

In Case 24/68

COMMISSION OF THE EUROPEAN [UNION], represented by Sandro Gaudenzi, acting as Agent, with an address for service in Luxembourg at the offices of Emile Reuter, its Legal Adviser, 4 boulevard Royal,

applicant,

v

ITALIAN REPUBLIC, represented by Adolfo Maresca, Minister Plenipotentiary acting as Agent, assisted by Pierro Peronaci, assistant to the Avvocato Generale dello Stato (State Advocate-General), with an address for service in Luxembourg at the Embassy of the Italian Republic,

defendant,

Application for a ruling that the Italian Republic has failed to fulfil its obligations under the Treaty [on the Functioning of the European Union], by levying a charge called a statistical levy (*diritto di statistica*) on goods exported to the other Member States contrary to [Article 30 TFEU], and by levying a charge called a statistical levy on goods subject to the regulations of the Council concerning various common organizations of the agricultural markets and imported from other Member States, contrary to the said regulations;

THE COURT

composed of: R. Lecourt, President, A. Trabucchi and J. Mertens de Wilmars, (Rapporteur) Presidents of Chambers, A. M. Donner, W. Strauß, R. Monaco and P. Pescatore, Judges,

Advocate-General: K. Roemer

Registrar: A. Van Houtte

gives the following

# JUDGMENT

## Grounds of judgment

- 1 The Commission has made an application to the Court pursuant to [Article 258 TFEU] for a ruling that in collecting a statistical levy on goods exported to the other Member States, the Italian Republic has failed to fulfil its obligations under [Article 30 TFEU].
- 2 this application also asks for a ruling that by collecting a statistical levy on goods subject to the regulations of the Council concerning certain common organizations of agricultural markets and imported from other Member States, the Italian Republic has failed in its obligations under the combined provisions of [Article 288 TFEU] and of Articles 21(1) of Regulation No 120/67 /EEC, 19(1) of Regulation 121/67/EEC, 13(1) of Regulation No 122/67/EEC, 13(1) of Regulation No 123/67/EEC, 22(1) of Regulation No 804/68/EEC, 22(1) of Regulation No 805/68/EEC, 23(1) of Regulation No 359/67/EEC, and 3(1) of Regulation No 136/66/EEC.

The concept of a charge having equivalent effect

- 3 according to [Article 28 TFEU], the [Union] shall 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.

Article 12 [repealed] prohibits the introduction of new customs duties on imports or exports or any charges having equivalent effect. Under [Article 30 TFEU] customs duties and charges having equivalent effect on both exports and imports in force between Member States are to be abolished in the manner laid down in those articles.

- 4 The position of these articles at the beginning of that Part of the Treaty reserved for the [policies and internal actions of the Union], [Article 28 TFEU] being the first provision appearing at the very beginning of the Title dealing with the free movement of goods and [Article 30 TFEU] at the beginning of the [chapter] on the [...] [customs union] [...], is sufficient to show the fundamental role of

the prohibitions laid down therein.

The importance of these prohibitions is such that in order to prevent their circumvention by means of various customs and fiscal measures, the Treaty was intended to prevent any possible failure in their implementation.

- 5 [Article 30 TFEU] therefore specifies that the prohibitions in [Article 28 TFEU] shall also apply to customs duties of a fiscal nature.

[Article 110 TFEU], which appears both in that Part of the Treaty which deals with the '[Policies and Internal Actions of the Union]' and in the Chapter on tax provisions, is intended to fill in any breaches which a fiscal measure might open in the prohibitions laid down, by prohibiting the imposition on imported products of internal taxation in excess of that imposed on domestic products.

- 6 In prohibiting the imposition of customs duties, the Treaty does not distinguish between goods according to whether or not they enter into competition with the products of the importing country.

Thus, the purpose of the abolition of customs barriers is not merely to eliminate their protective nature, as the Treaty sought on the contrary to give general scope and effect to the rule on the elimination of customs duties and charges having equivalent effect, in order to ensure the free movement of goods.

- 7 It follows from the system as a whole and from the general and absolute nature of the prohibition of any customs duty applicable to goods moving between Member States that customs duties are prohibited independently of any consideration of the purpose for which they were introduced and the destination of the revenue obtained therefrom.

The justification for this prohibition 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.

- 8 The extension of the prohibition of customs duties to charges having equivalent effect is intended to supplement the prohibition against obstacles to trade created by such duties by increasing its efficiency.

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 Thus, in order to ascribe to a charge an effect equivalent to a customs duty, it is important to consider this effect in the light of the objectives of the Treaty, in the Parts, Titles and Chapters in which [Articles 28 and 30 TFEU] are to be found, particularly in relation to the free movement of goods.

Consequently, any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign 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, is not discriminatory or protective in effect and if the product on which the charge is imposed is not in competition with any domestic product.

- 10 It follows from all the provisions referred to and from their relationship with the other provisions of the Treaty that the prohibition of new customs duties or charges having equivalent effect, linked to the principle of the free movement of goods, constitutes a fundamental rule which, without prejudice to the other provisions of the Treaty, does not permit of any exceptions.

