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INFORMATION MEMO

Preliminary ruling by the Court of Justice in Sopeco v. Albatros.
The Treaty clauses concerning quantitative restrictions are not self-executing.

The Court of Justice of the European Economic Community has just given its ruling in the case "Sopeco v. Albatros", which arose as follows:

On 9 March 1959 the Albatros Company of Rome entered into a contract to supply 6 000 metric tons of petrol per year to the Sopeco Company of Paris for importation into France. On 28 April of the same year, Sopeco advised Albatros that it had failed to obtain the necessary import licence from the French authorities and could not therefore fulfil the contract. Albatros brought an action against Sopeco before the Civil Tribunal of Rome for breach of contract.

The import of petroleum into France is governed by the law of 30 March 1928. In its defence, Sopeco submitted that French law in this field was incompatible with the EEC Treaty, in particular with the provisions concerning the elimination of quantitative restrictions. Its failure to execute the contract was therefore due to 'force majeure'.

The parties having requested an adjournment, the Rome Tribunal submitted four interlocutory questions to the Court, the purpose being to establish whether the Treaty provisions on the elimination of quantitative restrictions (Articles 30, 31, 32, 33 and 35) involved abrogation of the laws of the Member States in this matter.

The Court's ruling

The Court declares itself competent, having been called upon not to rule on the compatibility with the Treaty of French law on petroleum imports, but to interpret the Treaty clauses relevant to the legal issues raised by the Tribunal of Rome.

The Court's reply to the questions submitted by the Tribunal is in the negative: "None of the provisions of the Treaty referred to by the Tribunal of Rome implied that on the entry into force of the Treaty quantitative restrictions, discriminatory measures or measures of equivalent effect in force at the time should be automatically rescinded, nor did any of the said provisions lay an obligation on the Member States to withdraw such restrictions or measures completely by 1959."

The Court points out that the provisions forbidding any tightening of the restrictions existing when the Treaty came into force could, of their very nature, apply only to measures adopted after that date (Articles 31(1), 32(2) and 37(2)). These restrictions were to be withdrawn only by stages during the transition period, according to a specified time-table (Articles 32(2), 33 and 37(1 and 3)).

The Court did not consider the question whether French law in this field constituted a government monopoly within the meaning of Article 37 of the Treaty. Nor did it decide the question whether the application of Article 37 to government monopolies overruled any other provisions of the Chapter relating to the elimination of quantitative restrictions, the effect of either interpretation for the legal issues raised by the Tribunal being precisely the same.