Neutral Citation Number: [2010] EWCA Civ 263

Case No: A2/2009/1748

IN THE HIGH COURT OF JUSTICE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
Mr Justice Hamblen
[2009] EWHC 1721 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/03/2010

Before :

LORD JUSTICE MUMMERY
LORD JUSTICE RICHARDS
and
LORD JUSTICE RIMER

- -

Between :

(1) Bloomsbury International Limited
(2) Ocean World Fisheries Limited
(3) Vision Seafood International Limited
(4) Seafridge Limited
(5) Seatek (UK) Limited
(6) Vision Seafoods Limited
(7) British Seafood Limited
(8) Five Star Fish Limited — **Appellants**

- and -

(1) The Sea Fish Industry Authority
(2) Department for Environment, Food and Rural Affairs — **Respondents**

- -
- -

Charles Graham QC and Valentina Sloane (instructed by **The Wilkes Partnership**) for the **Appellants**
Charles Flint QC and Robert Weekes (instructed by **Nabarro LLP**) for the **First Respondent**
Iain Quirk (instructed by **the Solicitor to DEFRA**) for the **Second Respondent**

Hearing dates : 17-18 February 2010

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Approved Judgment

Lord Justice Richards :

1. The question at the centre of this appeal is whether the power under section 4 of the Fisheries Act 1981 ("the 1981 Act") to impose a levy in respect of sea fish and sea fish products "landed" in the United Kingdom extends to the imposition of a levy in respect of sea fish and sea fish products first brought to land elsewhere and then imported into the United Kingdom. If the power extends to imports, a further question is whether a levy is contrary to articles 28 and 30 of the Treaty on the Functioning of the European Union ("the TFEU"), as a charge having an effect equivalent to a customs duty, in so far as it applies to imports from other EU Member States.

2. The power to impose a levy is conferred on the Sea Fish Industry Authority ("the Authority"), the first respondent to the appeal. The regulations by which the Authority has exercised that power are currently the Sea Fish Industry Authority (Levy) Regulations 1995 ("the 1995 Regulations"), as contained in the schedule to the Sea Fish Industry Authority (Levy) Regulations 1995 Confirmatory Order 1996 (SI 1996 No. 160). Those regulations expressly cover imports. The appellants ("the companies") are a group of importing companies which challenge the legality of the levy in so far as it applies to imports. A number of issues were directed for hearing before Hamblen J who, in an extremely clear and helpful judgment, decided the determinative issues in favour of the Authority.

3. The companies appeal, with permission granted by the judge, against the judge's findings that (1) the 1981 Act is to be read as empowering the imposition of a levy in respect of imports and (2) the imposition of such a levy is not contrary to EU law. The appeal is resisted by the Authority. The Department for Environment, Food and Rural Affairs played an active part in the proceedings below but its role in the appeal has been limited to supporting the Authority's position.

The 1981 Act

4. Part I (sections 1-14) of the 1981 Act as amended concerns the constitution and functions of the Authority. The material provisions are these:

> "2. *Duties of the Authority*
>
> (1) Subject to subsection (2A) below it shall be the duty of the Authority to exercise its powers under this Part of this Act for the purpose of promoting the efficiency of the sea fish industry and so as to serve the interests of that industry as a whole.
>
> (2) In exercising its powers under this Part of this Act the Authority shall have regard to the interests of consumers of sea fish and sea fish products.
>
> (2A) If any levy imposed under section 4 below has effect in relation to sea fish or sea fish products from the sea fish industries of member States other than the United Kingdom, the Authority shall so exercise its powers under this Part of this Act as to secure that benefits are conferred on those industries

commensurate with any burden directly or indirectly borne by them in consequences of the levy.

….

4. *Levies*

(1) For the purpose of financing its activities the Authority may impose a levy on persons engaged in the sea fish industry.

(2) Any levy under this section shall be imposed by regulations made by the Authority and confirmed by an order of the Ministers; and in this section 'prescribed' means prescribed by such regulations.

(3) Regulations under this section may impose a levy either –

(a) in respect of the weight of sea fish or sea fish products landed in the United Kingdom or trans-shipped within British fishery limits at a prescribed rate which, in the case of sea fish, shall not exceed 2p per kilogram; or

(b) in respect of the value, ascertained in the prescribed manner, of sea fish or sea fish products landed or trans-shipped as aforesaid at a prescribed rate not exceeding 1 per cent of that value.

(4) If regulations under this section impose a levy as provided in subsection (3)(a) above the prescribed rate in relation to any sea fish product shall be such that its yield will not in the opinion of the Authority exceed the yield from a levy at the rate of 2p per kilogram on the sea fish required on average (whether alone or together with any other substance or article) to produce a kilogram of that product.

(5) Different rates may be prescribed for sea fish or sea fish products of different descriptions …

(6) Any levy imposed under this section shall be payable by such persons engaged in the sea fish industry, in such proportions and at such times as may be prescribed; and the amount payable by any person on account of the levy shall be a debt due from him to the Authority and recoverable accordingly.

…

(8) For the purposes of this section -

(a) parts of a sea fish shall be treated as sea fish products and not as sea fish;

> (b) references to the landing of fish include references to the collection for consumption of sea fish which have been bred, reared or cultivated in the course of fish farming whether in the sea or otherwise and references to the landing of fish or fish products include references to bringing them through the tunnel system as defined in the Channel Tunnel Act 1987.
>
> …
>
> 14. *Interpretation of Part I*
>
> (1) In this Part of this Act –
>
> …
>
> 'sea fish' means fish of any kind found in the sea, including shellfish and, subject to section 4(8)(a) above, any part of any such fish but does not include salmon or migratory trout.
>
> (2) For the purposes of this Part of this Act other than sections 2(2A) and 3(5) 'the sea fish industry' means the sea fish industry in the United Kingdom and a person shall be regarded as engaged in the sea fish industry if
>
> (a) he carries on the business of operating vessels for catching or processing sea fish or for transporting sea fish or sea fish products, being vessels registered in the United Kingdom; or
>
> (b) he carries on in the United Kingdom the business of breeding, rearing or cultivating sea fish for human consumption, of selling sea fish or sea fish products by wholesale or retail, of buying sea fish or sea fish products by wholesale, of importing sea fish or sea fish products or of processing sea fish (including the business of a fish fryer)."

