

## **Legal Report – Karen West**

**Title: Higher Import Duty Placed on Ureaformaldehyde? The Van Gend en Loos Case of 1962 that established the Principle of Direct Effect by the European Court of Justice (ECJ)**

### **Introductory Academic Section: Purpose, Method, Delimitations and Report Structure:**

**Purpose of Report:** Does Article 12 of the EEC Treaty have direct application within the Netherlands Territory or may nationals from the Netherlands and the Belgian Government lay claim to national rights their courts should protect in regard to this EEC Import Duty on their ureaformaldehyde?

**Method:** The "traditional" legal (dogmatic) method of investigation and perspectives was used for this report.

**Delimitations:** The purpose of this report is *not* to decide if all imports placed on chemicals such as ureaformaldehyde should have a higher import duty. The delimitation of this report is to show how the decision was made as to whether or not to place a higher import duty on ureaformaldehyde only. It demonstrates how the principle of direct effect was established in the ureaformaldehyde case in 1962, and also discusses a few other cases where it came up later. It compares and contrasts the principle of vertical and horizontal direct effect, and also, direct applicability.

**Report Structure:** Following this title and introductory academic section, there will be a factual presentation of the case, followed by discussion and analyses of the case.

### **Factual Presentation:**

**Introduction of Topic:** Should a higher import duty be placed on ureaformaldehyde originating in Germany imported to the Netherlands (1962)?

### **Specification of Issue:**

The European Economic Community (EEC) claimed they had the jurisdiction to determine the raising of the import tax on ureaformaldehyde to the Netherlands and Belgium, since these were member nations of the European Union (then called the European Community, EC). The Belgian National Courts disagreed and said this decision was in their jurisdiction.

This case established the "Principle of Direct Effect". It said that if the European Union (EU), formerly at this time called European Commission (EC) Law was "appropriately framed", individuals of member states (in this case, the Netherlands and Belgium) have conferred upon them rights which the courts of member states of the EU must recognize and enforce. The criteria that must be met in this "Principle of Direct Effect" are that it be clear, be a negative, rather than a positive obligation, unconditional, containing no reservation on the part of the member state, and not dependent on any national implementing measure.

To contrast that with the “Principle of Direct Applicability” from EU Law, that relates only to regulations, and the characteristic of regulations to be directly effective. The confusion between the two principles comes from that direct applicability refers to the fact that regulations are effective as soon as they are published by the EC/EU, and implementing legislation within member states is not required.

The original argument in the Van Gend en Loos case on the import duty on ureaformaldehyde in the Van Gend and Loos case in 1962 was due to the EEC treaty objective to make a common market, the functioning of which is the concern of all member European nations and their people. The EEC Treaty endowed institutions of sovereign rights which effects member nations and their citizens, with the intermediaries the European Parliament, Economic and Social Committee. This Treaty had to have uniform interpretation for all member nations. It had to include a customs union, an essential provision of the prohibition of the customs duties and charges, explained in Article 12 in the original Treaty of Rome, but Article 12 did not require intervention of EU member states.

This is the reason that the “Principle of Direct Effect” was created in this case of the import duty on ureaformaldehyde. The EEC Treaty could not enforce the import duty on the Netherlands and Belgium. It had a clear and unconditional prohibition which was not positive, and contained no reservation on the part of the Netherlands and Belgium, and was not dependent on any national implementing measure, directly effecting member nations and their citizens. So the Netherlands and Belgian member citizens were allowed to argue these rights and that their national courts must support them.

Van Gend and Loos who represented the Netherlands and Belgium, differed from the Inspector of Customs and Excise in the EU Courts, saying a classification of aminoplasts caused the tax raise, and this was outside the jurisdiction conferred on the Court of Justice of the European Communities. A tax increase as a result of a tariff description change, rather than a rate increase. So the argument ended forming the “Principle of Direct Effect” when the final decision was that national courts will make the decision, because it was not under their jurisdiction of EEC Courts to decide the conflicting views on the tariff description tax increase.

The “Principle of Direct Effect” criteria described above, if they are satisfied, then the right or rights in question can be enforced before national courts. However, whether or not any particular measure satisfies the criteria is a matter of EU law to be determined by the EU Courts.

### **Discussion and Analyses of this Case:**

The result of the case of Van Gend and Loos was that a citizen of a member state could enforce a right granted by the European Community legislation against the state. This was a variety of direct effect, and it allowed the citizen (or a company) to enforce a right against the state, but it did not address doing this against another citizen or company.

