

JUDGMENT OF THE COURT
5 MAY 1970¹

**Commission of the European Communities
v Kingdom of Belgium**

Case 77/69

Summary

1. *Tax provisions — Internal taxation — Domestic products and imported products — Identical rate — Stage of processing of the products — Differential basis — Discrimination*
(EEC Treaty, Article 95)
 2. *Member States — Obligations — Failure to fulfil — Liability — Extent — Constitutionally independent institutions*
(EEC Treaty, Article 169)
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| <ol style="list-style-type: none">1. A single flat-rate transference duty which is imposed on national products and imported products at the same rate, but has the effect, by reason of the different basis on which it is applied, of taxing imported products if they have been subjected to processing, more heavily than national products at a similar stage of processing, is of a discriminatory | <p>nature and is contrary to the first paragraph of Article 95 of the EEC Treaty.</p> <ol style="list-style-type: none">2. The liability of a Member State under Article 169 arises whatever the agency of the State whose action or inaction is the cause of the failure to fulfil its obligations even in the case of a constitutionally independent institution. |
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In Case 77/69

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Cesare Maestriperi, acting as Agent, with an address for service in Luxembourg at the offices of its Legal Adviser, Emile Reuter, 4, boulevard Royal,

applicant,

v

KINGDOM OF BELGIUM, represented by Gilbert de Klerck, acting Director of

¹ — Language of the Case: French.

Administration at the Ministry for Foreign Affairs and External Trade, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy,

defendant,

Application for a declaration that the Kingdom of Belgium has failed to fulfil its obligations under Article 95 of the EEC Treaty in respect of the flat-rate transference duty on wood,

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore (Rapporteur) Presidents of Chambers, A. M. Donner, A. Trabucchi, W. Strauß and J. Mertens de Wilmars, Judges ,

Advocate-General: J. Gand

Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

In Belgium, in application of Article 31-14(1) of the Règlement Général sur les Taxes Assimilées au Timbre (the General Regulation on Duties assimilated to Stamp Duties) (Royal Decree of 3 March 1927, amended by Royal Decree of 27 December 1965), a single flat-rate duty of 14% *ad valorem* is levied on the transference of home-grown wood transferred standing or felled, as well as on a certain number of products resulting from the processing of wood and imported into Belgium.

Under Article 31-14(3) of the said General

Regulation the said flat-rate duty is paid on sale by the producer in respect of home-grown wood transferred standing or felled and on declaration of entry for home use in respect of imported products.

Nevertheless, when a producer of home-grown wood subjects it to processing the flat-rate duty is paid on the price of the product when sold (Article 31-14(4)).

As the price of processed wood is appreciably higher than that of standing or felled wood, the Commission has considered since 1963 that the application of Article 31-14 of the General Regulation on Duties assimilated to Stamp Duties had the effect, in numerous

cases, of imposing on products imported from other Member States into Belgium a duty higher than that borne by similar home-grown products.

In the opinion of the Commission, duty imposed at the same rate on standing wood and on wood after processing amounts to an infringement of Article 95 of the EEC Treaty, according to which no Member State may impose on the products of other Member States any internal taxation of any kind in excess of that imposed on similar domestic products.

In response to the first approaches of the Commission in 1963, the Belgian Government did not dispute the existence of discrimination, in respect of the flat-rate transference duty, as regards certain types of imported wood and undertook to study measures capable of putting an end to it.

By letter of 14 October 1966 the permanent representative of Belgium accredited to the Communities informed the Commission that the Belgian Government considered that it was appropriate, for the calculation of the duties imposed on home-grown wood, to take into account the provincial taxes imposed in the provinces of Luxembourg, Liège and Namur at the rate of 3% or 2%, either on the sale of cut wood or on the use of such cut wood by the owner for commercial or industrial purposes.

