

In Case 46/76

Reference to the Court under [Article 267 TFEU] by the Arrondissementsrechtbank of The Hague, for a preliminary ruling in the proceedings before that Court between

W. J. G. BAUHUIS

and

THE NETHERLANDS STATE

for an interpretation of the provisions of the Treaty prohibiting charges having an effect equivalent to customs duties on exports and of Council Directive No 64/432 of 26 June 1964 (OJ English Special Edition 1963-1964, p. 164)

THE COURT

composed of: H. Kutscher, President, A. M. Donner and P. Pescatore, Presidents of Chambers, J. Mertens de Wilmars, M. Sorensen, Lord Mackenzie Stuart, A. O'Keefe, G. Bosco and A. Touffait, Judges,

Advocate-General: G. Reischl

Registrar: A. Van Houtte

gives the following

## JUDGMENT

Law

- 1 By order of 10 May 1976 received at the Court Registry on 2 June 1976 the Arrondissementsrechtbank, The Hague, requested the Court under [Article 267 TFEU] to give a ruling on the interpretation of [Article 30 TFEU] and in this connexion to state whether:

'... the phrase "charges having an effect equivalent to customs duties on

exports" (is) to be interpreted as including pecuniary charges which are imposed by a Member State in respect of the veterinary and public health inspection of livestock which is intended to be exported to another Member State in so far as such pecuniary charges suffice to cover, and do not exceed, the actual costs of a veterinary and public health inspection which is carried out by authority of the Government:

(a) (as regards bovine animals and swine):

in compliance with obligations imposed on the exporting Member State by the Council of the European [Union] in its Directive No 64/432/EEC of 26 June 1964; or

(b) (as regards bovine animals and swine):

in compliance with the obligations referred to at (a) above, and in addition to ensure that the bovine animals and swine concerned satisfy the particular conditions laid down for the importation thereof by the importing Member States; or

(c) (as regards animals other than bovine animals or swine):

in order to ensure that the animals concerned satisfy the conditions laid down for the importation thereof by the importing Member State?'

- 2 These questions were referred during proceedings brought against the Netherlands administrative authorities by a cattle dealer who, between August 1966 and July 1971, exported live animals to other Member States and claims a refund of the fees paid for the veterinary and public health inspections carried out by the Netherlands administrative authorities prior to their export.
- 3 He submits that these fees are charges having an effect equivalent to customs duties on exports prohibited as from 1 January 1962 by [Article 30 TFEU] and that they were therefore improperly paid.
- 4 It is clear from the judgment delivered by the national court that the fees at issue were charged, on the one hand, on the occasion of veterinary and public health inspections of bovine animals and swine prescribed and provided for by Council Directive No 64/432/EEC of 26 June 1964 on animal health problems affecting intra-[Union] trade in bovine animals and swine (OJ English Special Edition 1963-1964, p. 164) and, on the other hand, on the occasion of veterinary and public health inspections other than those laid down by this directive or again on animals other than those referred to in the directive and coming solely within the provisions of national law.
- 5 These situations must be examined separately.
- 6 It is however advisable to specify first of all the legal framework within which the questions referred have to be answered.

- 7 [Article 28 TFEU] prohibits between Member States customs duties on imports and exports and all charges having equivalent effect.
- 8 Under [Article 30 TFEU] Member States shall abolish between themselves customs duties on exports and charges having equivalent effect by the end of the first stage of the transitional period at the latest.
- 9 The justification for the prohibition of charges having an effect equivalent to customs duties lies in 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 goods, which is aggravated by the resulting administrative formalities.
- 10 Consequently, any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of [Articles 28 and 30 TFEU], even if it is not imposed for the benefit of the State.
- 11 The position would be different only if the charge in question is the consideration for a benefit provided in fact for the exporter representing an amount proportionate to the said benefit or if it related to a general system of internal dues applied systematically in accordance with the same criteria to domestic products and imported products alike.
- 12 Although Article 36 of the [TFEU] provides that "The provisions of [Articles 34 to 35 TFEU] shall not preclude prohibitions or quantitative restrictions on imports ... justified on grounds of ... the protection of health and life of humans, animals ...", this provision constitutes a derogation from the basic rule that all obstacles to the free movement of goods between Member States shall be eliminated and must be interpreted strictly and thus cannot be understood as authorizing measures of a different nature from those referred to in [Articles 34 to 35 TFEU].
- 13 Consequently, although Article 36 [TFEU] does not prevent veterinary and public health inspections it cannot nevertheless be interpreted as thereby permitting the imposition of charges levied on imported goods subjected to the said inspections and intended to cover the costs thereof.
- 14 In fact this charge is not intrinsically necessary for the exercise of the power laid down in Article 36 [TFEU] and is thus capable of constituting an additional barrier to intra-[Union] trade.
- 15 It is appropriate to examine the questions referred in the light of these

considerations.

