

Case C-28/96

Fazenda Pública

v

Fricarnes SA

(Reference for a preliminary ruling
from the Supremo Tribunal Administrativo)

(National charges on the marketing of meat — Charge
having equivalent effect — Internal taxation — Turnover tax)

Opinion of Advocate General Tesouro delivered on 23 January 1997 I - 4942
Judgment of the Court (Fifth Chamber), 17 September 1997 I - 4943

Summary of the Judgment

1. *Tax provisions — Internal taxation — Meaning*
(*EC Treaty, Art. 95*)
2. *Free movement of goods — Customs duties — Charges having equivalent effect — Internal taxation — Charge applicable to domestic and imported products but benefiting the former solely or to a greater extent — Criteria for characterization*
(*EC Treaty, Arts 9, 12 and 95*)

3. *Tax provisions — Harmonization of laws — Turnover taxes — Common system of value added tax — Prohibition of the levying of other national charges which can be characterized as turnover taxes — Purpose — Meaning of 'turnover taxes' — Scope — Charge levied only on certain products — Excluded*
(Council Directive 77/388, Art. 33)

1. Pecuniary charges under a general system of internal charges applying systematically to domestic and imported products according to the same criteria are, in principle, covered by Article 95 et seq. of the Treaty.

2. A charge on the marketing of meat levied without distinction on domestic and imported products constitutes a charge having an effect equivalent to a customs duty, prohibited by Articles 9 and 12 of the Treaty, if the revenue from it is intended to finance activities benefiting only the taxed domestic products and if the resultant advantages fully offset the burden which the latter products bear; if those advantages only partly offset the burden borne by the domestic products, the charge constitutes discriminatory internal taxation prohibited by Article 95 of the Treaty and must be reduced proportionally.

If the activities financed by the charge benefit domestic products and taxed imported products but the former obtain a proportionally greater advantage from them, the charge constitutes, to that

extent, a charge having an effect equivalent to a customs duty or discriminatory internal taxation, depending on whether the advantage accruing to the taxed domestic products fully or only partly offsets the burden which they bear.

It follows that, with a view to determining how the charges on the marketing of meat and offal, the charge in respect of ruminants and the charge for measures to combat swine fever are to be characterized in law, it is incumbent on the national court to consider:

- whether the revenue from the charge specifically intended to be used to combat diseases of livestock reared on national territory benefits exclusively animals of national origin or, at least, benefits them proportionally more than imported animals;
- whether the revenue from all the charges at issue is used for stabilization only of trade with the other Member States in the products which bear the charges;

— whether the institutional integration of the organizations representing the economic agents concerned and the implementation of the national and Community aid schemes and financial and fiscal incentives in favour of the agri-foodstuffs industry and the distribution of agri-foodstuffs, to which part of the revenue from the charges in question is appropriated, benefit only domestic production or whether they benefit such production proportionally more than imported products.

3. Since the aim pursued by Article 33 of the Sixth Directive (77/388) on the harmonization of the laws of the Member

States relating to turnover taxes is to preclude the introduction of taxes, duties and charges which, because they are levied on the movement of goods and services in a way comparable to value added tax, would compromise the functioning of the common system of value added tax, that provision does not preclude the levying of a charge which is applied only to certain products, is not proportional to the price of those products, is not charged at each stage of the production and distribution process and is not imposed on the added value of the goods. Since it displays none of the characteristics of value added tax, such a charge does not apply to the movement of goods and services in a manner comparable to value added tax.