OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 12 December 1989 *

Mr President,
Members of the Court,

1. By judgment of 3 March 1988 the Arrondissementsrechtbank (District Court), Maastricht, requested this Court to give a preliminary ruling on two questions regarding the interpretation of Articles 30 and 36 of the EEC Treaty. The questions arose in the context of a dispute between Krantz GmbH & Co. (hereinafter referred to as 'Krantz GmbH'), established in the Federal Republic of Germany, and the Collector of Direct Taxes, Kerkrade (Netherlands), together with the Kingdom of the Netherlands. Krantz GmbH sold some machines on hire-purchase terms to J. J. Krantz & Zoon NV (hereinafter referred to as 'Krantz & Zoon'), a company established in the Netherlands. Krantz & Zoon installed the machines in the factory of its subsidiary, Vaalser Textielfabriek BV, in Vaals. Following the insolvency of both Krantz & Zoon and its subsidiary, the Collector seized all the movable property found on the premises of Vaalser Textielfabriek, in order to recover the direct taxes which it owed. The movable property in question included the machines, on which Krantz & Zoon had not finished paying the instalments to Krantz GmbH and which therefore remained the property of that company.

2. When its request for the return of the machines was rejected by the Collector by virtue of the Netherlands Law on the collection of direct taxes, Krantz GmbH was able to obtain possession of the machines only on payment of a sum of HFL 200 000. Seeking to have the seizure of the machines declared illegal and to obtain a refund of the HFL 200 000, Krantz GmbH commenced proceedings before the Arrondissementsrechtbank, Maastricht, claiming before that court (*inter alia*) that the Netherlands Law on the collection of direct taxes was incompatible with the principle of the free movement of goods.

3. The national legislation cited in the questions of the national court is the Law of 22 May 1845 on the collection of the State's direct taxes (Wet op de Invordering van 's Rijks Directe Belastingen), in particular Article 16. That article governs the pursuit of claims by 'third parties who consider themselves entitled, wholly or in part, to movable property seized by reason of a tax debt'.[1] The third paragraph of Article 16 calls for particular attention, inasmuch as it lays down the principle that 'third parties may not bring an action against seizure on account of a tax debt — except in respect of land tax — if the fruit harvested, or due to be harvested, or movable property intended for furnishing or equipping a house or farm or for cultivating or working land are on the debtor's premises at the time of seizure'. The interpretation placed on that paragraph in the Netherlands extends its restrictions on the claims of third parties to cover the movable property used for the running of an undertaking, but not to stocks of raw materials, auxiliary materials or finished products found on the premises.

* Original language: French.

1 — First paragraph of Article 16 of the Law of 22 May 1845.

4. Inasmuch as Netherlands legislation divests suppliers who are nationals of another Member State of the right to reclaim their property seized by the tax authorities along with the other goods of its debtors, the Court is requested to rule on whether that legislation is to be regarded as a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 30 of the EEC Treaty and, if so, whether its application is justified under Article 36.

5. As was observed above, in the course of the main proceedings Krantz GmbH submitted that there was, in the circumstances of the case, a measure having equivalent effect and stated that the rights of seizure held by the Netherlands tax authorities was 'prejudicial to trade in goods in the Netherlands' [2] and that a general awareness of those rights outside the Netherlands would lead to a considerable decline in sales on instalment terms from the other Member States.

6. For their part, the Netherlands Government and the Commission have argued in the proceedings before the Court that provisions of the kind contained in the Netherlands Law (hereinafter: 'the Invorderingswet') did not fall within the ambit of the prohibition on measures having equivalent effect. The Commission contends that the national measure in question has no bearing on imports, thereby endorsing the view expressed in the main by the Netherlands Government.

7. The provisions of the Invorderingswet on the tax authorities' right of seizure is not designed to regulate trade with other Member States. The Invorderingswet, which applies without distinction to domestic and imported goods furnishing the place of residence of the tax debtor, with the exception of stocks, belongs to what one might call the general legislative framework of business activities. It is distinct from legislative provisions relating directly and exclusively to the conditions for the production or marketing of certain products or types of product, whose effects on imports must be assessed, as far as the prohibition under Article 30 is concerned, by reference to the guidelines laid down by this Court in its 'Cassis de Dijon' judgment. [3] The Court's recent judgment in the case of *Torfaen Borough Council* [4] seems to demonstrate that where provisions forming part of the abovementioned legislative framework have effects on imports, their compatibility with Article 30 is subject to somewhat different legal criteria.

