

JUDGMENT OF THE COURT
OF 15 JUNE 1976¹

Giordano Frecassetti
v Amministrazione delle Finanze dello Stato
(preliminary ruling requested by the Tribunale di Genova)

Case 113/75

Summary

1. *Agriculture — Common organization of the markets — Cereals — Levy — Imposition — Date*
(Article 17 of Regulation No 19 of the Council; Article 15 of Regulation No 120/67/EEC of the Council)
2. *Customs duty to be applied to goods declared for internal consumption — Rate — Determination — Date — Recommendation of the Commission of 25 May 1962 — Application to levies — Not permissible*

1. The 'day of importation' referred to in Article 17 of Regulation No 19 and in Article 15 of Regulation No 120/67/EEC is the day on which the import declaration for the goods is accepted by the customs authorities.
2. The Recommendation of the Commission of 25 May 1962 concerning the date to be taken into account in determining the rate of customs duty to be applied to goods declared for internal consumption cannot apply to levies.

In Case 113/75,

Reference to the Court pursuant to Article 177 to the EEC Treaty by the Tribunale di Genova for a preliminary ruling in the proceedings pending before that court between

GIORDANO FRECCASSETTI,

AMMINISTRAZIONE DELLE FINANZE DELLO STATO,

on the interpretation of the term 'day of importation' for the purposes of determining the levy applicable to cereals (Article 17 of Regulation No 19 of

¹ — Language of the Case: Italian.

the Council of 4 April 1962 and Article 15 of Regulation No 120/67/EEC of the Council of 13 June 1967),

THE COURT

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

Advocate-General: J.P. Warner

Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The order for reference and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

A — 1. The first paragraph of Article 17 of Regulation No 19 of the Council of 4 April 1962 on the progressive establishment of the common organization of the markets in cereals (JO of 20. 4. 1962, p. 933) provides that:

'The amount of the intra-Community or third country levy to be charged shall be that applicable on the day of importation.'

2. The first paragraph of Article 15 of Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the markets in

cereals (OJ English Special Edition 1967, p. 33) also provides that:

'The levy to be charged shall be that applicable on the day of importation.'

B — 1. From May 1967 to March 1968 the plaintiff in the main action imported into Italy various consignments of maize. In respect of these consignments it submitted declarations which were accepted by the customs authorities of Genoa.

As the amounts involved were considerable customs clearance was carried out in stages over a period of time.

During this time the Community levies were subject to substantial variations and the plaintiff in the main action therefore in its requests to remove the goods sought and obtained the application of

the rate of levy in force on the date of each request where this was more favourable than that in force on the date of acceptance of the declaration of importation or of the submission of a prior request to remove the goods.

Following a check the defendant in the main action requested the importer to pay the sum of Lit. 2 710 190, which did not include the costs of the difference in the levies.

Although this is not specified in the order it subsequently appeared that the Genoa customs authorities had thought that the levy in force on the date when each quantity of the goods was removed and cleared through customs was applicable if it was more favourable to the importer than that in force on the date of the acceptance of the import declaration.

2. The applicant appealed against the notice requiring payment and by an order of 31 October 1975 the Tribunale di Genoa stayed the proceedings and pursuant to Article 177 of the EEC Treaty asked the Court of Justice to give a preliminary ruling on the questions relating to:

1. The interpretation of Article 17 of EEC Regulation No 19 of 4 April 1962 and of Article 15 of Regulation No 120/67/EEC of 13 June 1967, in so far as they provide that 'The levy to be charged shall be that applicable on the day of importation', in order to determine:

(a) Whether 'day of importation' is to be taken as meaning the day on which the import declaration for the goods is submitted by the importer or received by the Customs or whether it is to be taken as meaning the day on which the goods are placed fully at the disposal of the importer after completion of customs clearance formalities in respect of the goods?

(b) In a case where a consignment of goods is cleared through customs in several batches, whether 'day of importation' is to be taken as meaning the day on which each individual batch of goods is cleared through customs or the day on which the first or the last batch of that consignment of the goods is cleared through customs?

