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REGIONAL CUSTOMS DUTIES AND EC LAW: THE *LANCRY* AND *DODECANESE* JUDGMENTS

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The compatibility of "regional customs duties", i.e., *ad valorem* taxes levied on the occasion of importation of goods in a given region of a Member State, has been addressed by the Court of Justice in a number of recent cases.

The *Legros* - *"Octroi de Mer"* Case

The issue of the compatibility of regional customs duties with EC law was first addressed by the Court in 1992 in its celebrated *Legros* judgment, better known, at least in French speaking countries, as the *"Octroi de Mer"* judgment.[2]

The case concerned the compatibility with EC law of an *ad valorem* tax (so-called "Octroi de Mer", i.e., dock due) levied on goods "imported" in the French overseas department of Martinique, and which originated from other Member States (as well as from a non-Member country bound by a free trade agreement with the Community).

The Court held that the dock dues at issue constituted a charge having equivalent effect to a customs duty on imports and were thus incompatible with the prohibition on such charges laid down by the Treaty. It further held that, for the purposes of such classification, it was irrelevant that the dock dues at issue were also imposed on goods originating from other parts of France.

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2 Case C163/90 - *Legros*, judgment of 16th July 1992, [1992] ECR 1-4625.

However, the Court had not yet had the opportunity to rule upon the compatibility with Community law of regional customs duties levied on the occasion of the "importation" in a given region of a Member State of goods originating from another region of the same Member State. Nor had the Court had the opportunity to rule upon the compatibility with Community law of regional customs duties levied on the occasion of the export of goods leaving a region of a Member State, be it for other regions of the same Member State or for other Member States.

The Court has now had the opportunity to address the first question in its *Lancry* judgment of 9th August 1994,[3] and the second question in its so-called *"Dodecanese"* judgment of 14th September 1995.[4]

The *Lancry* judgment, like the *Legros* judgment, addressed the issue of the compatibility with EC law of the "Octroi de Mer" levied by the French overseas department of Martinique.

However, contrary to the *Legros* case, the goods "imported" in Martinique in the *Lancry* case originated from metropolitan France, i.e., from the same Member State.

The most sensitive question which was put to the Court was therefore, in substance, as follows: does the prohibition on customs duties and on charges having equivalent effect apply to a charge levied by a Member State on the entry into one region of the State of goods originating from other regions of that same State?

Advocate General Tesauro had suggested to the Court in his opinion to answer that question in the negative. The Court, however, declined to follow the opinion of its Advocate General.

It held, on the contrary, that a charge levied by a Member State on the entry into one region of the State of goods originating from outside that region constitutes a — prohibited — charge having equivalent effect to customs duties on import, not only when it is levied on goods which originate from other Member States, but also when it is levied on goods originating from other regions of the same State.

Indeed, in the opinion of the Court, the abolition of duties between regions and municipalities of a Member State is implicit in the concept of a customs union among the Member States and in the prohibition of customs duties and charges having equivalent effect levied by a Member State on goods originating from other

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3 Joined Cases C363/93 and C407/93 to C411/93, *Lancry* [1994] ECR I-3957.

4 Joined Cases C485/93 and C486/93, *Simitzi and Kos* (Tax regime of the Dodecanese), not yet reported in ECR.

Member States.[5] Holding otherwise would have led, as Advocate General Tesauro acknowledged, to "the paradox of a single market in which barriers to trade between Portugal and Denmark are prohibited, whilst barriers to trade between Naples and Capri are [viewed as] immaterial [in terms of the Treaty]".[6]

The *Dodecanese* judgment, handed down a few months after the *Lancry* judgment, has gone one step further. Namely, the regional customs duty at issue before the Court was levied not only on imports of goods in the Greek region of Dodecanese (both from other regions of Greece as well as from other Member States), but also on goods leaving the Dodecanese region (be it for other regions of Greece, or for other Member States). Here, too, the Court held that such a charge was contrary to the Treaty:[7]

> " ... a pecuniary charge imposed unilaterally on goods by reason of the fact that they cross a frontier constitutes a charge having equivalent effect. Consequently, a charge imposed on domestic goods by reason of the fact that they are exported from the Member State in question constitutes a charge having an equivalent effect to a customs duty on exports within the meaning of Article 16 of the Treaty.
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> That conclusion is not altered by the fact that the pecuniary charge is also levied on goods leaving one region of a Member State for another part of the territory of the same State.
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> A charge levied at a regional frontier by reason of the despatch of goods from one region of a Member State to other regions of the same State constitutes an obstacle to the free movement of goods which is at least as serious as a charge levied at the national frontier by reason of the export of goods from the territory of a Member State (see, by analogy, the judgment in *Legros and Others*, para 16)."

"Radical" Change in the Case Law of the Court

As pointed out by Advocate General Tesauro in his opinion in the *Dodecanese* case, the *Lancry* judgment (handed down a few months before the *Dodecanese* judgment) represents a considerable change in the case law of the Court. Indeed,

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5 See *Lancry* judgment, para 27 to 29.

6 See opinion of Advocate General Tesauro in the *Lancry* case, para 28.

7 See para 19 to 21.

until the *Lancry* judgment, the Court had consistently held that the rules of the Treaty prohibiting *ad valorem* taxes on imports or on exports as between Member States were inapplicable in purely internal situations.

The *Lancry* judgment does represent, in this respect, a "radical" change in the previous case law of the Court.[8]

This "radical" change has now been confirmed, if need be, by the *Dodecanese* judgment.

[8] See opinion of Advocate General Tesauro in the *Dodecanese* case, para 19.