8. The point at issue in the *Torfaen* case was whether the prohibition in the United Kingdom on the Sunday opening of retail premises constituted a measure having equivalent effect to a restriction on imports. The Court referred to its *Cinéthèque* judgment of 11 June 1985 [5] and concluded that the compatibility of the prohibitory provisions with the principle of the free movement of goods was determined by two conditions: first, that the provisions in question should serve a justifiable purpose under Community law and, secondly, that their effects on imports should not go beyond what is necessary for the attainment of the aim in view — a matter for the appraisal of the national court.

2 — Judgment of the national court at p. 6 of the English translation

3 — Judgment of 20 February 1979 in Case 120/78 *Rewe Zentral* [1979] ECR 649.

4 — Judgment of 23 November 1989 in Case C-145/88 *Torfaen Borough Council* [1989] ECR 3851.

5 — Joined Cases 60 and 61/84 [1985] ECR 2605

9. On the first point the Court, drawing parallels with the *Oebel*[6] case, took the view that national rules governing the opening hours of retail premises 'reflect certain political and economic choices in so far as their purpose is to ensure that working and non-working hours are so arranged as to accord with national or regional socio-cultural characteristics, and that, in the present state of Community law, is a matter for the Member States';[7] accordingly, those national rules had to be regarded as consistent with the objectives of public interest pursued by the Treaty. On the second point the Court held that the issue whether the restrictive effects exerted by specific national rules on the free movement of goods actually remained within the limit of its intrinsic effects was a question of fact to be determined by the national court.

10. Should the Court, in answering the questions submitted by the Arrondissements-rechtbank, adopt a similar approach? If so, the Court must consider whether the aim pursued by the Invorderingswet, namely to ensure that action to recover taxes is effective, is in keeping with the broad objectives of the Treaty and, if necessary, inform the national court that it is responsible for ascertaining whether or not the effects on imports of that law do go beyond what is necessary to ensure the effectiveness of such action. I should note right away that the Court can hardly take the view that by regulating the tax authorities' right of seizure in such a way as to ensure the effective recovery of direct taxes, Netherlands legislation is not pursuing an aim consistent with the general objectives of the Treaty. Decisions on such matters remain within the powers of the Member States. In that hypothesis the Dutch court would have the task of determining whether or not the effects on imports were excessive for the attainment of an objective which was in itself legitimate.

11. However, I do not propose that the Court should contend with any such problems. It seems to me that a situation such as the one described by the national court does not even lend itself to an approach of the kind adopted in the *Torfaen Borough Council* judgment. In my opinion it is only where there are perceptible effects on imports that there are grounds for inquiring whether the provisions giving rise to those effects reflect a legitimate objective or whether the effects are disproportionate. On the other hand, such a procedure does not appear to me to be relevant if no perceptible effect on imports can be attributed to legislation. I am very doubtful whether there are any effects on imports due to the application of provisions on the seizure of property such as those at issue here. There is therefore no cause in the present case to make compatibility with Article 30 dependent on the extent to which imports are effected; rather, there are grounds for concluding that the compatibility of the national measure with Article 30 is shown quite simply by the *absence* of any bearing on imports.

12. I propose to explain briefly my reasons for believing that the Invorderingswet has no bearing on imports. This law, which applies to movable property furnishing the place of residence of a person owing direct taxes irrespective of whether they originate in the Netherlands or elsewhere in the Community, does not cover stocks of raw materials, auxiliary materials, or finished products. Its scope is thus strikingly limited. Moreover, the Invorderingswet has no effect on the volume of demand from buyers on instalment terms. The only possible effect concerns the offering of

6 — Judgment of 14 July 1981 in Case 155/80 [1981] ECR 1993.

7 — Case C-145/88, cited above in footnote 4, paragraph 14.

goods on instalment terms by sellers, who might hesitate to enter into a contract with a buyer subject to Netherlands direct taxation. I should emphasize the merely hypothetical character of any 'reluctance' on the sellers' part, inasmuch as such reluctance could only relate to the materialization of an uncertain event — indeed, an event uncertain on two counts, since the risk of seizure of goods sold on instalment terms to a Netherlands buyer does not arise unless (i) that buyer also turns out to be a defaulting debtor of direct taxes, and (ii) the competent national authorities decide to resolve the situation by the seizure of property. Lastly, it may be added that in facing that risk (if any) all sellers are on the same footing, whether they are Netherlands nationals or from another Member State.