On 14 February 1967 the Commission informed the Belgian Government that the provincial taxes could not be the subject of compensation on imports, in particular because they were imposed only on a part of the domestic production of wood. In its opinion, in the opposite case, because provincial taxes were not imposed on the wood produced in six of the nine Belgian provinces, imported wood was more heavily taxed than certain types of domestic wood, which was incompatible with Article 95 of the Treaty as interpreted by the Court in its judgment of 1 December 1965 in Case 45/64.

The Commission insisted that the Belgian Government should as rapidly as possible bring into force measures enabling it to conform to the Treaty.

On 2 June 1967 the Commission was informed of the measures which the Belgian Government intended to put into force to

'eliminate the discrimination which the system of the flat-rate transference duty applicable to wood involves to the detriment of foreign products':

- (a) in respect of the transference duty, the Belgian Government intended by a Royal Decree to fix rates differentiated in accordance with the category of the products: a rate of 18% for standing trees transferred in Belgium, of 15.5% for undressed wood (wood with bark) transferred in Belgium by a producer or importer and of 12.5% for wood sawn or otherwise processed, on importation;
- (b) in respect of registration fees, it was intended to abolish the duty of 5% imposed on public sales of trees, the collection of which excluded that of the flat-rate transference duty; the Belgian Government undertook to table the necessary draft law to carry out the latter measure as soon as it had been considered by the Conseil d'État and to endeavour to obtain its adoption by Parliament as soon as possible;
- (c) the alterations in the system of the flat-rate duty and the abolition of registration fees were to enter into force simultaneously at the beginning of September 1967.

The Commission informed the Belgian Government by letter of 13 March 1968 that an examination of calculations on the basis of which the new rates settled for the transference duty had been established had shown that, contrary to its observations of 14 February 1967, the rates intended to be collected on the import of round wood and sawn wood had been fixed taking into account the average weighted incidence on the sale prices of such wood in Belgium of the provincial taxes levied by the provinces of Luxembourg, Liège and Namur. The Commission did not therefore consider that the arrangement which the Belgian Government proposed to make in respect of the taxation system on imported wood was capable of putting an end to the infringements found, and it commenced the

procedure provided for in Article 169 of the Treaty against the Kingdom of Belgium.

On 25 April 1968 the permanent representative of Belgium accredited to the Communities informed the Commission that:

- (a) the necessary draft law for the abolition of the registration fee on the public sale of trees had been introduced into the Chamber of Representatives on 27 June 1967, but that on the dissolution of the Chambers it had lapsed and that it would be for a future Government to reintroduce it into Parliament;
- (b) in respect of the observations of the Commission concerning the provincial taxes, it would be necessary for the new Government to review the problem at the time of the Royal Decree intended to introduce the necessary amendments to the system of transference duty after the vote on the law abolishing the registration fee on public sales.

On 28 November 1968 the Commission delivered a reasoned opinion under Article 169 of the Treaty, in which it first justified the finding of a failure by the Kingdom of Belgium to comply with its obligations under Articles 95 and 97 of the EEC Treaty, and then called upon it to take the necessary measures to conform to the reasoned opinion within a period of one month, such period being capable of being extended so far as necessary for compliance with parliamentary procedures.

On 26 February 1969 the permanent representatives of Belgium accredited to the Communities informed the Commission that the draft law of 27 June 1967, which was intended to amend the system complained of, had been saved from lapsing by a law of 20 December 1968 and that the Council of Ministers had decided that the parliamentary procedure would be continued in respect of the said draft law and that account would no longer be taken of the provincial taxes when the new rates of transference duty were subsequently fixed. By letter of 2 April 1969 the Commission noted with satisfaction the procedure

commenced by the Belgian Government to end the infringement which was the subject of its reasoned opinion but pointed out that for the suppression of the disputed taxes it could no longer agree to a period extending beyond 30 June 1969.

By an application lodged on 22 December 1969 the Commission brought before the Court the failures of the Kingdom of Belgium to fulfil its obligations under Article 95 of the EEC Treaty of which it complains in respect of the general transference duty on wood.

II — Procedure

The written procedure followed the normal course.

However, the Commission refrained from lodging a reply.

On hearing the preliminary report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure without a preparatory inquiry. The parties presented oral argument at the hearing on 10 March 1970. The Advocate-General delivered his opinion at the hearing on 14 April 1970.

III — Conclusions of the parties

The *Commission* claims that the Court should:

- declare that the Kingdom of Belgium, by applying the same rate laid down by Article 31-14 of the General Regulation on Duties assimilated to Stamp Duties (Royal Decree of 3 March 1927) to home-grown wood transferred standing or felled and to imported wood, calculated on the value at the time of the declaration of entry for home use, has failed to fulfil its obligations under Article 95 of the EEC Treaty;
- order the Kingdom of Belgium to pay the costs.

The *Kingdom of Belgium* stated that it relied upon the wisdom of the Court.

IV — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

The *Commission*, after recalling the facts of the case and the voluminous correspondence exchanged with the defendant, states that the system of the flat-rate transference duty, as applied in Belgium to wood, constitutes an infringement of Article 95 of the EEC Treaty and that the infringement has been continuing for an unreasonable time.

In respect of the provincial taxes, the Commission points out that they are levied only in three provinces of Belgium and that even in these provinces they are not imposed on all cut wood, as cutting done in the State forests is not subject to them.

Furthermore cutting done in the provinces of Luxembourg, Liège and Namur represents only 84 % of Belgian production.

As to the economic incidence of the disputed taxation, the Commission points out that in 1968 Belgium imported from other Member States of the Community 648 729 metric tons of wood of an approximate value of 850 million francs, which was only very slightly less than national production. As a matter of principle, the Commission states that it attaches the greatest importance to the complete achievement of the internal market; for this purpose it is important that examples of tax discrimina-

tion such as that of which it complains to Belgium in the present case should be eliminated.

The *Kingdom of Belgium* does not dispute that the contested regulations impose higher duties on imported wood than are imposed on home-grown wood.

It recalls that in order to remedy this state of affairs the Government on 27 June 1967 introduced into the Chamber of Representatives a draft law amending the code of registration, mortgage and court fees. Its statement of reasons shows clearly that this draft law is intended to ensure conformity with Article 95 of the EEC Treaty in the sector of wood.

As to the problem of provincial taxes, the Council of Ministers agreed with the reasoned opinion of the Commission and decided that account would not be taken of them when the new rates of transference duty were subsequently fixed. The Royal Decree to be introduced for this purpose would be closely linked to the law to repeal the provision relating to the registration fee of 5 % and would enter into force at the same time as that law. The Belgian Government on two occasions reminded the President of the Finance Committee of the Chamber of Representatives of its interest in seeing the draft law — saved from lapsing in 1968 — come to fruition as soon as possible. Under the principle of the separation of powers the Belgian Government has no other means of action; it finds itself facing a situation of *force majeure*.

Grounds of judgment

- 1 By an application lodged at the Registry on 22 December 1969, the Commission made an application to the Court under Article 169 of the Treaty for a declaration 'that the Kingdom of Belgium, by applying the same rate laid down in Article 31–14 of the General Regulation on Duties assimilated to Stamp Duties (Royal Decree of 3 March 1927) to home-grown wood transferred standing or felled and to imported wood calculated on its value at the time of the declaration of entry for home use, has failed to fulfil its obligations under Article 95 of the Treaty establishing the European Economic Community'.
- 2 Under Article 31–14 of the Royal Decree of 3 March 1927 introducing the General

Regulation on Duties assimilated to Stamp Duties as amended in particular by the Royal Decree of 27 December 1965, a single flat-rate duty of 14% is levied on the transfer of home-grown or imported wood.

