

JUDGMENT OF THE COURT (First Chamber)

20 September 2007*

In Case C-297/05,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 22 July 2005,

Commission of the European Communities, represented by M. van Beek and D. Zijlstra, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Kingdom of the Netherlands, represented by H.G. Sevenster and D.J.M. de Grave, acting as Agents,

defendant,

* Language of the case: Dutch.

supported by:

Republic of Finland, represented by E. Bygglin, acting as Agent, with an address for service in Luxembourg,

intervener,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, R. Schintgen, A. Tizzano, M. Ilešič (Rapporteur) and E. Levits, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 22 March 2007,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 By its application, the Commission of the European Communities requests the Court to declare that, by requiring vehicles which have previously been registered in

another Member State to undergo an identification check together with a roadworthiness test relating to their general condition prior to registration in the Netherlands, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 28 EC and 30 EC.

Legal context

Community legislation

- 2 Recital (33) in the preamble to Council Directive 96/96/EC of 20 December 1996 on the approximation of the laws of the Member States relating to roadworthiness tests for motor vehicles and their trailers (OJ 1997 L 46, p. 1) provides:

‘... in view of the expected impact of this Directive on the sector in question and in the light of the principle of subsidiarity, the Community measures provided for in this Directive are necessary to achieve harmonisation of the rules on roadworthiness tests, to prevent distortion of competition between road hauliers and to guarantee that vehicles are properly checked and maintained; ... these aims could not be achieved in full by the Member States acting individually’.

- 3 Article 1(1) of Directive 96/96 provides:

‘In each Member State, motor vehicles registered in that State and their trailers and semi-trailers shall undergo periodic roadworthiness tests in accordance with this Directive and in particular its Annexes I and II.’

4 Article 3(1) and (2) of that Directive provides:

‘1. Member States shall take such measures as they deem necessary to make it possible to prove that a vehicle has passed a roadworthiness test complying with at least the provisions of this Directive.

These measures shall be notified to the other Member States and to the Commission.

2. Each Member State shall, on the same basis as if it had itself issued the proof, recognise the proof issued in another Member State showing that a motor vehicle registered on the territory of that other State, together with its trailer or semi-trailer, have passed a roadworthiness test complying with at least the provisions of this Directive.’

5 Article 5 of the Directive states:

‘Notwithstanding the provisions of Annexes I and II, Member States may:

- bring forward the date for the first compulsory roadworthiness test and, where appropriate, submit the vehicle for testing prior to registration,

- shorten the interval between two successive compulsory tests,

- make the testing of optional equipment compulsory,

- increase the number of items to be tested,

- extend the periodic test requirement to other categories of vehicles,

- prescribe special additional tests,

- require for vehicles registered on their territory higher minimum standards for braking efficiency than those specified in Annex II and may include a test on vehicles with heavier loads provided such requirements do not exceed those of the vehicle's original type-approval.'

6 Article 11(1) of Directive 96/96 states:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 9 March 1998. They shall forthwith inform the Commission thereof.

...'

- 7 Recitals (3), (6) and (9) in the preamble to Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles (OJ 1999 L 138, p. 57) are worded as follows:

‘(3) ... harmonisation of the form and content of the registration certificate will facilitate its comprehension and thus help towards the free movement, on the roads in the territory of the other Member States, of vehicles registered in a Member State;

...

(6) ... harmonisation of the registration certificate will facilitate the re-entry into service of vehicles that have previously been registered in another Member State, and will contribute to the proper functioning of the internal market;

...

(9) ... in order to facilitate those checks specifically intended to combat fraud and the illegal trade in stolen vehicles, it is appropriate to establish close cooperation between Member States, based on an effective exchange of information’.

- 8 Article 2(b) of Directive 1999/37 defines the registration of a vehicle as the administrative authorisation for the entry into service in road traffic of that vehicle, involving the identification of the latter and the issuing to it of a registration number.

9 Article 4 of that Directive provides:

‘For the purposes of this Directive, the registration certificate issued by a Member State shall be recognised by the other Member States for the identification of the vehicle in international traffic or for its re-registration in another Member State.’

