JUDGMENT OF THE COURT (Sixth Chamber)
17 June 1998 *

In Case C-68/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunale di Trento (Italy) for a preliminary ruling in the proceedings pending before that court between

Grundig Italiana SpA

and

Ministero delle Finanze

on the interpretation of Article 95 of the EC Treaty,

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, G. F. Mancini and J. L. Murray (Rapporteur), Judges,

* Language of the case: Italian.

Advocate General: C. O. Lenz,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Grundig Italiana SpA, by Enrico Giammarco, of the Trento Bar,

— the Italian Government, by Professor Umberto Leanza, Head of the Legal Department at the Ministry of Foreign Affairs, acting as Agent, assisted by Ivo M. Braguglia, Avvocato dello Stato,

— the Commission of the European Communities, by Enrico Traversa, of its Legal Service, acting as Agent,

— the EFTA Surveillance Authority, by Håkan Berglin, Director of the Legal and Commercial Affairs Department, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Italian Government and the Commission at the hearing on 12 June 1997,

after hearing the Opinion of the Advocate General at the sitting on 15 July 1997,

gives the following

Judgment

1 By order of 15 February 1996, received at the Court on 14 March 1996, the Tribunale (District Court), Trento, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 95 of the EC Treaty.

2 That question arose in a dispute between Grundig Italiana SpA ('Grundig Italiana') and the Ministero delle Finanze (Finance Ministry) with regard to the repayment of the sum of LIT 112 236 330 770, together with interest at the legally prescribed rate, paid by that company by way of national consumption tax on audiovisual and photo-optical products between 1 January 1983 and 31 December 1992.

3 Under Article 4 of Decree-Law No 953 of 30 December 1982 (Official Gazette of the Italian Republic (GURI) No 359 of 31 December 1982), subsequently replaced by Law No 53 of 28 February 1983 (GURI, ordinary supplement to No 58 of 1 March 1983, published in a consolidated version in GURI No 65 of 8 March 1983, hereinafter 'Law No 53'), a consumption tax on audiovisual and photo-optical products was introduced in Italy with effect from 1 January 1983. That tax was imposed both on products manufactured in Italy and on imported products. So far as the first group of products is concerned, the tax was assessed on the basis of the ex-works value ('*valore franco fabbrica*'); in the case of the second group, it was charged on the customs value of the goods free at the national frontier ('*valore in dogana franco frontiera nazionale*'). The rate of tax was set, irrespective of the origin of the product, at 16% of its value, while a reduced rate of 8% was provided for television sets.

4 On 23 March 1983 the Ministero delle Finanze adopted a decree in implementation of Law No 53 (GURI No 83 of 25 March 1983, subsequently amended by the Ministerial Decrees of 10 June 1983, 23 October 1984 and 10 April 1985, published

in GURI No 193 of 15 July 1983, No 303 of 3 November 1984 and No 92 of 18 April 1985, respectively, hereinafter 'the implementing decree'). Article 2(7) of that decree provides that, in the case of goods imported into Italy, the free-at-national-frontier value of the goods was to be calculated on the basis of the customs value within the meaning of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (OJ 1980 L 134, p. 1), plus any costs and charges for transport to the Italian border, less any components of the price paid or payable in respect of transport and marketing within Italian customs territory. Article 2(5) of the implementing decree also provided that, so far as concerned products manufactured in Italy, the taxable amount could be the price due on the sale of the product, subject to a flat-rate deduction of 35% of that price.

5 Under the second sentence of Article 4(3) of Law No 53, domestic producers were required to submit to the competent authorities a return containing the essential details needed for assessment of the tax within the month following the relevant quarter, the tax payable being determined by reference to the total number of sales of audiovisual and photo-optical equipment in that quarter. Article 2(9) of the implementing decree provided in the case of importers that the consumption tax was to be assessed and collected at the time of importation through customs.

