JUDGMENT OF THE COURT (Second Chamber)
30 May 2002 *

In Case C-296/00,

REFERENCE to the Court under Article 234 EC by the Corte suprema di cassazione (Italy) for a preliminary ruling in the proceedings pending before that court between

Prefetto Provincia di Cuneo

and

Silvano Carbone, in his capacity as sole director of the company Expo Casa Manta Srl,

on the interpretation of Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) Nos 1765/82, 1766/82 and 3420/83 (OJ 1994 L 67, p. 89) and Council

* Language of the case: Italian.

Regulation (EC) No 3285/94 of 22 December 1994 on the common rules for imports and repealing Regulation (EC) No 518/94 (OJ 1994 L 349, p. 53),

THE COURT (Second Chamber),

composed of: N. Colneric (Rapporteur), President of the Chamber, R. Schintgen and V. Skouris, Judges,

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Italian Government, by U. Leanza, acting as Agent, and G. Aiello, avvocato dello Stato,

— the Commission of the European Communities, by C. Bury and R. Amorosi, acting as Agents,

having regard to the Report for the Hearing,

after hearing the Opinion of the Advocate General at the sitting on 17 January 2002,

gives the following

Judgment

1 By order of 18 April 2000, received at the Court Registry on 1 August 2000, the Corte suprema di cassazione (Supreme Court of Cassation) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) Nos 1765/82, 1766/82 and 3420/83 (OJ 1994 L 67, p. 89) and Council Regulation (EC) No 3285/94 of 22 December 1994 on the common rules for imports and repealing Regulation (EC) No 518/94 (OJ 1994 L 349, p. 53).

2 That request was made in the course of proceedings between the Prefetto Provincia di Cuneo (Prefect of the Province of Cuneo) and Mr Carbone, acting in his capacity as sole director of the company Expo Casa Manta Srl (hereinafter 'Expo Casa Manta'), regarding the administrative confiscation of 20 non-approved cordless telephones.

Legal background

Community provisions

3 Article 9(2) of the EC Treaty (now, after amendment, Article 23(2) EC) provides:

'The provisions of Chapter 1, Section 1, and of Chapter 2 of this Title [relating to the elimination of customs duties and quantitative restrictions between Member States] shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.'

4 Article 10(1) of the EC Treaty (now, after amendment, Article 24 EC) provides:

'Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.'

5 Article 1(2) of Regulation No 519/94 provides:

'Imports into the Community of the products referred to in paragraph 1 shall take place freely and so shall not be subject to any quantitative restrictions, without prejudice to:

— the measures which may be taken under Title V;

— the quantitative quotas referred to in Annex II.'

6 Title V of that Regulation concerns safeguard measures and Annex II thereof certain products originating in China.

7 Article 1(2) of Regulation No 3285/94 provides:

'The products referred to in paragraph 1 shall be freely imported into the Community and accordingly, without prejudice to the safeguard measures which may be taken under Title V, shall not be subject to any quantitative restrictions.'

8 Title V of that Regulation refers to safeguard measures.

9 Article 19(2)(a) of Regulation 519/94 and Article 24(2)(a) of Regulation 3285/94, which, in their respective regulations, come under Title VI containing final provisions, state:

'Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or application by Member States:

(i) of prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property;

(ii) of special formalities concerning foreign exchange;

(iii) of formalities introduced pursuant to international agreements in accordance with the Treaty.'

National provisions

10 Article 398 of Presidential Decree No 156 of 29 March 1973 ratifying the consolidation of the legislation relating to the post, postal banking services and telecommunications (*GURI* No 113 of 3 May 1973, Ordinary Supplement), in the version resulting from Law No 209 of 22 May 1980 (*GURI* No 155 of 7 June 1980, hereinafter 'the Postal Code') provides:

'It is forbidden to build or to import into the national territory, for commercial purposes, to use or to operate, in any capacity, electrical or radio-electrical equipment or electricity transmission lines which are not in conformity with the standards laid down for the prevention and elimination of interference with the transmission and reception of radio signals.

Such standards, which shall also lay down the conformity assessment procedure, shall be enacted by way of decree of the Minister for Postal Services and Telecommunications, acting together with the Minister for Industry, Trade and Craft Industries, in accordance with the directives of the European Community.

The placing on the market and importation for commercial purposes of the goods referred to in the first paragraph are conditional upon the issue of a certificate attesting to compliance or upon production of a declaration of compliance in accordance with rules to be established by decree as referred to in the second paragraph.

The bodies and persons authorised to endorse type-approval stamps or issue compliance certificates as provided for in the preceding paragraph shall be appointed by decree of the Minister for Postal Services and Telecommunications, acting together with the Minister for Industry, Commerce and Craft Industries.'

