JUDGMENT OF THE COURT
11 December 1990 *

In Case C-47/88,

Commission of the European Communities, represented by J. Føns Buhl, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, also a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Denmark, represented by J. Molde, legal adviser in the Danish Ministry of Foreign Affairs, with an address for service in Luxembourg at the office of the acting Danish chargé d'affaires, S. Rubow, ministerial adviser, Danish Embassy, 11 B boulevard Joseph-II,

defendant,

APPLICATION for a declaration that the Kingdom of Denmark has failed to fulfil its obligations under Article 95 of the EEC Treaty by charging, pursuant to Law No 13 of 16 January 1985 on registration duties on motor vehicles, as subsequently amended, such a high registration duty on motor cars and other motor vehicles that the free movement of goods within the Community is impeded,

and for a declaration that, as regards used motor vehicles, the Kingdom of Denmark has failed to fulfil its obligations under Article 95 because the calculation of the registration duty for imported used motor vehicles is generally made on the

* Language of the case: Danish.

basis of an estimated value which is higher than the real value of the vehicle with the result that imported used motor vehicles are taxed more heavily than used motor vehicles which are sold on the domestic market after being registered in Denmark,

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida, M. Díez de Velasco (Presidents of Chambers), F. A. Schockweiler, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: J. Mischo
Registrar: H. A. Rühl, Principal Administrator

having regard to the Report for the Hearing,

after hearing oral argument presented by the parties at the sitting on 10 July 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 18 September 1990,

gives the following

Judgment

1 By application lodged at the Court Registry on 15 February 1988 the Commission brought an action under Article 169 of the EEC Treaty for a declaration that the Kingdom of Denmark had failed to fulfil its obligations under Article 95 of the EEC Treaty by charging, pursuant to the law on registration duties on motor vehicles (Codified Law No 13 of 16 January 1985, hereinafter referred to as 'Law No 13/85') such a high registration duty on private motor cars that the free movement of goods within the Community is impeded, and for a declaration that, as regards used motor vehicles, the Kingdom of Denmark has also failed to fulfil its obligations under Article 95 because the registration duty for imported used

motor vehicles is generally assessed on the basis of an estimated value which is higher than the real value of the vehicle with the result that imported used motor vehicles are taxed more heavily than motor vehicles which are sold on the domestic market after being registered in Denmark.

2 Under Law No 13/85, motor vehicles registered in Denmark in accordance with the road-traffic legislation are subject to a registration duty. The duty is levied only upon first registration of the vehicle within Danish territory. The rates applicable to private vehicles, which are calculated by reference to the value of the vehicle, including value-added tax, are as follows: 105% on the first DKR 19 750 and 180% on the balance of the price.

3 In the case of imported used vehicles, the taxable value is 100% of the price of the vehicle as new where it is less than six months old and 90% of that price where it is more than six months old. By contrast, the sale of vehicles already registered in Denmark does not give rise to payment of a further registration duty.

4 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The registration duty on new motor vehicles

5 The Commission maintains in the first place that the Danish registration duty levied on new motor vehicles is incompatible with Article 95 of the Treaty since, because of its very high level and in the absence of domestic production, it compromises the free movement of goods in the common market and does not form part of the framework of the general system of taxation in Denmark. The fact that a Member State does not manufacture a given product does not preclude the application of the principles laid down in Article 95.

6 The Danish Government agrees with the Commission's classification of the Danish registration duty as internal taxation within the meaning of Article 95. Thereafter their views differ, however, since the Danish Government considers that that article cannot apply where there is no similar or competing domestic production in the importing Member State.

7 It is therefore necessary to decide whether the prohibitions laid down in Article 95 may be applicable in the absence of similar or competing domestic production.

8 It should be noted in the first place that Article 95 expressly prohibits the imposition on products from other Member States of internal taxation in excess of that imposed on similar domestic products or internal taxation of such a nature as to afford indirect protection to other products.

9 It should also be noted that, as the Court has consistently held (see most recently the judgment in Case 252/86 *Bergandi* v *Directeur général des impôts* [1988] ECR 1343) that the aim of Article 95 as a whole is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation that discriminates against products from other Member States. Thus Article 95 must guarantee the complete neutrality of internal taxation as regards competition between domestic products and imported products.

10 On the other hand, Article 95 cannot be invoked against internal taxation imposed on imported products where there is no similar or competing domestic production. In particular, it does not provide a basis for censuring the excessiveness of the level of taxation which the Member States might adopt for particular products, in the absence of any discriminatory or protective effect.

