OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 31 March 1987 *

Mr President,
Members of the Court,

I — The subject of the application and the Commission's interest in bringing it

1. The application brought by the Commission of the European Communities against the Italian Republic for a declaration that the latter has failed to fulfil its obligations is based on Article 30 of the EEC Treaty. It concerns the national rules applicable to the registration of vehicles brought into Italy by way of parallel imports which are laid down in the following texts:

Circular No 66/84 of 19 March 1984, in force from 1 July 1984 to 28 February 1985, and Circular No 125/84 of 11 July 1984, both amending and supplementing Circular No 104/83 of 3 May 1983;

Circular No 22/85 of 15 February 1985, which came into force on 1 March 1985 and remained in force until 21 June 1985, repealing the abovementioned three circulars 'except for those provisions expressly carried over'.

2. Notwithstanding the discussion of that subject in the written procedure and at the hearing, the application does not concern Circular No 133/85 of 28 August 1985, which is subsequent to the reasoned opinion and was adopted after

(i) the interlocutory order of 7 June 1985 in which the President of the Court of Justice of the European Communities decided in particular that the Italian Republic was required 'to take the measures necessary to ensure that no requirement is imposed on parallel importers which is more strict than those which existed before July 1984', that is to say, under Circular No 104/83, and

(ii) Circular No 105/85 of 21 June 1985 suspending immediately, pending the adoption of new rules, the three circulars covered by the application and 'as a consequence' bringing back into force the earlier rules adopted in Circular No 104/83.

3. Before turning my attention to the substance of the dispute, the submission put forward by the Italian Republic to the effect that the Commission has no interest in bringing these proceedings, and which should therefore be regarded as an objection of inadmissibility, must be rejected.

The repeal of the measures at issue does not deprive the Commission of an interest in bringing the proceedings, and in any event the Commission has limited the purpose of its application to a declaration that the Italian Republic failed to fulfil its obligations *during the period in question.* The Court has held that

'even when the fault has been remedied subsequent to the time-limit prescribed by paragraph 2 [of Article 169 of the EEC Treaty], pursuit of the action still has an object'.[1]

1 — Case 39/72 *Commission* v *Italian Republic* [1973] ECR 111, paragraph 9.

* Translated from the French.

As the Court emphasized in its judgment of 5 June 1986 in Case 103/84,

'such an interest may consist in establishing a basis for liability on the part of a Member State, by reason of its failure to fulfil its obligations, towards those who acquire rights as a result of that failure'. [2]

4. It must therefore be asked whether, and to what extent, the failure to fulfil the obligations concerned exists and, if it does, whether the defendant Member State is entitled to rely on Article 36 of the EEC Treaty.

II — The failure to fulfil obligations

5. Subject to the details set out below, reference is made to the Report for the Hearing for the description both of the rules contained in Circular No 104/83, which were applicable until 30 June 1984, and which the Commission regards as being in accordance with Community rules, and the contested provisions, introduced successively by Circulars Nos 66/84, 125/84 and 22/85. Those measures substantially amended the rules for registering vehicles not yet or already registered in the exporting country.

6. In regard to *vehicles not yet registered,* those amendments were introduced only by Circular No 22/85, which makes registration of such vehicles in Italy subject to the production not merely, as in the past, of a *certificate of origin* but also

'if the information necessary to prepare the registration book is not contained in the certificate of origin'

of a technical certificate containing

'information . . . concerning the vehicle to be registered, indicating the vehicle type and chassis number'.

The certificate of origin and the technical certificate must be issued by the manufacturers or their legal representatives at a 'reasonable cost' and within a time-limit of 40 working days from the date of the application. The Commission stated, without being contradicted, that the period of time needed for registration can be as long as three months, whereas in Belgium or Luxembourg it is only two to three days, and can cost approximately LIT 290 000 for a Fiat vehicle, compared with BFR 800 for the same operation in Belgium.

7. Unless they are justified under Article 36 of the EEC Treaty, those provisions are undoubtedly in the nature of measures having an effect equivalent to quantitative restrictions on imports within the meaning of Article 30, as interpreted by the Court in *Dassonville.* The requirement that an additional document be produced, even though it is not systematic, the introduction of a long time-limit and the additional cost of registration constitute rules enacted by a Member State which are 'capable of hindering, directly or indirectly, actually or potentially, intra-Community trade'. [3]

8. With regard to vehicles already registered in the exporting country, the rules applicable to parallel imports laid down in Circular No 104/83 were amended successively by Circulars Nos 66 and 125/84, on the one hand, and 22/85, on the other.

2 — Case 103/84 *Commission* v *Italian Republic* [1986] ECR 1759 at pp. 1768 and 1771, paragraph 9.

3 — Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837, paragraph 5.