10 Article 8(1) of that Directive states:

‘Member States shall bring into force the laws, regulations or administration provisions necessary to comply with this Directive by 1 June 2004. They shall notify the Commission thereof immediately.

...’

National legislation

11 The vehicle registration procedure and issue of registration certificates are governed by Article 36(1) and (2) and Articles 42 to 61 of the *Wegenverkeerswet* (Road Traffic Law) of 21 April 1994 (Stb. 1994, No 475) and Chapter 4, Articles 17 to 40a, of the *Kentekenreglement* (Registration Certificate Rules) of 6 October 1994 (Stb. 1994, No 760).

- 12 Articles 42 to 46 of the *Wegenverkeerswet* relate to the registration of vehicle registration numbers. Article 42(2) and (3) provides:

‘2. Within the framework of [the register of vehicle registration numbers], the *Rijksdienst voor Wegverkeer* [Road Traffic Authority; ‘RDW’] shall process data relating to motor vehicles and trailers to which a registration number has been allocated, the name of the holder of that registration number and details of other motor vehicles and of trailers.

3. The data referred to in paragraph (2) shall be collected for the following reasons:

- (a) for the effective enforcement of this Law and for the maintenance of rules laid down by or pursuant to this Law; or

- (b) for the effective enforcement of the *Wet op de motorrijtuigenbelasting* (Law on the taxation of motor vehicles) of 1994, the *Wet op de belasting van personenauto’s en motorrijwielen* (Law on the taxation of cars and motorcycles) of 1992, the *Wet aansprakelijkheidsverzekering motorrijtuigen* (Law on third party liability insurance of motor vehicles), the *Wet bereikbaarheid en mobiliteit* (Law on accessibility and mobility) and of other legislation relating to motor vehicles and trailers and for the maintenance of rules laid down by or pursuant to these provisions.’

13 The registration certificate, which is governed by Chapter 4, Articles 17 to 40a, of the Kentekenreglement, consists of Parts I and II, the first of which contains the vehicle's technical data (Part IA) together with information about the identity of the owner or person in control of the vehicle (Part IB), and the second of which contains the information required on a change of ownership.

14 As regards the first issue of a two-part registration certificate, Article 25(1) of the Kentekenreglement provides:

'The owner or person in control of a vehicle requiring a two-part registration certificate to be issued for the first time shall make the vehicle available to the RDW for inspection, and shall apply to the RDW for a registration certificate by presenting such proof of entitlement as is designated by ministerial order.'

15 Article 25b of the Kentekenreglement provides that, for the purposes of registration in the Netherlands, it is necessary to present the registration certificate previously obtained in another Member State. Article 25b(2) and (3) provides:

'2. The issue [of a registration certificate in the Netherlands] shall be refused if Part II of the registration certificate, in so far as it has been issued, is missing.

3. In exceptional cases and by way of derogation from paragraph (2), the RDW may issue a registration certificate provided that the competent authorities in the Member State in which the vehicle was previously registered have provided written or electronic confirmation that the applicant is entitled to have the vehicle registered in another Member State.'

- 16 Under Articles 26 to 30 of the Kentekenreglement, the vehicle identification check is not required in the case of a sale between individuals in the Netherlands, because the technical data relating to the vehicle which appear in Part IA of the registration certificate are already referred to in the vehicle register. The RDW issues the new owner with a registration certificate consisting only of Part IB.
- 17 Netherlands legislation provides for four different procedures for the registration of vehicles.
- 18 According to procedure 1, new, unused vehicles which have Netherlands or Community type-approval are issued with a registration certificate, generally via an undertaking that has been approved by the RDW. Approved undertakings may apply directly to the RDW for the issue of a registration certificate without a specific roadworthiness test of the general condition of the vehicle. Identification of the vehicle and verification that it corresponds to the certificate of conformity is accordingly carried out by the approved undertaking. There is no specific roadworthiness test of the general condition of the vehicle. The costs charged to the customer are limited to the costs of Parts I and II of the registration certificate, a total of EUR 47.20.
- 19 Procedure 2 applies to vehicles which are less than three years old and which have Community type-approval. Before they are registered, such vehicles must be checked by an RDW-approved centre. During such checks, vehicles are identified by means of the registration certificate issued in another Member State and the certificate of conformity for the purpose of preventing fraud in relation to registration certificates. The documents submitted are checked in order to identify any discrepancies. A specific roadworthiness test relating to the general condition of a vehicle is carried out only if the vehicle has defects which are apparent on a visual

inspection and which could endanger road users or the environment. That check takes approximately 25 minutes and costs EUR 45, in addition to the EUR 47.20 payable for the registration certificate.