11 At the present time there is in Denmark no domestic production of cars or of other products liable to compete with cars. It must therefore be concluded that the Danish registration duty on new vehicles does not infringe the prohibitions laid down in Article 95.

12 It is true that, as the Court held in its judgment in Case 31/67 *Stier* v *Hauptzollamt Hamburg-Ericus* [1968] ECR 235, it is not permissible for the Member States to impose on products which, in the absence of comparable domestic production, escape the application of the prohibitions contained in Article 95 charges of such an amount that the free movement of goods within the common market would be impeded as far as those goods were concerned.

13 Nevertheless, the only possibility of appraising an adverse effect of that kind on the free movement of goods is by reference to the general rules contained in Article 30 et seq. of the Treaty, and the Commission's action is based exclusively on infringement of Article 95 of the Treaty.

14 It must therefore be stated that the alleged infringement in so far as concerns new motor vehicles has not been established.

The registration duty on imported used cars

15 The Commission claims that Denmark levies a registration duty on used cars which differs according to whether they are imported or are bought in Denmark. The registration duty on used cars imported into Denmark is calculated on the basis of a flat-rate taxable value which can never be less than 90% of the taxable value of the car when new, whereas no new registration duty is levied on used cars sold in Denmark which have already been registered there. As a result, the

taxation is higher for imported used vehicles than for vehicles bought on the Danish market.

16 The Danish Government contends in the first place that the very nature of the registration duty means that it applies only to imported used cars and not to used cars sold on the Danish market, on which the duty was paid on registration as new cars or as imported used cars. It also considers that there is no real discrimination in favour of Danish products since no cars are manufactured in Denmark and all used cars are therefore of foreign origin.

17 It must be observed at the outset that, as the Commission has correctly observed, the fact that there is no Danish production of motor vehicles does not signify that Denmark has no used-vehicle market. A product becomes a domestic product as soon as it has been imported and placed on the market. Imported used cars and those bought locally constitute similar or competing products. Article 95 therefore applies to the registration duty charged on the importation of used cars.

18 It must then be borne in mind that, as the Court held in its judgment in Case 74/76 *Iannelli* v *Meroni* [1977] ECR 557, in order to apply Article 95 of the Treaty, not only the rate of direct and indirect internal taxation on domestic and imported products but also the basis of assessment and the detailed rules for levying the tax must be taken into consideration.

19 In that connection, it is undisputed that the taxable value of imported used vehicles is equal to 100% of the price of the vehicle when new where it is less than six months old and 90% of that price where it is more than six months old. On the other hand, the sale of vehicles already registered in Denmark does not give rise to payment of a further registration duty.

20 Accordingly, even if it appears that by reason of the very large amount of tax levied on new cars the portion of the duty still incorporated in the value of the vehicle is written off more slowly in Denmark than in other Member States which levy a lower duty, that does not prevent the levying of a registration duty for which the basis of assessment is at least 90% of the value of the car when new from constituting generally manifest over-taxation of the vehicles in comparison with the residual registration duty in the case of previously registered used cars bought on the Danish market, whatever their age or condition.

21 Consequently, it must be recognized that the rule whereby the basis for the Danish registration duty levied on imported used cars is at least 90% of the price of the vehicle when new leads to discriminatory taxation of imported used cars.

22 In view of the foregoing, it must be held that by imposing a registration duty on imported used motor vehicles based on an estimated value which is higher than the real value of the vehicle with the result that imported used motor vehicles are taxed more heavily than used motor vehicles which are sold on the domestic market after being registered in Denmark, the Kingdom of Denmark has failed to fulfil its obligations under Article 95 of the EEC Treaty.

Costs

23 The first paragraph of Article 69(3) of the Rules of Procedure provides that the Court may order the parties to bear their own costs in whole or in part if each party succeeds on some and fails on other heads or where the circumstances are exceptional. Since both parties have failed in part of their submissions, they must each be ordered to bear their own costs.

On those grounds,

THE COURT

hereby:

(1) Declares that, by imposing a registration duty on imported used motor vehicles generally based on an estimated value which is higher than the real value of the vehicle with the result that imported used motor vehicles are taxed more heavily than used motor vehicles which are sold on the domestic market after being registered in Denmark, the Kingdom of Denmark has failed to fulfil its obligations under Article 95 of the EEC Treaty;

(2) Dismisses the remainder of the application;

(3) Orders the parties to bear their own costs.

Due Mancini O'Higgins Moitinho de Almeida

Díez de Velasco Schockweiler Grévisse Zuleeg Kapteyn

Delivered in open court in Luxembourg on 11 December 1990.

J.-G. Giraud
Registrar

O. Due
President