11 Article 399 of the Postal Code provides:

'Any person who contravenes the provisions of Article 398 shall be liable to an administrative penalty of an amount between ITL 15 000 and 300 000. If such person is a manufacturer or importer of electrical or radio-electrical equipment, the administrative penalty shall be between ITL 50 000 and 1 000 000 without prejudice to the confiscation of the products and equipment which do not conform to a certificate of compliance under Article 398.'

The dispute in the main proceedings

12 On 9 March 1995 the Guardia di Finanza (customs officers) seized 20 non-approved cordless telephones which Expo Casa Manta had in its possession for sale contrary to Articles 398 and 399 of the Postal Code. That seizure was subsequently converted into administrative confiscation by order of the Prefetto Provincia di Cuneo.

13 In his capacity as the sole director of Expo Casa Manta, Mr Carbone brought an action against that order. The Pretore di Saluzzo (Magistrate for Saluzzo) (Italy), before whom it was brought, upheld the action and annulled the confiscation order on the ground that Regulations Nos 519/94 and 3285/94, which liberalised, *inter alia*, the importation of cordless telephones, had lifted the prohibition, laid down in Article 398 of the Postal Code, on the possession for sale of non-approved equipment.

14 The Prefetto Provincia di Cuneo brought an action to quash that decision of the Pretore. He claimed that it constituted an erroneous application of Article 19(2)(a) of Regulation No 519/94 and Article 24(2)(a) of Regulation 3285/94, in that, even if those regulations did eliminate all restrictions on the

importation of the equipment concerned, they none the less did not affect the national rules on their sale, which therefore continued to be prohibited.

15 Since it had to determine, in order to decide the case before it, whether those two regulations had liberalised only the importation, or both importation and sale of the products in issue in the main proceedings, the Corte suprema di cassazione stayed the proceedings and referred the matter to the Court of Justice 'for the interpretation of Community Regulations Nos 519/94 and 3285/94'.

Arguments set out in the observations submitted to the Court

16 The Italian Government points out that Article 19 of Regulation No 519/94 and Article 24 of Regulation No 3285/94 reserve to the Member States the right to adopt and apply prohibitions 'on grounds of public morality, public policy or public security, and the protection of the health and life of humans and animals'.

17 In the main proceedings, the seizure and confiscation of the cordless telephones was ordered so as to avoid interference with the radio frequencies attributed to the Italian police forces, so that those measures complied with the Community regulations.

18 The Italian Government maintains that the question of interpretation referred by the Corte Suprema di cassazione should therefore not be answered. The dispute in the main proceedings could be decided at national level by correctly establishing the facts of the case, which does not fall within the jurisdiction of the Court of Justice.

19 Alternatively, the Italian Government submits that Regulations Nos 519/94 and 3285/94 have eliminated the restrictions on the importation of the equipment from third countries which is in issue in the main proceedings, but they have not abolished the requirement to obtain approval for the equipment before it is put on the market.

20 The Commission points out, at the outset, that the national court has not provided certain essential factual information, such as the country of origin of the equipment in issue in the main proceedings and its tariff classification, which is necessary for a better understanding of the question of law submitted to the Court. Nor has the national court clearly defined its question. However, the material supplied to the Court is sufficient to enable it to give a useful answer with a view to the decision in the main proceedings.

21 So far as concerns the scope of Regulations Nos 519/94 and 3285/94, the Commission maintains that they concern only the liberalisation of imports of goods coming from third countries into Community territory and that they do not affect the subsequent marketing of the goods within that territory, which is therefore covered by national legislation or other applicable Community rules.

22 The sole objective of Regulations Nos 519/94 and 3285/94 is to achieve greater uniformity in the rules for imports by eliminating the exceptions and derogations which result from national measures of commercial policy in force prior to their adoption, in particular, quantitative restrictions maintained by Member States under previous legislation. The objective pursued of eliminating quantitative restrictions on imports is the same as that of Article XI of the General Agreement on Tariffs and Trade of 1994 (hereinafter 'the GATT 1994') (which is set out in Annex 1A to the Agreement establishing the World Trade Organisation (here-

inafter 'the WTO') ratified on behalf of the European Community by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1)).

23 By Articles 398 and 399 of the Postal Code, the Italian legislature intended to ensure that all electric and radio-electric equipment and all electricity transmission lines comply with the standards laid down in order to prevent and eliminate interference with the transmission and reception of radio signals.

24 According to the Commission, in view of the fact that those rules apply both to national and imported products, it cannot be maintained that they are contrary to Community law.