5. Section 2(2A) was added in order to meet concerns expressed by the European Commission in 1983 that receipts from the levy benefited only national producers even though the burden of the levy also fell on producers from other member states. The last part of section 4(8)(b), concerning the bringing of fish or fish products through the Channel Tunnel, was added by an order made pursuant to powers conferred by the Channel Tunnel Act 1987.

The 1995 Regulations

6. The material provisions of the 1995 Regulations are these:

> "*Interpretation*
>
> 2. In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them –

…

'firsthand sale' means –

(a) in relation to any sea fish or sea fish product which has been first landed in the United Kingdom the first sale thereof (other than a sale by retail) whether prior to or after landing in the United Kingdom;

(b) in relation to any sea fish or sea fish product which has been first landed outside the United Kingdom and any sea fish product manufactured outside the United Kingdom from such sea fish or sea fish product which in either case is purchased by a person carrying on business in the sea fish industry and is imported or brought into the United Kingdom for the purposes of any such business, the first sale thereof (whether in the United Kingdom or elsewhere) to such a person as aforesaid;

(c) in relation to any sea fish or sea fish product which is trans-shipped within British fishery limits, the first sale thereof.

…

'sale by retail' means a sale to a person buying otherwise than for the purpose of resale or processing or use as bait, and includes a sale to a person for the purposes of a catering business (other than a fish frying business); and 'sell by retail' has a corresponding meaning;

…

Imposition of levy

4.(1) There shall be paid to the Authority subject to and in accordance with the provisions of these Regulations by every person engaged in the sea fish industry who –

(a) purchases any sea fish or any sea fish product on a firsthand sale; or

(b) trans-ships within British fishery limits any sea fish or any sea fish product by way of firsthand sale; or

(c) lands any sea fish or sea fish product in the United Kingdom for subsequent sale other than in the United Kingdom;

a levy (hereinafter referred to as 'the levy') at the rate per kilogram set out in the second column of the Schedule hereto in

> respect of any sea fish or sea fish product specified opposite thereto in the first column of the said Schedule so purchased … by him
>
> …
>
> (6) Where the levy becomes payable in respect of any sea fish it shall not be payable in respect of the products of such sea fish.
>
> *Time Limits for Payment*
>
> 5.(1) Levy payable by a person who purchases any sea fish or sea fish product on a firsthand sale shall be paid to the Authority within seven days after the end of –
>
> > (a) the week during which there took place the firsthand sale of the fish or fish product in respect of which the levy is payable; or
> >
> > (b) the week during which such fish or fish product was imported or brought into the country;
>
> whichever is the later …."

7. The schedule to the 1995 Regulations contains rates of levy according to the type of sea fish or sea fish product. For example, under the heading "sea fish" the principal rate is that set out for "sea fish other than cockles or mussels or whelks or pelagic fish [defined as mackerel, pilchard, sprat, scad or whitebait] sold on a firsthand sale or pelagic fish trans-shipped within British fishery limits or sea fish sold for fishmeal production". Under the heading "sea fish products" the first sub-heading is "fresh, frozen or chilled sea fish", under which different rates are set out for "gutted", "headless and gutted", "fillets, skin on" and "fillets, skinless". Other sub-headings include "smoked sea fish", "salted and cured sea fish" and various categories of pelagic fish, again with different rates for different entries under each sub-heading. There are separate entries for shellfish, sea fish products sold for fishmeal, sea fishmeal, "any sea fish product not referred to above" and "any pelagic fish product not referred to above", each with a different rate.

First issue: the meaning of "landed"

8. The companies' case is that sea fish are "landed" in the United Kingdom, within the meaning of section 4(3) of the 1981 Act, when they have been caught at sea and are brought to land for the first time in the United Kingdom, as when a fishing vessel lands its catch here (whereas fish that are brought to land elsewhere and are then brought into the United Kingdom are "imported" into the country, not landed here). The judge described this as the narrower meaning of the term.

9. The Authority accepts that "landed" is capable of having the narrower meaning and has that meaning in many contexts, but contends that in the context of the 1981 Act it refers to fish brought on to the land of the United Kingdom by any means (whether by road, rail, air or sea), so that it extends to imports into the United Kingdom of fish

previously brought to land elsewhere. The judge described this as the wider meaning of the term.

10. The judge referred to the observations of Lord Hoffmann in *Charter Reinsurance Co Ltd v Fagan* [1997] AC 313, 391C:

> "I think that in some cases the notion of words having a natural meaning is not a very helpful one. Because the meaning of words is so sensitive to syntax and context, the natural meaning of words in one sentence may be quite unnatural in another. Thus a statement that words have a particular natural meaning may mean no more than that in many contexts they will have that meaning. In other contexts their meaning will be different but no less natural."

11. The judge accepted that in many contexts the word "landed" will have the narrower meaning: it is likely to have that meaning, for example, in the context of recreational fishing and in the context of catches of fish made by commercial fishing vessels. In the context of the 1981 Act, however, he reached the clear conclusion, after detailed examination of the legislative provisions themselves and of the legislative history, that the term has the wider meaning contended for by the Authority and that the imposition of a levy on imports is therefore within the powers conferred by the 1981 Act. The Authority supports the judge's conclusion. The companies say that he was wrong to reject the narrower meaning.

12. In his submissions on behalf of the companies, Mr Graham QC repeatedly described the narrower meaning as the "correct and exact" meaning of the term. This formulation was directed at bringing the appellants' case within a line of authority going back to the decision of the Divisional Court in *Spillers Limited v Cardiff (Borough) Assessment Committee* [1931] 2 KB 21, not cited to the judge. *Spillers* concerned the meaning of the term "contiguous" in a rating statute. It was held to have a "proper and exact" meaning (involving actual contact) and a "loose and inexact" meaning (involving close proximity but without actual contact). Lord Hewart CJ rejected in robust terms the suggestion that Parliament could have intended the loose and inexact meaning. He stated (at page 43):

> "It ought to be the rule, and we are glad to think that it is the rule, that words are used in an Act of Parliament correctly and exactly, and not loosely and inexactly. Upon those who assert that that rule has been broken the burden of establishing their proposition lies heavily. And they can discharge it only by pointing to something in the context which goes to show that the loose and inexact meaning must be preferred."

