JUDGMENT OF THE COURT
25 April 1985 *

In Case 207/83

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

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by G. Dagtoglou of the Treasury Solicitor's Department, London, acting as Agent, assisted by Robin Auld QC, with an address for service in Luxembourg at the Embassy of the United Kingdom of Great Britain and Northern Ireland, 28 Boulevard Royal,

defendant,

Application for a declaration that, by prohibiting the retail sale of certain goods imported from other Member States unless they are marked with or accompanied by an indication of origin, the United Kingdom has failed to fulfil an obligation incumbent on it under Article 30 of the EEC Treaty,

THE COURT,

composed of: G. Bosco, President of the First Chamber acting as President, O. Due and C. Kakouris (Presidents of Chambers), P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot and R. Joliet, Judges,

Advocate General: M. Darmon
Registrar: P. Heim

after hearing the opinion of the Advocate General delivered at the sitting on 30 January 1985,

gives the following

* Language of the Case: English.

JUDGMENT

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

Decision

1 By an application lodged at the Court Registry on 15 September 1983 the Commission of the European Communities brought an action before the Court under Article 169 of the EEC Treaty for a declaration that, by prohibiting the retail sale of certain goods imported from other Member States unless they are marked with or accompanied by an indication of origin, the United Kingdom has failed to fulfil an obligation incumbent on it under Article 30 of the EEC Treaty.

2 The national legislation challenged by the Commission is the Trade Descriptions (Origin Marking) (Miscellaneous Goods) Order 1981 (Statutory Instrument 1981 No 121) which entered into force on 1 January 1982.

3 Article 2 of that Order provides that no person may supply or offer to supply by retail the goods listed in the Schedule to the Order, other than second-hand goods and goods supplied in certain special circumstances, unless the goods are marked with or accompanied by an indication of origin. In a case in which the goods are exposed for supply and the indication of origin would not be conveyed until after delivery, such an indication must also be displayed near the goods. The indication of origin must be clear and legible; it must not in any way be hidden or obscured or reduced in conspicuousness by any other matter, whether pictorial or not.

4 According to Article 1 of the Order, the 'origin' of goods means 'the country in which the goods were manufactured or produced'.

5 The Schedule to the Order lists the goods to which the Order applies. Those goods are divided into four categories: clothing and textile goods, domestic electrical appliances, footwear and cutlery.

6 Articles 3 and 4 of the Order contain detailed provisions concerning the requirements for non-retail suppliers and on advertisements, but those provisions are not the subject of this action.

7 By a letter dated 18 December 1981 the Commission drew the attention of the United Kingdom Government to the fact that, in the Commission's view, the requirements laid down in Article 2 of the Order constituted a measure having an effect equivalent to a quantitative restriction which was contrary to Article 30 of the EEC Treaty and not justified on any ground recognized by Community law as permitting a derogation from the principle of the free movement of goods in the Community.

8 In that letter the Commission pointed out *inter alia* that the Order imposed a not inconsiderable burden upon the retailer of any product listed in one of the four categories of goods covered by the Order. Under the scheme introduced by the Order, it remained for the retailer to prepare appropriate notices, display them near the goods and ensure throughout the day that the notices were not detached, knocked over, obscured or moved. None of those problems would arise if the product was already origin-marked at the time when it was delivered to the retailer, which would encourage the retailer to choose the course of selling only goods which are already origin-marked. The burden of the requirements laid down in the Order would inevitably be passed up the sales chain and come to rest on the manufacturer who, anxious to retain his customers, would feel obliged to origin-mark his products. Such a requirement would necessarily increase the production costs of the imported article and make it more expensive.

9 In its reply dated 10 February 1982 the United Kingdom Government first stated that the contested Order applied only to retail traders and that therefore a potential effect on imports would be too random in nature to come into consideration for the possible application of Article 30. Furthermore, the origin information was of sufficient value to the great majority of United Kingdom consumers in the sectors to which the Order applied to constitute a measure which was justified *vis-à-vis* the requirements of Community law.

10 The United Kingdom Government suggested in its reply that, if the Commission agreed, the Order could be amended so that in future the retailer could choose

between an indication of national origin or the marking 'Made in the European Community'. Such a suggestion would be in conformity in all essential respects with a proposal for a directive on the approximation of the laws of the Member States relating to the indication of the origin of certain textile and clothing products, which the Commission submitted to the Council in 1980 (Official Journal C 294, p. 3) but which it has since withdrawn.

11 In its reasoned opinion, issued on 14 February 1983, the Commission maintained its position. It pointed out that the proposal for a directive with which the United Kingdom Government wished to draw a parallel had received a negative opinion from the Economic and Social Committee in 1981 (Official Journal C 185, p. 32). Although the Committee believed that it was essential for consumers to be able to make their buying decisions in the light of adequate information, it considered that the indication of a product's country of origin did not fill a genuine consumer need; other information, such as price, composition, grade, quality and instructions for use, were more important. The Commission agreed with that opinion.

