JUDGMENT OF THE COURT
3 July 1985 *

In Case 277/83

Commission of the European Communities, represented by Guido Berardis, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Italian Republic, represented by its Government in the person of Arnaldo Squillante, President of Chamber of the Consiglio di Stato and Head of the Department for Contentious Diplomatic Affairs, Treaties and Legislative Matters of the Ministry for Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie-Adelaide,

defendant,

APPLICATION for a declaration that by applying a reduced rate of tax on the manufacture of alcohol distilled from wine and used in the production of Marsala liqueur wine, whilst applying at the full rate the equivalent frontier surcharge on alcohol distilled from wine and used in the production of liqueur wines imported from other Member States, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco and O. Due (Presidents of Chambers), P. Pescatore, K. Bahlmann, R. Joliet and T. F. O'Higgins, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

* Language of the Case: Italian

after hearing the Opinion of the Advocate General delivered at the sitting on 27 March 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By application lodged at the Court Registry on 19 December 1983, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by applying a reduced rate of tax on alcohol distilled from wine and used in the manufacture of Marsala liqueur wine, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty, inasmuch as a frontier surcharge is imposed at the full rate on alcohol distilled from wine and used in the manufacture of liqueur wines imported from other Member States.

2 It is clear from the documents before the Court that Italian legislation imposes a tax on the manufacture of domestically produced wine distilled from alcohol and a frontier surcharge of the same amount on imported alcohol distilled from wine. However, Article 29 of Italian Decree Law No 1200 of 6 October 1948 (Official Gazette of the Italian Republic No 233 of 6 October 1948), as subsequently amended by Law No 891 of 22 December 1980 (Official Gazette of the Italian Republic No 355 of 30 December 1980), grants a reduction of 60% on the rate of tax payable in respect of the manufacture of alcohol distilled from wine and used in the manufacture of liqueur wines which qualify for the designation 'Marsala'.

3 Marsala liqueur wine is also subject to special rules concerning, in particular, the geographical demarcation of vineyards, the quality of grapes which may be used in its manufacture and supervision of the production and marketing of such wine by the public authorities.

4 In July 1984 the Italian Parliament adopted Law No 408 of 28 July 1984 (Official Gazette of the Italian Republic No 212 of 2 August 1984), Article 4 of which provides that the reduction of the charges on the manufacture of alcohol which is provided for in Article 29 of the decree law of 1948 as regards the manufacture of Marsala is to be extended to all liqueur wines and all aromatized wines, including those produced in the Member States of the European Community and imported into Italy. The law is scheduled to enter into force upon the adoption by the competent ministers of an appropriate decree which is still to be enacted.

5 It should be noted in the first place that the Commission, whilst emphasizing that the new legislative measure is in conformity with Article 95, points out that the situation has remained unchanged since the procedure was initiated and it cannot therefore suspend this action.

6 The Commission considers that all liqueur wines, whether or not they bear a designation of origin, constitute similar products within the meaning of the first paragraph of Article 95 because they 'have similar characteristics and meet the same needs from the point of view of consumers', as indicated by the Court in its judgment of 27 February 1980 in Case 169/78 (*Commission* v *Italy* [1980] ECR 385, see paragraph 5 of the decision and the cases referred to therein). The Commission points out in that regard that liqueur wines taken together form a range of homogeneous products with similar characteristics. The relevant Community rules contain a precise definition of liqueur wine which is set out in paragraph 12 of Annex II to Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine (Official Journal 1979 L 54, p. 1). Within that category all liqueur wines are interchangeable and meet practically the same needs from the point of view of consumers.

7 According to the Commission, the tax system in question has the effect of placing imported liqueur wines at a disadvantage by according preferential treatment to Marsala liqueur wine. Marsala accounts, amongst all liqueur wines with a registered designation of origin, for over 90% of Italy's domestically produced liqueur wines. The fact that other domestically produced liqueur wines are also not given a tax advantage in no way alters the fact that imported liqueur wines are discriminated against because, in the Commission's view, a differential system within a single Member State can be compatible with Article 95 only if similar or competing imported products can also benefit from that system.

8 The Italian Government observes that the Italian authorities are at present drafting the decree provided for by Law No 408 which extends the treatment accorded to Marsala liqueur wine to other liqueur wines whether produced in Italy or imported from other Member States. In its view, therefore, the new Italian rules will satisfy the Commission's requirements in full.

9 As regards the substance of the case, the Italian Government relies in its defence on the judgment of 27 February 1980 in Case 171/78 (*Commission* v *Denmark* [1980] ECR 447), in which the Court recognized that the Member States are entitled to grant tax relief in respect of certain types of products, on condition that the benefit of such relief is extended without discrimination to imported products in the same conditions. The rules concerning Marsala are not, according to the Italian Government, contrary to the principle thus laid down because, taken as a whole, the provisions relating to Marsala lay down exceptional requirements, which are extremely strict and restrictive, for the production of all such wine. In granting tax relief, the Italian legislation sought to take account of the special position of producers of Marsala who are required to bear the additional charges resulting from the system of supervising production referred to earlier.

