

In Case 87/75

Reference to the Court under [Article 267 TFEU] by the Tribunale of Genoa for a preliminary ruling in the action pending before it between

CONCERIA DANIELE BRESCIANI (the Brothers Bresciani, Tanners)

and

AMMINISTRAZIONE ITALIANA DELLE FINANZE

on the interpretation of [Article 30 TFEU] and of Article 2 (1) of the Convention of Association between the European [Union] and the African States and Madagascar associated with that [Union], signed at Yaounde on 20 July 1963 and concluded in the name of the [Union] by the Council in its Decision of 5 November 1963 (OJ 1964, p. 1430) and of Article 2 (1) of "the Convention of Association signed at Yaounde on 29 July 1969 and concluded in the name of the [Union] by the Council in its Decision of 29 September 1970 (OJ 1970, L 282, p. 1).

THE COURT

composed of: R. Lecourt, President, H. Kutscher and A. O'Keeffe, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sorensen and Lord Mackenzie Stuart, Judges,

Advocate-General: A. Trabucchi

Registrar: A. Van Houtte

gives the following

JUDGMENT

Law

- 1 By order of 24 July 1975, which was received at the Court on 4 August 1975, the Tribunale of Genoa referred to the Court five questions concerning the interpretation of the concept of 'charges having an effect equivalent to customs duties on imports' contained in [Article 30 TFEU] and in Article 2 (1) of the Convention signed at Yaounde on 20 July 1963 UO, 1964, p. 1430) and

of the Convention signed at Yaounde on 29 July 1969 (OJ, English Special Edition (Second Series, I External Relations (2))).

- 2 It appears from the file that, in 1969 and 1970, and in any case prior to entry into force of the second Yaounde Convention, the plaintiff in the main 'action imported various consignments of raw cowhides from France and from Senegal, a State associated with the [Union] under the abovementioned Conventions, and had to pay a veterinary and public health inspection duty upon importation.
- 3 The duty was introduced by Italy as a fiat-rate charge to offset the costs of the compulsory public health inspection of imported products of animal origin. The national court states that similar products of domestic origin are not subject to the same duty. Nevertheless, in Italy, when animals are slaughtered, there are veterinary inspections for which local authorities charge duties and the main purpose of which is to establish whether the meat is fit for consumption.
- 4 The first question asks whether a pecuniary charge levied for the purposes of a compulsory public health inspection of raw hides as they cross the frontier constitutes a charge having an effect equivalent to customs duties on imports within the meaning of [Article 30 TFEU].
- 5 As the Court held in its judgment of 14 December 1972, in *Marimex v Amministrazione Italiana delle Finanze* (Rec. 1972, p. 1309), pecuniary charges imposed for reasons of public health examination of products when they cross the frontier, which are determined according to special criteria applicable to them, which are not comparable to the criteria for determining the pecuniary charges affecting similar domestic products, are to be regarded as charges having an effect equivalent to customs duties.
- 6 The national court requests that the three following considerations be taken into account:

First, the fact that the charge is proportionate to the quantity of the goods and not to their value distinguishes a duty of the type at issue from charges which fall within the prohibition under [Article 30 TFEU]. Second, a pecuniary charge of the type at issue is no more than the consideration required from individuals who, through their own action in importing

products of animal origin, cause a service to be rendered. In the third place, although there may be differences in the method and time of its application, the duty at issue is also levied on similar products of domestic origin.

- 7 According to [Article 28 TFEU], the [Union] is to be based upon a customs union founded upon the prohibition between Member States of customs duties and of 'all charges having equivalent effect' and the adoption of a common customs tariff in their relations with third countries.

Under [Article 30 TFEU], charges having an effect equivalent to customs duties on imports, in force between Member States, are to be progressively abolished by them during the transitional period.

The position of these articles at the beginning of that part of the Treaty reserved for the '[Policies and Internal Actions of the Union]' is sufficient to indicate their crucial role in the construction of the common market.

- 8 The justification for the obligation progressively to abolish customs duties is based on the fact that any pecuniary charge, however small, imposed on goods by reason of the fact that they cross a frontier constitutes an obstacle to the movement of such goods.