(c) In a case where changes occur in the rate of the levy between the date on which the import declaration is submitted or received and the date on which the goods are cleared through customs, whether the levy which is the lower of those in force on the two above mentioned dates is to be applied or even that in force on an intermediate date between the other two dates, which may be even lower?

2. The interpretation of the Recommendation of the EEC Commission, addressed to Member States on 25 May 1962 and published in the Official Journal of the European Communities of 29 June 1962 so as to answer the question whether the Recommendation, which is concerned with customs duties, can also apply on the subject of Community levies.'

3. The order from the Tribunale di Genova was received at the Court Registry on 25 November 1975.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the Commission of the European Communities on 27 January 1976, by the plaintiff in the main action on 6 February 1976, and by the Government of the Italian Republic on 12 February 1976.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided not to hold a preparatory inquiry.

II — Written observations submitted to the Court

A — 1. The *plaintiff in the main action* recalls that in order to avoid disparities in treatment in the course of customs clearance the Recommendation of the Commission of 25 May 1962 (Journal Officiel of 29 June 1962, p. 1545) addressed to all Member States proposed that procedures connected with this operation should be unified.

Customs terminology no longer refers to 'crossing the frontier' but rather 'release to the market'. This phrase has a precise legal meaning and signifies the acceptance by the customs authorities of the import declaration. The customs duty applicable is therefore that in force at the time of this acceptance.

However, where the customs duty decreases before the customs authorities give permission for the goods to be released, the Recommendation suggested that Member States should decide that the declarant may request the application of the more favourable rate.

Italy complied with this Recommendation by means of Article 6 of the Decree of the President of the Republic No 723 of 26 June 1965 containing introductory provisions on the customs tariff.

It appears that the Commission's Recommendation was in fact intended to refer to the concept of import duties in the wide sense that is to customs duties as a whole and thus to levies.

The rules applicable to customs duties are applicable to levies both as to the scope and the effects of the acceptance of the import declarations.

This is confirmed by the judgment of the Court of 15 December 1971 (Case 35/71, *Schleswig-Holsteinische landwirtschaftliche Hauptgenossenschaft eGmbH v Hauptzollamt Itzehoe* [1971] ECR)

according to which 'the rate of levy applicable must ... be that in force on the date on which the goods are irrevocably put into free circulation' by Article 2 of Directive No 74 of 4 March 1969, by Articles 8 and 15 of Regulation No 1373 of 10 July 1970 and by the judgment of 15 May 1974 (Case 186/73, *Fleischkontor v Einfuhr- und Vorratsstelle Schlachtvieh*, [1974] ECR 533).

A proper import declaration was made in respect of the products at issue in the main action. This declaration was accepted by the customs office and it entailed the final introduction of the products subject to the levy into the customs territory of a Member State and therefore into the internal market of the Community. Consequently the levy in force at this date must be applied since the goods are finally released into free circulation by virtue of the acceptance of the import declaration.

2. The rules applicable to customs dues must also be applied to levies as regards the importer's right to request the application of the more favourable rate if there exists a difference between the rate on the date of acceptance and that on the date of actual customs clearance.

This follows from the fact the right to the application of the more favourable rate is a general principle of fiscal law and that this extension to levies is provided for by numerous provisions of Community law (including those mentioned above) and national law (Article 34 of the one and only piece of Italian legislation on customs) and from the fact that in Italy at least, the practice is to equate levies with customs duties and to apply to them in particular the rules set out in Article 6 of the introductory provisions on the customs tariff (which are wholly in conformity with the Commission's Recommendation).

3. In fact the main action is concerned not with two but with three levies in

force on three different dates. However the latter problem only concerns the interpretation of national rules and can only be resolved by the national court.