This is an example of vertical direct effect since that is the relationship between EU Law and national law and covers the state's obligation to ensure its observance and compatibility with EU Law and

national law. It enabled citizen to rely on it in actions against state or against public bodies. So the doctrine of direct effect does not apply horizontally, between private parties (citizens and companies amongst each other). The doctrine of direct effect only applies vertically, among citizens and companies of a state and the government.

The problem of horizontal and vertical direct effect would only apply to directives and other similar types of secondary legislation, and not to regulations, since regulations are by their nature self-executing.

There was one case where horizontal direct effect took place, in the case of Defrenne. In that case, a long dormant provision of the Treaty of Rome, establishing the right of equal pay for women was applied to private employers and did not just apply to public employers. This was a case where a primary legislation (The Treaty of Rome) had horizontal effect to disputes between private parties.

The Van Gend en Loos case that established direct effect doctrine was also applied in a case in 1985. The dispute that allowed the direct effect case of sails that are imported separately from their sail boats was whether or not a common customs tariff applied, since that also included things such as tarpulins and other similar sail like material. So they challenged the customs tariff imposed by the ECJ as allowed by the doctrine of vertical direct effect. The result was that the common customs tariff included sails made of synthetic textile fibers and specifically intended for sailboards when they are imported separately from their supporting structure. This is another example of when the Van Gend en Loos doctrine of direct effect was applied 23 years after it originated in 1962.

So in conclusion, the reason that the Van Gend en Loos case was important is because it was the case that established the principle of direct effect, vertical direct effect, except in one exceptional future case mentioned above where horizontal direct effect took place. Vertical direct effect doctrine allowed the citizens and private parties to have their national courts argue things like an unfair customs tariff established by the EU. The one exception in the horizontal direct effect between private parties was in the case of equal pay for women, and in this case it was not the national courts arguing between a citizen or company and the government, but rather between two private parties, where it was ruled that equal pay for women established in the Treaty of Rome, applied to private employers and not just public employers. But in most other cases since the doctrine of direct effect was established by the Van Gend en Loos case, it is vertical direct effect that is used, that allows citizens and private parties to sue member state governments.

## References:

1. 61962CJ0026: **Judgment of the Court of 5 February 1963. NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration. Reference for a preliminary ruling: Tariefcommissie - Netherlands. Case 26-62**, Form: Judgment, ECLI identifier: ECLI:EU:C:1963:1, Author: Court of Justice of the European Communities, Date of document: 05/02/1963
2. 61962CC0026: **Opinion of Mr Advocate General Roemer delivered on 12 December 1962. NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration.**

**Reference for a preliminary ruling: Tariefcommissie - Netherlands.**

**Case 26-62**, Form: Advocate General's Opinion, ECLI identifier: ECLI:EU:C:1962:42, Author: Court of Justice, Date of document: 12/12/1962