13. That case was affirmed by the Privy Council in *New Plymouth Borough Council v Taranaki Electric-Power Board* [1933] AC 680. It was, however, distinguished by Lord Lowry in *Attorney-General's Reference (No.1 of 1988)* [1989] 1 AC 971, 993-4, on the basis that "in *Spiller's* case the choice was between the proper and ordinary meaning of a word and its loose and inaccurate meaning; whereas in this case the choice is between the primary meaning and the secondary but correct and acceptable meaning".

14. Mr Graham submitted that in this case, in the context of sea fish, the narrower meaning is the correct and exact one and is the meaning it has always had in past fisheries legislation; and the wider meaning, covering imports, is a loose and inexact one rather than a correct and acceptable secondary meaning. It is therefore to be expected that Parliament used the term with the narrower meaning. The burden is on the Authority to show that the wider meaning *must* nonetheless be the correct one; and the judge was wrong to treat this as a simple context-driven choice between two competing meanings.

15. I do not think that the narrower meaning of "landed" can be regarded, even in the context of sea fish, as the "correct and exact" meaning, to be contrasted with a "loose and inexact" wider meaning, so as to engage the reasoning in *Spillers*. The issue is more complex than that, and *Spillers* does not help.

16. On the other hand, it does seem to me that "landed" has a *normal* meaning in the general context of fisheries; and I think it helpful to start by considering that meaning, whilst keeping in mind the cautionary observations of Lord Hoffmann in *Charter Insurance* and that what ultimately matters is the meaning of the term in the specific context of Part I of the 1981 Act.

17. One would normally refer to a fish being "landed" when it is brought to land after being caught, whether by an angler landing a single fish caught with rod and line, or by a fishing vessel landing a catch of fish it has taken at sea. The judge referred at para [58] of his judgment to examples of fisheries legislation where "landed" has that meaning. They include, at the national level, the Sea Fish (Conservation) Act 1967 ("the 1967 Act") and, at the EU level, Council Regulation (EEC) No. 2847/93.

18. Mr Flint QC, for the Authority, submitted that in a fish conservation statute, where one is concerned with the monitoring of catches, one would expect "landed" to refer to the landing of fish by the vessel that caught them, but that Part I of the 1981 Act is not a conservation statute. In my view that is the normal meaning in a wider context than conservation statutes. In any event, although Part I of the 1981 Act is not concerned with the conservation of stocks, it is contained in a statute which does include that subject-matter. One of the purposes of the 1981 Act, as its short title states, is "to amend the law relating to the regulation of sea fishing"; and for that purpose Part III contains substantial amendments to the 1967 Act. Where those amendments refer to the landing of fish (as, for example, in the substituted section 1 of the 1967 Act), the term plainly has its normal meaning. Although words can have different meanings in different parts of the same statute, one would expect a clear indication if "landed" was intended to have a materially different meaning in Part I from that which it has in Part III (albeit in amendments made to an earlier statute). The link with Part III is reinforced by the fact that section 4(3) empowers the imposition of a levy in respect of fish "landed in the United Kingdom or trans-shipped within British fishery limits"; and the Part III amendments to the 1967 Act create a similar parallelism between the landing of fish and the trans-shipment of fish, by the insertion of provisions into the 1967 Act for the regulation of trans-shipments within British fishery limits (see, for example, the powers in section 6(1) and (1A) of the 1967 Act, as amended, to prohibit the landing or trans-shipment of sea fish caught in certain areas).

19. The formulation of the narrower meaning for which the companies contend includes reference to bringing fish to land "for the first time". In the ordinary course, a fishing vessel will bring its catch of fish to land only once: the fish will be landed for the first and only time. We were taxed by Mr Flint in argument, however, with the improbable example of a fishing vessel unloading its catch in Dieppe, then reloading it and sailing to Felixstowe, where the catch is unloaded again: is the catch landed both in Dieppe and in Felixstowe, or is it landed only in Dieppe where it is brought to land for the first time? I am inclined to the view that "for the first time" is not an integral feature of the normal meaning, so that it would be possible for a fishing vessel, in the example given, to land its catch first in Dieppe and then in Felixstowe. Section 8 of the 1967 Act may provide some support for that view, in that it appears to contemplate that sea fish may be landed in the United Kingdom although they have been previously landed elsewhere; but we were not addressed on the section and I think it unnecessary to consider it in detail. Even if the normal meaning does encompass the landing in the United Kingdom of fish that have previously been landed elsewhere, it still applies only where fish are brought to land by the fishing vessel that caught them; and, as discussed below, it does not extend to ordinary cases of importation of fish previously landed elsewhere. The point does not therefore cause a serious difficulty for the companies' case in the present proceedings.

20. There are certain exceptional situations where, on the normal meaning, fish may be landed and imported at one and the same time. The Dieppe/Felixstowe example considered above may be one such case. Another arises out of the operation of a particular rule of EU law whereby sea fish are treated as originating in the country of the vessel that took them from the sea, so that the landing of sea fish in the United Kingdom by a foreign fishing vessel is regarded as an importation into the United Kingdom: see Case C-280/89, *Re British Fishing Boats: EC Commission v Ireland* [1993] 1 CMLR 273.

21. Leaving aside those exceptional situations, however, the normal meaning of "landed" in a fisheries context would not cover the importation into the United Kingdom of fish previously landed elsewhere. That is most obvious in the case of importation of a consignment of fish by road or rail, as might occur between the Republic of Ireland and Northern Ireland: to say that fish have been "landed" by being brought by land from one country to another is not only outside the normal meaning but is on any view a highly artificial use of language (I shall consider later the effect of the amendment to the 1981 Act in relation to fish brought through the Channel Tunnel). It is at least a sensible use of language, but still outside the normal meaning in a fisheries context, to say that a consignment of fish is landed when it is unloaded from a cargo vessel onto the dockside, and possibly when it is driven in a lorry from a ferry onto land. As to importation by air, it is true that an aircraft and its contents, including any consignment of fish, are landed in the sense of being brought to ground on arrival in a country; but again that is outside the normal meaning in a fisheries context.

22. The above considerations lead me provisionally to favour the narrower meaning of "landed" in section 4(3) of the 1981 Act, subject to the possible (and, in my view, for present purposes immaterial) exclusion of "for the first time" from the formulation of the narrower meaning. I turn to consider the various factors that caused the judge to reject the narrower meaning and to adopt the wider meaning.