6 The national consumption tax was abolished with effect from 1 January 1993 by Decree-Law No 331 of 30 August 1993, converted into Law No 427 of 29 October 1993.

7 On 22 July 1993 Grundig Italiana brought an action before the Tribunale di Trento for a declaration that the provisions introducing the national consumption tax on audiovisual and photo-optical products were incompatible with Community law and for an order requiring the Ministero delle Finanze to refund it the sum of LIT 112 236 330 770 paid by it whilst those provisions were in force, together with interest at the legally prescribed rate.

8 Taking the view that the outcome of the case depended upon an interpretation of Article 95 of the Treaty, the Tribunale di Trento stayed the proceedings and submitted the following question to the Court:

'Must Article 95 of the EC Treaty be interpreted as prohibiting a Member State from introducing and collecting a national consumption tax of the kind provided for by Article 4 of the Decree-Law of 30 December 1982, converted into law by Law No 53 of 28 February 1983, and further governed by the Decree of the Ministry of Finance of 23 March 1983, in so far as different taxable amounts are determined for domestic products and for those imported from other Member States and different procedures are laid down for collection of the tax on the same products?'

9 It is apparent from the order for reference that the Tribunale di Trento is essentially asking whether Article 95 of the Treaty precludes a Member State from introducing and levying a consumption tax in so far as the taxable amount and the procedure for collecting the tax are different for domestic products and for products imported from other Member States.

10 As a preliminary point, it should be noted that the Court has already held in Case C-130/92 *OTO* v *Ministero delle Finanze* [1994] ECR I-3281, paragraph 11, which concerned the interpretation of Community law with regard to the same Italian legislation, that a charge such as the national consumption tax at issue in the main proceedings must be regarded as an integral part of a general system of internal taxation within the meaning of Article 95 of the Treaty and that its compatibility with Community law must therefore be assessed on the basis of that article.

11 Moreover, it is settled case-law that the aim of Article 95 of the Treaty 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 result from the application of internal taxation which discriminates against products from other Member States. That provision is intended to cover all products from Member States, including products originating in non-member countries which are in free circulation in the Member States (Case 193/85 *Co-Frutta* v *Amministrazione delle Finanze dello Stato* [1987] ECR 2085, paragraphs 25, 26 and 29).

12 It follows that a system of taxation can be considered compatible with Article 95 of the Treaty only if it is so arranged as to exclude any possibility of imported products being taxed more heavily than domestic products (see, in particular, Case C-152/89 *Commission* v *Luxembourg* [1991] ECR I-3141, paragraph 21).

13 For the purposes of assessing whether or not a system of taxation is discriminatory, it is necessary to take into consideration not only the rate of tax but also the basis of assessment and the detailed rules for levying the various duties (see Case 55/79 *Commission* v *Ireland* [1980] ECR 481, paragraph 8). The decisive criterion for purposes of comparison with a view to the application of Article 95 is the actual effect of each tax on domestic production, on the one hand, and on imported products, on the other. Even where the rate is the same, the effect of the tax may vary according to the detailed rules for the assessment and collection thereof applied to domestic production and imported products.

14 In the first place, so far as concerns the consumption tax at issue in the main proceedings, it is apparent from the case-file that for products manufactured in Italy no transport or distribution costs are included in the taxable amount, whereas, for products imported from other Member States, the taxable amount consists of the value for customs purposes, plus any costs and charges for delivery to the Italian border, less transport or distribution costs incurred within Italy.

15 The Italian Government points out that, since the national charge affects products intended for consumption on the domestic market, the tax in question must be calculated on the basis of the value of those products at the time when they are made available to Italian consumers, which value includes the cost of transport as far as the Italian border.

16 It is settled case-law that the prohibition of discrimination laid down in Article 95 is infringed where a tax is assessed on the value of a product if, in the case of the imported product alone, assessment criteria are taken into consideration which are likely to increase its value *vis-à-vis* the corresponding domestic product (Case 74/76 *Iannelli* v *Meroni* [1977] ECR 557, paragraph 21).

