JUDGMENT OF THE COURT (Fifth Chamber)
9 March 1995 *

In Case C-345/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tax Section of the Supremo Tribunal Administrativo (Portugal) for a preliminary ruling in the proceedings pending before that court between

Fazenda Pública,

Ministério Público

and

Américo João Nunes Tadeu

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

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, Judge, acting as President of the Fifth Chamber, D. A. O. Edward and J.-P. Puissochet (rapporteur), Judges,

* Language of the case: Portuguese.

Advocate General: F. G. Jacobs,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Américo João Nunes Tadeu, Abogado

— the Portuguese Government, by Luis Fernandes, Director of the Legal Service, General Directorate of the European Communities at the Ministry of Foreign Affairs, and Maria Luisa Duarte, Legal Adviser at the same Directorate, acting as Agents,

— the Greek Government, by Nikolaos Mavrikas, Assistant Legal Adviser in the State Legal Service and Dimitrios Anastassopoulous, Legal Assistant in the State Legal Service, acting as Agents,

— the Netherlands Government, by A. Bos, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by Enrico Traversa and Francisco de Sousa Fialho, members of the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations submitted by the Portuguese Government, by the Greek Government, represented by Panagiotis Kamarineas, Assistant Legal Adviser in the State Legal Service, acting as Agent, and by the Commission at the hearing on 17 November 1994,

after hearing the Opinion of the Advocate General at the sitting on 13 December 1994,

gives the following

Judgment

1 By a judgment of 26 May 1993, which was received at the Court on 6 July 1993, the Supremo Tribunal Administrativo (Supreme Administrative Court) (Portugal) referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Articles 9, 12 and 95 of the EEC Treaty.

2 The questions arose in proceedings between the Portuguese tax authorities (the Fazenda Pública) and Mr Nunes Tadeu, who seeks reimbursement of the motor vehicle tax he was charged when he imported a second-hand car into Portugal from another Member State.

3 On 10 August 1990 Mr Nunes Tadeu bought a second-hand Peugeot car, a 205 XS, for BF 200 000 in Belgium. The car's initial registration had been made in Belgium on 11 February 1987. On 20 August 1990 he returned to Portugal in that car under a transit registration and began completing the formalities necessary for its definitive importation.

4 In May 1991 the customs authorities in Oporto asked him to pay ESC 271 665 motor vehicle tax, calculated in accordance with Article 1 of Decree-Law 152/89 of 10 May 1989 (Díario da República, Ist series, No 107 of 10 May 1989,

p. 1858, hereinafter 'the Decree Law'), which as amended read at the material time as follows:

'1. The Motor Vehicle Tax is a domestic tax levied on light passenger motor vehicles imported new or second-hand, or assembled or manufactured in Portugal, and which have been duly registered.

2. ...

3. The tax is a specific single-stage tax varying according to cylinder capacity in accordance with the table which is annexed to this text and forms an integral part thereof.

4. The tax on imported second-hand cars first registered more than two years previously shall be 10% less than the amount resulting from the table referred to in the preceding paragraph.'

5 Mr Nunes Tadeu paid the tax but in December 1991 applied to the Tribunal Fiscal Aduaneiro do Porto (Oporto Customs Tribunal) for reimbursement on the ground that its application to second-hand imported cars was incompatible with Articles 5, 85 and 95 of the EEC Treaty. His application was granted by a judgment of 3 April 1992 which was challenged by the Portuguese tax authorities (the Fazenda Pública), supported by the Portuguese Public Prosecutor's Office, in an appeal brought before the Supremo Tribunal Administrativo, which referred the following questions to the Court of Justice for a preliminary ruling:

'1. Is the application of a motor vehicle tax with the characteristics described above on second-hand light motor vehicles imported from Belgium into Portugal compatible with the first and second paragraphs of Article 95 of the

Treaty of Rome when other second-hand vehicles, whether imported new or assembled or manufactured in Portugal, are not subject to the tax?

2. Is such taxation to be regarded as a charge having an effect equivalent to a customs duty on imports, which is prohibited by Articles 9 and 12 of the Treaty?'

6 It should first be noted that the tax, which the Court has already considered in Case C-343/90 *Lourenço Dias* [1992] ECR I-4673, paragraphs 53 and 54, is applied without distinction to vehicles assembled or manufactured in Portugal and to imported new and second-hand vehicles, and forms part of a general system of internal charges imposed on categories of products in accordance with an objective criterion, namely cylinder capacity. Such taxes constitute internal taxation within the meaning of Article 95 of the EEC Treaty.

7 The reply to the second question is therefore clearly that a motor vehicle tax applied without distinction to vehicles assembled or manufactured in the Member State where it is levied and to both new and used imported vehicles is not a customs duty or a charge having an effect equivalent thereto within the meaning of Articles 9 and 12 of the Treaty.

