JUDGMENT OF THE COURT
5 March 2008*

(Port charges – charges having equivalent effect to customs duties – internal taxation – free movement of goods)

In Case E-6/07,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Hæstiréttur Íslands (the Supreme Court of Iceland) in a case pending before it between

HOB vín ehf.

and

Faxaflóahafnir sf.

concerning rules on free movement of goods within the EEA,

THE COURT,

composed of: Carl Baudenbacher, President, Thorgeir Örlygsson and Henrik Bull (Judge-Rapporteur), Judges,

* Language of the Request: Icelandic.

Registrar: Skúli Magnússon,

having considered the written observations submitted on behalf of:

– the Appellant, represented by Stefán Geir Þórisson, Supreme Court Attorney;

– the Respondent, represented by Anton Björn Markússon, Supreme Court Attorney;

– the Government of Iceland, represented by Sesselja Sigurðardóttir, First Secretary and Legal Officer, Ministry for Foreign Affairs, acting as Agent;

– the EFTA Surveillance Authority, represented by Ólafur Jóhannes Einarsson and Florence Simonetti, Officers, Department of Legal & Executive Affairs, acting as Agents; and

– the Commission of the European Communities, represented by Richard Lyal and Søren Schønberg, acting as Agents,

having regard to the Report for the Hearing,

having heard oral argument of the Appellant, represented by Stefán Geir Þórisson, the Respondent, represented by Anton Björn Markússon, the EFTA Surveillance Authority, represented by Ólafur Jóhannes Einarsson and Florence Simonetti, and the Commission of the European Communities, represented by Richard Lyal and Søren Schønberg, at the hearing on 14 December 2007,

gives the following

Judgment

I Facts and procedure

1 Faxaflóahafnir sf. (hereinafter “the Respondent”) is a partnership founded by several municipalities around the bay of Faxaflói in south-western Iceland. Its principle object is the operation of four Icelandic ports (the Ports of Reykjavík, Akranes, Grundartangi and Borgarnes). The Respondent’s tariffs provide for four categories of port charges for the loading and unloading of cargo. The charge for non-alcoholic

beverages is ISK 370.80 per tonne while that for alcoholic beverages amounts to ISK 1 022.30 per tonne.

2 HOB vín ehf. (hereinafter "the Appellant"), which imports alcoholic beverages from other EEA States, and which has had to pay the higher charge on alcoholic beverages, brought an action against the Respondent before the Reykjavík District Court. The Appellant claimed, principally, reimbursement of the charges that it had paid to the Respondent in connection with imports of alcoholic beverages. In the alternative, the Appellant claimed reimbursement of the difference between what it had paid and the amount that it would have been required to pay if the imports had consisted of non-alcoholic beverages. The Appellant pleaded *inter alia* that the charges were contrary to Article 10, 11 or 14 EEA. The Reykjavík District Court dismissed the action. It held that the provisions of the EEA Agreement on the free movement of goods did not apply to the Respondent, and that the charges that it levied could not be regarded as customs, taxes or duties of any other type to be paid to a public entity, in addition to which the court did not consider that the charges constituted a restriction on the free movement of goods. The Appellant appealed to Hæstiréttur Íslands. The appeal was lodged on 19 October 2006.

3 The significant point of dispute between the parties concerns the Appellant's argument that the provisions of the EEA Agreement on free movement of goods apply to the Respondent, and that the imposition of charges in connection with the import of alcoholic beverages via ports owned by the Respondent constitutes a violation of Article 10, 11 or 14 EEA.

4 By a letter dated 8 May 2007, registered at the EFTA Court on 21 May 2007, Hæstiréttur Íslands put a request to the Court for an Advisory Opinion on the following two questions:

1. *Does the levying of charges by a partnership owned by several municipalities, in connection with the import of alcoholic beverages from other EEA States through a port owned by the partnership, fall under the provisions of Article 10, 11 or 14 of the EEA Agreement? The question is based on the premises that the operation of the port is not regarded in law as a public operation; the levying of the charges is based on an authorisation in law and the charges are to meet the cost of the services provided, together with a share of the cost related to the joint operation of the port.*

2. *If the answer to the first question is such that any of the abovementioned provisions of the EEA Agreement apply, does that provision preclude the levying of charges of the type referred to in the first question? The question is based on the premise that higher charges are imposed in connection with the import of alcoholic beverages than of non-alcoholic beverages, and that in*

Iceland alcoholic beverages are generally imported, inter alia from other EEA States.