9. The provisions introduced on that subject by the first two circulars were also in the nature of measures having equivalent effect to quantitative restrictions. That is so in regard to:

the formality of *certification* in regard to the *registration book*, which must be carried out in certain cases by the competent public authorities abroad and, in all cases, by the diplomatic or consular authorities in the foreign country from which the vehicle comes;

the *doubling of the maximum time-limit* for carrying out technical tests, increased from 30 to 60 days;

the *new document* concerning the technical characteristics of the vehicle, replacing the certificate of conformity, which must be a single document drawn up individually for the vehicle concerned.

10. Circular No 22/85 certainly abolished the requirement to produce the single document and the certification formalities described above. However, it laid down in regard to vehicles already registered in the exporting country measures having equivalent effect because it made their registration in Italy subject to the production, not merely of the registration book already required under the 1983 rules, but also of the *certificate of origin* and, in certain cases, of a *technical certificate* under the same conditions concerning time-limits and cost as those set out above in regard to new vehicles, thus constituting a hindrance to trade.

III — Application of the derogation provided for in Article 36 of the EEC Treaty

11. Although the Italian Republic, in its defence, states that the measures adopted in Circular No 22/85 and in the earlier circulars, application of which has been suspended, are fully compatible with the Treaty and all other Community rules, it did not refute in detail the complaints made against it.

12. In fact, the defendant Member State relies on Article 36 of the EEC Treaty as a basis for contending that the Commission's application should be dismissed. Italy refers to the need to put an end to unlawful transactions organized under the cover of parallel imports. It thus claims that the provisions of Article 30 may be disregarded in this case in the interests of public policy, as permitted by Article 36.

13. As the Commission pointed out in its reasoned opinion, the importance of the problem raised by unlawful dealings in vehicles cannot be denied, nor can the defendant Member State's need to adopt the means to ensure effective policing in that area. None the less, the measures adopted for that purpose must permit a fair balance to be struck between the restrictions imposed in the interest of crime prevention and compliance with the rules guaranteeing free movement of goods. As the Court held in *Dassonville*:

'if a Member State takes measures to prevent unfair practices . . . it is however subject to the condition that these measures should be reasonable and that the means of proof required should not act as a hindrance

to trade between Member States and should, in consequence, be accessible to all Community nationals'. [4]

14. It cannot therefore be denied that the rules laid down in the various Italian circulars are contrary to the principle of proportionality, the essential nature of which the Court has thus emphasized.

15. With regard to the administrative formalities required for parallel imports of vehicles from another State, it must be considered that the requirement to have the registration book certified by the authorities of the Member State from which the vehicle comes and the need to produce a document to meet the special requirements imposed by the Italian rules dealing with the technical characteristics of the vehicle must be regarded in fact as a presumption that the documents normally issued by those authorities for the same purposes are not in conformity with the Italian rules. It may be deduced *a fortiori* from the solution adopted by the Court in its judgment in Case 2/84 [5] concerning documents issued by an administration in a non-member country that in such circumstances, cooperation between the Member States should lead at least to *reciprocal recognition* of control documents already issued in respect of the same vehicle in another Member State. [6]

16. With regard to the other conditions laid down in the Italian rules, the fact that the Member State has at its disposal an alternative system of control is sufficient to show that they are disproportionate. It may be considered, as the Commission does, that the discovery, with a view to prosecution, of dealings in stolen vehicles, in regard to which in fact no precise information has ever been supplied, may be effectively carried out by measures which are less restrictive, less costly and which may be carried out more rapidly than those at issue, in particular by an appropriate check of chassis numbers.

17. Hence the imposition of administrative formalities in addition to or in the place of the submission of the certificates of origin or conformity or the registration book of an imported vehicle issued by the authorities in the exporting Member State may not be regarded as necessary to satisfy requirements of public policy. Obviously that does not call into question the legitimacy of any checks which the Member State of destination might impose in order to ensure that imported vehicles comply with national technical requirements justified, in particular, in the interest of safety.

IV — Conclusion

18. Consequently, I propose that the Court should:

Declare that by adopting

4 — Case 8/74, cited above, paragraph 6.

5 — Judgment of 28 March 1985, Case 2/84 *Commission* v *Italian Republic* [1985] ECR 1127 at pp. 1131 and 1139, paragraph 18.

6 — See, in particular, Case 104/75 *De Peijper* [1976] ECR 613, paragraphs 27 and 28.

from 1 July 1984 to 28 February 1985, the contested measures contained in Circular No 66/84 of 19 March 1984, together with the amendments made with effect from 11 July 1984 by Circular No 125/84;

from 1 March 1985 to 21 June 1985 the rules contained in Circular No 22/85,

the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty without being entitled to rely on the derogations provided for in Article 36 thereof;

Order the defendant Member State to pay the costs.