23. The judge referred first to the fact that "landed" relates to sea fish *products* as well as to sea fish. When considering sea fish products, it is important to bear in mind that, by section 4(8)(a) of the 1981 Act, parts of a sea fish are treated as sea fish products. Certain processes that can and do take place on the fishing vessel at sea, in particular deheading, gutting and filleting, therefore result in sea fish products as defined. Other sea fish products are the result of processing that is bound in practice to take place on land rather than at sea: the judge cited smoked fish, cured fish and fishmeal as examples. The narrower meaning of "landed" can sensibly be applied to products processed at sea, in that they are brought to land in the same way as unprocessed fish by the vessel that caught the fish. The narrower meaning is plainly not apt, however, to cover the importation of products processed on land.

24. The judge regarded this as a pointer towards the wider meaning. He did not accept the argument that the power to impose a levy should be read as applying to some sea fish products (those that have undergone the limited amount of processing that can be done on board the fishing vessel itself) but not to others. He said that "the words used [i.e. sea fish products] are general and unqualified and it is difficult to justify this implied restriction of their meaning", and that "[i]n terms of the imposition of and the benefits from a levy it is also difficult to discern why a marked distinction should be drawn between these different types of sea food products" (para [61]).

25. I see the matter in a different way. The draftsman of the 1981 Act plainly considered that there would be sea fish products capable of being landed in the United Kingdom and thereby attracting liability to levy. But as I have said, even on the narrower meaning there are such products, namely those processed on board the fishing vessel itself. That is sufficient to give purpose to the inclusion of the reference to sea fish products. To argue that that does not cover all sea fish products, in particular that it does not cover those processed on land, and that the wider meaning must be adopted in order to ensure that such products are covered, is in my view to look at the matter the wrong way round. The 1981 Act does not say that all sea fish products are to be subject to the levy. It empowers the imposition of a levy only in relation to those landed in the United Kingdom. In those circumstances it seems to me to be wrong in principle to adopt a strained meaning of "landed" in order to enable a levy to be charged on all sea fish products. What makes that course all the more inappropriate is that sea fish products processed on land in the United Kingdom are at no time landed in the United Kingdom, even on the wider meaning, and are therefore incapable of attracting a levy at all (albeit a levy may have been payable on the sea fish or sea fish products that were used as ingredients for this processing stage). I do not think that the meaning of "landed" should be stretched so as cover imports of sea fish products when the equivalent products are not subject to a levy when produced in the United Kingdom. To some extent this point looks ahead to the issues under EU law which I consider later.

26. The judge also attached significance to the fact that, by section 14(2)(b) of the 1981 Act, a person who carries on in the United Kingdom the business of importing sea fish or sea fish products is to be regarded as engaged in the sea fish industry, so that importers are included in the class of persons for whose benefit the Authority is to exercise its powers (section 2(1)) and upon whom it is empowered to impose a levy (section 4(1)). He held that the effect of the companies' construction "is largely if not completely to exclude importers from liability for the levy", which "is inconsistent

with the scheme of the 1981 Act as a whole, which includes importers as a class of persons for whose benefit the [Authority's] powers are to be exercised, and section 14(2) in particular, which demonstrates a clear intention that importers shall be liable for the levy" (para [67]). Mr Flint also made much of this point before us, submitting that it would be very surprising if the power to charge a levy did not match the Authority's duty under section 2(1) to promote the efficiency and serve the interests of the industry as a whole.

27. I accept that on the narrower meaning there will be only limited scope for payment of the levy by importers notwithstanding that they form part of the industry which is intended as a whole to benefit from the levy. To that extent there is force in the judge's point. Even on the narrower meaning, however, the inclusion of importers in section 14(2)(b) is not altogether devoid of purpose. Their business as importers does not preclude the possibility of their purchasing fish that have been landed (in the narrower meaning) in the United Kingdom and therefore of their becoming subject to the levy. An additional consideration, but not one on which I would place much weight, is that the landing of fish in the United Kingdom by a foreign vessel constitutes an importation into the United Kingdom (see *Re British Fishing Boats: EC Commission v Ireland*, cited above). The reason I would not place much weight on that consideration is that importers were included in the predecessor statute, the Sea Fish Industry Act 1970 (considered further below), which also preceded the United Kingdom's accession to the EU, and it would be to attribute undue prescience to the draftsman to suppose that he had in mind at that time that the landing of fish in the United Kingdom by a foreign vessel would constitute an importation.

28. The judge also attached significance to the expanded meaning of "landed" in section 4(8)(b) of the 1981 Act, in particular the provision included by amendment, under the powers conferred by the Channel Tunnel Act 1987, that references to the landing of fish or fish products include references to bringing them through the Channel Tunnel. The judge said that the Channel Tunnel amendment suggests a meaning which "necessarily contradicts the narrower meaning" and on the companies' construction "produces the bizarre result that the 1981 Act covers sea fish imported by lorry carried by rail through the Channel Tunnel, but not sea fish carried by lorry on a Channel ferry" (paras [70]-[71]). He referred to the principle that the court seeks to avoid a construction that creates an anomaly (Bennion, *Statutory Interpretation*, 5th ed (2008), section 315), and to the principle that the meaning and effect of an amended statute should generally be ascertained by an examination of the language of that statute as amended (*Inco Europe Ltd v First Choice Distribution* [1999] 1 WLR 270, 272-3). In his view "[t]he fact that the Channel Tunnel amendment clearly uses 'landed' in its wider rather than its narrower meaning, and the anomalous consequences which would result if imports brought in by other means were not similarly subject to levies, therefore provide important support for the wider meaning" (para [78]).

29. I agree that if the narrower meaning of "landed" is correct the Channel Tunnel amendment produces a striking anomaly, but it counts simply as an anomaly: it was plainly not intended to have, and did not have, any more general effect on the meaning of the pre-existing statutory language. If, however, the wider meaning is correct, the amendment was not needed at all, since the bringing of sea fish and sea fish products on to the land of the United Kingdom by any means was already

covered. Although Mr Flint invited us to treat it as a provision made for the avoidance of doubt, it is not so expressed; and, in common with the pre-existing provision in section 4(8)(b) that references to the landing of fish include references to the collection for consumption of sea fish from fish farms, it reads like an *extension* of the definition of "landed". This was a ministerial amendment made by subordinate legislation under the authority conferred by the Channel Tunnel Act 1987. It is not clear to me what the draftsman can have had in mind, and in my view the amendment does not provide any real assistance either way to the resolution of the dispute before us. It is, however, worth noting that section 4(8)(b), to which the amendment was attached, would have been the natural place to make clear from the outset, if such had been the legislative intention, that "landed" included the importation of sea fish and sea fish products into the United Kingdom by any means.