*I - The fees charged for the veterinary and public health inspections prescribed by Directive No 64/432/EEC*

- 16 With a view to eliminating obstacles to intra-[Union] trade in bovine animals and swine the Council by Directive No 64/432 of 26 June 1964 harmonized the animal health measures in force in the Member States by making it obligatory for the latter to standardize domestic provisions in this field in accordance with the requirements of this directive.
- 17 According to the second and third recitals of the directive of 26 June 1964 its aim is to increase the effectiveness of the regulations on the organizations of the markets in beef and veal and pigmeat by substituting 'for the numerous traditional means of protection at the frontier a single system designed in particular to facilitate intra-[Union] trade'.
- 18 According to the third and fourth recitals this objective can only be attained by eliminating differences between national laws by 'approximating the animal health provisions of Member States'.
- 19 This approximation consists mainly in imposing upon Member States exporting cattle the obligation to ensure compliance with certain veterinary and public health measures intended, *inter alia*, to guarantee that the exported animals are not a source of contagious disease.
- 20 It is apparent from all these considerations that the harmonized system of veterinary and public health inspections introduced by the directive is based on the principle that the veterinary and public health guarantees required by each of the Member States have equivalent effect and it is this principle which guarantees both the protection of health and equal treatment of products.
- 21 Seen in this light the aim of the system is to transfer supervision to the exporting Member State and to replace in this way the systematic measures of protection at the frontier with a uniform system so as to make multiple frontier inspections unnecessary and at the same time to give the Member State of destination the opportunity of ensuring that the guarantees provided by the system of inspections thus standardized are in fact given.
- 22 This system is based on the trust which Member States should place in each other as far as concerns the guarantees provided by the inspections carried out initially by the veterinary and public health departments of the Member States from which the animals are exported.
- 23 With a view to making these guarantees effective the directive harmonized the provisions adopted by Member States by making un usually strict methods of supervision of universal application.

- 24 It therefore frequently happens that some at least of the inspections prescribed by the directive will be similar to the inspections carried out when the same animals are marketed and transported in the territory of the Member State concerned.
- 25 If the fees for these inspections are demanded in the case of internal marketing as well as in the case of exportation then they form part of a general system of domestic charges and are not charges having an effect equivalent to a customs duty on exports but fall within the prohibition of discrimination under [Article 110 TFEU].
- 26 Therefore the first question referred relates to the interpretation of the concept of a charge having an effect equivalent to a customs duty on exports with reference to the fees charged only for inspections of animals intended for export to another Member State and for the purpose of fulfilling the obligations of Council Directive No 64/432.
- 27 Although the organization of these inspections and exporting to another Member State are correlated, this organization by the exporting State has been made obligatory in the directive so that inspections at the frontier organized unilaterally by the importing Member State become unnecessary or are at least reduced to an occasional check that the veterinary and public health measures which are required to be taken in the exporting Member State have been complied with.
- 28 These measures are laid down unilaterally by each Member State but have been made obligatory and uniform in the case of all the products in question whichever the exporting Member State or the Member State of destination may be.
- 29 On the other hand they are not prescribed by each Member State in order to protect some interest of its own but by the Council in the general interest of the [Union].
- 30 They cannot therefore be regarded as unilateral measures which hinder trade but rather as operations intended to promote the free movement of goods, in particular by rendering ineffective the obstacles to this free movement which might be created by the measures for veterinary and public health inspections adopted pursuant to Article 36 [TFEU].
- 31 In these circumstances fees charged for veterinary and public health inspections, which are prescribed by a [Union] provision, which are uniform and are required to be carried out before despatch within the exporting country do not constitute charges having an effect equivalent to customs duties on exports, provided that they do not exceed the actual cost of the inspection for which they were charged.

- 32 The reasons for the prohibition of any obstacle to intra-[Union] trade, whether such obstacle takes the form of charges having an effect equivalent to customs duties or of measures having an effect equivalent to quantitative restrictions, do not apply to this case.
- 33 Moreover, as far as the question whether it is lawful to demand a fee is concerned, a distinction must be made between the inspections prescribed by the directive and those occasional inspections which, according to its provisions, only Member States are permitted to carry out at the frontier, because the former are obligatory and of general application so that they affect all the goods concerned, whereas the fees charged for the latter, which are only carried out in a random manner, are only borne by the goods which are inspected.
- 34 It is a question moreover of the compensation, justified on economic and financial grounds, for an obligation imposed by [Union] law on all the Member States equally.
- 35 The costs of the inspection may well vary from one Member State to another so that the fees may prove to be different according to the Member State where the inspection is carried out.
- 36 Although it may be desirable to see these charges harmonized, the fact that, if they are not to be designated as charges having an effect equivalent to customs duties, they must not exceed the actual costs of the operation, removes them from the category of prohibited aids to exports and precludes them from being regarded as obstacles to the movement of goods.