The obligation progressively to abolish customs duties is supplemented by the obligation to abolish charges having equivalent effect in order to prevent the fundamental principle of the free movement of goods within the common market from being circumvented by the imposition of pecuniary charges of various kinds by a Member State.

The use of these two complementary concepts thus tends, in trade between Member States, to avoid the imposition of any pecuniary charge on goods circulating within the [Union] by virtue of the fact that they cross a national frontier.

- 9 Consequently, any pecuniary charge, whatever its designation and mode of application, which is unilaterally imposed on goods imported from another Member State by reason of the fact that they cross a frontier, constitutes a charge having an effect equivalent to a customs duty. In appraising a duty of the type at issue it is, consequently, of no importance that it is proportionate to the quantity of the imported goods and not to their value.

- 10 Nor, in determining the effects of the duty on the free movement of goods, is

it of any importance that a duty of the type at issue is proportionate to the costs of a compulsory public health inspection carried out on entry of the goods. The activity of the administration of the State intended to maintain a public health inspection system imposed in the general interest cannot be regarded as a service rendered to the importer such as to justify the imposition of a pecuniary charge. If, accordingly, public health inspections are still justified at the end of the transitional period, the costs which they occasion must be met by the general public which, as a whole, benefits from the free movement of [Union] goods.

- 11 The fact that the domestic production is, through other charges, subjected to a similar burden matters little unless those charges and the duty in question are applied according to the same criteria and at the same stage of production, thus making it possible for them to be regarded as falling within a general system of internal taxation applying systematically and in the same way to domestic and imported products.
- 12 The second question is whether [Article 30 TFEU] began to have direct effect on 31 December 1969, the date on which the transitional period ended, or on 1 July 1968, the date on which customs duties were abolished within the [Union].
- 13 Subject to any specific provisions, such effect occurred as from the end of the transitional period, namely 1 January 1970. In fact, the Council's decision of 26 July 1966 on the abolition of customs duties in line with the implementation of the Common Customs Tariff on 1 July 1968 (p. 2971) is based on the concept of a selective acceleration of actions which, as a whole, were to be completed by the end of the transitional period at the latest. In these circumstances that decision only applies to measures to which it specifically refers, that is to say, to customs duties as such and to quantitative restrictions.
- 14 The reply must therefore be that the direct effect of [Article 30 TFEU] can only be invoked as from 1 January 1970.
- 15 The third question is whether the concept of a charge having equivalent effect has the same meaning in Article 2 (1) of the Yaounde Convention of 1963 and of the Yaounde Convention of 1969 as in [Article 30 TFEU].

The fourth question is whether Article 2 (1) of the Yaounde Convention of 1963 has immediate effect so as to confer on [Union] 'citizens' an individual right, which the national courts must protect, not to pay to a Member State a

charge having an effect equivalent to customs duties. As these questions are related, they must be joined for the purposes of the reply.

16 The first question to be considered is whether Article 2 (1) of the Yaounde Convention of 1963 confers on those subject to [Union] law the right to rely on it in order to challenge the imposition of a national duty. In order to do this, regard must be simultaneously paid to the spirit, the general scheme and the wording of the Convention and of the provision concerned.

17 Pursuant to the Fourth Part of the [FEU] Treaty, certain overseas countries and territories which had special relations with four of the former six Member States were associated with the [Union]. By reason of these special economic and political connexions, the association was intended, under [Article 198 TFEU], to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire. The Implementing Convention for the association of overseas countries and territories to the [Union], annexed to the Treaty, was concluded for a period of five years.

18 Since, at the end of this period, several of the countries and territories had advanced towards political independence, the Yaounde Convention was concluded in order to maintain the association between certain of those independent African States and Madagascar and the European [Union]. It was concluded in the name not only of the Member States but also of the [Union] which, in consequence, are bound by virtue of [Articles 216(2) and 218(1) to (9) and (11) TFEU].

19 As far as customs duties and charges having equivalent effect are concerned, Article 2 (1) of the 1963 Convention provides as follows:

'Goods originating in Associated States shall, when imported into Member States, benefit from the progressive abolition of customs duties and charges having an effect equivalent to such duties, resulting between Member States under the provisions of [Article 30 TFEU], Articles 14 [repealed] and 15 of the Treaty [repealed] and the decisions which have been or may be adopted to accelerate the rate of achieving the aims of the Treaty.'