II Legal background

National Law

5 Article 8(1)–(3) of the Ports Act No 61/2003 (Hafnalög) provides for three different forms of operation of ports. First, a port may be owned by a municipality and operated without appointing a special board of directors. Second, it may be owned by a municipality and operated under a special board of directors. Third, it can be operated as a public limited liability company, irrespective of whether or not it is owned by public bodies, as a private limited liability company, as a partnership or by a private body operating independently.

6 The Respondent was founded as a partnership under Article 8(3) of the Ports Act. Article 8(3) states specifically that ports operated under that paragraph are not regarded as public operators.

7 Chapter VI of the Ports Act addresses this type of ports specifically and states, amongst other things, in Article 19, that they are permitted to pay dividends to their owners only after having set aside funds for satisfactory maintenance and renewal of the port, in accordance with more detailed provisions in the regulation applying to the port, issued under Article 4 of the Act.

8 Article 20 of the Ports Act states that a port operated under Article 8(3) has full operational authority, and that the levying of charges by the port shall cover the cost of the services provided and a share of the cost related to the joint operation of the port.

9 The Respondent's charges are subject to the requirements of Article 20, cf. Article 19, of the Ports Act.

EEA Law

10 Article 10 EEA reads:

Customs duties on imports and exports, and any charges having equivalent effect, shall be prohibited between the Contracting Parties. Without prejudice to the arrangements set out in Protocol 5, this shall also apply to customs duties of a fiscal nature.

11 Article 11 EEA reads:

> *Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between the Contracting Parties.*

12 Article 14 EEA reads:

> *No Contracting Party shall impose, directly or indirectly, on the products of other Contracting Parties any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.*
>
> *Furthermore, no Contracting Party shall impose on the products of other Contracting Parties any internal taxation of such a nature as to afford indirect protection to other products.*

13 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

III Findings of the Court

The first question

14 By its first question, Hæstiréttur Íslands asks whether the levying of charges by a partnership owned by several municipalities, in connection with the import of alcoholic beverages from other EEA States through a port owned by the partnership, falls under the provisions of Article 10, 11 or 14 EEA. The question is based on the premises that the operation of the port is not regarded in law as a public operation; that the levying of the charges is based on an authorisation in law and that the charges are to meet the cost of the services provided, together with a share of the cost related to the joint operation of the port.

15 The Appellant is of the opinion that the case falls to be assessed under Article 10 EEA which prohibits customs duties and any charges having equivalent effect. As domestic alcoholic beverages are only transported by road, it is only on imported alcoholic beverages that the port charge in question has to be paid. Consequently, the port charge falls exclusively on imported goods, in connection with their importation into Iceland through the ports operated by the Respondent. Furthermore, as the charge levied on alcoholic products exceeds the cost of the service connected to it, the charge does not fall outside Article 10 EEA by virtue of being payment for services. In the alternative, the Appellant alleges that the case must be assessed under Article 14 EEA prohibiting discriminatory internal taxation. Should the Court come to the conclusion that neither Article 10 nor

Article 14 EEA applies, the Appellant is of the opinion that the port charge needs to be scrutinised under Article 11 EEA on the prohibition of quantitative restrictions and measures having equivalent effect.

16 The Appellant argues that there is no difference between Articles 10, 11 and 14 EEA in respect of which bodies are bound by them. The provisions apply to measures emanating not only from the central government but also from all local authorities. The levying of port charges is *de facto* a public measure which must be examined under the rules on free movement of goods, even if the ports themselves are organised as private operators.

17 According to the Respondent, already its status as a private body means that Articles 10, 11 and 14 EEA are not applicable to it. Article 10 EEA does not apply also for the reason that the port charges are levied irrespective of whether the goods have been imported or not and Article 14 EEA does not apply also for the reason that the port charges are simply payment for services rendered.

18 The Government of Iceland observes, firstly, that wine is excluded from the scope of the EEA Agreement. Secondly, it is argued that Articles 10, 11 and 14 EEA only apply to actions of public bodies and for that reason do not apply to an operation such as that of the Respondent. The fee charged by the ports of the Respondent is merely payment for services provided. The tariff is set by the Respondent on a private law basis and without influence from the State or municipalities. The Respondent is in competition with other ports, and can price its services according to market conditions at any given time. The Government finally observes that the Respondent has not been granted any special or exclusive rights by the municipalities.

