JUDGMENT OF THE COURT (First Chamber)

22 April 1999 *

In Case C-109/98,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal Administratif de Dijon (France) for a preliminary ruling in the proceedings pending before that court between

CRT France International SA

and

Directeur Régional des Impôts de Bourgogne,

on the interpretation of Articles 9, 12 and 95 of the EC Treaty,

* Language of the case: French.

THE COURT (First Chamber),

composed of: P. Jann, President of the Chamber, D. A. O. Edward and L. Sevón (Rapporteur), Judges,

Advocate General: G. Cosmas,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— CRT France International SA, Thierry Chiron, of the Dijon Bar, Guy Laubin, of the Reims Bar, and Laurent Salem, of the Paris Bar,

— the French Government, by Kareen Rispal-Bellanger, Head of Sub-directorate (International Economic Law and Community Law) in the Legal Directorate, Ministry of Foreign Affairs, and Sujiro Seam, Secretary for Foreign Affairs in the same directorate, acting as Agents,

— the Commission of the European Communities, by Roland Tricot, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of CRT France International SA, represented by Thierry Chiron and Laurent Salem, the French Government, represented by Alain Lercher, Administrative Court Member, acting as Agent, and the Commission, represented by Roland Tricot, at the hearing on 3 December 1998,

after hearing the Opinion of the Advocate General at the sitting on 4 February 1999,

gives the following

Judgment

1 By judgment of 24 March 1998, received at the Court on 15 April 1998, the Tribunal Administratif (Administrative Court), Dijon, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Articles 9, 12 and 95 of that Treaty.

2 That question was raised in proceedings brought by CRT France International SA ('CRT'), which imports into France telecommunications equipment and in particular transmitting-receiving sets operating on two-way channels ('CB sets'), against the Directeur Régional des Impôts de Bourgogne (Regional Director of Taxes, Burgundy), concerning a tax demand served on CRT on 18 October 1996 by the tax administration in the sum of FF 25 127 160 in respect of the flat-rate tax on the supply of CB sets.

3 That tax, initially FF 250 per CB set, was introduced by Article 83 of the Law of 31 December 1992 amending the finance law for 1992, which came into effect on 1 January 1993. The tax was amended by the Law of 30 December 1993, which came

into effect on 1 January 1994. That provision, which is codified in Article 302 *bis* (X) of the Code Général des Impôts (General Tax Code), states:

'I. Supplies in France of transmitting-receiving sets operating on two-way channels, known as CB sets, shall be subject to payment of a tax.

CB sets with a maximum of 40 channels, operating exclusively by angular modulation with a peak modulation power of not more than 4 watts, shall not be subject to that tax.

II. The tax shall be owed by manufacturers, importers or persons effecting intra-Community purchases within the meaning of Article 256 *bis* (I)(3), on the basis of the operations referred to in I above and carried out by them.

The rate of tax shall be 30% of the sale price, exclusive of value added tax, of the CB sets, but the amount of tax may not be lower than FF 150 nor greater than FF 350 per device.

The tax shall be due in the month following the supply of the CB sets.

III. The tax shall be determined, collected and checked under the same procedures and subject to the same penalties, safeguards and privileges as value added tax. Objections shall be submitted, examined and adjudicated upon under the rules applicable to that tax.'

4 CRT objected that the abovementioned tax was incompatible with Articles 9, 12 and 95 of the Treaty, whereupon the Tribunal Administratif, Dijon, stayed proceedings pending a preliminary ruling from the Court of Justice on the following question:

'Do Articles 9, 12 and 95 of the Treaty of 25 March 1957 establishing the European Economic Community preclude the national authorities from imposing on manufacturers, importers and persons making supplies in France of transmitting-receiving sets operating on two-way channels a tax, the rules for which are laid down by Article 302 *bis* (X) of the Code Général des Impôts?'

5 According to CRT, in the absence of domestic production, the tax at issue must be considered a charge having an effect equivalent to a customs duty since it is levied only on imported products. CRT considers that the tax levied on CB sets imported from other Member States is contrary to Articles 9 and 12 of the Treaty and that the tax levied on CB sets imported from non-member countries is contrary to Article 113.

6 CRT takes the view that the tax cannot be regarded as internal taxation within the meaning of Article 95 of the Treaty since it does not form part of a general system of taxation systematically levied on imported products and domestic products or, more particularly, a general system of taxation on use of the radio relay system. Numerous types of equipment using the radio relay system are not subject to any tax. Moreover, the taxation of other types of equipment using that relay system is based on criteria different from those on which the taxation of the CB sets is based. Taxation of the latter depends only on the number of CB sets sold, without account being taken of their subsequent use in French territory, the particular use of the frequency bands on which they transmit or the width of the band concerned.

7 CRT has stated, without being contradicted, that the introduction of the tax had the effect of doubling the prices of sets at the lower end of the range, which account for the bulk of sales, and that as a result the market has collapsed.