- 20 Procedure 3 covers vehicles which are more than three years old and which have Community type-approval, vehicles previously registered in another Member State which have been given national type- or single vehicle approval in that State, and also vehicles previously registered in the Netherlands which have Netherlands type-approval.
- 21 On import, the identification procedure in respect of such vehicles is accompanied by an inspection of their general condition from the point of view of compliance with standing requirements, which is carried out by an RDW-approved centre. The registration certificate issued in another Member State and the certificate of conformity containing the necessary technical information must be supplied, together with (where vehicles do not have Community type-approval) an approval document or similar, stating the engine power, the (maximum) load and the axle weight. Such checks of the general condition of the vehicle last approximately 50 minutes and cost EUR 78, to which the sum of EUR 47.20 payable for obtaining the registration certificate must be added.
- 22 Such checks involve the identification of the vehicle and examination of the documents submitted. Any differences between the technical requirements in force in the Member State from which the vehicle in question originated and those which apply in the Netherlands do not preclude registration of the vehicle if it can be ascertained from the documents supplied that the vehicle is in the condition in which it was approved in the Member State from which the vehicle in question originated and that those differences do not pose any serious safety risk.

- 23 Moreover, any vehicle that is more than three years old and registered in the Netherlands is required to undergo a periodic roadworthiness test (Algemene Periodieke Keuring). Where a vehicle covered by procedure 3 is required to undergo a compulsory roadworthiness test, the person requesting the issue of a registration certificate receives a certificate permitting him or her to use the vehicle for one year.
- 24 Under Article 25(7) of the Kentekenreglement, the procedures summarised above apply *mutatis mutandis* to a request for re-registration in respect of a vehicle previously registered in the Netherlands which has subsequently been taken off the road, has left the territory of the Netherlands, was intended for use off the public highway or has been allocated a special registration.
- 25 Procedure 4 applies to vehicles which have previously been registered in a State that is not a member of the European Union and to — as yet — unregistered vehicles which do not have type- or single vehicle approval. In addition to the identification procedure, such vehicles are inspected as to their general condition, with such inspections generally being carried out at the applicant's premises after an administrative check of the individual application by a special department of the RDW. The technical information must be communicated for the purpose of registration.
- 26 The RDW's practices in relation to procedures 2 and 3, described above, are based on the Kentekenreglement.
- 27 On 11 November 2005, the Minister for Transport sent a circular to the RDW requesting it to stop requiring vehicles previously registered in another Member State to undergo the roadworthiness test referred to in Article 25(1) of the Kentekenreglement, with effect from 1 December 2005.

Pre-litigation procedure

- 28 As the Commission was of the view that Netherlands legislation in relation to the vehicle registration procedure did not accord with the provisions of Articles 28 EC and 30 EC, it initiated the procedure for failure to fulfil obligations by formally requesting the Kingdom of the Netherlands to submit its observations.
- 29 The Netherlands Government replied to that formal notice by letter of 10 July 2003. In a second letter of 29 January 2004, it provided more detailed observations.
- 30 On 9 July 2004, the Commission issued a reasoned opinion requesting the Kingdom of the Netherlands to take the measures necessary to comply with the opinion within two months of its receipt.
- 31 After requesting a one month extension of the time-limit for responding to that reasoned opinion, the Kingdom of the Netherlands responded on 2 November 2004.
- 32 By application lodged at the Registry of the Court of Justice on 22 July 2005, the Commission brought the present action under Article 226 EC.
- 33 By order of 20 February 2006, the President of the Court granted the Republic of Finland leave to intervene in support of the forms of order sought by the Kingdom of the Netherlands.