30. The next point dealt with by the judge was the effect of section 2(2A) of the 1981 Act, another provision introduced by amendment. That subsection provides that if any levy has effect in relation to sea fish or sea fish products from the sea fish industries of other EU member states, the Authority is to exercise its powers under Part I so as to secure that benefits are conferred on those industries commensurate with any burden directly or indirectly borne by them in consequence of the levy. The judge said that one would expect this provision to apply to sea fish industries of member states generally, rather than to parts of such industries, and for "sea fish industries" to have a similarly wide meaning to that given to "the sea fish industry in the United Kingdom" under section 14(2). If so, the provision would apply to, amongst other products, fish that had been brought ashore in another member state, processed and then imported into the United Kingdom. On the companies' case, however, it applied only to sea fish caught in the national waters of another member state or by vessels which were part of the sea fish industry of another member states, and excluded processors, importers and merchants in other member states. In the judge's view "it makes little sense to construe the provision as going to eliminate discrimination against only one sector of the sea fish industries of other member states, namely, the catching sector" (para [82]).

31. My reaction to that line of reasoning is similar to that concerning the discussion of the "sea fish products" issue (see paras [23]-[25] above). Even on the companies' case it is possible for the levy to have effect in relation to some sea fish and sea fish products from the sea fish industries of other member states. Thus there is room for the application of the subsection. To the extent that a burden is borne in consequence of the levy, commensurate benefits must be secured. To say that the subsection refers to the sea fish industries of member states generally, including processors, importers and merchants, and that the levy must therefore be intended to apply generally to imports, is again to look at the matter the wrong way round.

32. The judge then examined the legislative history at some length, going back to the provisions of the Herring Industry Act 1935 empowering the imposition of a levy on first sales of fresh herring. I will not repeat the detail, which is set out at paras [84] to [97] of his judgment. He dismissed the companies' submission, not renewed before us, that the earlier legislation was *in pari materia* to the 1981 Act and that the 1981 Act should be construed accordingly. He accepted that "historically the definition of first hand sales has frequently drawn a distinction between landing and importing", but he considered that one could not derive from that practice the conclusion that

throughout any legislation dealing with this subject-matter "landed" will always be used in its narrower meaning, regardless of context: it all depends on the specific context in which the word is being used (see para [99] of his judgment).

33. It is of course true that it all depends on context. Nevertheless the fact that a distinction has frequently been drawn between landing and importing in a fisheries context can be seen as a reflection of the narrower meaning that landing generally has in this context, and as a pointer to its having that meaning in section 4(3) of the 1981 Act in the absence of an express provision extending it to imports generally.

34. There were two further points that the judge derived from the legislative history. One was that "it does clearly emerge … that under all these schemes levies have always been imposed on imports". The judge could discern no good reason for a change of policy in the 1981 Act. The other was a striking similarity between the language of section 4(3) of the 1981 Act and that of section 17(1) of the Sea Fish Industry Act 1970, pursuant to which a levy had in practice been imposed on importers, apparently without anyone questioning the power to impose such a levy pursuant to it. The judge observed that if there had been intended to be a change in policy one would have expected different language to be used; conversely, given that there had been no issue but that levies could be imposed on importers under the 1970 Act, if the intent was to carry on imposing levies on importers it was understandable why similar wording should be used in the 1981 Act. If anything, therefore, he considered that the legislative history, and in particular the long history of imposing levies on importers and the lack of any convincing explanation for a sudden and marked change in policy in that regard, supported the Authority's case on construction (see paras [100]-[102] of his judgment).

35. I accept that there is some force in the point about a consistent policy of empowering the imposition of a levy on imports. But in so far as the power to impose a levy on imports was conferred historically by a provision referring specifically to the importation, as opposed to the landing, of fish, it provides no support at all for the wider meaning of "landed" in the 1981 Act. As to the similarity of language between the 1970 Act and the 1981 Act, the issue of construction is essentially the same in each case: either the statutory language empowers the imposition of a levy on imports or it does not. The absence of a challenge to regulations made under the 1970 Act imposing a levy on imports tells one nothing about the proper construction of the statute itself or, therefore, about the proper construction of the similar language in the 1981 Act.

36. The judge declined to place reliance on the explanatory notes and explanatory memoranda relating to the 1981 Act, or on certain Hansard extracts, as aids to construction of the statute. Those matters have not been pursued before us.

37. Save for the EU law issue, I have touched on all the matters taken expressly into account by the judge in reaching his conclusion that section 4(3) of the 1981 Act has the wider meaning contended for by the Authority. With great respect to the judge, I have reached a different conclusion. I have indicated that the narrower meaning (subject to a proviso about "in the first place") accords in my view with the natural meaning of "landed" in a fisheries context, and that if the wider meaning had been intended in Part I of the 1981 Act I would have expected to see it spelled out in terms. I have borne in mind that we are concerned not just with a general fisheries context,

but with the specific context of Part I, and I accept that some (but not all) of the specific contextual points made by the judge tell in favour of the wider meaning. I do not regard those points, however, as sufficient to displace the narrower meaning, and in my judgment the balance of the argument comes down in favour of the narrower meaning.

38. It follows that, in my judgment, the 1995 Regulations are *ultra vires* section 4 of the 1981 Act in so far as they impose a levy on imports of sea fish and sea fish products into the United Kingdom (that is to say, imports other than those constituted by the landing of fish in the United Kingdom in the narrower meaning: see paragraph [20] above).

39. At a late stage in his submissions Mr Graham sought to rely on what is described in Bennion, *Statutory Interpretation*, section 278 as the principle against doubtful penalisation. In its application to taxing statutes, the principle was expressed in this way by Evans LJ in *Ingram v Inland Revenue Commissioners* [1997] 4 All ER 395, 414:

> "… in the context of tax legislation it is necessary to consider the legal analysis with the utmost precision, so that the taxpayer shall not become liable to tax unless this is clearly and unequivocally the effect of the statutory provisions."

The text of Bennion suggests that the strength of the principle is open to doubt in the modern era. I do not need to explore the issue. The principle may provide additional support for the conclusion I have reached but is not necessary for that conclusion.