*II – The fees charged for the special veterinary and public health inspections of bovine animals and swine on the occasion of their exportation*

- 37 With a view to promoting the free movement of bovine animals and swine Directive No 64/432 has made veterinary and public health inspections intended to protect the health and life of humans and animals generally applicable and uniform in the whole of [Union] territory.
- 38 The mutual confidence, which Member States must have in the inspections carried out, under the prescribed conditions, by the competent authorities of the other Member States, constitutes a basic element of the system introduced by the directive, without which it would have no purpose.
- 39 It follows that bovine animals and swine which have undergone inspections prescribed by this directive must be able to be transported from one Member State to the others without additional health and veterinary requirements.
- 40 Consequently, apart from the exceptions laid down by the directive itself, any additional inspection of bovine animals or swine for export to another Member State imposed unilaterally by a Member State, either on its own

initiative or in order to meet the requirements of another Member State, which are no longer justified, would constitute a measure having an effect equivalent to a quantitative restriction and any fee charged on this occasion would, for that reason, be incompatible with [Union] law.

- 41 The position would be different only if this inspection and an identical fee were also prescribed and charged under domestic regulations in connexion with the sale and transport of bovine animals and swine on the territory of the Member State concerned.
- 42 Moreover, if there were additional inspections carried out in the exporting country in the circumstances and subject to the conditions referred to in the special provisions of Directive No 64/432, such as Article 8, the fees would conform with those analysed above and would not constitute charges having an effect equivalent to customs duties on exports, provided that they do not exceed the actual costs of the operation.

*III - Fees charged for veterinary and public health inspections of animals other than bovine animals and swine carried out in exporting countries*

- 43 The inspections referred to in the last part of the question are carried out by Member States unilaterally and in a way which has not been standardized and are in no way connected with any [Union] rules.
- 44 In so far as these are inspections of animals intended only for export and differ from those carried out when the same animals State concerned they are measures having an effect equivalent to quantitative restrictions.
- 45 These measures which are intended to protect the veterinary and public health interests of the importing country comply with the Treaty subject to the conditions laid down in Article 36 [TFEU] thereof.
- 46 Article 36 [TFEU] does not prohibit the replacement of the inspections carried out by the importing State on the occasion of the crossing of the frontier by inspections initially carried out by the Member States.
- 47 However the transfer of these inspections which continue to be carried out in the interest of the importing State does not in fact change their nature.
- 48 As it has been noted above that, although Article 36 [TFEU], in accordance with the conditions which it prescribes, does not prevent the retention of certain restrictions, in particular those which take the form of veterinary and public health inspections, it does not however permit the collection of duties charged on the goods subjected to these inspections, since this collection is not necessary for the exercise of the powers provided for by Article 36 [TFEU] and therefore constitutes an additional obstacle to intra-[Union] trade.

- 49 The reasons which render lawful the collection of appropriate duties for the carrying out of uniform [Union] inspections of general application cannot be applied to situations which continue to consist of obstacles set up unilaterally.
- 50 This is the case even if the domestic inspections are measures for the promotion of exports.
- 51 It is therefore necessary to reply that fees charged by the exporting State for veterinary and public health inspections carried out by the authorities of that State, which are not required by a [Union] regulation or directive but which have been prescribed for the purpose of checking whether the conditions to which the Member State of destination has made the importation subject have been complied with, constitute charges having an effect equivalent to customs duties.

### **Costs**

- 52 The costs incurred by the Netherlands Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.
- 53 As these proceedings are, in so far as the parties to the main action are concerned, 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 questions referred to it by the Arrondissementsrechtbank, The Hague, by order of 10 May 1976, hereby rules:

- 1. Fees charged for veterinary and public health inspections which are prescribed by a [Union] provision, which are uniform and are required to be carried out before despatch within the exporting country, do not constitute charges having an effect equivalent to customs duties on exports, provided that they do not exceed the actual cost of the inspection for which they were charged.**
- 2. Consequently, apart from the exceptions laid down by Directive No 64/432/EEC itself, any additional inspection of bovine animals or swine intended for export to another Member State, which is prescribed unilaterally by a Member State, either on its own initiative or in order to meet the requirements of another Member State which are no longer justified, constitutes a**

measure having an effect equivalent to a quantitative restriction and any fee charged on that occasion would, for that reason, be incompatible with [Union] law.

3. Fees charged by the exporting Member State for veterinary and public health inspections carried out by the authorities of that State, which are not required by a [Union] regulation or directive but which have been prescribed for the purpose of checking whether the conditions to which the Member State of destination has made the importation subject have been complied with, constitute charges having an effect equivalent to customs duties.

Kutscher	Donner	Pescatore	Mertens de Wilmars	Sorensen
Mackenzie Stuart			Bosco	Touffait
	O'Keefe			

Delivered in open court in Luxembourg on 25 January 1977.

A. Van Houtte  
Registrar

H. Kutscher  
President

Robert Schütze European Union Law