Article 2 (5) provides as follows:

'At the request of an Associated State, there shall be consultations within the Association Council regarding the conditions of application of this Article.'

- 20 On the other hand, Article 3 (2) limits the obligation on the Associated States to abolish customs duties and charges having equivalent effect by providing that 'each Associated State may retain or introduce customs duties and charges having an effect equivalent to such duties which correspond to its development needs or its industrialization requirements or which are intended to contribute to its budget'.
- 21 Article 61 of the Convention provides that the [Union] and the Member States shall undertake the obligations set out in Articles 2, 5 and 11 even with respect to Associated States which, on the grounds of international obligations applying at the time of the entry into force of the [FEU] Treaty and subjecting them to a particular customs treatment, may consider themselves not yet able to offer the [Union] the reciprocity provided for by Article 3 (2) of the Convention.
- 22 It is apparent from these provisions that the Convention was not concluded in order to ensure equality in the obligations which the [Union] assumes with regard to the Associated States, but in order to promote their development in accordance with the aim of the first Convention annexed to the Treaty.
- 23 This imbalance between the obligations assumed by the [Union] towards the Associated States, which is inherent in the special nature of the Convention, does not prevent recognition by the [Union] that some of its provisions have a direct effect.
- 24 Since the provision according to which consultations regarding the conditions of application of Article 2 of the Convention shall take place only at the request of an Associated State, it follows that the abolition of charges having equivalent effect must, on the part of the [Union], proceed automatically.
- 25 By expressly referring, in Article 2 (1) of the Convention, to [Article 30 TFEU], the [Union] undertook precisely the same obligation towards the Associated States to abolish charges having equivalent effect as, in the Treaty, the Member States assumed towards each other. Since this obligation is

specific and not subject to any implied or express reservation on the part of the [Union], it is capable of conferring on those subject to [Union] law the right to rely on it before the courts and to do so with effect from 1 January 1970.

26 The answer to be given to the national court is, in consequence, that, with effect from 1 January 1970, Article 2 (1) of the Yaounde Convention of 1963 confers on [Union] citizens the right, which the national courts of the [Union] must protect, not to pay to a Member State a charge having an effect equivalent to customs duties.

27 The last question asks whether the prohibition of the imposition of charges having equivalent effect imposed upon the Member States by the two Yaounde Conventions has applied without interruption since 1 January 1970.

28 Article 59 of the 1963 Convention provides that it shall be concluded for a period of five years from the date of its entry into force. Article 60 provides that the contracting parties shall examine the provisions which might be made for a further period and that the Association Council shall, if necessary, take any transitional measures required until the new Convention enters into force.

29 Since the first Convention of Association expired on 30 May 1969, before the new Convention was adopted, the Association Council, so as to prevent any interruption, extended it on two occasions. As these decisions were adopted by the Association Council under powers conferred on it by the Convention, it must be concluded that the obligations imposed upon the Member States by the first Convention continued to exist without interruption until the second Convention came into force.

Costs

30 The costs incurred by the Commission of the European [Union], which submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Tribunale of Genoa hereby rules:

- 1. Whatever its designation and mode of application, a pecuniary charge which is imposed unilaterally on goods imported from another Member State when they cross a frontier constitutes a charge having an effect equivalent to a customs duty.**
- 2. The direct effect of [Article 30 TFEU] may be invoked only with effect from 1 January 1970.**
- 3. Article 2 (1) of the Convention signed at Yaounde on 20 July 1963 confers, with effect from 1 January 1970, on those subject to [Union] law the right, which the national courts of the [Union] must protect, not to pay to a Member State a charge having an effect equivalent to customs duties.**
- 4. The obligations imposed upon the Member States by the Yaounde Convention of 1963 continued to exist without interruption until the entry into force of the Convention signed at Yaounde on 29 July 1969.**

Lecourt	Kutscher	O'Keeffe
Donner Stuart	Mertens de Wilmars	Sorensen Mackenzie

Delivered in open court in Luxembourg on 5 February 1976.

A. Van Houtte	R. Lecourt
Registrar	President