry. It is free of charge.

2. Judgments of the Court and Opinions of the Advocates General

Offset copies of judgments and opinions may be ordered in writing from the Internal Services Division of the Court of Justice, P.O. Box 1406, Luxembourg, subject to availability and at a standard price of Bfrs 100 per judgment or opinion. They will not be available after publication of that part of the Reports of Cases Before the Court which contains the judgment or Advocate General's opinion requested.

Persons who have a subscription to the Reports of Cases Before the Court can take out a subscription to the offset texts in one or more Community languages. The price of that subscription for one year is the same as the price of the Reports, Bfrs 1 800 per language. The price of subscription will be altered according to changes in costs.

II. Technical information and documentation

A. Publications of the Court of Justice of the European Communities

1. Reports of Cases Before the Court

The Reports of Cases Before the Court are the only authentic source for citations of judgments of the Court of Justice.

The volumes from 1954 to 1978 are available in Dutch, English, French, German and Italian. The volumes from 1973 are available in addition in Danish. The Danish version of the volumes from 1954 to 1972 comprises a selection of judgments, opinions and summaries of the most important cases. The volume for 1954 to 1964, the volume for 1965 to 1968 and the volumes for 1969, 1970, 1971 and 1972 are available.

2. Selected Instruments relating to the Organization, Jurisdiction and Procedure of the Court

3. Bulletin Bibliographique de Jurisprudence Communautaire

The "Bulletin Bibliographique de Jurisprudence Communautaire" is the continuation of the "Bibliography of European Judicial Decisions", Supplement No. 6 of which was published in 1976. The layout of the "Bulletin" is the same as that of the "Bibliography". Therefore the footnotes refer to the "Bibliography". The period of collection and compilation covered by the bulletins which have already appeared is from February 1976 to June 1978.

The above publications are on sale at the booksellers whose addresses are given below:

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Other Countries: Office for Official Publications of the European Communities, Case Postale 1003, LUXEMBOURG.

B. Publications issued by the Information Office of the Court of Justice

Requests for these four publications as they appear must be sent to the Information Office, stating the language required. This service is free of charge (P.O. Box 1406, Luxembourg, Grand Duchy of Luxembourg).

1. Proceedings of the Court of Justice of the European Communities

Weekly summary of the proceedings of the Court published in the six official languages of the Community. This document is available from the Information Office.

2. Information on the Court of Justice

Quarterly bulletin containing the heading and a short summary of the judgments delivered by the Court of Justice.

3. Annual synopsis of the work of the Court of Justice

Annual publication containing a summary of the work of the Court of Justice covering both cases decided and other activities (seminars for judges, visits, study groups, etc.). This publication contains much statistical information.

4. General Booklet of Information on the Court of Justice

This booklet is published in the six official languages of the Community and in Spanish and Irish. It may be obtained from the Information Office of the Court of Justice.

C. Publications issued by the Documentation Branch of the Court of Justice

1. Summary of the case-law on the EEC Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters

Three parts have been published. Copies may be obtained from the Documentation Branch of the Court of Justice, P.O. Box 1406, Luxembourg.

D. Compendium of Case-Law relating to the European Communities – Répertoire de la jurisprudence relative aux traités instituant les Communautés européennes Europäische Rechtsprechung

Extracts from cases decided by the Court of Justice relating to the Treaties establishing the European Communities published in German and French. Extracts from judgments of national courts are also published in the original language.
The German and French editions are available from: Carl Heymann's Verlag, Gereonstrasse 18-32, D-5000 COLOGNE 1, Federal Republic of Germany.

As from 1973 an English edition has been added to the complete French and German editions. The first three volumes of the English series are on sale from: Elsevier - North Holland, Excerpta Medica, P.O. Box 211, AMSTERDAM, The Netherlands.

III. Visits

Sessions of the Court are held on Tuesdays, Wednesdays and Thursdays every week, except during the Court's vacations - that is, from 20 December to 6 January, the week preceding and two weeks following Easter, and from 15 July to 10 September.

