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## Case Comment: Van Gend En Loos v Nederlandse Administratie Der Belastingen - The EU's Principle of Direct Effect

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### INTRODUCTION

The European Court of Justice decided a seminal case in **1963** called *Van Gend En Loos v Nederlandse Administratie der Belastingen*<sup>1</sup>. This case established that natural and legal persons could obtain rights under the Treaty Establishing the European Economic Community and that these rights could be enforced in the courts of the member states of the Community. The term '*direct effect*' was coined to describe this idea. The ruling in this case is widely regarded as a watershed moment in the evolution of law within the European Union<sup>2</sup>.

According to **Joseph Weiler**, the case of '*Van Gend En Loos*<sup>3</sup> occupies a distinctive place within the annals of international legal rulings, characterized by its exceptional structural and philosophical ramifications.

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<sup>1</sup> *Van Gend En Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1

<sup>2</sup> Marilena Ene, *Van Gend en Loos Case* (Editura Solomon 2021)

<sup>3</sup> *Van Gend En Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1

The primary legal aspect of the **Van Gend & Loos case**<sup>4</sup> is the Court of Justice’s creation of the doctrine of direct effect. This doctrine grants individuals the authority to directly invoke particular rules of the European Union when they become involved in legal conflicts before domestic courts. The status of EU law within the domestic legal systems of Member States is delineated by the idea of EU law primacy, as established in the *Costa v ENEL*<sup>5</sup> decision.

## FACTS

The case in question can be traced back to 09 September 1960 when a commercial entity known as *‘Van Gend En Loos’*<sup>6</sup> imported a shipment of urea formaldehyde into the Netherlands from the Federal Republic of Germany. Following this, the Dutch government implemented an **8% import charge on 01 January 1960** by the 1960 *Tariefbesluit*, a customs levy that was enforced in the **Netherlands starting from 01 March 1960**.

The primary issue in this case stems from **Article 12<sup>7</sup> of the European Economic Community Treaty**. This provision states that Member States are obligated to abstain from implementing any fresh customs duties on imports or exports, or any charges that have a similar impact. Furthermore, they are also required to refrain from raising existing duties imposed on their trade with one another. Van Gend En Loos argued that the implementation of the **Tariefbesluit in 1960** increased the import tariff imposed on commodities originating from a different member state of the European Economic Community.

It is noteworthy to mention that, upon the commencement of the **EEC Treaty on 01 January 1958**, the **Netherlands implemented a 3% import tariff** on urea formaldehyde. The pivotal significance of the Dutch government's case was influenced by the eventual categorization of urea formaldehyde as a dangerous substance under the *Tariefbesluit* of 1960. The authors argued that the re-classification was the primary factor leading to the tariff increase that occurred after the implementation of a charge freeze in compliance with Community laws.

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<sup>4</sup> *Ibid*

<sup>5</sup> *Costa v Ente Nazionale Per L’Energia Ellettrica (ENEL)* [1964] CMLR 425

<sup>6</sup> *Van Gend En Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1

<sup>7</sup> Treaty of Rome 1957, art 12

The Customs and Excise Inspector's statement constituted a refutation of Van Gend En Loos's reasoning. Undaunted by the circumstances, Van Gend En Loos proceeded to seek legal recourse by applying the Tariefcommissie, a supra-institution endowed with ultimate jurisdiction in tax-related affairs. Upon acknowledging that the dispute pertained to the interpretation of the EEC Treaty, the Tariefcommissie subsequently directed the issue to the European Court of Justice for a preliminary ruling by **Article 177(3) of the EEC Treaty**<sup>8</sup>.

## ISSUES

1. Do rights exist under the treaty setting up the European Community, and do legal persons have the same entitlement to those rights as natural persons?
2. To what extent does Article 12<sup>9</sup> of the EEC Treaty apply directly inside the boundaries of a Member State i.e. to what degree citizens of such a State may assert rights of the individual that must be safeguarded by the courts based upon such Article?