10 Moreover, the Italian Government considers that it is not under any obligation to assimilate, for tax purposes, imported liqueur wines to Marsala since such wines are liable to tax at the same rate as that applied to all domestically produced liqueur wines, with the exception of Marsala. In those circumstances, the Italian Government maintains that proof that Marsala is a product similar to imported liqueur wines does not provide a decisive basis for the finding that Article 95 has been infringed. As regards the adverse effect on competition of the tax system, the Italian Government considers that preferential tax treatment is not contrary to Article 95 where other circumstances exist which ensure that such treatment has neither the purpose nor the effect of reducing the competitiveness of imported products. In its view, such circumstances exist in this case, having regard to the fact that the measure granting relief is similar to the measures adopted for the support of economic activities located in Southern Italy which have as their purpose to promote the economic development of underdeveloped regions, and that the reduction of the tax confers on producers of Marsala only a very limited advantage (amounting to approximately LIT 122 per litre of Marsala).

11 The Court notes in the first place that it is common ground that the new law extending the tax treatment of Marsala to all liqueur wines, whether domestically produced or imported from other Member States, has not yet entered into force. Moreover, the Italian Government has maintained its view that, in principle, the tax treatment reserved to Marsala is not contrary to Article 95 of the EEC Treaty. Finally, it should be noted that the Commission has decided not to discontinue the proceedings.

12 As far as the substance of the case is concerned, it is clear from the consistent case-law of the Court (see the judgments of 27 February 1980 in Case 169/78 *Commission* v *Italy* [1980] ECR 385 and of 27 May 1981 in Joined Cases 142 and 143/80 *Amministrazione delle Finanze dello Stato* v *Essevi and Salengo* [1981] ECR 1413), that the aim of Article 95 is to ensure free movement of goods between 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 or which is protectionist in scope. The first paragraph of Article 95, which is based on a comparison of the tax burdens imposed on domestic products and on imported products which may be classified as 'similar', is the basic rule in this respect. Having regard to the state of development of Community law, the grant of certain tax exemptions or tax concessions by way of tax relief or in the form of a reduction of rates of tax on the basis of objective criteria must be permitted on condition that the benefit of such measures is extended without discrimination to imported products which satisfy the same conditions.

13 It cannot be disputed that liqueur wines constitute a range of homogeneous products with similar characteristics and that they have similar properties and meet the same needs from the point of view of consumers. Moreover, it is also quite clear that no imported liqueur wine can ever qualify for the preferential treatment accorded to Marsala and that imported liqueur wines accordingly suffer discrimination.

14 It therefore remains to be considered whether that system is compatible with the first paragraph of Article 95 of the EEC Treaty in the light of the reasons relied upon by the Italian Government to justify the differential tax treatment of alcohol distilled from wine and used in the manufacture of Marsala.

15 In the first place, it should be noted that liqueur wines from other Member States will never be able to satisfy the requirements laid down by the Italian rules in order to qualify for the designation Marsala and accordingly they can never qualify for the tax advantage granted in respect of Marsala.

16 Nor can the Italian Government avail itself of the argument that the region in which Marsala is produced is underdeveloped, since discriminatory fiscal practices are not exempt from the application of Article 95 on the ground that they may be classified at the same time as a method of financing State aid (judgment of 21 May 1980 in Case 73/79 *Commission* v *Italy* [1980] ECR 1533).

17 Finally, even on the assumption that the reduction of the tax confers only a very limited advantage on producers of Marsala, it must be pointed out that the purpose of the first paragraph of Article 95, which is to eliminate all forms of direct or indirect discrimination, could not be achieved if the advantages granted in respect of domestic products could escape the prohibition laid down by Article 95 by reason of their purportedly limited effect. Accordingly, even a tax relief the discriminatory effect of which is slight falls within the prohibition in Article 95.

18 In conclusion, in the light of the foregoing considerations it must be held that the fiscal provisions applied in Italy which are set out in the legislation referred to above are incompatible with the requirements of Article 95 of the EEC Treaty as regards the tax on Marsala liqueur wine and the frontier surcharge on alcohol distilled from wine and used in the production of liqueur wines imported from other Member States.

Costs

19 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the defendant has been unsuccessful in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) **Declares that by imposing on liqueur wines imported from other Member States a frontier surcharge on alcohol distilled from wine and used in the manufacture of such wines at a rate higher than that of the tax on alcohol distilled from wine and used in the production of Marsala liqueur wine, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty.**

(2) **Orders the Italian Republic to pay the costs.**

Mackenzie Stuart Bosco Due

Pescatore Bahlmann Joliet O'Higgins

Delivered in open court in Luxembourg on 3 July 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President