19 The EFTA Surveillance Authority (hereinafter “ESA”) observes that with regard to alcoholic beverages, Articles 10, 11 and 14 EEA only apply to beer and spirits.

20 According to ESA, Article 10 EEA does not apply because the port charges in question are levied also on goods which arrive from other Icelandic ports. Therefore, they do not fulfil the requirement for falling under Article 10 EEA of being unilaterally imposed on the goods in question by reason that the goods cross a frontier.

21 ESA points out that in order for Article 14 EEA to apply, the port charges in question need to qualify as taxation within the meaning of that Article. In this respect, ESA sees no difference between the public institutions themselves and bodies controlled by them in the way in which the Respondent is controlled by the municipalities which own it. However, ESA does not find it obvious that Article 14 EEA applies when the entity in question is acting outside the remit of public law functions. The notion of taxation is normally associated with contributions to

public revenue that are compulsory. As ESA, in relation to the second question posed by Hæstiréttur Íslands, comes to the conclusion that in any case the port charges are not contrary to Article 14 EEA, ESA does not find it necessary to conclude whether port charges such as those at issue in the present case qualify as taxation at all.

22 ESA further argues that Article 11 EEA does not extend to trade obstacles of a fiscal nature or having an effect equivalent to customs duties.

23 ESA's views in relation to the first question are largely shared by the Commission of the European Communities (hereinafter the "Commission"). The Commission also refrains from drawing a conclusion with regard to whether the charges in question constitute taxation in relation to Article 14 EEA.

24 The Court notes at the outset that it follows from Tables I and II of Protocol 3 to the EEA Agreement, which list beer and spirits, that Iceland is bound by Articles 10, 11 and 14 EEA in relation to those categories of products by virtue of Article 8(3)(b) EEA and Article 1 of Protocol 3, cf. Case E-9/00 *ESA* v *Norway* [2002] EFTA Ct. Rep. 72, at paragraph 30. However, as Article 8(3)(a) EEA does not refer to Chapter 22 of the Harmonized Commodity Description and Coding System, Articles 10, 11 and 14 EEA do not apply to wine, cf. Case E-4/04 *Pedicel* [2005] EFTA Ct. Rep. 1, at paragraphs 24–25 and 28–29.

25 Next, the Court finds it appropriate to assess whether charges such as the port charges in question fall within the scope of Article 10 EEA.

26 It is not disputed that, formally, the port charge levied by the Respondent for the loading and unloading of alcoholic beverages is imposed regardless of whether the products are being imported or have been transported by sea from another port in Iceland. Thus, as those charges are not levied on the products by reason of the fact that they cross a frontier, they do not constitute charges having equivalent effect to customs duties, see for comparison Case 24/68 *Commission* v *Italy* [1969] ECR 193, at paragraphs 8–9 and Case C-90/94 *Haahr Petroleum* [1997] ECR I-4085 (hereinafter "*Haahr Petroleum*"), at paragraph 20. Already for that reason, Article 10 EEA is not applicable. It is immaterial in this context that goods arriving from abroad by sea may be considered to have entered the customs territory of the importing State when brought ashore. The judgment of the Court of Justice of the European Communities (hereinafter the "ECJ") in Case C-163/90 *Legros* [1992] ECR I-4625, referred to by the Appellant, does not contradict this finding. The dues imposed in that case were levied on goods by reason of the fact that they crossed a regional border and the dues did not apply to goods originating in that region, cf. paragraphs 4 and 11–12 of the judgment. The reason why the port

charge at issue in the present case is not levied on domestic alcoholic beverages is that, for reasons of practicality or economy, they are not transported by sea.

27 As Article 10 EEA is not applicable to port charges such as those at issue in this case, the Court has to assess whether Article 14 EEA may apply.

28 Those who have submitted observations to the Court disagree, firstly, on whether Article 14 EEA may be applicable to charges set by private bodies and, secondly, on whether the Respondent in this respect must be considered a private body or equated to a public authority. As the former question only arises if the Respondent must be considered a private body in relation to Article 14 EEA, the Court will deal with the latter question first.