40. I have reached that conclusion on the construction of the statute as a matter of domestic law, without regard to the impact of EU law. As explained below, however, I am also of the opinion that if the wider meaning were adopted it would produce a result incompatible with EU law. It is necessary to construe the 1981 Act, so far as possible, in such a way as to achieve compatibility with EU law: see Case C-106/89, *Marleasing SA v La Commercial Internacional de Alimentacion SA* [1990] ECR I-4135. That can readily be done in this case by adopting the narrower meaning in preference to the wider meaning. Accordingly, even if I had taken a different view of construction as a matter of domestic law, I would have reached the same result through the application of EU law.

The second issue: the impact of EU law

41. The second issue concerns the position under EU law if imports are subject to a levy as provided for by the 1995 Regulations. I think it right to consider the issue even though my conclusion on the first issue makes it strictly unnecessary for me to do so.

42. The relevant provisions of the TFEU are articles 28, 30 and 110 (formerly articles 23, 25 and 90 respectively of the EC Treaty):

> "*Article 28*
>
> 1. The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition

> between Member States of customs duties on imports and exports and of all charges having equivalent effect ….
>
> 2. The provisions of Article 28 … shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.
>
> *Article 30*
>
> Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States ….
>
> *Article 110*
>
> No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.
>
> Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products."

43. The judge defined a charge having an effect equivalent to a customs duty as a "CEE". At para [114] he set out a summary of relevant principles, with which no issue has been taken on the appeal. They include the following:

> "(3) The principal characteristic of a CEE, just as a customs duty, is the imposition of the charge by reason of the fact that the goods pass a frontier ….
>
> (4) Even if it is shown that a charge is imposed on goods by reason of the fact that they cross a frontier, it will escape classification as a CEE if it can be established that the charge is related to a system of internal dues applied systematically and in accordance with the same criteria to domestic products and imported or exported products alike under article 90 EC …, i.e. if it forms part of a system of internal taxation ….
>
> (5) It is well established that article 25 EC and article 90 EC are mutually exclusive. The same charge cannot constitute both a CEE and an internal tax. The former is unlawful but the latter lawful to the extent that it does not discriminate in favour of domestic products ….
>
> (6) In order for a charge to form part of a system of internal taxation, it must be shown that:
>
> > (a) The charge applies to both domestic and imported products …

> And
>
> (b) Domestic and imported products are subject to the same duty in respect of the same products at the same marketing stage and that the chargeable event giving rise to the duty is identical …."

44. Applying those principles, the judge held that the levy imposed under the 1995 Regulations in respect of imported sea fish and sea fish products is not a charge having an equivalent effect. The first basis for that conclusion was that the levy is not imposed on imports by reason of the fact that the sea fish or sea fish products cross a frontier: although one of the conditions to be satisfied before levy is payable is that they cross the frontier, the chargeable event is the "firsthand sale" as defined in regulation 2, which may either precede or follow importation. The second and alternative basis for the conclusion was that the levy forms part of a system of internal taxation applied systematically and in accordance with the same criteria to domestic products and imported products alike.

45. Before examining the companies' criticisms of the judge's reasoning and conclusion, I need to refer more fully to some of the relevant decisions of the European Court of Justice, including some that were not cited to the judge.

46. Case 132/78, *Denkavit Loire Sarl v The French State* [1979] 3 CMLR 605 concerned a charge levied on imports of meat, in the particular case on imports of lard. The same national legislation provided for the levying of a charge on domestic meat at the time when the animal was slaughtered. To the question whether the charge on imports was contrary to the prohibition on charges having an effect equivalent to customs duties (as contained in the relevant provisions of what was then the EEC Treaty), the court responded in this way:

> "7. As the Court has acknowledged several times … 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 9, 12, 13 and 16 of the Treaty. Such a charge … escapes that classification if it relates to a system of internal dues applied systematically and in accordance with the same criteria to domestic products and imported products alike, in which case it does not come within the scope of Articles 9, 12, 13 and 16 but within that of Article 95 of the Treaty.
>
> 8. It is however appropriate to emphasise that in order to relate to a general system of internal dues, the charge to which an imported product is subject must impose the same duty on national products and identical imported products at the same marketing stage and that the chargeable event giving rise to the duty must also be identical in the case of both products. It is therefore not sufficient that the objective of the charge imposed on imported products is to compensate for a charge imposed on

> similar domestic products – or which has been imposed on those products or a product from which they are derived – at a production or marketing stage prior to that at which the imported products are taxed. To exempt a charge levied at the frontier from the classification of a charge having equivalent effect when it is not imposed on similar national products or is imposed on them at different marketing stages or, again, on the basis of a different chargeable event giving rise to duty, because that aims to compensate for a domestic fiscal charge applying to the same products … would make the prohibition on charges having an effect equivalent to customs duties empty and meaningless.
>
> 9. It is therefore necessary to reply to the first question that a charge which is imposed on meat, whether or not prepared, when it is imported, and in particular on consignments of lard, even though no charge is imposed on similar domestic products, or a charge is imposed on them according to different criteria, in particular by reason of a different chargeable event giving rise to the duty, constitutes a charge having an effect equivalent to a customs duty within the meaning of Articles 9, 12 and 13 of the Treaty."

47. One sees a slightly different formulation in Case 15/81, *Gaston Schul, Douane Expediteur BV v Inspecteur der Invoerrechten en Accijnzen* [1982] 3 CMLR 229:

> "[19] The essential characteristic of a charge having an effect equivalent to a customs duty, and the one which distinguishes it from internal taxation, is therefore that it affects only imported products as such whereas internal taxation affects both imported products and domestic products.
>
> [20] The Court has nevertheless recognised that a pecuniary charge payable on a product imported from another member-State and not on an identical or similar domestic product does not constitute a charge having equivalent effect but internal taxation within the meaning of Article 95 of the Treaty if it is part of a general system of internal dues applicable systematically to categories of products according to objective criteria applied without regard to the origin of the products."

The facts of that case concerned the imposition of value added tax on an imported product. Unsurprisingly the court held that, since the tax was part of a uniform system laid down by EC directives, it did not constitute a charge having an effect equivalent to a customs duty.