17 Secondly, it is apparent from the order for reference that in the case of domestic products, all costs borne within Italy in respect of marketing are excluded from the taxable amount, whereas, for imported products, costs related to marketing within Italy but incurred outside Italy are included. As the Advocate General has pointed out at point 37 of his Opinion, those rules also apply where payment of marketing costs is centralised.

18 Thus, unlike domestic producers, importers of the products in question cannot deduct from the basis of assessment of the tax the entire cost of release for consumption on the Italian market.

19 Thirdly, it is apparent from the order for reference that domestic producers may make a flat-rate deduction from the taxable amount for their products of 35% of

the price due, whereas that possibility is not available for products imported from the other Member States.

20 The Italian Government submits that the flat-rate percentage is intended to represent that part of the sales price which corresponds to the cost of marketing domestic products. Admittedly, to allow domestic producers alone to make a flat-rate deduction of that kind enables them to determine more rapidly and easily the taxable amount for domestic products. However, that practice serves only to place domestic goods and imported goods in comparable situations once again. The taxable amount is much more difficult to establish for domestic producers who have to determine the ex-works value than for importers who can base themselves on the value for customs purposes and, therefore, on the formalities involved in making customs declarations.

21 It should be observed that importers and domestic producers are in comparable situations inasmuch as they seek to deduct transport and marketing costs.

22 Finally, it is apparent from the order for reference that, for imported goods, the obligation to pay the charge arises at the time of importation through customs, whereas for domestic goods, it arises only when the domestic producer lodges the return with the tax authorities during the month following the quarter in which the goods have been placed on the market, the event giving rise to the charge occurring when the product intended for consumption is placed on the domestic market.

23 In this connection, the Court has consistently held that a benefit reserved to domestic production in the form of facilities for deferred payment involves a

difference in treatment to the detriment of products imported from other Member States, which is contrary to the prohibition laid down in Article 95 of the Treaty (see *Commission* v *Ireland*, cited above).

24 In those circumstances, the Italian Government's argument that the difference between the procedure for collection applied to domestic goods and that applied to imported goods is intended to relieve domestic producers of the duty to submit a tax return for each product cannot be accepted. Once discrimination has been established, Article 95 does not provide any means of justification for the State concerned.

25 In view of the foregoing, it follows that Article 95 of the Treaty must be considered to have been infringed by national legislation introducing a consumption tax in so far as

— for products manufactured in that State, no transport or distribution costs are included in the taxable amount, whereas, for products imported from other Member States, the taxable amount consists of the value for customs purposes, plus any costs and charges for delivery to the Italian border, less transport or distribution costs incurred within Italy;

— in the case of domestic products, all costs borne within the national territory in respect of marketing are excluded from the taxable amount, whereas, for imported products, costs related to marketing within the national territory but incurred outside it are included;

— the possibility of making a flat-rate deduction for the purposes of calculating the taxable amount is reserved to domestic products; and

— for imported goods, the obligation to pay the charge arises at the time of importation through customs, whereas for domestic goods, it arises only when the domestic producer lodges the return with the tax authorities during the month following the quarter in which the goods have been placed on the market, the event giving rise to the charge occurring when the product intended for consumption is placed on the domestic market.

26 The answer to the question raised must therefore be that Article 95 of the Treaty is to be interpreted as precluding a Member State from introducing and levying a consumption tax in so far as the taxable amount and the procedure for collecting the tax are different for domestic products and for products imported from other Member States.

Costs

27 The costs incurred by the Italian Government 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Tribunale di Trento by order of 15 February 1996, hereby rules:

Article 95 of the EC Treaty must be interpreted as precluding a Member State from introducing and levying a consumption tax in so far as the taxable amount and the procedure for collecting the tax are different for domestic products and for products imported from other Member States.

Ragnemalm Mancini Murray

Delivered in open court in Luxembourg on 17 June 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber