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INFORMATION MEMO

Article 226: first ruling by the Court of Justice

(Case 13/63: Government of the Italian Republic
v. EEC Commission)

By decision of January 17, 1963 the Commission authorized the French Government to adopt safeguard measures under Article 226 against imports of refrigerators and their components from Italy. The Commission justified its decision mainly on the grounds that French output had declined despite increased consumption and five French factories manufacturing this item had been forced to close down. The decision was designed to enable French industry to adapt itself to the new conditions.

Under the safeguard measures, the Italian Republic was to levy until July 31, 1963 a special degressive charge on refrigerator exports. This charge was higher not only than the duty levied in France before customs disarmament began, but also than the rate at which the common external tariff had been bound.

The Italian Government sued for annulment of the Commission's decision, alleging violation of Article 7 of the Treaty (Article 7 prohibits discrimination on grounds of nationality) and of the principle of Community preference: in its endeavour to observe the rules of GATT the Commission had, in Italy's view, infringed those of the Treaty. Italy also claimed that the reasons advanced by the Commission in giving its decision had been insufficient.

The Commission replied that in any case imports from Italy were still in a position to compete with similar products from non-member countries, and that the special charge payable by Italian exporters had not been calculated accurately by the Italian authorities.

On the question of the legality of the decision attacked, the Advocate General examined the errors of substance alleged by the appellant and moved that the appeal be rejected. In his opinion the decision of the Commission had struck a fair balance between French, Italian and Community claims.

In a judgment of July 17, 1963, the Court rejected the Italian appeal, finding that the Commission's diagnosis of a decline in output accompanied by an increase in imports and a fall in refrigerator prices

as evidence of the existence of "serious difficulties liable to persist" within the meaning of Article 226 had been legitimate. The fact that the producers concerned had themselves undertaken to re-organize their sector did not disprove the existence of such difficulties; in fact if they had not done so, Article 226 could not have been applied in the first place.

The Court ruled that in authorizing the measure attacked, the Commission was entitled to distinguish between Common Market countries rather than between Common Market companies, since it had noted a difference in price levels in different countries. If it had treated different situations in exactly the same manner, this would in actual fact have been tantamount to discrimination.