13. In the light of those considerations I find it difficult, to say the least, to describe the Netherlands law in question as a measure restricting imports on the basis of the argument — the *only* argument which can be made in this respect — that non-Dutch sellers *might* hesitate to sell goods on instalment terms to Netherlands nationals when those goods *might* be seized *if* the buyers should happen to default on payments to the Netherlands tax authorities. Such a concatenation of contingencies clearly cannot be treated as a restriction on imports. Application of the Invorderingswet, in the circumstances described in the judgment of the Arrondissementsrechtbank, does not disclose any connection with trade between the Netherlands and the other Member States. It is a national measure having no bearing on imports. That conclusion might perhaps have required reconsideration if the Invorderingswet had also applied to stocks, since the possibility of effects on trade arising out of a greater degree of 'reluctance' could not then have been ruled out. Such, however, is not the case.

14. I must also make some remarks prompted by the comparison of the present case with the circumstances which gave rise to the Court's judgments in *Blesgen*[8] and *Forest*.[9] In the first judgment the Court ruled that legislation prohibiting the consumption, with or without charge, in all places open to the public of spirits whose alcoholic strength exceeded 22° had

'in fact no connection with the importation of the products'

and for that reason was not

'of such a nature as to impede trade between Member States'.[10]

In the second judgment the Court held that French legislation establishing quotas for the milling of wheat

'in fact has no effect on wheat imports'[11]

8 — Judgment of 31 March 1982 in Case 75/81 [1982] ECR 1211.

9 — Judgment of 25 November 1986 in Case 148/85 [1986] ECR 3449.

10 — Case 75/81, cited above in footnote 8, paragraph 9.

11 — Case 148/85, cited above in footnote 9, paragraph 19

and was

'not likely to impede trade between Member States'. [11]

In both those cases the national measures at issue, although considered to have no bearing on imports, were nevertheless of such a nature that their abolition might have enabled imports to increase. Thus, since according to the case-law of the Court it is possible, in certain circumstances, to regard legislation as having no bearing on imports when that legislation is in fact not totally without effects in that regard, the same must be true *a fortiori* of measures whose restrictive effect, whether actual or potential, is simply undetectable.

15. Admittedly, the status of the *Blesgen* and *Forest* judgments within the Court's case-law on measures having equivalent effect is perhaps rather peculiar. It was to that peculiarity that Mr Advocate General Van Gerven was alluding in his Opinion in the *Torfaen Borough Council* case when he noted that 'the factual context of those judgments was quite specific' [12] and when he referred to the 'empirical judgment' [12] which the Court had exercised. Perhaps, in the light of the wording used in the *Cinéthèque* and *Torfaen* judgments, the Court would today have used slightly different terms with which to justify its conviction that measures similar to those considered in the *Blesgen* and *Forest* judgments are compatible with Article 30. However, I also believe that if ever a national measure deserved to be regarded as having no bearing on imports, it has to be the one which the Maastricht court has referred to this Court.

16. The very broad definition of a 'measure having equivalent effect' formulated in the *Dassonville* judgment has since 1974 served as a constant point of reference for subsequent judgments on the subject. The inherent breadth of that definition and the Court's concern, apparent in its judgments, not to reduce its scope fully explain why businessmen have attempted to have a wide variety of measures treated as measures having equivalent effect to quantitative restrictions on imports, where such an effect — however indirect and tenuous — cannot be altogether ruled out. The Court's judgment in *Torfaen Borough Council*, based on the *Cinéthèque* judgment, provides some clarification to the effect that restrictive effects on imports, if inherent in legislation pursuing goals permitted by the Treaty, cannot, unless they are disproportionate, cause a measure to be regarded as a measure having equivalent effect to quantitative restrictions. Thus a 'lower limit' for a measure having an equivalent effect to quantitative restrictions on imports is becoming discernible. The present case falls short of the lower limit, or the 'lower limit to the lower limit', since the alleged effects on imports of the Invorderingswet cannot be substantiated in the first place.

17. In the absence of any perceptible *effect* on imports, there can be no measure having equivalent *effect*. I therefore take the view that the first question submitted for a preliminary ruling must be answered in the negative, from which it follows that it is not necessary to answer the second question.

11 — Case 148/85, cited above in footnote 9, paragraph 19.

12 — Case C-145/88, cited above in footnote 4, paragraph 7 of the Opinion.

18. In conclusion, I propose that the Court should rule as follows:

'Legislation of a Member State on the collection of direct taxes which authorizes the seizure of property, whether domestic or imported, furnishing the debtor's place of residence, but excluding stocks of raw materials, auxiliary materials or finished products, without the right on the part of suppliers from another Member State who own property sold on hire-purchase terms to reclaim it, does not fall under the prohibition contained in Article 30 of the EEC Treaty.'