Admissibility of the action

Arguments of the parties

- 34 The Netherlands Government claims that the Commission failed to fulfil its obligation to define the subject-matter of the action in sufficiently precise and consistent terms both during the pre-litigation stage and in the application, in particular because it did not explain the difference between the 'test of the general condition of the vehicles' and the 'vehicle identification check' in its reasoned opinion.
- 35 In its application, the Netherlands Government submits, the Commission unlawfully extended the subject-matter of the dispute from that contained in the reasoned opinion in that its complaint about the 'additional roadworthiness tests' also covered the vehicle identification procedure. Consequently, the Commission's application should be dismissed in so far as it also covers that identification procedure.
- 36 The Commission explains that it is criticising procedures 2 and 3 described above. The vehicle checks required under those procedures should be put into two categories: those which are intended solely to identify vehicles, which are carried out in procedures 2 and 3, and those relating to the general condition of vehicles, that is, the roadworthiness tests in the strict sense, which are carried out in procedure 3.
- 37 The Commission states that it made it clear in paragraphs 5(2), 5(3) and 13 of the reasoned opinion that its criticism related to both types of check. It is apparent, moreover, from the response of the Netherlands Government to the reasoned opinion that it understood that the Commission's complaints were directed against the two types of check in question.

Findings of the Court

- 38 Paragraph 13 of the reasoned opinion concerns the two types of check covered by procedures 2 and 3, as described above.
- 39 Moreover, it is apparent from the response of the Netherlands Government to the reasoned opinion of 2 November 2004 that the latter dealt separately with procedures 2 and 3 by commenting, first, on the identification of vehicles previously registered in another Member State which is provided for in both procedures, and, second, on the test as to the general condition of those vehicles which is provided for in procedure 3.
- 40 It follows that the Netherlands Government was in a position to identify the complaints against the two types of check provided for in procedures 2 and 3 which were put forward by the Commission in its reasoned opinion, and that the Netherlands Government is not justified in claiming that the Commission improperly extended the subject-matter of the dispute in its application.
- 41 Having regard to the foregoing, the plea of inadmissibility advanced by the Netherlands Government must be dismissed.

Merits*Arguments of the parties*

- 42 According to the Commission, the registration in the Netherlands of vehicles previously registered in another Member State and the issue of registration

certificates on a change of ownership of vehicles previously registered in the Netherlands are two comparable situations.

- 43 Those comparable situations are dealt with differently, thereby creating an obstacle to intra-Community trade. Taking into account the fact that it is compulsory, systematic and costly, the obligation to submit vehicles which were previously registered in another Member State for testing prior to registration makes it more difficult to import such vehicles and thus constitutes a measure having equivalent effect to quantitative restrictions within the meaning of Article 28 EC. The Commission takes the view that the test in question falls into two categories, namely, (i) as a check for identification of vehicles and (ii) as a test for inspection of their general condition.
- 44 In the Commission's view, the contested measures must be described as measures having equivalent effect, which are prohibited under Article 28 EC, because they make the import of vehicles previously registered in another Member State less attractive and thus constitute a hindrance to the free movement of goods. Furthermore, they cannot be justified on the grounds of an objective referred to in Article 30 EC or of an overriding requirement that is recognised in the case-law of the Court.
- 45 In particular, according to the Commission, the vehicle identification check in procedures 2 and 3 cannot be justified by the need to establish whether the registration numbers of imported vehicles previously registered in another Member State have been changed, because such numbers could equally have been changed during a transfer of ownership within the territory of the Kingdom of the Netherlands. Moreover, since the content of registration documents has been harmonised at Community level under Directive 1999/37, the inspection carried out

in the Netherlands is superfluous and duplicates the checks which have already been carried out in the other Member States. The Commission observes also that it is necessary to wait for several weeks for that inspection to be carried out.

46 As regards the roadworthiness tests relating to the general condition of vehicles, the Commission continues, it is apparent from the case-law of the Court that vehicles which have previously been registered in a Member State where their roadworthiness was tested may, in certain circumstances, be submitted by the authorities of another Member State for additional testing when they are registered in that State, provided nevertheless that a similar test is required for domestic vehicles which are presented for registration in the same circumstances. However, in the present case, vehicles which are already registered in the Netherlands and which have been transferred to new owners are not submitted for such testing, unlike vehicles which are already registered in another Member State and which are being presented for registration in the Netherlands.