Admissibility

25 The information provided by the national court gives the Court of Justice sufficient knowledge of the factual and legislative context of the main proceedings to enable it to interpret the Community rules which are relevant to the situation which forms the subject-matter of the dispute. Although it has not been expressly formulated, the question of interpretation which the Court is requested to decide is apparent from the reasoning of the order for reference.

26 The question of the need for a preliminary ruling to enable the national court to give judgment in the main proceedings is for that court to decide. According to settled case-law, where the questions referred concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see,

in particular, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38; Case C-340/99 *TNT Traco* [2001] ECR I-4109, paragraph 30; and Case C-472/99 *Clean Car Autoservice* [2001] ECR I-9687, paragraph 13). None of the exceptions to the rule identified in that case-law applies to this case. In particular, it is not obvious that the interpretation of Community law sought bears no relation to the actual facts of the main action or its subject-matter.

27 It follows that the reference for a preliminary ruling is admissible.

The question referred to the Court

28 The national court is in essence asking whether Regulations Nos 519/94 and 3285/94 affect a Member State's rules as regards the placing on the market of products imported from third countries.

29 Those regulations were adopted in the context of the common commercial policy, as is apparent from their legal basis, that is Article 113 of the EC Treaty (now, after amendment, Article 133 EC). Whereas Regulation No 519/94 covers imports from State-trading countries, Regulation No 3285/94 concerns imports from countries which are members of the WTO.

30 It is apparent from the preambles to those two regulations that their objective is to liberalise imports into the Community of products coming from third countries. Thus, the fourth recital in the preamble to Regulation 519/94 states that, in order to achieve greater uniformity in the rules for imports it is necessary to eliminate the exceptions and derogations resulting from the remaining national commercial policy measures. The third recital in the preamble to Regulation

3285/94 refers to the Agreement establishing the WTO and to GATT 1994 and the Agreement on Safeguards also contained in Annex 1A thereto. In the light of those new multilateral rules, according to the sixth recital in the preamble to Regulation 3285/94, the common rules for imports should be made clearer and, if necessary, amended, particularly where the application of safeguard measures is concerned. The fifth recital in the preamble to Regulation 519/94 and the seventh recital in the preamble to Regulation 3285/94 state that the starting point for the common rules for imports is liberalisation of imports, namely the absence of any quantitative restrictions.

31 Placing products on the market is a stage subsequent to importation. Just as a product lawfully manufactured within the Community may not be placed on the market on that ground alone, the lawful importation of a product does not imply that it will automatically be allowed onto the market.

32 A product coming from a third country, in respect of which the requirements laid down by Article 10(1) of the Treaty are satisfied, is regarded as being in free circulation. It will then be treated, according to Article 9(2) of the Treaty, in the same way as products originating in Member States as regards the elimination of customs duties and quantitative restrictions between the Member States (see Case 41/76 *Donckerwolcke and Schou* [1976] ECR 1921, paragraphs 16 and 17). In so far as there are no Community rules harmonising the conditions governing the marketing of the products concerned, the Member State into which they are put into free circulation may prevent their being placed on the market if they do not satisfy the conditions laid down for that purpose under national law.

33 Regulations Nos 519/94 and 3285/94 contain no provisions relating to the placing on the market of the products to which they refer. In contrast to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ 1999 L 91, p. 10), which was adopted on the basis of Article 100a of the EC Treaty (now, after amendment, Article 95 EC)

after the date material to the facts in the main proceedings, they do not provide for any harmonisation of the applicable national provisions on the matter.

34 Where Regulations Nos 519/94 and 3285/94 state, in Article 19(2)(a) and 24(2)(a) respectively, that they do not preclude the adoption or application by Member States of prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property, that reservation relates to the importation and not the placing on the market of the products referred to. Those provisions apply to the external aspect of the common market. They allow in that regard derogations comparable to those set out in Article 36 of the EC Treaty (now, after amendment, Article 30 EC), which concerns the internal aspect of the common market.

35 In view of all the preceding considerations, the reply to the national court must be that Regulations Nos 519/94 and 3285/94 do not affect a Member State's rules as regards the placing on the market of products imported from third countries.

Costs

36 The costs incurred by the Italian Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Corte suprema di cassazione by order of 18 April 2000, hereby rules:

Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) Nos 1765/82, 1766/82 and 3420/83 and Council Regulation (EC) No 3285/94 of 22 December 1994 on common rules for imports and repealing Regulation (EC) No 518/94 do not affect a Member State's rules as regards the placing on the market of products imported from third countries.

Colneric Schintgen Skouris

Delivered in open court in Luxembourg on 30 May 2002.

R. Grass N. Colneric

Registrar President of the Second Chamber