8 In the first question the Portuguese court asks essentially whether it is compatible with Article 95 of the Treaty for a Member State to charge on second-hand motor vehicles imported from other Member States a tax which is not applicable to second-hand cars purchased on its own territory.

9 The plaintiff in the main action considers that distinction to be contrary to Article 95 of the Treaty because it makes imported second-hand vehicles more expensive and therefore favours the national used car market.

10 It has been established that the disputed tax applies equally and on the basis of objective criteria to both vehicles assembled or manufactured in Portugal and those which are imported new or second-hand. It does not apply to used car transactions within the country because it is charged only once, when the vehicle is first registered in the national territory, and part of it remains incorporated in the value of second-hand vehicles which have already been registered and purchased on the Portuguese market.

11 There is at present no rule of Community law which prevents Member States from introducing a general system of internal taxes charged in accordance with objective criteria on a particular category of goods, such as the category concerned here.

12 However, in applying Article 95, and in particular when comparing the taxes applicable to imported second-hand cars with those applicable to second-hand cars purchased at home, which are similar or competing products, it is necessary to have regard, as the Court held in (*inter alia*) Case C-47/88 *Commission* v *Denmark* ([1990] ECR I-4509, paragraph 18), not only to the rate of direct or indirect internal taxation on domestic or imported products but also to the basis of assessment and the detailed rules for levying the tax.

13 In that context, it is common ground that in the case of imported second-hand vehicles, the tax charged under the decree-law may not be less than 90% of the tax charged on a new car regardless of their age or condition, whereas the residue of the tax incorporated in the value of a second-hand car purchased in the national

territory may be less than that since the residual value of the tax diminishes proportionately with the vehicle's depreciation.

14 As a result, a motor vehicle tax on imported second-hand vehicles which is not less than 90% of the tax charged on new cars is manifestly excessive for those vehicles compared with the residue of the tax in second-hand vehicles already registered, and purchased on the Portuguese market.

15 Consequently, a rule such as that contained in Article 1(4) of the decree-law which restricts the reduction in the amount of the tax charged on new cars to 10% without having regard to the vehicle's actual depreciation discriminates against imported second-hand cars.

16 The fact that the motor vehicle tax is calculated on the cylinder capacity and not on a flat-rate taxable value, as the Netherlands Government has observed, does not affect that conclusion: the residue of the tax incorporated in the value of the second-hand vehicle purchased on Portuguese territory still diminishes automatically with the depreciation of the vehicle, unlike the tax charged on imported second-hand vehicles, which, as stated above, is never less than 90% of the tax charged on new cars.

17 The Portuguese Government argues that the tax scheme is solely intended to ensure that the commercial value of domestic second-hand cars is more or less equivalent to that of imported second-hand vehicles. It cannot be discriminatory or protectionist because imported second-hand vehicles cost less, even after motor vehicle tax has been added, than equivalent domestic second-hand vehicles.

18 That argument cannot be accepted. A national tax system which is liable to eliminate a competitive advantage held by imported products over domestic products would be manifestly incompatible with Article 95, which seeks to guarantee that internal charges have no effect on competition between domestic and imported products (*Commission* v *Denmark*, cited above, paragraph 9).

19 Lastly, the Portuguese Government alluded to certain practical difficulties in estimating the real market value of the second-hand vehicles for the purposes of calculating the tax. Even if their existence were proved, such difficulties cannot justify the application of internal charges which discriminate against products from other Member States in breach of Article 95 of the Treaty.

20 In the light of all those considerations the reply to the first question must be that it is incompatible with Article 95 of the EEC Treaty for a Member State to charge on second-hand cars from other Member States a tax which, being calculated without taking the vehicle's actual depreciation into account, exceeds the residual tax incorporated in the value of similar second-hand motor vehicles already registered in the national territory.

Costs

21 The costs incurred by the Portuguese, Greek and Netherlands Governments and the Commission of the European Communities, 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 (Fifth Chamber),

in answer to the questions referred to it by the Tax Section of the Supremo Tribunal Administrativo by a judgment of 26 May 1993, hereby rules:

1. **A motor vehicle tax applied without distinction to vehicles assembled or manufactured in the Member State where it is levied and to both new and used imported vehicles is not a customs duty or a charge having an effect equivalent thereto within the meaning of Articles 9 and 12 of the EEC Treaty.**

2. **It is incompatible with Article 95 of the EEC Treaty for a Member State to levy on second-hand cars from other Member States a tax which, calculated without taking the vehicle's actual depreciation into account, exceeds the residual tax incorporated in the value of similar second-hand motor vehicles already registered in the national territory.**

Moitinho de Almeida Edward Puissochet

Delivered in open court in Luxembourg on 9 March 1995.

R. Grass
Registrar

J. C. Moitinho de Almeida
acting as President of the Fifth Chamber