47 The Netherlands and Finnish Governments take the view that a change of ownership of a vehicle which is already registered in the Netherlands cannot be compared to the import of a vehicle from another Member State. The purpose of registering a vehicle and that of registering a change of ownership are different: registration of a vehicle involves entering it in the national Netherlands register, while the change of ownership simply links to another person a vehicle that is already registered. Therefore, the two situations are not comparable.

48 By contrast, registration in the Netherlands of vehicles which were previously registered in another Member State can be compared to the procedure for registering vehicles which were previously registered in the Netherlands, but which have subsequently been removed from the register and for which an application for re-registration in the Netherlands has been lodged. In that case, under Article 25(7) of the Kentekenreglement, the procedure is the same as that which applies when vehicles are imported.

- 49 As regards the vehicle identification check, the Netherlands and Finnish Governments claim that such a check is necessary to ensure road safety, combat fraud, protect the environment and consumers, and as a matter of public policy.
- 50 In that respect, Directive 1999/37 provides for only minimal harmonisation, which allows the Member States to impose additional tests at the time of registration.
- 51 As regards the additional roadworthiness test provided for in procedure 3, the Netherlands Government claims that this ensures that only vehicles which satisfy Netherlands road safety and environmental requirements are allowed onto the road in the Netherlands.
- 52 The Finnish Government also takes the view that the measures being challenged are compatible with the principle of proportionality, because the objectives of registration, in the light of which the roadworthiness test is essential, cannot be achieved by less restrictive means.

Findings of the Court

Vehicle identification check

- 53 According to the case-law of the Court, the prohibition of measures having equivalent effect to restrictions which is set out in Article 28 EC covers all rules

enacted by the Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade (Case C-217/99 *Commission v Belgium* [2000] ECR I-10251, paragraph 16; Case C-65/05 *Commission v Greece* [2006] ECR I-10341, paragraph 27; and Case C-54/05 *Commission v Finland* [2007] ECR I-2473, paragraph 30). Thus, the mere fact that an importer is deterred from introducing or marketing the products in question in the Member State concerned amounts to a hindrance to the free movement of goods (*Commission v Belgium*, paragraph 18, and Case C-254/05 *Commission v Belgium* [2007] ECR I-4269, paragraph 30).

- 54 In the present case, it is apparent from the case-file that the Kingdom of the Netherlands requires vehicles to be identified before they are registered. Where a vehicle which has previously been registered in another Member State is imported, that identification is carried out in accordance with Articles 2(b) and 4 of Directive 1999/37 by means of the registration certificate issued by that other Member State.
- 55 The Commission nevertheless claims that the Kingdom of the Netherlands is hindering the free movement of goods on the ground that the identification procedure is not just a purely administrative formality, but includes the obligation to present the vehicle to the RDW, thereby allowing the inspector to check whether the vehicle is actually present in the territory of the Netherlands and corresponds to the data in the registration certificate issued by the other Member State. According to the Commission, that check, which lasts approximately 25 minutes and which cost EUR 45 at the time of the pre-litigation procedure, makes the import of vehicles into the Netherlands less attractive.
- 56 The Commission's argument cannot be upheld.
- 57 As is apparent from the Commission's own application, during the procedure in question, the competent Netherlands authorities confine themselves to identifying the vehicle for registration purposes.

58 That is a simple administrative formality, therefore, which does not introduce any additional check, but which is integral to the actual processing of the registration application and also to the conduct of the associated procedure.

59 Furthermore, the non-deterrent nature of that procedure is confirmed by the manner in which the tests are carried out in the Netherlands.

60 As regards, first of all, the need to travel on account of the obligation to present the vehicle to the RDW, it is clear from the case-file that the RDW has an extensive network of centres throughout the whole territory of the Netherlands in which identification checks can, therefore, readily be carried out.

61 Next, as far as the charge of EUR 45 is concerned, in view of the costs inevitably involved in any registration, that amount is unlikely to influence a vehicle owner's decision as to whether or not to register the vehicle in the Netherlands.

