

Case 154/85 R

Commission of the European Communities

v

Italian Republic

'Restrictions on imports of motor vehicles'

Summary

*Free movement of goods — Quantitative restrictions — Measures having equivalent effect —
Limit on the number of importers
(EEC Treaty, Art. 30)*

National rules or practices which result in imports being channelled in such a way that only certain traders can effect those imports, whereas others are prevented from

doing so, constitute a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty.

ORDER OF THE PRESIDENT OF THE COURT

7 June 1985 *

In Case 154/85 R

Commission of the European Communities, represented by its Legal Adviser, Antonino Abate, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

* Language of the Case: Italian.

supported by

The Kingdom of the Netherlands, represented by Mr Bos, a legal adviser at the Ministry for Foreign Affairs, with an address for service in Luxembourg at the Netherlands Embassy,

intervener,

v

Italian Republic, represented by Arnaldo Squillante, Head of the Department of Contentious Diplomatic Affairs, acting as Agent, assisted by O. Fiumara, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that, with regard to the parallel importation of motor vehicles from other Member States, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty,

THE PRESIDENT OF THE COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

makes the following

ORDER

- 1 By an application for interim measures lodged at the Court on 22 May 1985, the Commission of the European Communities requested the Court to order the Italian Republic to adopt the measures necessary to ensure the immediate registration and free movement of vehicles originating in the EEC and imported from other Member States as parallel imports. On the same day the Commission brought an action for a declaration that by making the registration of vehicles imported from other Member States as parallel imports subject to formalities which are not justified under Community law, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty.

- 2 By a telex of 30 May 1985, the Kingdom of the Netherlands requested leave to intervene in support of the Commission's submissions. That request must be allowed.
- 3 By an application lodged at the Court Registry on 3 June 1985, various Italian importers (Autocarrozzeria Becast, Automarket Bonometti, Guiseppe Fabris, Autosalone Foralosso Renato, Autofficina Guglielmi Giovanni, Francesco Lain, L'Auto, Mercatone dell'Auto and Valcar) requested leave to intervene in the interlocutory proceedings in support of the Commission's submissions. That application must be rejected because Article 37 of the Protocol on the Statute of the Court of Justice of the EEC does not permit private individuals or companies to intervene in disputes between the institutions and Member States.
- 4 The Commission states in the first place that in recent months it has received a large number of complaints regarding the system of registration in Italy for new or used vehicles imported from another Member State. Since July 1984 the Italian Government has systematically increased the stringency of the administrative requirements with the result that any registration of a vehicle imported outside the official distribution network has been made much more difficult. The measures were taken as a response to a sudden increase in parallel imports into Italy in 1984.
- 5 The Commission's action is directed in particular against Circular No 22/85, which was adopted on 15 February 1985 by the Ministry of Transport of the Italian Republic and came into force on 1 March 1985.
- 6 By virtue of that circular, the registration of a new foreign vehicle is made subject to the production of a certificate of origin of the vehicle issued by the manufacturer and a document indicating the technical specifications of the vehicle. For vehicles already registered in the exporting country the importer must provide, in addition to those two documents, the certificate of registration issued by the authorities of the exporting Member State.
- 7 The circular also provides that the certificate of origin and the document indicating the technical specifications of the vehicle must be issued by the manufacturer or, for foreign makes, by the legal representative established in Italy 'within a period of 40 working days from the application'. In addition, the circular

authorizes the manufacturers and the legal representatives to receive a 'reasonable' fee for issuing those certificates.

8 During the proceedings before this Court, certain Italian undertakings applied to the Tribunale amministrativo regionale [Regional Administrative Court], Latium, to have Circular No 22/85 declared void. By an order of 8 May 1985 that court suspended the operation of the circular. However, the Italian administration interpreted that order as meaning that the suspension of the circular in question concerned solely vehicles from non-member countries and not vehicles from the EEC.

9 The Commission claims that as a result of the circular parallel imports have been completely paralysed because no certificate of origin has been issued since 1 March 1985 by the manufacturers or by the representatives of foreign makes established in Italy.

10 In the Commission's view, even if certificates of origin are issued, as a result of the circular the time required to register a vehicle is ten times longer than in the other Member States. That is sufficient to dissuade those wishing to avoid using the official distribution network. Moreover, the fees charged in Italy for issuing the certificates of origin and the documents indicating the technical specifications are far higher than those normally charged in the other Member States.