48. In Case 132/80, *United Foods NV v Belgian State* [1982] 1 CMLR 273 one of the issues was whether an "inspection levy" (a charge for a health inspection) on fish was a charge having an effect equivalent to a customs duty. The court emphasised at para [36] that the assessment had to go beyond taking into account the purely formal criterion that the levy formed part of a single system of rules derived from the same

basic law, and that it "must be made having regard to the contents and to the effects of the rules at issue". It held that the levy on imports of fish from fish farms constituted a charge having equivalent effect "where the situation under the national legislation is such that fish from fish farms situated on national territory escapes in law or in fact the imposition of any health charges" (para [37]). In relation to fish caught at sea a distinction was drawn in the national legislation between "landed" fish and "imported" fish (a feature with a certain resonance for the present case). The court held that the levy on imported sea fish was a charge having an equivalent effect, one of the reasons being that imports bore in practice a higher rate of levy:

> "[42] Furthermore, the rules for the determination of the inspection levy provide, in the case of 'landed' fish, for the application of a uniform rate per kilogramme, whereas the inspection levy on imported fish fixed by reference to quantities weighing 100 kilogrammes and fractions thereof is applied on the basis of a distinction drawn between processed and other fish, the inspection levy on processed fish being twice as high as that on unprocessed fish. Presumably, although the file on the case contains no indications in this respect, imported fish is in most cases, in view of the requirements of transportation, classified in the same category as processed fish which attracts a higher inspection levy than unprocessed fish."

49. A later case relating to measures adopted under the same Belgian legislation was Case 314/82, *Re Health Inspection Charges: EC Commission v Belgium* [1985] 3 CMLR 134. Health inspections, for which charges were made, were carried out on imported poultry-meat and home-produced poultry meat (subject to the exception of dried, smoked or salted meat, for which domestic inspection charges had been abolished). The Commission contended that the charges for inspection on importation were charges having an effect equivalent to customs duties. The Belgian Government argued that the charges were levied not on account of importation but on account of the health inspections, and that home-produced poultry-meat (with the exceptions mentioned) was subject to the same charge. By the time of the hearing, the Government had decided to abolish the checks and charges on imports of dried, smoked or salted meat. The court repeated the principles set out above and rejected the Government's case. It held in relation to dried, smoked or salted meat that "before the amendment of the rules at issue, the charges levied on those categories of meat did not correspond to any charges in respect of comparable home-produced goods" and that they therefore constituted charges having an equivalent effect (para [16]). As regards other categories of meat, it referred to various points of distinction between the treatment of imported and home-produced meat: the former were levied pursuant to a decree, the latter had been provided for until recently in an agreement between the relevant professional bodies; the charges on importation became part of the general state budget and were used only indirectly to cover the cost of the health checks, whereas the charges in respect of home-produced meat were paid directly to the veterinarians' relevant professional organisations; the criteria used to calculate the charges were different for the two groups of products, and in certain cases that might result in higher charges being imposed on imported products. The court concluded:

> "[21] An appraisal of the national rules at issue in terms of their form, their content and their effects, reveals therefore that the inspection charges levied in respect of home-produced meat are not part of a general system of internal dues imposing the same charge, in accordance with the same criteria, to domestic and imported products alike."

50. Joined Cases C-441 & 442/98, *Kapniki Mikhailidis AE v Idrima Kinonikon Asphaliseon (IKA)* [2001] 1 CMLR 13, concerned a tax on the export of unprocessed tobacco from Greece. The Greek Government submitted that the impugned tax constituted merely one component of a general and non-discriminatory system of tax designed to finance social security benefits for tobacco workers, and that the other components included a consumption tax on the selling price of tobacco. There was, however, some doubt before the European Court of Justice about the precise nature of the taxes applied. The Advocate General observed that for Greece's contention to succeed "the national court must ultimately be satisfied of the precise comparability of the relevant taxes" and that the consumption tax referred to "clearly applies to retail sales of processed tobacco products in Greece and cannot, therefore, be comparable with a tax imposed on exported unprocessed tobacco" (para A32). The court's judgment repeated the principles laid down in the settled case-law, emphasising that "[i]t is therefore not sufficient that the objective of the charge imposed on the exported products is to compensate for a charge imposed on similar domestic products – or which has been imposed on those products or a product from which they are derived – at a production or marketing stage prior to that at which the exported products are taxed" (para 23). The court then echoed the concerns expressed by the Advocate General about the application of those principles to the particular case.

51. In considering how the principles apply to the present case, I propose to concentrate on imports from EU member states of sea fish products that have been processed on land. Mr Graham's submissions on the appeal focused on the specific application of the levy to such products (though he put the case on a broader basis at first instance). Mr Flint submitted that there is no evidence that this is a real issue for the companies, most of whose imports are from the Far East; but there is evidence that they make some imports of such products from the EU, so that the case advanced by Mr Graham cannot be dismissed as wholly academic, and the precise impact on the companies' business is not a matter that we need resolve. Adopting the approach I have indicated also makes it unnecessary to deal separately with the special situation where sea fish or sea fish products are landed in the United Kingdom by a foreign vessel: that amounts, as previously explained, to an importation for the purposes of EU law, but it is not contended that the levy imposed in those circumstances is a charge having an effect equivalent to a customs duty.

52. Mr Graham submitted, and I agree, that the first question is whether the levy payable under the 1995 Regulations in respect of imported sea fish products is payable by reason of their crossing the frontier. The judge held that it was not, because the chargeable event which is the basis of liability is the firsthand sale as defined in regulation 2, and the time limits for payment of the levy under regulation 5 do not affect the nature of the event which founds liability for the levy. He also rejected the companies' argument, based on evidence as to their invariable practice, that the firsthand sale must necessarily precede importation.

53. The judge's concentration on the chargeable event was an understandable consequence of the way the arguments were presented to him. To my mind, however, the concept of the chargeable event is a distraction at this point of the analysis. If one stands back and asks whether the levy on imported sea fish products is imposed by reason of their crossing the frontier, I think that the answer is obviously "yes". By virtue of paragraph (b) of the definition of firsthand sale in regulation 2, a precondition to the charging of a levy on such a product is that it is "imported or brought into the United Kingdom". By virtue of regulation 5(1), the levy is to be paid within seven days after the end of (a) the week during which the firsthand sale took place or (b) the week during which the product was imported or brought into the country, whichever is the later. There may be cases where importation occurs without any prior or subsequent sale falling within the definition of firsthand sale, in which case no levy is payable. But where, under the terms of the 1995 Regulations, a levy is payable in relation to imported products, the very fact that the products have crossed the frontier is a reason why it is payable.