62 Finally, as regards the fact relied upon by the Commission — that there may be a waiting period of several weeks before a vehicle can be presented for registration — it is sufficient to note that importers of vehicles can easily avoid or at least reduce that waiting period by making an appointment in good time at an RDW centre of their choice.

63 In the light of the foregoing considerations, the vehicle identification check considered above is unlikely to have any deterrent effect whatsoever on the import of a vehicle into the Netherlands or to make the import of vehicles less attractive. Therefore, the Commission's complaint about that check must be dismissed.

Roadworthiness test of the general condition of vehicles

- 64 As a preliminary point, it must be observed that, according to consistent case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation obtaining in the Member State at the end of the period laid down in the reasoned opinion (see, inter alia, Case C-63/02 *Commission v United Kingdom* [2003] ECR I-821, paragraph 11, and Case C-135/03 *Commission v Spain* [2005] ECR I-6909, paragraph 31). The Court cannot take account of any subsequent changes (see, inter alia, the judgment of 18 November 2004 in Case C-482/03 *Commission v Ireland*, not published in the ECR, paragraph 11).
- 65 The Commission's reasoned opinion was dated 9 July 2004 and the time-limit imposed on the Kingdom of the Netherlands was set at two months and extended by one month. Accordingly, the appropriate date for determining whether the Kingdom of the Netherlands has, as alleged, failed to fulfil its obligations is 9 October 2004. Therefore, the circular from the Minister for Transport, which was issued after that date, is irrelevant to the present case.
- 66 Before examining whether the test of the general condition of vehicles, which is carried out at the time of their registration, is compatible with Articles 28 EC and 30 EC, it must first be ascertained whether, in prescribing such a test, the Kingdom of the Netherlands merely acted in compliance with its obligations under Directive 96/96.
- 67 As regards the roadworthiness test as to the general condition of vehicles, the objectives of Directive 96/96, set out in recital (33) in the preamble to that Directive, are to achieve harmonisation of the rules on roadworthiness tests, to prevent distortion of competition between road hauliers and to guarantee that vehicles are properly checked.

- 68 Article 3(1) of Directive 96/96 gives Member States a margin of discretion. However, Article 3(2) requires Member States to recognise certificates issued in other Member States which show that the vehicle in question has passed a roadworthiness test complying with at least the provisions of that Directive. Nevertheless, Article 5 of Directive 96/96 lists the additional tests or conditions which a Member State is free to impose, as against those referred to in Annexes I and II to the Directive, provided that those tests are not already covered by that certificate (see, to that effect, Case C-451/99 *Cura Anlagen* [2002] ECR I-3193, paragraph 62).
- 69 In the present case, under procedure 3 (which applies to vehicles which are more than three years old and have Community type-approval, vehicles previously registered in a Member State which have been given national type- or single vehicle approval in that State, and also vehicles previously registered in the Netherlands which have Netherlands type-approval), the registration of such vehicles is preceded by an inspection of their general condition, with account being taken of the registration certificate and the certificate of conformity issued in other Member States. By contrast, vehicles which are less than three years old and which were previously registered in other Member States are not required to undergo a test as to their general condition before registration.
- 70 Procedure 3 cannot be justified on the basis of Directive 96/96, since, contrary to Article 3(2) of that Directive, it does not incorporate the principle of recognition of documents issued by the other Member States which certify that a vehicle has passed a roadworthiness test.
- 71 Therefore, it is necessary to ascertain, second, whether the requirement that vehicles which are more than three years old and which have previously been registered in another Member State must be submitted for testing as to their general condition prior to registration in the Netherlands constitutes a measure having equivalent effect to a quantitative restriction on imports, prohibited under Article 28 EC, and, if

so, whether such a requirement may nevertheless be justified on grounds of the protection of interests referred to in Article 30 EC (see, to that effect, Case C-150/00 *Commission v Austria* [2004] ECR I-3887, paragraph 80).

72 As observed in paragraph 53 of this judgment, the prohibition of measures having equivalent effect to restrictions which is set out in Article 28 EC covers all rules enacted by the Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade.