## RULES

**Article 12 of the Treaty of Rome**<sup>10</sup>, commonly referred to as the EEC Treaty or the Treaty establishing the European Economic Community, articulates the obligation for Member States to abstain from implementing any fresh customs duties on imports or exports, or charges that have a similar impact when engaging in trade with one another. Furthermore, Member States are also required to refrain from augmenting existing duties or charges in their commercial interactions with fellow Member States.

The scope of Article 12 of the EEC Treaty<sup>11</sup> encompasses both people and Member States, hence carrying significant legal implications. Significantly, the reclassification carried out in the Tariefbesluit resulted in an increase in duties, which goes against the provisions outlined in Article 12.

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<sup>8</sup> Treaty of Rome 1957, art 177(3)

<sup>9</sup> *Ibid*

<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

The Tariefcommissie requested a preliminary judgment on two concerns, by Article 177(3) of the EEC Treaty<sup>12</sup>. The focus of the inquiry was the interpretation of Article 12<sup>13</sup> of the Treaty within the framework of Community law, rather than its application to Dutch constitutional law. As a result, it came under the jurisdiction of the Court of Justice.

Article 12<sup>14</sup> explicitly pertained to the geographical jurisdiction of a Member State. This indicates that Article 12<sup>15</sup> not only imposed rights and obligations on Member States but also extended them to the inhabitants of these States. The instant impact of this measure eliminated the need for legislative action at the national level, making it more advantageous compared to conflicting national laws.

The Member States willingly surrendered certain sovereign powers to enhance the effectiveness of Community law as an innovative framework of international legal principles. The primary goal of the EEC Treaty was to create a harmonized market that would have a positive impact on both the citizens of the Member States and the States themselves.

## ANALYSIS

The judgment discussed here, along with its Italian counterpart *Costa v ENEL*<sup>16</sup>, is often emphasized by legal experts inside the European Union (EU) due to its significant impact on EU history.

According to Van Gend & Loos, the European Union, originally referred to as the European Economic Community, represents a unique legal framework that differs from traditional institutional formations. The aforementioned differentiation originates from the complete integration of European Union law into the national legal frameworks of members, which

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<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

<sup>16</sup> *Van Gend En Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1

therefore renders it subject to enforcement by national judiciaries. This legal principle was established in the landmark case of *Costa v ENEL*<sup>17</sup>.

The ruling established the fundamental concept that both natural persons and legal entities are endowed with instant privileges under European Union law. Individuals can exercise these rights in front of domestic courts, circumventing the requirement for national legislatures to incorporate these entitlements into domestic legislation. This legal principle is commonly referred to as 'the theory of direct effect'.

A technical disagreement arose after the arrival of *German 'Harnstoffharz'*, a widely employed glue for wooden doors, into the Netherlands. The debate revolved around the reclassification of the chemical, leading to a subsequent rise in import tariffs imposed by the Dutch government. Van Gend & Loos argued that the aforementioned action violated the ban within the European Treaty that prohibits member states from increasing import tariffs. The issue under consideration pertained to the scope of applicability of this agreement, namely whether it exclusively pertained to member states and if the Commission had the responsibility for its implementation. Alternatively, it was also examined whether a firm might independently pursue legal action against tax increases within the Netherlands.

The significance of the restrictions on customs taxes and charges is of great importance within the broader framework of the Treaty. This framework specifically addresses import tariffs and charges that have similar effects, as outlined in Article 9<sup>18</sup>, which is a fundamental aspect of establishing a customs union under the Treaty. The Treaty's introductory section, known as the '*Foundations of the Community*', clearly highlights this fundamental component. Article 12 within this section provides a clear explanation of the scope and meaning of the aforementioned aspect.