12 When the United Kingdom Government reported that it felt unable to comply with the reasoned opinion, the Commission brought this action.

13 The United Kingdom's defence is in substance limited to developing the two arguments which it has already put forward during the procedure prior to the application to the Court. First, it contends that the Order is a national measure which applies to imported and national products alike and the effect of which on trade between Member States is uncertain, if not non-existent. Secondly, it maintains that, in the case of the goods to which the Order applies, the requirements relating to indications of origin meet the requirements of consumer protection since consumers regard the origin of the goods which they buy as an indicator of their quality or true value.

14 Those two arguments must be examined in turn.

15 As regards the possible effect of the contested Order on trade, the United Kingdom points out that the requirements laid down in Article 2 of the Order concern the retail sale of all the goods covered by the Order, whether imported or not. Some of those goods, for example woollen knitwear and cutlery, are produced in the United Kingdom in substantial quantities.

16 It should first be observed, with regard to that argument, that in order to escape the obligations imposed on him by the legislation in question the retailer will tend, as the Commission has rightly pointed out, to ask his wholesalers to supply him with goods which are already origin-marked. That tendency has been confirmed by complaints received by the Commission. Thus, it emerges from the documents before the Court that the Groupement des industries françaises des appareils d'équipement ménager [French Domestic Appliance Manufacturers' Association] informed the Commission that French manufacturers of domestic appliances who wish to sell their products on the United Kingdom market have had to mark such products systematically in response to pressure brought to bear on them by their distributors. The effects of the contested provisions are therefore liable to spread to the wholesale trade and even to manufacturers.

17 Secondly, it has to be recognized that the purpose of indications of origin or origin-marking is to enable consumers to distinguish between domestic and imported products and that this enables them to assert any prejudices which they may have against foreign products. As the Court has had occasion to emphasize in various contexts, the Treaty, by establishing a common market and progressively approximating the economic policies of the Member States seeks to unite national markets in a single market having the characteristics of a domestic market. Within such a market, the origin-marking requirement not only makes the marketing in a Member State of goods produced in other Member States in the sectors in question more difficult; it also has the effect of slowing down economic interpenetration in the Community by handicapping the sale of goods produced as the result of a division of labour between Member States.

18 It follows from those considerations that the United Kingdom provisions in question are liable to have the effect of increasing the production costs of imported goods and making it more difficult to sell them on the United Kingdom market.

19 The second argument advanced by the United Kingdom is in effect that the contested legislation, applicable without distinction to domestic and imported products, is necessary in order to satisfy imperative requirements relating to consumer protection. It states that a survey carried out amongst United Kingdom consumers has shown that they associate the quality of certain goods with the countries in which they are made. They like to know, for example, whether leather shoes have been made in Italy, woollen knitwear in the United Kingdom, fashion-wear in France and domestic electrical applicances in Germany.

20 That argument must be rejected. The requirements relating to the indication of origin of goods are applicable without distinction to domestic and imported products only in form because, by their very nature, they are intended to enable the consumer to distinguish between those two categories of products, which may thus prompt him to give his preference to national products.

21 It must also be observed that the fact that United Kingdom consumers associate a product's quality with its national origin does not appear to have been a consideration which prompted the United Kingdom Government when it suggested to the Commission that, as far as the Member States of the Community were concerned, it was prepared to accept the indication 'Made in the European Community'. Besides, if the national origin of goods brings certain qualities to the minds of consumers, it is in manufacturers' interests to indicate it themselves on the goods or on their packaging and it is not necessary to compel them to do so. In that case, the protection of consumers is sufficiently guaranteed by rules which enable the use of false indications of origin to be prohibited. Such rules are not called in question by the EEC Treaty.

22 Those considerations lead to the conclusion that Article 2 of the Order constitutes a measure which makes the marketing of goods imported from other Member States more difficult than the marketing of domestically-produced goods and for which Community law does not recognize any ground of justification. That provision therefore falls within the prohibition laid down in Article 30 of the EEC Treaty.

23 It must therefore be declared that, by prohibiting the retail sale of certain goods imported from other Member States unless they are marked with or accompanied by an indication of origin, the United Kingdom has failed to fulfil an obligation incumbent on it under Article 30 of the EEC Treaty.

Costs

24 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that, by prohibiting the retail sale of certain goods imported from other Member States unless they are marked with or accompanied by an indication of origin, the United Kingdom has failed to fulfil an obligation incumbent on it under Article 30 of the EEC Treaty.

(2) Orders the United Kingdom to pay the costs.

Bosco Due Kakouris

Pescatore Koopmans Everling Bahlmann Galmot Joliet

Delivered in open court in Luxembourg on 25 April 1985.

P. Heim
Registrar

G. Bosco
President of the First Chamber
Acting as President