11 The Commission claims that the Italian measures, which have the effect of paralysing imports, constitute a clear and serious breach of the fundamental principles governing the free movement of goods, as set out in Articles 3 (a), 9 and 30 of the EEC Treaty. The Italian measures discriminate against vehicles from the EEC imported as parallel imports; they also are disproportionate in relation to the objective pursued, which is to prevent the registration of vehicles stolen in Italy.

12 According to the Commission, the discontinuation of imports undoubtedly causes damage to the exporters from other Member States and Italian importers. The final consumer also suffers irreparable damage. Approximately 10 000 vehicles already imported are now immobilized. It is therefore necessary to take action immediately to re-establish the *status quo ante*, in which the principle of the free movement of goods was respected and applied fully and unconditionally. The rules

which were in force prior to the measures adopted recently by the Italian Government provided for the possibility of choosing between the procedure based on the certificate of origin of the vehicle issued by the manufacturer, and the procedure based on certificates issued by the public authorities of the exporting Member State as prescribed under the legislation of that State.

- 13 The Italian Government contends that the number of parallel imports has in no way decreased since the introduction of the circular, and that although it is possible to discern a certain slowing down, that is a temporary phenomenon which commonly accompanies the introduction of new rules.
- 14 In addition, the Italian Government stresses that the rules are intended to prevent traffic in stolen vehicles. At the same time it maintains that it is essential to ensure, prior to effecting the registration, that the imported vehicle conforms to the national safety standards.
- 15 The Netherlands Government points out that exports to Italy have decreased considerably since the disputed measures were adopted.
- 16 *Prima facie* it appears that the Italian circulars adopted after July 1984 are liable to affect seriously the functioning of the parallel market. In that respect it is necessary to refer to the judgment of the Court of 20 May 1976 (Case 104/75 *De Peijper* [1976] ECR 613), according to which national rules or practices which result in imports being channelled in such a way that only certain traders can effect those imports, whereas others are prevented from doing so, constitute a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty.
- 17 The restriction on imports arises both from the apparently excessive length of the time required for registration of vehicles imported outside the official distribution networks and from the additional expense (on average LIT 130 000, according to the Italian Government) resulting from the requirement of a certificate of origin, which must be issued prior to registration.
- 18 The question whether the measures taken by the Italian Republic may be justified with regard to the provisions of Article 36 of the Treaty is a question which goes

to the substance of the case and which must not be prejudged by measures adopted in interlocutory proceedings. However, it must be noted that the Italian Government has at this stage advanced no serious argument justifying the disputed measures on the basis of requirements relating to public policy. Nor has it been explained why it is not possible to apply less restrictive measures.

- 19 Moreover, the Italian Government has not disputed that the measures which it has adopted cause irreparable damage to Italian parallel importers and to the exporters of other Member States, who are prevented, at least in part, from doing business. In addition, damage is caused to the final consumer, who is prevented from benefiting from the advantages offered by the common market.
- 20 As regards the urgency of the measure, notwithstanding repeated requests from the Commission and the Court, the Italian Government has not been able to contest seriously the claim that the registration of imported vehicles has been subject to considerable delay, the backlog being estimated by the Commission at approximately 10 000 vehicles. Clearly the Italian Government can easily obtain precise statistics in such a matter.
- 21 In those circumstances the Court considers that interim measures may be accorded in order to re-establish the *status quo ante* and that the Italian Republic must take the measures necessary to ensure that no requirement is imposed on parallel importers which is more strict than those which existed before July 1984. In addition, the Italian Republic should inform the Commission every two weeks of the number of registrations effected and the reasons for any delay.
- 22 It remains open to the Italian Government to request, at any time, the modification of this order, in particular in the light of any statistics or other evidence which are more precise than those which have been supplied to the Court.

On those grounds,

THE PRESIDENT,

by way of an interlocutory ruling,

hereby:

- (1) Orders the Italian Republic, pending judgment on the principal application:**
 - (a) on notification of this Order to take the measures necessary to ensure that no requirement is imposed on parallel importers which is more strict than those which existed before July 1984;**
 - (b) to inform the Commission every two weeks of the number of registrations effected and the reasons for any delay.**
- (2) Reserves the costs.**

Luxembourg, 7 June 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President