OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 21 FEBRUARY 1984

My Lords,

Article 1 of Italian Ministerial Decree of 10 July 1980 (Gazzetta Ufficiale No 191 of 14. 7. 1980) provides that used buses which come from outside Italy, and which are cleared through customs after 31 July 1980, may not be tested there with a view to registration, if they were manufactured more than seven years prior to an application being made for such a test.

The Commission issued a reasoned opinion dated 13 October 1982, pursuant to Article 169 of the EEC Treaty, to the effect that the Republic of Italy was in breach of its obligations under Article 30 of the EEC Treaty, in that this provision amounted to a measure having an equivalent effect to a quantitative restriction on imports. It invited Italy to take the necessary measures to remove this breach within two months of the notification of the opinion.

As foreshadowed in correspondence leading up to the Commission's opinion, on 14 December 1982 a further Ministerial Decree was adopted (Gazzetta Ufficiale No 6 of 7. 1. 1983), replacing the contested Decree. Article 1 of the second Decree stipulates that buses may not be admitted for a test, with a view to their being registered in Italy for the first time, if they were manufactured more than seven years before an application was made for that test. Article 1 of the new Decree is thus not limited to used buses, nor does it apply only to imported buses.

That second Decree may have been issued within the two-month period referred to in the Commission's opinion, but it did not come into effect until 8 January 1983, that is after the period for compliance expired. The question in any event arises as to whether the alleged breach, if it existed, was remedied.

In these proceedings the Commission asks the Court to declare that the provision in the first Decree does constitute a measure of equivalent effect to a quantitative restriction prohibited by Article 30.

The Commission's case is that the restriction in the first Decree imposes restrictions on the purchases of buses from outside Italy, which do not apply to purchases of buses registered inside Italy. Moreover it also subjects imports to a condition other than a formality which is not imposed on national products, and which it is more difficult for buses outside Italy to comply with, thus satisfying the test set out in Article 2 (2) of Directive 70/50/EEC of 22 December 1969 (OJ L 13). The new Decree makes no practical difference. Neither Decree is justified for the protection of human life since less rigorous measures than a total ban would achieve that objective.

The Italian Government rejects this claim. There was no absolute ban under the first Decree: under the second Decree all buses requiring first registration in Italy when they are seven years old or more, whatever their origin, are treated alike. In any event these restrictions are necessary for public safety and therefore justified under Article 36 of the EEC Treaty. There can be no certainty that imported buses have been properly maintained or are in a safe condition; the Italian authorities can have greater confidence in buses registered in Italy since they are subject to annual tests and the record of such tests is available. The claim is in respect of a period before Council Directive 77/143/EEC of 29 December 1976 (OJ L 47, p. 47) was finally required to be enforced on 1 January 1983, so that Italy neither was obliged, nor could be expected, to rely on certificates from other Member States.

It seems to me that the first Decree clearly did constitute a restriction on imports falling within Article 30 standing alone. Buses could, it is true, be brought in to be scrapped or to be cannibalized for usable parts (other than certain parts essential to road safety such as the chassis and the brakes of a vehicle). Equally they could be used for transport purposes other than as a "bus" within the definition of the Italian legislation, so that they could be used to carry less than nine people. To this extent the probibition was not absolute. A vehicle could not, however, be used as a "bus", however good its condition, however well-proved its mechanical history. It is no answer to say that imported buses registered before they were seven years old could continue to be used after they were seven years old, subject to satisfying prescribed tests, in the same way as local buses. The restriction on the buses in question still remains.

The second Decree, as the Italian Government fairly concedes, introduces a change which is largely, if not entirely, formal. The possibility of a bus, made in Italy and kept there, not being registered until it was more than seven years old, and then being the subject matter of an application for registration is, at best, remote.

The argument that these restrictions are excluded from being a breach of Article 30 because they are justified under Article 36 has greater force. Clearly road safety is a matter of current widespread concern, not least where buses are involved. Road safety provisions can clearly be required and justified for the protection of the health and life of humans within the meaning of Article 36 of the Treaty.

Even accepting, however, that a full record of the mechanical history of a vehicle in one Member State may make it possible for that Member State to accept that a vehicle is safe for the road, it does not follow that sufficiently reliable evidence cannot be produced as a result of tests in other Member States. Such a record does not seem to be available here since the full details of the results of the tests are not part of the

documentation relied on. Nor does it establish that a sufficiently careful test of a seven year old vehicle, undertaken for the first time in Italy, cannot be relied on to show that the vehicle is roadworthy. This is so particularly as it is accepted (a) that such tests can be adequate for seven year old vehicles intended to carry nine persons or less, when, even if numerically to a less extent, human health and life must be protected, and (b) that vehicles imported when they are less than seven years old (e.g. six years old) can be sufficiently tested after they are seven years old in order to ensure their safety. Indeed it seems that the Italian Government itself in 1979 introduced for vehicles registered in Italy, and more than seven years old, restrictions on the continuing registration of vehicles which after inspection were shown to have been constructed or reconstructed with parts essential to road safety which were taken from vehicles withdrawn from circulation, or which themselves were more than seven years old.

Accordingly, whilst of course fully accepting the need for the objectives sought to be attained, I am not satisfied by the Italian Government (upon whom the burden lies, Case 251/78 *Denkavit Futtermittel* v *Minister of Agriculture* [1979] ECR 3369) that this total ban on the importation of vehicles seeking to be registered and used as "buses" has been shown to be necessary or justified.

It does not seem to me that either party derives assistance in these proceedings from the terms of Council Directive 77/143 (supra). It is not suggested that at the relevant time Italy was in breach of the directive. Nor can it be said that because the directive does not impose a maximum age at which tests can first be carried out, therefore they can be imposed at any time so that the Decree cannot be justified under Article 36. Once the directive came into force tests were required one year after first use. Conversely it does not seem to me that it is to be implied from Article 5 (3) of the directive that, if no proof as to road-worthiness is supplied from another Member State, the Member State into which it is wished to import the buses can automatically exclude them from roadworthiness tests.

Accordingly I consider that the Commission is entitled to the declaration sought that, by prohibiting the importation of used buses coming from another Member State where the buses were made more than seven years before the date of application for a roadworthiness test, the Republic of Italy was in breach of its obligations under Article 30 of the EEC Treaty, and that the Republic of Italy should pay the Commission's costs and its own costs of these proceedings.