In the case of the 'staggered' clearance through customs of bulk goods such as cereals there is often a certain lapse of time between the request for removal and the date of actual customs clearance. As, in the case in the main action, the levy applicable on the day of the request for removal was lower than that applicable either on the day of the declaration of importation or the day of actual customs clearance the importer sought and obtained the application of the most favourable levy. Since the lapse of time between the request and the actual customs clearance could have been due to delays caused by the customs authorities, the solution can therefore only be found from a consideration of the Italian Law. However, the plaintiff in the main action is content to leave this point for the Court to decide.

B — 1. The *Commission* points out that for the first time the Court is asked to give a preliminary ruling on the interpretation of a recommendation. In view of the difference in the functions of Articles 173 and 177 it is not surprising that the Treaty permits the Court to give a preliminary ruling on the interpretation and the validity of measures which, however, it has no power to annul.

Nor can such references for a preliminary ruling give ground for surprise if it is borne in mind that the Community rule may be taken into consideration not only for the purposes of its direct application to the case but also as a means of interpreting the applicable national rule. Thus the interpretation of the directive may influence the interpretation of the national rule implementing it. In the same way the interpretation of the national rule adopted in conformity with a recommendation may be elucidated by interpretation of the recommendation. In

the latter case the difference between whether or not the adaptation of the national system to the Community rule is mandatory is of no importance as to the relevance of the question.

2. Question 1 (a) and (c) and 2.

The solution in the recommendation of the Commission for the determination of the amount of the customs duties payable was adopted because it was considered that the date to be taken into account could not be prior to the moment when the importer unambiguously demonstrates his intention to release the goods to the consumer market. Nevertheless the importer's declaration is not sufficient evidence of this. Apart from the practical difficulties release to the market is subject to compliance with certain conditions of form and substance. The date to be taken into consideration can therefore not be prior to that on which the customs administration recognized the formal validity of the declaration and registers it or, so to speak, accepts it.

Nevertheless the recommendation did take account of the considerations concerning the economic function of the customs duty, but solely in cases of reduction of the amount, in order not to penalize an importer who, at the moment of the declaration, relied on the application of a fixed level of duty. The taking account of the moment when permission to remove the goods is granted — and not the date of the actual removal — is explained by the intention not to grant to the importer a 'bonus for negligence'. Therefore the recommendation intended to attribute prime importance to the moment when the goods enter — or at least may enter according to the wishes of the importer — the economic network of the country of importation.

The solution advocated by the recommendation (hardly different from that contained in the earlier legislation of the original Member States of the

Community) is applied to customs duties by all the Member States with the exception of Ireland and the United Kingdom and also to agricultural levies by the Federal Republic of Germany and by Italy (where the customs administration is responsible for collecting both customs duties and levies).

Although, as regards customs duties, the question of the relevant date for the determination of the rate of duty is only governed by a measure of a binding nature as from the adoption of the Proposal for a Council directive on the harmonization of procedures for the release of goods for free circulation (OJ C 14 of 15. 2. 1974, p. 45, Article 12), for agricultural levies on the other hand the Council regulations which established, them specified on each occasion that the amount applicable was that in force on the day of importation. Moreover in the judgment of the Court in Case 35/71 (*supra*) it is stated that.

'the concept 'day of importation', which is conclusive for the purposes of the application of a levy scheme must have the same meaning in all Member States, since otherwise there is a danger that different rates of levy would be applied to goods which are in the same situation economically at the same date and the introduction of which into the territory of the Member States has comparable effects on the market in agricultural products.'

Although the Commission's recommendation of 25 May 1962 may only strictly refer to agricultural levies it may also be of value for the interpretation of the concept of 'day of importation' contained in the agricultural regulations.

The interpretation of this concept by the Court in the judgment delivered in Case 35/71 is so clear that it requires no commentary.

If the criteria adopted were transposed to the problem raised by the main action,

account would have to be taken of the different context of the question raised. In Case 35/71 the Court was not asked to rule as to the precise moment of the customs clearance to be taken into consideration and therefore this problem was not resolved.