3. 11957EN02: **TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY, ANNEX II - LIST REFERRED TO IN ARTICLE 38 OF THIS TREATY**, Author: The six Member States: Belgium, Germany, France, Italy, Luxembourg, Netherlands, Date of document: 25/03/1957
4. 12006E/TXT: **Treaty establishing the European Community (Consolidated version 2006)**, Author: The Member States, Date of document: 29/12/2006; Date of publication
5. 12004V/PRO/08: **Treaty establishing a Constitution for Europe - Protocols and Annexes - 8. Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden**, Author: Greece, The nine Member States: Belgium, Denmark, Germany, Ireland, France, Italy, Luxembourg, Netherlands, United Kingdom, Date of document: 28/05/1979
6. 12012E/TXT: **Consolidated version of the Treaty on the Functioning of the European Union**, Author: The Member States, Date of document: 26/10/2012; Date of publication
7. 61984CJ0032: **Judgment of the Court (First Chamber) of 7 March 1985. *Van Gend & Loos NV v Inspecteur der Invoerrechten en Accijnzen*, Enschede.**  
**Reference for a preliminary ruling: Tariefcommissie - Netherlands.**  
**Common customs tariff - Sails for sailboards.**  
**Case 32/84**, Form: Judgment, ECLI identifier: ECLI:EU:C:1985:104, Author: Court of Justice, Date of document: 07/03/1985
8. 61984CC0032: **Opinion of Mr Advocate General Darmon delivered on 31 January 1985. *Van Gend & Loos NV v Inspecteur der Invoerrechten en Accijnzen*, Enschede.**  
**Reference for a preliminary ruling: Tariefcommissie - Netherlands.**  
**Common customs tariff - Sails for sailboards.**  
**Case 32/84**, Form: Advocate General's Opinion, ECLI identifier: ECLI:EU:C:1985:43, Author: Court of Justice, Date of document: 31/01/1985
9. **Van Gend en Loos v Nederlandse Administratie der Belastingen**, From Wikipedia, the free encyclopedia, link at:  
[http://en.wikipedia.org/wiki/Van\\_Gend\\_en\\_Loos\\_v\\_Nederlandse\\_Administratie\\_der\\_Belastingen](http://en.wikipedia.org/wiki/Van_Gend_en_Loos_v_Nederlandse_Administratie_der_Belastingen)
10. **Treaty of Rome, officially the Treaty establishing the European Economic Community (TEEC), is an international agreement that led to the founding of the European Economic Community (EEC) on 1 January 1958. It was signed on 25 March 1957 by Belgium, France, Italy, Luxembourg, the Netherlands and West Germany. The word *Economic* was deleted from the treaty's name by the Maastricht Treaty in 1993, and the treaty was repackaged as the *Treaty on the functioning of the European Union* on the entry into force of the Treaty of Lisbon in 2009**, From Wikipedia, the free encyclopedia, link at:  
[http://en.wikipedia.org/wiki/Treaty\\_of\\_Rome](http://en.wikipedia.org/wiki/Treaty_of_Rome)
11. **Treaty of Rome, Chapter 1, Page 8, Section 1, The Customs Union, Elimination of Customs Duties Between Member States, Article 12, March 25<sup>th</sup>, 1957**, link at:  
[http://ec.europa.eu/archives/emu\\_history/documents/treaties/rometreaty2.pdf](http://ec.europa.eu/archives/emu_history/documents/treaties/rometreaty2.pdf)
12. **Direct effect**, From Wikipedia, the free encyclopedia, In European Union law, direct effect is the principle that Union law may, if appropriately framed, confer rights on individuals which the courts of member states of the European Union are bound to recognise and enforce. Direct effect is not explicitly stated in any of the EU Treaties. **The principle of direct effect was first**

established by the European Court of Justice (ECJ) in *Van Gend en Loos v. Nederlandse Administratie der Belastingen*. Direct effect has subsequently been loosened in its application to treaty articles and the ECJ has expanded the principle, holding that it is capable of applying to virtually all of the possible forms of EU legislation, the most important of which are regulations, and in certain circumstances to directives. Link at:  
[http://en.wikipedia.org/wiki/Direct\\_effect](http://en.wikipedia.org/wiki/Direct_effect)

13. **Direct Applicability**, From Wikipedia, The Free Encyclopedia, A concept of European Union constitutional law that **relates specifically to regulations, direct applicability (or the characteristic of regulations to be directly effective)** is set out in Article 288 (ex Article 249) of the Treaty on the Functioning of the European Union (as amended by the Lisbon Treaty). Although often confused with the doctrine of direct effect, direct applicability refers to the fact that regulations require no implementing legislation within individual member states - they take effect as soon as they are published by the European Commission,  
[http://en.wikipedia.org/wiki/Direct\\_applicability](http://en.wikipedia.org/wiki/Direct_applicability)
14. **Foster v British Gas plc**, *Foster v British Gas plc* (1990) C-188/89 is a leading EU law concerning the definition of the "state", for the purpose of determining which organisations in the private or public sector can be regarded as an organ of the state. The ECJ held a state is any manifestation or organisation under control of a central government. In a previous case, *Chandler v Director of Public Prosecutions*,<sup>[1]</sup> Lord Reid held a state is synonymous with an 'organised community', and according to Lord Devlin it meant 'the organs of government of a national community', link at:  
[http://en.wikipedia.org/wiki/Foster\\_v\\_British\\_Gas\\_plc](http://en.wikipedia.org/wiki/Foster_v_British_Gas_plc)
15. **Defrenne vs. Sabena (No 2)**, From Wikipedia, the free encyclopedia, *Defrenne v Sabena (No 2)* (1976) C-43/75 is a foundational European Union law case, concerning direct effect and the place of social rights in the common market. A woman named Gabrielle Defrenne worked as a flight attendant for the airline Sabena. The airline paid her less than her male colleagues who did the same work. Ms Defrenne complained that this violated her right to equal treatment on grounds of gender under article 119 of the Treaty of the European Community, (Now Article 157 TFEU- prior to the Lisbon Treaty, this was article 141 TEC), link at:  
[http://en.wikipedia.org/wiki/Defrenne\\_v\\_Sabena\\_%28No\\_2%29](http://en.wikipedia.org/wiki/Defrenne_v_Sabena_%28No_2%29)
16. Penny Parker's class notes and glossary – thanks Penny!