8 The French Government and the Commission, on the other hand, consider that, even in the absence of domestic production, the tax in question is in the nature of internal taxation within the meaning of Article 95 of the Treaty since it forms part of a general system of taxation intended to defray the charges borne by the French Republic through use of the Hertzian radio spectrum, which is the public property of the State. Before 1 January 1993 that tax was levied on the use of CB sets by users wishing to receive an individual administrative authorisation. It was in the interests of administrative simplification that the law was amended to ensure that the tax was no longer levied on the use but on the supply of CB sets and was no longer payable by users but by manufacturers and importers.

9 The French Government and the Commission state that all the equipment using the radio relay system in France is subject to a tax, although the provisions applicable to such equipment may differ. Only certain low-power units approved under a European standard are exempt.

10 The French Government submits, finally, that the tax at issue does not infringe Article 95 of the Treaty since, in particular, it does not favour any domestic production. It also points out that Article 95 does not apply to products imported directly from non-member countries, and most CB sets are imported from such countries.

11 It is settled case-law that the essential feature of a charge having an effect equivalent to a customs duty which distinguishes it from an internal tax is that the former is

borne solely by an imported product as such, whilst the latter is borne by both imported and domestic products (see, in particular, Case 90/79 *Commission* v *France* [1981] ECR 283, paragraph 13).

12 In this case it is undisputed that there was no domestic production of CB sets. That, however, is a question of fact to be determined by the national court.

13 The Court has also recognised that a charge borne by a product imported from another Member State, when there is no identical or similar domestic product, does not constitute a charge having equivalent effect but internal taxation within the meaning of Article 95 of the Treaty if it relates to a general system of internal dues applied systematically to categories of products in accordance with objective criteria irrespective of the origin of the products (Case 90/79 *Commission* v *France*, cited above, paragraph 14).

14 In that regard, the argument of the French Government and the Commission that the tax on CB sets forms part of a system of that kind and is intended to enable the French Republic to cover the costs incurred in overseeing the Hertzian radio spectrum cannot be upheld.

15 Whilst it has been established that most of the devices using that radio spectrum are taxed, the method of taxing CB sets differs from that applied to other equipment in that, in the case of CB sets, it is the supply that is taxed whereas in other cases the tax is borne by the users.

16 As the Advocate General has observed in point 31 of his Opinion, no evidence has been produced to show why the use of that radio spectrum makes it necessary to tax the supply of CB sets rather than their use.

17 However, as the Court held in Case 158/82 *Commission* v *Denmark* [1983] ECR 3573, paragraph 19, a charge which represents payment for a service actually rendered to an importer, of an amount in proportion to that service, does not constitute a charge having an effect equivalent to a customs duty.

18 That does not apply to the tax at issue in the main proceedings in that, as CRT has stated without being contradicted by the French Government, the tax does not fund any service rendered to importers of CB sets.

19 Moreover, according to settled case-law (see, in particular, Case C-130/93 *Lamaire* v *NDALTP* [1994] ECR I-3215, paragraph 14), a charge which is imposed on goods by reason of the fact that they cross a frontier may escape classification as a charge having equivalent effect as prohibited by the Treaty, if it is levied on account of inspections carried out for the purpose of fulfilling obligations imposed by Community law.

20 It is undisputed that the tax at issue does not fall within that exception.

21 It follows that, in so far as it is levied on the supply of CB sets imported from other Member States, the tax constitutes not internal taxation within the meaning of Article 95 of the Treaty but a charge having an effect equivalent to a customs duty, which is prohibited by Articles 9 and 12 of the Treaty.

22 As regards the CB sets imported from non-member countries, it must be borne in mind that, since the introduction of the Common Customs Tariff on 1 July 1968, the levying of a customs duty or charge having equivalent effect, unilaterally introduced by a Member State in respect of goods imported directly from non-member countries, is contrary to Articles 9, 12 and 113 of the Treaty (Joined Cases 37/73 and 38/73 *Diamantarbeiders* v *Indiamex* [1973] ECR 1609, paragraph 18, and Case C-126/94 *Cadi Surgelés and Others* [1996] ECR I-5647, paragraph 18).

23 The answer to the question submitted must therefore be that Articles 9 and 12 of the Treaty preclude a tax borne by manufacturers, importers and persons making supplies in France of CB sets imported from Member States, such as the tax governed by Article 302 *bis* (X) of the Code Général des Impôts, and that Articles 9, 12 and 113 of the Treaty preclude a tax borne by manufacturers, importers and persons making supplies in France of CB sets imported from non-member countries, such as the tax governed by Article 302 *bis* (X) of the Code Général des Impôts.

Costs

24 The costs incurred by the French 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Tribunal Administratif de Dijon by judgment of 24 March 1998, hereby rules:

Articles 9 and 12 of the EC Treaty preclude a tax borne by manufacturers, importers and persons making supplies in France of transmitting-receiving sets operating on two-way channels and imported from Member States, such as the tax governed by Article 302 *bis* (X) of the Code Général des Impôts, and Articles 9, 12 and 113 of the EC Treaty preclude a tax borne by manufacturers, importers and persons making supplies in France of transmitting-receiving sets operating on two-way channels and imported from non-member countries, such as the tax governed by Article 302 *bis* (X) of the Code Général des Impôts.

Jann Edward Sevón

Delivered in open court in Luxembourg on 22 April 1999.

R. Grass P. Jann

Registrar President of the First Chamber