In order to resolve it it is essential to proceed from the proposition that it is necessary to be as close as possible to the time of the actual introduction of the imported goods into the economic network. However this point in time must be excluded since it is inconceivable that the importer should determine the amount of the levy. Moreover by adopting the day on which removal of the goods is authorized, one would run up against the difficulty of being unable to achieve any certain indication of the date and the fact that this moment would be subsequent to that when the levy must be calculated or even paid.

The only remaining possibility is therefore to take account of this point in time only in conjunction with the (prior) point in time of the acceptance of the declaration for release on to the market which amounts to adopting the solution employed in the Recommendation of 25 May 1962 with the possibility for the importer to benefit from the levy in force on the day on which removal is authorized where this is lower. This solution makes it possible to reconcile smoothly the purpose of the agricultural rules and the intrinsic logic of the customs procedure, the practical requirements of the customs administration and the interest of the importers. Of course, as has already been said on the subject of the recommendation, it means that it is impossible to take account of the levy, which may perhaps be lower, in force on an intermediate date between the two abovementioned times.

On the one hand this interpretation is justified by the common economic basis of duties and levies which excludes the

application of different dates according to whether protection is achieved by means of a duty or by a levy. On the other hand it accords with the solution given by the Court to the analogous problem raised with regard to import certificates (judgment in Case 186/73, *supra*).

3. Question 1 (b)

Although it is not possible for a declaration for release to the market to be given effect by several authorizations to remove goods where each one relates to part of the goods, in respect of which the declaration is made, it may be accepted that the actual removal of the goods may be carried out by instalments. The question put should be understood by interpreting 'customs clearance' as 'removal' and therefore becomes superfluous if the replies proposed by the Commission with regard to the preceding questions are adopted, for these replies place no significance on the time of removal (whether in whole or in part).

C — 1. *The Government of the Republic of Italy* believes that while at first it may appear that the judgment in Case 35/71 is also capable of resolving the problems raised by the present case, in particular as it provides that 'the rate of levy applicable must therefore be that in force on the date on which the goods are irrevocably put into free circulation' the argument in that case turned on a quite special situation, that of a system of customs warehouses.

The question to be resolved is that of importation which is subject to successive controls, that is to say, where the importer obtains authorization to clear goods through customs not at one single time but in instalments.

Even in the case of clearance through customs by successive clearance certificates, the levy is applicable according to the rate in force on the date of acceptance of the final customs import

declaration which establishes that the goods are intended for consumption in the Community territory. On the basis of the identical criterion applied to customs duties, the importer is nevertheless entitled to ask, in respect of each quantity examined and cleared through customs, for the application of the levy, which may be lower, in force on the date on which each customs clearance certificate is used.

Even ignoring the convergent factors which may be derived from an analytical examination of the Community rules, it appears that it must be concluded that 'day of importation' must in principle be interpreted as being the day when the customs authorities accept the document whereby the final importation is declared. The customs rules of the different Member States in fact follow this interpretation which is by implication confirmed by the judgment of 15 May 1974 in Case 186/73 and that of 28 May 1974 in Case 3/74 (*Einfuhr- und Vorratsstelle für Getreide und Futtermittel v Pfützenreuter* [1974] ECR 589). It appears therefore from the identical criterion employed in the case of customs duties that the levy in force on the day that the customs authorities accept the final import declaration must be regarded as being applicable to products subject to the levy rules.

2. There further appear to be no objections on principle to the possibility of derogation, by virtue of which the importer may ask for the application of the most favourable rate in force on the day of customs clearance.

Even if their objectives are not wholly the same levies and customs duties have an analogous purpose and they constitute the instruments for a criterion of uniform taxation. This is evident both from Community rules themselves and in particular from the agreements concluded with associated countries and from the Common Customs Tariff contained in the Annex to Regulation No 950/68/EEC of 28 June 1968 (OJ

English Special Edition 1968 (1) p. 275) from Regulation (EEC) No 3000 of 17 November 1975 (OJ L 304 of 24. 11. 1975) which lay down uniform preliminary provisions and which also expressly refer to the levy rules and to the abovementioned draft directive of 21 December 1973 in which customs duties, charges having an equivalent effect and levies are taken into account simultaneously and in a uniform manner in a single provision.