29 Whether a certain body constitutes a public authority must be decided on the basis of the relevant provisions of the EEA Agreement itself. In this context, regional and local authorities must be equated to the central authorities of the Contracting Parties. The obligations under the Agreement must be the same for all Contracting Parties irrespective of the distribution of powers and tasks between the central, regional and local levels of government. This distribution may vary from one Contracting Party to the other (see for comparison with regard to Article 28 EC, the provision corresponding to Article 11 EEA, Joined Cases C-1/90 and C-176/90 *Aragonesa de Publicidad Exterior* and *Publivía* [1991] ECR I-4151, at paragraph 8).

30 Similarly, a partnership wholly owned by public authorities must be equated to the public authorities themselves. Otherwise, EEA States could circumvent their obligations under Article 14 EEA by means of such partnerships. It cannot matter in this respect that the body in question is considered, under national law, to be a legal person which is separate from the traditional public authorities and whose activity is not regarded as a public operation.

31 Article 14 EEA covers not only taxes imposed directly on the goods as such, but also taxes which have an immediate effect on the cost of the goods, see for comparison Case 20/76 *Schöttle* [1977] ECR 247 (hereinafter "*Schöttle*"), at paragraphs 13–15. The fact that the charge is collected by a body for its own benefit does not exclude that it may constitute taxation within the meaning of Article 14 EEA, see for comparison Case 74/76 *Iannelli & Volpi* [1977] ECR 557, at paragraph 19, and *Haahr Petroleum*, at paragraph 4. In this respect, it follows from *Haahr Petroleum* that also charges which constitute payment for services rendered in connection with the goods, for instance port services, may constitute taxation in relation to Article 14 EEA, see paragraph 35 of that judgment. It is also evident from the facts of that case that this is so even though there is no legal obligation to receive the service in question and the service is provided on the

basis of a contract, governed by private law, between the service provider and the customer.

32 In *Haahr Petroleum*, the tariff was set by the Minister in the exercise of official authority vis-à-vis the ports. The ports were not free to set their own tariffs. In the present case, it would seem that the port operator sets the tariff itself based on an authorisation in law which subjects the pricing policy only to conditions of a general nature. The question is whether, under such circumstances, payment for services may qualify as taxation for the purposes of Article 14 EEA.

33 Public authorities must be able to engage in economic activities without their pricing policy falling under Article 14 EEA whenever that activity consists in services with immediate effect on the cost of goods originating in other EEA States. This is particularly so when the authorities operate in a competitive market which makes it possible for prospective customers to choose freely between several operators who set their own prices. The realisation of the internal market, as foreseen by the EEA Agreement, is not endangered by Article 14 EEA not being applicable in such a situation. Furthermore, the concept of taxation as customarily understood implies an element of compulsion.

34 However, those engaged in the handling of imported goods may find themselves in a situation in which they have no option but to rely on the services of the public provider in question. In such a situation, there is no difference in the effect between the pricing policy of an individual public service provider which sets its own prices and a tariff decided by a central authority and made obligatory for all, or most, services providers in question, as was the case in *Haahr Petroleum*. The application of the competition rules of the EEA Agreement to public authorities when engaged in economic activities of an industrial or commercial nature by offering goods or services on the market (see for comparison Case C-343/95 *Cali & Figli* [1997] ECR I-1547, at paragraph 16) does not fully meet the need to ensure non-discrimination in these cases. Article 54 EEA which prohibits abuse of a dominant market position may indeed also be applicable in such situations. However, that provision lays down its own conditions which are not the same as those of Article 14 EEA. Thus, Article 14 EEA may be applicable in situations where Article 54 EEA is not, and vice versa.

35 The concept of taxation within the meaning of Article 14 EEA must be interpreted in a wide sense, see for comparison *Schöttle*, at paragraph 13. The Court further recalls that the ECJ, in Case C-16/94 *Dubois and Cargo* [1995] ECR I-2421, applied the EC Treaty provision parallel to Article 10 EEA to a fee provided for in a contract. In view of this, and in order to avoid circumvention of the prohibition laid down in Article 14 EEA, payment for services provided by a public entity constitutes taxation for the purposes of Article 14 EEA when the customers have

no option but to rely on the service in question, see, in this direction, also the Opinion of Advocate General Jacobs in *Haahr Petroleum*, at point 63.

36 In this context, it cannot matter whether the price has been set according to purely commercial criteria, focusing on profit maximisation, or according to considerations of the general good usually associated with the exercise of public authority. The effect of the charge or fee in question on the cost of goods would be the same regardless of motivation.