- 3 Although the rate of tax is uniform for all wood whatever its origin, the basis and the detailed methods of levying the duty are different for home-grown wood and for products coming from abroad.
- 4 In respect of the former, the flat-rate duty is paid, according to Article 31-14 (1) (1) and Article 31-14 (3) of the Royal Decree of 3 March 1927, at the time of sale by the producer of wood transferred standing or felled.
- 5 On the other hand, in respect of imported products, assessment takes place, in accordance with paragraph 3 (1) of the same article, at the time of the declaration of entry for home use, taking into account the more or less advanced state of processing, defined by paragraph 1 (2) (a) to (j).
- 6 According to the wording of paragraph 3 (1), 'the flat-rate duty shall cover all subsequent transfers until the arrival of the goods in the hands of the consumer or the person who submits them to an industrial process', it being understood however that 'processing of one of the products enumerated in paragraph 1 into another of those products shall not be regarded as industrial processing'.
- 7 It follows from this system that, because of the fact that the flat-rate duty is paid at the time of the transfer of standing or felled wood, home-grown wood is exempted from all subsequent charges arising out of the increase in value due to the processing defined by the Royal Decree.
- 8 The same treatment is not extended to imported wood which, under the terms of the same decree, is taxed in relation to its more advanced state of processing and assessed consequently on the basis of a higher value than that of wood transferred standing or felled.
- 9 The system established by Article 31-14 of the Royal Decree of 3 March 1927 thus has, as a result of this differentiation in the basis of the single flat-rate duty, the effect of taxing imported wood, if it has already undergone processing, more heavily than national products in a similar stage of processing.
- 10 It appears consequently that, although the rate of tax is apparently a uniform one, the scheme brought into force by the Royal Decree of 3 March 1927 results in discrimination between home-grown and imported wood contrary to the prohibition of the first paragraph of Article 95 of the Treaty.

- 11 The defendant does not dispute the existence of discrimination resulting from the provisions which form the subject-matter of the proceedings.
- 12 Following a series of steps taken by the Commission the first of which dates back to 1963, the Belgian Government has shown its willingness to take the necessary measures with a view to eliminating the discrimination complained of.
- 13 A draft law intended to make possible a revision of the disputed scheme was put before Parliament in 1967 and provisions were later adopted in order to revive this draft law which had lapsed owing to the dissolution of the Belgian Parliament in the meanwhile.
- 14 In these circumstances the Belgian Government considers that the delay in enacting the law amounts as far as it is concerned to a 'case of *force majeure*'.
- 15 The obligations arising from Article 95 of the Treaty devolve upon States as such and the liability of a Member State under Article 169 arises whatever the agency of the State whose action or inaction is the cause of the failure to fulfil its obligations, even in the case of a constitutionally independent institution.
- 16 The objection raised by the defendant cannot therefore be sustained.
- 17 In these circumstances, by applying a duty at the same rate, as laid down by Article 31-14 of the Royal Decree of 3 March 1927 as amended, to home-grown wood transferred standing or felled and to imported wood calculated on its value at the time of the declaration of entry for home use, the Kingdom of Belgium has failed to fulfil its obligations under Article 95 of the Treaty.

Costs

- 18 Under the terms of Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.
- 19 The defendant has failed in its submissions.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the parties;

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Articles 95, 169 and 171;

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

hereby:

1. Declares that, by applying a duty at the same rate, as laid down by Article 31–14 of the Royal Decree of 3 March 1927 as amended by the Royal Decree of 3 March 1927 as amended by the Royal Decree of 27 December 1965, to home-grown wood transferred standing or felled and to imported wood calculated on its value at the time of the declaration of entry for home use, the Kingdom of Belgium has failed to fulfil its obligations under Article 95 of the EEC Treaty;
2. Orders the defendant to pay the costs.

Lecourt

Monaco

Pescatore

Donner

Trabucchi

Strauß

Mertens de Wilmars

Delivered in open court in Luxembourg on 5 May 1970.

A. Van Houtte

R. Lecourt

Registrar

President