

JUDGMENT OF THE COURT

11 October 1990 *

In Case C-210/89,

Commission of the European Communities, represented by Sergio Fabro, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremis, a member of the Commission's Legal Department, Wagner Centre,

applicant,

v

Italian Republic, represented by Professor Luigi Ferrari Bravo, Head of the Legal Department at the Ministry of 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-Adélaïde,

defendant,

APPLICATION for a declaration that, by making the importation of cheeses into Italy conditional upon compliance with Law No 396 of 2 February 1939, in particular those provisions which prohibit the production for sale of cheeses whose fat content is lower than that prescribed by the Italian legislation (Article 1 of the abovementioned law), the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty and Article 22(1) of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176),

* Language of the case: Italian.

THE COURT,

composed of: O Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), F. A. Schockweiler and F. Grévisse, Judges,

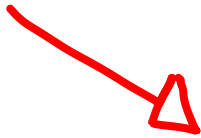
Advocate General: W. Van Gerven
Registrar: H. A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument submitted by the parties' representatives at the hearing on 13 June 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 5 July 1990,

makes the following



Judgment

- 1 By application lodged at the Court Registry on 6 July 1989, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by making the importation of cheeses conditional upon compliance with Italian Law No 396 of 2 February 1939, in particular those provisions which prohibit the production for sale of cheeses whose fat content is lower than that prescribed by the Italian legislation, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty and Article 22(1) of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products.
- 2 Italian Law No 396 of 2 February 1939 prohibits the production for sale and the marketing of cheeses whose fat content, in relation to dry matter, is lower than a given minimum, specified in a table annexed to the law, which varies according to the different types of cheese.

- 3 Taking the view that that law hindered the importation into Italy of cheeses with a lower fat content which were lawfully manufactured and marketed in the other Member States, and therefore constituted a measure having equivalent effect to a quantitative restriction on imports contrary to Article 30 of the EEC Treaty, the Commission initiated the procedure provided for in Article 169 of the Treaty.
- 4 Reference is made to the Report for the Hearing for a fuller account of the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 5 As Community law stands, there are no common or harmonized rules on the manufacture and marketing of cheese. It is therefore for each Member State to regulate, within its own territory, the conditions governing the manufacture and marketing of that product.
- 6 However, the Member States may exercise that power only within the limits imposed on them, in particular by the provisions of the Treaty relating to the free movement of goods.
- 7 In that regard, it should be noted that Article 30 of the Treaty, whose terms are, moreover, referred to in Article 22(1) of Regulation No 804/68 of 27 June 1968, prohibits quantitative restrictions on imports and all measures having equivalent effect between Member States.
- 8 On account of their disparity, national rules on the marketing of products may constitute an obstacle to intra-Community trade when they apply, as in this case, to products imported from a Member State in which they are lawfully manufactured and marketed.

- 9 The Commission is therefore right in maintaining that the Italian legislation in question constitutes a measure having equivalent effect within the meaning of Article 30 of the Treaty, in so far as its effect is to prohibit the importation of cheeses with a fat content lower than that prescribed by that legislation from other Member States in which they are lawfully manufactured and marketed.
- 10 The Italian Republic does indeed maintain that the contested legislation does not prohibit the importation or sale of such products, provided they are not released for consumption under the name 'cheese'.
- 11 However, even if it were so limited in its scope, the Italian legislation would still have to be regarded as a measure having equivalent effect to a quantitative restriction on imports prohibited by Article 30 of the Treaty.
- 12 The Court has pointed out, in particular, in its judgment in Case 286/86 *Ministère public v Deserbais* [1988] ECR 4907, that it cannot be stated in principle that a Member State may not lay down rules making the use by national producers of the generic name 'cheese' subject to the observance of a minimum fat content.
- 13 As the Court also stated in the same judgment, however, it would be incompatible with Article 30 of the Treaty and the objectives of a common market to apply such rules to imported cheeses as well where those cheeses have been lawfully produced and marketed in another Member State under the same generic name but with a lower fat content. The Member State of importation cannot prevent the importation and marketing of such products under the generic name 'cheese' where the consumer is given adequate information.
- 14 The Italian Republic also relies on the absence of any Community rules on the production, marketing and designation of cheeses and on the differences between national rules which envisage in this area inconsistent and contradictory designations. It argues that, in the light of that situation, the application of the principle of the free movement of goods which comply with the rules of the State in which

they are manufactured, and not with the rules of the State into which they are imported and released for consumption, would give rise to serious confusion to the detriment of consumers in a country such as Italy where national legislation reserves the designation in question to cheeses with a minimum fat content.

- 15 That argument must be rejected.
- 16 Rules hindering intra-Community trade which, as in this case, are applicable to domestic and imported products alike, may indeed be justified in the light of Article 30 of the Treaty if they are necessary to satisfy mandatory requirements relating *inter alia* to consumer protection and fair trading.
- 17 In this case, however, no such justification is possible since, in order to ensure consumer protection and fair trading, it would be sufficient for the Italian authorities to prescribe adequate labelling so as to provide correct information on the actual fat content of cheeses to enable consumers to make their choice in full knowledge of the facts.
- 18 It must therefore be held that, by making the importation and marketing of cheeses originating in other Member States where they are lawfully manufactured and marketed conditional upon compliance with a minimum fat content or, according to the Italian Government's interpretation of its national legislation, by prohibiting the importation and marketing under the name 'cheese' of cheeses not complying with that minimum fat content from other Member States where they are lawfully marketed under that name, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty and Article 22(1) of Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products.

Costs

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

On those grounds,

THE COURT

hereby:

- (1) Declares that, by making the importation and marketing of cheeses originating in other Member States where they are lawfully manufactured and marketed conditional upon compliance with a minimum fat content or, according to the Italian Government's interpretation of its national legislation, by prohibiting the importation and marketing under the name 'cheese' of cheeses not complying with that minimum fat content from other Member States where they are lawfully marketed under that name, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty and Article 22(1) of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products;
- (2) Orders the Italian Republic to pay the costs.

Due	Mancini	O'Higgins	
Moitinho de Almeida	Rodríguez Iglesias	Schockweiler	Grévisse

Delivered in open court in Luxembourg on 11 October 1990.

J.-G. Giraud
Registrar

O. Due
President

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