Apart from the fact that they emphasize the need to refer to the date of acceptance of the final import declaration in order to determine the levy applicable, these factors lead to the adoption, in the case of levies as well, of the criterion whereby the importer may ask for the application of the rate of duty in force on the date of the actual customs clearance of the imported goods according to the rules and procedures which at the present moment still differ in the various Member States, that is to say, when, after the customs examination and the payments of the duties, he may actually dispose of the goods (whether or not they are in fact removed from the customs premises).

This possibility should be accepted in particular when customs clearance is effected by successive clearance certificates, especially in view of the fact that it fulfils the need of guaranteeing the genuinely competitive nature of the products in question on the internal market, which conforms precisely with the actual purpose of the levy rules. At the same time the application of the levy in force on the date on which the final import declaration is accepted, which may possibly be lower than the rate applicable on the date of customs clearance, is justified in view of the commercial forward planning of the trader concerned and the influence which has in fact already been exercised on the internal market by the products which have been the subject of a final import declaration.

3. On the other hand there must in any case be excluded the possibility of taking account of the levies in force during the period between the date of acceptance of the final import declaration and the date of the clearance of the goods through customs. Otherwise each trader concerned could choose the most favourable levy and thus evade taxation.

4. This answer renders superfluous the request for the interpretation of the recommendation of 25 May 1962 which must be regarded as unacceptable and therefore inadmissible in view of the fact that this kind of act has no binding force. The fact that recourse to Article 177 is intended to provide the solution to cases before the courts clearly shows the scope which should be given to the term 'acts' in paragraph (b) of that provision. It cannot be argued that the fact that the question has been ruled inadmissible requires an assessment of the importance of the question as the fact that it is impossible to interpret recommendations excludes the very need to rule on this particular point. Nor can the admissibility of this question be supported by the help which a national court might obtain from an interpretation of the recommendation since in any case the national court would have to apply the rule of national law in accordance with an interpretation which only that court has jurisdiction to give, whether or not it is in accordance with an exact interpretation of the recommendation.

The plaintiff in the main action, represented by Nicola Catalano, Advocate of the Rome Bar, the Italian Government, represented by Arturo Marzano, *Avvocato dello Stato*, and the Commission of the European Communities, represented by its legal adviser, Giuliano Marenco, acting as Agent, presented oral argument at the hearing on 8 April 1976.

The Advocate-General delivered his opinion at the hearing on 26 May 1976.

Law

- 1 By order of 31 October 1975, which was received at the Court Registry on 25 November 1975, the Tribunale di Genova referred, pursuant to Article 177 of the EEC Treaty, questions for a preliminary ruling on the interpretation of the concept 'day of importation' for the purposes of determining the levy applicable to cereals within the meaning of Article 17 of Regulation No 19 of the Council of 4 April 1962 (JO of 20. 4. 1962, p. 933) and Article 15 of Regulation No 120/67/EEC of the Council of 13 June 1967 (OJ English Special Edition 1967, p. 33).
- 2 These questions were raised in the course of a case relating to the fixing of the rates of levy for a maize importer who obtained customs clearance for his goods by instalments spread over a period of time.

Since the Community levies were subject to fluctuation during the period in question, the plaintiff in the main action sought and obtained in its requests for customs clearance the application of the rate of levy in force on the date of each of these requests when this was more favourable than that in force on the date of the acceptance of the import declaration or the submission of a prior request for removal of the goods.

After carrying out a check the national administration, the defendant in the main action, requested the importer to pay an additional sum by way of levy.