73 In the present case, by requiring vehicles to undergo a test as to their general condition (such as that provided for in procedure 3) prior to registration in the Netherlands, the Netherlands authorities submit all vehicles which are more than three years old and have previously been registered in other Member States for such testing in a general and systematic way, without taking any account whatsoever of tests that may have already been carried out by those Member States. Therefore, inasmuch as the test is carried out in addition to roadworthiness tests recently carried out in other Member States, the results of which are not recognised, some persons concerned may be deterred from importing into the Netherlands vehicles which are more than three years old and which have previously been registered in other Member States.

74 Such a procedure therefore constitutes a restriction on the free movement of goods, prohibited by Article 28 EC.

75 However, it is clear from settled case-law that national legislation which constitutes a measure having equivalent effect to quantitative restrictions can be justified on one of the grounds of public interest laid down in Article 30 EC or by imperative requirements (see, to that effect, Case C-270/02 *Commission v Italy* [2004] ECR

I-1559, paragraph 21, and *Commission v Finland*, paragraph 38). In either case, the national provision must be appropriate for securing the attainment of the objective pursued and not go beyond what is necessary in order to attain it (see, in particular, Joined Cases C-388/00 and C-429/00 *Radiosistemi* [2002] ECR I-5845, paragraphs 40 to 42, and also Case C-14/02 *ATRAL* [2003] ECR I-4431, paragraph 64).

⁷⁶ In that regard, it is for the competent national authorities to show, first, that their legislation is necessary in order to attain one or more objectives mentioned in Article 30 EC or meet imperative requirements and, second, that the legislation is in conformity with the principle of proportionality (see, to that effect, Case C-420/01 *Commission v Italy* [2003] ECR I-6445, paragraphs 30 and 31, and also Case C-270/02 *Commission v Italy*, paragraph 22, and *Commission v Finland*, paragraph 38).

⁷⁷ With regard to the argument put forward by the Netherlands Government that the examination of the general condition of vehicles safeguards road safety and the protection of the environment in so far as it ensures that only vehicles which satisfy Netherlands road safety and environmental requirements are allowed onto the road in the Netherlands, there is no dispute about the fact that road safety and the protection of the environment do constitute overriding reasons in the public interest capable of justifying a hindrance to the free movement of goods (see, in particular, *Cura Anlagen*, paragraph 59).

⁷⁸ However, as regards the assessment of the proportionality of the legislation in dispute and the question whether the objective sought may be attained by restrictions which have less of an effect on intra-Community trade, it should be noted that the Kingdom of the Netherlands does not specifically show that the restriction on the free movement of goods at issue is proportionate to the objective pursued.

- 79 In particular, a similar result could be achieved by less restrictive measures, such as recognition of the proof issued in another Member State showing that a vehicle registered in the territory of that State has passed a roadworthiness test, together with cooperation by the Netherlands customs authorities with their counterparts in other Member States concerning any data that may be missing.
- 80 Having regard to the foregoing, it must be held that, by requiring vehicles which are more than three years old and which have previously been registered in other Member States to undergo testing as to their general condition prior to registration in the Netherlands, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 28 EC and 30 EC.

Costs

- 81 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under the first subparagraph of Article 69(3) of those Rules, the Court may nevertheless order that the costs be shared or that the parties bear their own costs where each party succeeds on some and fails on other heads, or where the circumstances are exceptional. Since the Commission and the Kingdom of the Netherlands have each been partially unsuccessful in their pleadings, they should bear their own costs.
- 82 Pursuant to the first subparagraph of Article 69(4) of the Rules of Procedure, Member States which have intervened in the proceedings are to bear their own costs. The Republic of Finland, as intervener, must therefore bear its own costs.

On those grounds, the Court (First Chamber) hereby:

1. **Declares that, by requiring vehicles which are more than three years old and which have previously been registered in other Member States to undergo testing as to their general condition prior to registration in the Netherlands, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 28 EC and 30 EC;**

2. **Dismisses the action as to the remainder;**

3. **Orders the Commission of the European Communities, the Kingdom of the Netherlands and the Republic of Finland to bear their own respective costs.**

[Signatures]