The absolute prohibition stated in Article 12<sup>19</sup> is presented as a negative imperative, lacking any precondition provisions that would require proactive legislative measures to be taken at the

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<sup>17</sup> *Ibid*

<sup>18</sup> Treaty of Rome 1957, art 9

<sup>19</sup> Treaty of Rome 1957, art 12

domestic level. The aforementioned limitation has a direct and immediate impact on the legal dynamics between member states and their respective inhabitants. Importantly, the implementation of Article 12<sup>20</sup> can occur without the need for additional national law. Although member nations are obligated to refrain from certain actions as stated in this Article, it does not prevent their citizens from claiming the protections outlined within it.

Within the given situation, the European Court recognized the direct legal effect of Article 12<sup>21</sup> of the EEC Treaty on national legislation. The rationale underlying the foundation of the Treaty’s Common Market highlights its significance beyond a simple agreement based on consent among parties. The Court emphasizes that states that voluntarily surrender their sovereignty have the potential to gain advantages from the Community, which serves as a novel international legal framework. Furthermore, the Court asserts that the Treaty bestows rights and imposes obligations on both member states and people. It is important to note that Article 12 imposes a negative obligation on states, indicating that they are not obligated to undertake proactive measures on behalf of their population once it is put into effect. The endorsement and acceptance of Van Gend's legal action by the European Court of Justice aligns to safeguard individual rights and provide an extra avenue for enforcing European law.

Concerning the topic of obligations, the **Court of Justice of the European Union (CJEU)** refrained from offering a conclusive answer, stating its lack of power to judge on this particular issue. As a result, the European Court of Justice (ECJ) referred the decision regarding the substantive aspects of the case back to the national court, highlighting the importance of investigating the root cause of the tax escalation to arrive at a precise conclusion.

## CONCLUSION

The specifics of the deliberations in Luxembourg remain undisclosed. Nevertheless, a thorough analysis of the Court's records reveals a disparity of viewpoints. As a result, a majority of justices (4-3) deviated from the viewpoint expressed by Advocate General Roemer and instead

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<sup>20</sup> *Ibid*

<sup>21</sup> *Ibid*

embraced the notions of the ‘new legal order’ and the ‘direct effect’ of Article 12 EEC. Significantly, LeCourt and Trabucchi were pivotal in the determination of this outcome. In the *Costa v ENEL* case<sup>22</sup>, which took place two years later, the Court of Justice established and reinforced the concept of the ‘new legal order’ by recognizing the supremacy of EU law. There is ongoing scholarly and historical discourse surrounding the question of whether this judgment can be characterized as a transformative instance of judicial activism or as being by the original structure envisioned by the Treaties.

The concept of EU law being characterized as a ‘*new legal order*’, a term initially introduced in the **Van Gend & Loos case**<sup>23</sup>, encapsulates the fundamental principle of safeguarding the independence of EU law about the Member States. According to Rasmussen<sup>24</sup>, the Van Gend & Loos decision was a significant effort to distinguish European law from conventional international public law at its core. Horsley highlights the significant phrase ‘*independently of the legislation of Member States*’ as employed in the **Van Gend & Loos case**<sup>25</sup>, in which the Court asserted its authority to regulate the domestic implementation of EU treaty norms as a facet of Union law, thus presenting a compelling and ground-breaking argument.

Even though **Van Gend & Loos is no longer a company, Article 12 EEC has now been taken out of the Treaties**, and customs duties have been taken out of the domestic markets, the ideas it came up with are still important today. It has been ingrained in the minds of EU lawyers as the ruling that started the idea of a new legal order that was built into the judicial systems of the Member States and gave people and businesses their rights directly.

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<sup>22</sup> *Costa v Ente Nazionale Per L'Energia Ellettrica (ENEL)* [1964] CMLR 425

<sup>23</sup> *Van Gend En Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1

<sup>24</sup> Morten Rasmussen, 'Revolutionizing European law: A history of the Van Gend En Loos judgment' (2014) 12(1) *International Journal of Constitutional Law* <<https://academic.oup.com/icon/article/12/1/136/628616>> accessed 05 October 2023

<sup>25</sup> *Van Gend En Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1