- 3 The first question asks the Court to interpret Article 17 of Regulation No 19 of the Council of 4 April 1962 and Article 15 of Regulation No 120/67/EEC of the Council of 13 June 1967, in so far as they provide that 'The levy to be charged shall be that applicable on the day of importation', in order to determine:
 - (a) whether 'day of importation' is to be taken as meaning the day on which the import declaration for the goods is submitted by the importer or received by the Customs or whether it is to be taken as meaning the day on which the goods are placed fully at the disposal of the importer after completion of customs clearance formalities in respect of the goods?

- (b) in a case where a consignment of goods is cleared through customs in several batches, whether 'day of importation' is to be taken as meaning the day on which each individual batch of goods is cleared through customs or the day on which the first or the last batch of that consignment of the goods is cleared through customs?
- (c) in a case where changes occur in the rate of levy between the date on which the import declaration is submitted or received and the date on which the goods are cleared through customs, whether the levy which is the lower of those in force on the two abovementioned dates is to be applied or even that in force on an intermediate date between the other two dates, which may be even lower?

In the second question the Court is asked to interpret the Recommendation of the Commission addressed to Member States on 25 May 1962 and published in the *Journal Officiel* of 29 June 1962, in order to establish whether the Recommendation, which is concerned with customs duties, can also apply in the matter of Community levies.

- 4 The authority responsible for the application of the levies, whether this be the customs administration or the competent intervention body, cannot delay the determination of the rate of levy beyond the date prescribed by the provisions of the two abovementioned regulations.

This date is the day on which the customs department accepted the declaration whereby the importer shows his intention to release the goods to the market.

This acceptance may not take place until the goods have reached the place prescribed by the customs for the process of customs clearance and until the documents which must be produced for their release to the market have been submitted.

- 5 The aim of the agricultural levy is to compensate for the difference between the price on the world market and the highest Community price.

It is primarily intended to protect and stabilize the Community market, in particular by preventing price fluctuations on the world market from affecting prices within the Community.

- 6 The increase in prices on the world market (resulting in a reduction in the levy) after the date of the acceptance by the customs of the import declaration should therefore have no influence on the determination of the rate of levy since the rate of levy is in principle determined according to the purchase price of the goods.

Consequently if the authorities concerned were able to put back the date to be taken into consideration for the determination of the levy they would risk abusing the levy system to the detriment of Community produce.

- 7 The answer must therefore be given that 'day of importation' referred to in Article 17 of Regulation No 19 and in Article 15 of Regulation No 120/67/EEC is the day on which the import declaration for the goods is accepted by the customs authorities.
- 8 For the reasons set out above the Recommendation of the Commission of 25 May 1962 concerning the date to be taken into account in determining the rate of customs duty to be applied to goods declared for internal consumption cannot apply to levies.
- 9 If, on the other hand, the Commission had wished to indicate that it applies to levies, it would have specified this since the recommendation was adopted more than one month after the publication of Regulation No 19 on the progressive establishment of a common organization of the markets in cereals, Article 17 of which provides that 'the levy to be charged shall be that applicable on the day of importation'.

Costs

- 10 The costs incurred by the Republic of Italy and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

Since the proceedings are, 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, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tribunale di Genova by order of 31 October 1975, hereby rules:

- (1) The 'day of importation' referred to in Article 17 of Regulation No 19 and of Article 15 of Regulation No 120/67/EEC is the day on which the import declaration for the goods is accepted by the customs authorities.
- (2) For the reasons set out above the Recommendation of the Commission of 25 May 1962 concerning the date to be taken into account in determining the rate of customs duty to be applied to goods declared for internal consumption cannot apply to levies.

Lecourt	Kutscher	O'Keeffe	
Mertens de Wilmars	Pescatore	Sørensen	Mackenzie Stuart

Delivered in open court in Luxembourg on 15 June 1976.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 26 MAY 1976

My Lords,

As Your Lordships remember, the system of levies on imports instituted by Council Regulation No 19 on the

gradual establishment of a common organization of the market in cereals entered into force on 1 July 1962. It continued in force until 1 July 1967 when it was replaced by the new system