- 11 In this respect, it follows from [Article 110 TFEU] et seq that the concept of a charge having equivalent effect does not include taxation which is imposed in the same way within a State on similar or comparable domestic products, or at least falls, in the absence of such products, within the framework of general internal taxation, or which is intended to compensate for such internal taxation within the limits laid down by the Treaty.

Although it is not impossible that in certain circumstances a specific service actually rendered may form the consideration for a possible proportional payment for the service in question, this may only apply in specific cases which cannot lead to the circumvention of the provisions of [Articles 28 and 30 TFEU].

The disputed charge

- 12 The defendant emphasizes in the first place that the Commission is wrong in dividing the statistical levy into two distinct concepts,

one relating to imports and the other to exports, when the legal nature of the disputed charge should be determined by taking account of its true nature and not by breaking it down into two distinct charges.

According to the defendant the circumstance that the statistical levy is imposed whenever goods cross the frontier without distinguishing between exports and imports or between domestic and foreign goods *ipso facto* precludes any possibility of considering it as a charge having an effect equivalent to customs duties since any protection of domestic production or discrimination is eliminated.

- 13 On the other hand the Commission breaks down the disputed levy into two distinct charges having effects equivalent respectively to a customs duty on imports and to a customs duty on exports and with protective or discriminatory effects although to a very slight degree.

- 14 It is of no consequence for its designation under the Treaty whether the disputed charge is treated as a general charge or as two distinct charges, one on exports and the other on imports.

As it is imposed universally on goods crossing the frontier, the charge in question hampers the interpenetration at which the Treaty aims and thus has an effect on the free circulation of goods equivalent to a customs duty.

The very low rate of the charge cannot change its character with regard to the principles of the Treaty which, for the purpose of determining the legality of those charges, do not admit of the substitution of quantitative criteria for those based on the nature of the charge.

- 15 The Italian Government further maintains that the disputed charge constitutes the consideration for a service rendered and as such cannot be designated as a charge having equivalent effect.

According to the Italian Government the object of the statistics in question is to determine precisely the actual movements of goods and, consequently, changes the state of the market. It claims that the exactness of the information thus supplied affords importers a better competitive position in the Italian market whilst exporters enjoy a similar advantage abroad and that the special advantages which dealers obtain from the survey justifies their paying for this

public service and moreover demonstrates that the disputed charge is in the nature of a *quid pro quo*.

- 16 The statistical information in question is beneficial to the economy as a whole and *inter alia* to the relevant administrative authorities.

Even if the competitive position of importers and exporters were to be particularly improved as a result, the statistics still constitute an advantage so general, and so difficult to assess, that the disputed charge cannot be regarded as the consideration for a specific 'benefit actually conferred.

- 17 It appears from the abovementioned considerations that in so far as the disputed charge is levied on exports it is contrary to [Article 30 TFEU].

- 18 With regard to the statistical levy on the import from other Member States of products subject to regulations relating to the common organization of the the markets the abovementioned provisions of such regulations prohibit the levying of any customs duty or charge having equivalent effect on trade between the Member States.

The concept of a 'charge having equivalent effect' accessory to that of 'customs duty' was re-enacted in the abovementioned regulations from [Articles 28 and 30 TFEU].

Nothing in the said regulations justifies the conclusion that they are intended to confer on this concept a scope different from that which it has within the framework of the Treaty itself, especially as, when those regulations take account of the particular conditions for establishing a common market in agricultural products, they pursue the same objectives as [Articles 28 to 30 TFEU] which they implement.

- 19 According to [Article 288 TFEU] those regulations are to be binding in their entirety and directly applicable in all Member States. In infringing their provisions the defendant has thus failed to fulfil an obligations under the Treaty.

#### Costs

- 20 Under Article 69(3) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

The defendant has failed in its submissions.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the parties;

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty [on the Functioning of the European Union], especially [Articles 3, 28 TEU], [Articles 30, 38, 258 and 260(1) TFEU];

Having regard to the Protocol on the Statute of the Court of Justice of the European [Union];

Having regard to the Rules of Procedure of the Court of Justice of the European [Union];

## THE COURT

hereby declares:

1. On levying on exports to other Member States of the [Union] the charge provided for by Article 42 of the Decree of the President of the Republic No 723 of 26 June 1965, the Italian Republic has failed to fulfil its obligations under [Article 30 TFEU];
2. In levying on imports from other Member States the charge provided for by Article 42 of the Decree of the President of the Republic No 723 of 26 June 1965 on goods subject to the regulations of the Council relating to certain common organizations of the agricultural markets, the Italian Republic has failed to fulfil its obligations under [Article 288 TFEU] and Articles 21(1) of Regulation No 120/67/EEC, 19(1) of Regulation No 121/67/EEC, 13(1) of Regulation No 122/67/EEC, 13(1) of Regulation No 123/ 67/EEC, 22(1) of Regulation No 804/68/EEC, 22(1) of Regulation No 805/68/EEC, 23(1) of Regulation No 359/67/EEC, and 3(1) of Regulation No 136/66/EEC;
3. The defendant is ordered to pay the costs.

Lecourt  
Donner

Trabucchi  
Strauß

Mertens de Wilmars  
Monaco

Pescatore

Delivered in open court in Luxembourg on 1 July 1969.

A. Van Houtte  
Registrar

R. Lecourt  
President

Robert Schütze European Union Law Lisbonised Cases