37 As follows from paragraph 29 above, Article 14 also applies to local taxes (see also Case C-45/94 *Cámara de Comercio, Industria y Navegación de Ceuta* [1995] ECR I-4385). This entails that in relation to the criterion of there being no option but to rely on the services of the public provider in question, the test must be whether there is no alternative provider of the service requested by the customer within the area normally served by the public service provider, in this case by the ports operated by the Respondent. It is for the national court to establish whether this is the situation.

38 Article 11 EEA does not extend to obstacles to trade of a fiscal nature or having an effect equivalent to customs duties. Therefore, Article 11 is not applicable to the charge at issue, see for comparison Case 252/86 *Bergandi* [1988] ECR 1343, at paragraph 33.

39 Based on the above, the answer to the first question must be that the levying of charges for port services provided by a partnership owned by several municipalities falls to be assessed under Article 14 EEA if there is no alternative port to those of the partnership within the area normally served by those ports.

The second question

40 In light of the answer to the first question, it is only necessary to answer the second question in relation to Article 14 EEA. The question is thus whether that Article precludes the levying of port charges which are higher for alcoholic beverages than for non-alcoholic beverages, taking into account that in Iceland alcoholic beverages are generally imported, *inter alia* from other EEA States.

41 The Appellant’s main submission is that the port charges violate Article 14 EEA by discriminating against alcoholic beverages imported from other EEA States in relation to alcoholic beverages produced in Iceland. Imported alcoholic products have to be transported to Iceland by sea. Road transport is not an option. Domestic alcoholic products, on the other hand, are only transported by road. They have not been transported by sea for many years. The very high port charge for alcoholic beverages adds a cost element which is lacking for domestic alcoholic beverages. The Appellant submits that there is no appreciable difference in the costs related to

the ports' handling of alcoholic beverages compared to the handling of non-alcoholic beverages. Consequently, there is no objective justification for the very high charge for alcoholic products. For this reason, it violates Article 14 EEA.

42 Although the Appellant has focused on comparing the situation for imported and domestic alcoholic products, the Appellant does not exclude that the difference in port charges for alcoholic and non-alcoholic beverages could constitute illegal tax discrimination of imported alcoholic beverages vis-à-vis domestic non-alcoholic beverages.

43 The Respondent and ESA as well as the Commission are all of the opinion that there is no violation of Article 14 EEA. With regard to the Appellant's main submission concerning imported and domestic alcoholic products, they make the observation that the port charge does not distinguish between imported and domestic alcoholic products. The difference in treatment is caused by the fact that only imported alcoholic products are transported by sea and for that reason are subject to port charges. This is not relevant under Article 14 EEA. As to possible discrimination of imported alcoholic beverages in relation to domestic non-alcoholic beverages, it is maintained that alcoholic and non-alcoholic beverages are neither similar nor competing products and for that reason the difference in rates is not caught by Article 14 EEA. The Government of Iceland has not commented upon the second question.

44 The Court will first address the Appellant's main submission, the alleged discrimination of imported alcoholic beverages in relation to domestic alcoholic beverages.

45 Article 14 EEA prohibits, under its first paragraph, the direct or indirect imposition of taxes on products of other EEA States in excess of those imposed directly or indirectly on similar domestic products. Under its second paragraph, the Article prohibits taxes of such a nature as to afford indirect protection to domestic products which, although not similar to the imported products, nevertheless are in a competitive relationship to them, see Case E-1/01 *Einarsson* [2002] EFTA Ct. Rep. 1 (hereinafter "*Einarsson*"), at paragraph 24. With regard to the Appellant's main submission, it is not necessary to decide whether the various imported and domestic alcoholic products are similar or merely in competition. In relation to the basic question of whether this difference in treatment is relevant at all, when caused by the fact that only imported alcoholic beverages are transported by sea and so become subject to the charge in question, the answer must be the same under both paragraphs of Article 14 EEA.

46 Both the first and the second paragraph of Article 14 EEA apply to indirect discrimination of goods imported from other EEA States. Thus, a system of

taxation which makes no reference to the origin of the goods may still violate Article 14 EEA if it is designed in such a way as to benefit typically domestic products and to handicap imported products to the same extent, see for comparison Case C-302/00 *Commission* v *France* [2002] ECR I-2055, at paragraph 30.