The full list of public holidays in Luxembourg set out below should also be noted. Visitors may attend public hearings of the Court or of the Chambers so far as the seating capacity will permit. No visitor may be present at cases heard in camera or during proceedings for the adoption of interim measures. Each group visit must be notified to the Information Office of the Court of Justice.

Public holidays in Luxembourg

In addition to the Court's vacations mentioned above the Court of Justice is closed on the following days:

New Year's Day	1 January
Easter Monday	variable
Ascension Day	variable
Whit Monday	variable
May Day	1 May
Luxembourg National Day	23 June
Assumption	15 August
"Schobermesse" Monday	Last Monday of August or first Monday of September
All Saints' Day	1 November
All Souls' Day	2 November
Christmas Eve	24 December
Christmas Day	25 December
Boxing Day	26 December
New Year's Eve	31 December

IV. Summary of types of procedure before the Court of Justice

It will be remembered that under the Treaties a case may be brought before the Court of Justice either by a national court or tribunal with a view to determining the validity or interpretation of a provision of Community law, or directly by the Community institutions, Member States or private parties under the conditions laid down by the Treaties.

A. References for preliminary rulings

The national court or tribunal submits to the Court of Justice questions relating to the validity or interpretation of a provision of Community law by means of a formal judicial document (decision, judgment or order) containing the wording of the question(s) which it wishes to refer to the Court of Justice.

This document is sent by the Registry of the national court to the Registry of the Court of Justice, accompanied in appropriate cases by a file intended to inform the Court of Justice of the background and scope of the questions referred.

During a period of two months the Commission, the Member States and the parties to the national proceedings may submit observations or statements of case to the Court of Justice, after which they are summoned to a hearing at which they may submit oral observations, through their Agents in the case of the Commission and the Member State or through lawyers who are entitled to practise before a court of a Member State.

After the Advocate General has delivered his opinion, the judgment is given by the Court of Justice and transmitted to the national court through the Registries.

B. Direct actions

Actions are brought before the Court by an application addressed by a lawyer to the Registrar (P.O. Box 1406, Luxembourg), by registered post.

Any lawyer who is entitled to practise before a court of a Member State or a professor occupying a chair of law in a university of a Member State, where the law of such State authorizes him to plead before its own courts, is qualified to appear before the Court of Justice.

The application must contain:

The name and permanent residence of the applicant;

The name of the party against whom the application is made;

The subject-matter of the dispute and the grounds on which the application is based;

The form of order sought by the applicant;

The nature of any evidence offered;

An address for service in the place where the Court of Justice has its seat, with an indication of the name of a person who is authorized and has expressed willingness to accept service.

The application should also be accompanied by the following documents:

> The decision the annulment of which is sought, or, in the case of proceedings against an implied decision, by documentary evidence of the date on which the request to the institution in question was lodged;
>
> A certificate that the lawyer is entitled to practise before a court of a Member State;
>
> Where an applicant is a legal person governed by private law, the instrument or instruments constituting and regulating it, and proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorized for the purpose.

The parties must choose an address for service in Luxembourg. In the case of the Governments of Member States, the address for service is normally that of their diplomatic representative accredited to the Government of the Grand Duchy. In the case of private parties (natural or legal persons) the address for service - which in fact is merely a "letter box" - may be that of a Luxembourg lawyer or any person enjoying their confidence.

The application is notified to the defendant by the Registry of the Court of Justice. It requires the submission of a statement of defence; these documents may be supplemented by a reply on the part of the applicant and finally a rejoinder on the part of the defendant.

The written procedure thus completed is followed by an oral hearing, at which the parties are represented by lawyers or agents (in the case of Community institutions or Member States).

After hearing the opinion of the Advocate General, the Court gives judgment. This is served on the parties by the Registry.

This Bulletin is distributed free of charge to judges, advocates and practising lawyers in general on application to one of the Information Offices of the European Communities at the following addresses:

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