54. The next question is whether the levy on imported sea fish products forms part of a general system of internal taxation imposing the same charges, in accordance with the same criteria, on domestic and imported products alike: are the same charges imposed on identical or similar products at the same production or marketing stage and on the basis of the same chargeable event?

55. In purely formal terms the 1995 Regulations appear to meet those requirements. They lay down a uniform system that draws no distinction between domestic and imported products as regards rates of levy, production or marketing stage or chargeable event. The authorities make clear, however, that one must look beyond form and examine contents and effects. It is here that, in my judgment, the scheme runs into difficulties in relation to sea fish products that have been processed on land. By virtue of regulation 4(1)(a), a levy is payable by a person who purchases a sea fish product on a firsthand sale. That takes one to the definition of firsthand sale in regulation 2. Imported products are covered by paragraph (b) of that definition, the application of which will in practice generally produce a liability to levy, since there will be both an importation and a first sale of the products to a relevant person. Domestic products are covered by paragraph (a) of the definition, but the application of that paragraph will in practice produce *no* liability to levy. That is because liability arises only in relation to sea fish products which have been "first landed" in the United Kingdom; but products resulting from processing on land are in no sense "landed", let alone "first landed", in the United Kingdom. The sea fish or sea fish product ingredients from which they are produced may have been first landed in the United Kingdom, but the resulting products are not.

56. In practice, therefore, the 1995 Regulations involve a material difference of treatment between domestic and imported products. The position is the same in substance as, for example, in *Denkavit Loire*, where a charge was imposed on imported lard but not on domestic lard; in *United Foods*, to the extent that imports of fish from fish farms were subject to charges that fish from fish farms situated on national territory escaped "in law or in fact"; and in *Re Health Inspection Charges: EC Commission v Belgium*, in so far as charges were imposed on imports of dried, smoked or salted meat but not on the corresponding categories of home-produced meat. The consequence in those cases was that the charges on imported products could not be regarded as forming part

of a system of internal taxation but were held, on the contrary, to constitute charges having an effect equivalent to customs duties. The same consequence must in my view follow in the present case.

57. It is true that, in so far as their ingredients include sea fish or sea fish products on which a levy is payable, the production costs of similar domestic products will reflect the levy. But that is not the same as subjecting the domestic products themselves to the same levy as that imposed on imported products, and it does not secure the requisite identity of treatment. Cases such as *Denkavit Loire* and *Kapniki* show that it is not permissible to impose a charge on imported products to compensate for a charge imposed at a prior production or marketing stage on a product from which similar domestic products have been derived. The levy on imported products in this case is in effect, albeit not in form, a compensatory charge.

58. Mr Flint sought to avoid that reasoning by contending that the relevant marketing stage is the point at which the sea fish or sea fish products (as the case may be) enter the United Kingdom supply chain; that is the point at which the levy is imposed (either on the fish or on the fish products if levy has not been paid on the fish); and, pursuant to section 4(4) of the 1981 Act, the levy is at a rate that reflects the stage of processing that the fish or fish products have reached at that point; so that there is parity of treatment at that point between domestic and imported products. He referred to Case C-234/99, *Niels Nygard v Svineafgiftsfonden* [2001] ECR I-3657, where it was held that levies payable under a general system of taxation of Danish agricultural products, on the one hand in respect of pigs slaughtered domestically in Denmark and on the other hand in respect of pigs exported live from Denmark, were comparable "as in real economic terms those two moments correspond to the same marketing stage, both operations being carried out with a view to releasing the pigs from national primary production" (para 30).

59. I am not persuaded by that argument. In my view, the first sale of a sea fish after it has been landed in the United Kingdom cannot be treated as the same marketing stage as the sale of a sea fish product processed from sea fish landed elsewhere and imported into the United Kingdom, even though each sale happens to be the point at which the fish or fish product in question enters the United Kingdom supply chain. In order to determine whether the same charges are imposed at the same marketing stage on similar domestic products, it is necessary to consider the point at which similar domestic products are sold, rather than the point at which fish or fish products from which they have been processed are sold. The circumstances here are not analogous to those in the *Niels Nygard* case.

60. The situation might be different if imported products and similar domestic products were all subject to a levy save to the extent that the levy had been paid at an earlier marketing stage on the fish or fish products from which they were processed. Regulation 4(6) gets close to this by providing that where the levy becomes payable in respect of any sea fish it shall not be payable in respect of the products of such sea fish. But in practice under the current system one does not get as far as regulation 4(6) in relation to sea fish products processed on land in the United Kingdom, since in their case no liability to levy can ever arise under regulation 4(1)(a).

61. Mr Flint also placed reliance on the fact that the Commission's opinion in 1983 which led to the insertion of section 2(2A) by way of amendment to the 1981 Act contained

no suggestion that the regime operated pursuant to that Act infringed articles 25 and 28 EC, as they then were, but impliedly regarded the levy as forming part of a system of internal taxation. I do not think that any real assistance can be gained on this issue from the Commission's opinion. We do not know what information the Commission had about the operation of the levy regime. Its opinion addressed a different issue and cannot be taken as a seal of approval under articles 25 and 28 EC.

62. I should mention for completeness that Mr Graham advanced various additional arguments to show that the levy on imports is a charge having equivalent effect, including submissions to the effect that imported products as a whole attract a higher rate of levy than domestic products, and that the chargeable events are different as between imported and domestic products. I found those arguments less persuasive than those I have considered above, but in the circumstances they are not necessary for the companies' case and I do not need to express any concluded view on them.

63. Accordingly, in so far as they impose a levy on imports from EU member states of sea fish products that have been processed on land, the 1995 Regulations are in my judgment contrary to articles 28 and 30 TFEU.

64. In the light of my earlier finding that on ordinary principles of domestic law the 1995 Regulations are *ultra vires* the 1981 Act, nothing turns on that conclusion. As I have explained, however, if I had otherwise been in favour of the wider meaning of "landed" in section 4(3) of the 1981 Act, my conclusion on EU law would have caused me to adopt the narrower meaning so as to produce an interpretation in conformity with EU law.

Conclusion

65. For the reasons given, I would allow the companies' appeal.

Lord Justice Rimer :

66. I agree.

Lord Justice Mummery :

67. I also agree.