47 However, as concerns alcoholic beverages, the charge in question is levied for a service offered on equal terms to all in need of this particular service, the loading and unloading of goods in the ports operated by the Respondent. The facts of the present case thus differ from the situation in *Haahr Petroleum* which concerned port charges which were higher for imported goods than for domestic goods. The Respondent does not set the tariff for a comparable service for similar or competing goods which are mainly domestic, i.e. the loading and unloading of alcoholic beverages transported by road. Under such circumstances, the difference in treatment of imported and domestic alcoholic products resulting from the fact that the former are transported by sea and consequently go through ports whereas the latter are transported by road and so do not go through ports does not constitute a violation of Article 14 EEA.

48 In this respect, it cannot matter that the charge in question clearly exceeds the cost of the service for which it constitutes payment, as alleged by the Appellant. Whether or not such behaviour on part of the service provider may constitute abuse of a dominant position on the relevant market and for that reason violate competition law, is a different matter.

49 Next, the Court will address the Appellant's alternative submission which is that the difference in port charges for alcoholic and non-alcoholic beverages may constitute discriminatory internal taxation of imported alcoholic beverages vis-à-vis domestic non-alcoholic beverages.

50 In this perspective, it is clear that the same service is charged according to different rates depending on the category of the products concerned. However, as pointed out in paragraph 45 above, for the charges in question to constitute discrimination contrary to Article 14 EEA, it is further necessary that they distinguish between products which are either, under the first paragraph of Article 14 EEA, similar, or, under the second paragraph, in a competitive relationship with one another.

51 For products to be considered similar under the first paragraph of Article 14 EEA, they must have similar characteristics and meet the same needs from the point of view of the consumer, see for comparison Case 106/84 *Commission* v *Denmark* [1986] ECR 833, at paragraph 12. Alcoholic and non-alcoholic beverages are clearly not similar products within the meaning of the first paragraph of Article 14 EEA.

52 The second paragraph of Article 14 EEA calls for an assessment of whether or not the tax is of such a kind as to have the effect, on the market in question, of reducing potential consumption of imported products to the advantage of competing domestic products. For this to be the case, it is not sufficient that the relevant products are in competition with one another. It must further be demonstrated that the higher tax rate applies chiefly to the imported products, cf. *Einarsson*, at paragraph 31. Moreover, it must be demonstrated that the difference in tax burden caused by the charge in question would have an effect on the cross-elasticity of the demand. In making this assessment, one must take into account *inter alia* the discrepancy in price which may exist between the products independently of that difference. It is for the national court to assess whether those three conditions are fulfilled in the present case.

53 Based on the above, the answer to the second question from Hæstiréttur Íslands must be, firstly, that a port charge such as the one at issue does not constitute discrimination contrary to Article 14 EEA of imported alcoholic beverages in relation to domestic alcoholic beverages as long as the reason why only imported alcoholic beverages become subject to the charge is the fact that domestic alcoholic beverages are not transported by sea and so do not need port services, and the body setting the tariff for the port services does not set the tariff for comparable services needed in relation to domestic alcoholic beverages.

54 Secondly, in order for such a charge to violate Article 14 EEA by discriminating imported alcoholic beverages in relation to domestic non-alcoholic beverages, the charge must have the effect, on the market in question, of reducing potential consumption of the imported products to the advantage of competing domestic products.

IV Costs

55 The costs incurred by the Government of Iceland, ESA and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are a step in the proceedings pending before Hæstiréttur Íslands, any decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by Hæstiréttur Íslands, hereby gives the following Advisory Opinion:

1. **The levying of charges for port services provided by a partnership owned by several municipalities falls to be assessed under Article 14 EEA if there is no alternative port to those of the partnership within the area normally served by those ports.**

2. **A port charge such as the one at issue does not constitute discrimination contrary to Article 14 EEA of imported alcoholic beverages in relation to domestic alcoholic beverages as long as the reason why only imported alcoholic beverages become subject to the charge is the fact that domestic alcoholic beverages are not transported by sea and so do not need port services, and the body setting the tariff for the port services does not set the tariff for comparable services needed in relation to domestic alcoholic beverages.**

   In order for such a charge to violate Article 14 EEA by discriminating imported alcoholic beverages in relation to domestic non-alcoholic beverages, the charge must have the effect, on the market in question, of reducing potential consumption of the imported products to the advantage of competing domestic products.

Carl Baudenbacher Thorgeir Örlygsson Henrik Bull

Delivered in open court in Luxembourg on 5 March 2008.

Skúli Magnússon
Registrar

Carl Baudenbacher
President