Alþingi, 16. apríl 1996.

Eftirlitsstofnun EFTA,
b.t. Björns Friðfinnssonar,
faxnr. 00 32 2 2861 804.

Varðar: Frumvarp til laga um breyting á lögum nr. 97/1987, um vörugjald.

Á Alþingi hefur verið lagt fram frumvarp til laga um breytingu á vörugjaldslögum, nr. 97/1987. Er með frumvarpinu stefnt að því að breyta þeim ákvæðum laganna er varða álagningu vörugjalds og Eftirlitsstofnun EFTA hefur gert athugasemdir við. Er þar annars vegar lagt til að greiðslufrestur á vörugjaldi af innfluttum vörum og innlendum framleiðsluvörum verði samræmdur og hins vegar að leiðrétta mismunandi gjaldstofn þessara vara með því að breyta vörugjaldi í magngjald.

Málinu hefur nú að lokinni 1. umræðu verið vísað til efnahags- og viðskiptanefndar. Í 6. gr. frumvarpsins er gert ráð fyrir að vörugjald af innfluttum vörum greiðist við tollafgreiðslu en vörugjald af innlendum framleiðsluvörum reiknist við sölu eða afhendingu vöru frá framleiðanda.

Vegna þeirrar stöðu sem þetta mál er komið í er mikilvægt að fyrirhuguð lagabreyting nái settu marki, þ.e. að lögin svo breytt samræmist þeim skuldbindingum sem Ísland hefur gengist undir með aðild að samningnum um Evrópska efnahagssvæðið. Formaður efnahags- og viðskiptanefndar hefur falið undirrituðum að óska álits ESA á því hvort vafalaust sé að mismunandi útfærsla á álagningu vörugjalds, skv. 6. gr., eftir því hvort varan er innlend eða innflutt uppfylli þessar kröfur. Er þeirri ósk hér með komið á framfæri.

Virðingarfyllst,

Guðjón Rúnarsson,
ritari efnahags- og viðskiptanefndar.
(s: 5630606, fax: 5630610)

Meðfylgjand:

Ljósrit af umræddu frumvarpi.

EFTA SURVEILLANCE AUTHORITY

74 Rue de Trèves, B-1040 Brussels, Tel: (32)2 286 1811, Fax: (32)2 286 1800

College

Case Handler: Holger Standertskjöld
Tel.: 32 2 286 18 73

Brussels, 19 April 1996
Doc. No: 96-2015-D
Ref. No: GOO833.300.001

Mr Guðjón Rúnarsson
Alþingi
IS-150 Reykjavik
ICELAND

Re: Bill amending Commodity Tax Law No. 97/1987, as subsequently amended

Dear Mr Rúnarsson,

I should first like to recall that we had offered the Icelandic Authorities the opportunity to discuss the necessary alignment of the commodity tax legislation since 1994. However, much to our regret and in spite of the fact that the Authority had raised the matter at several occasions both formally and informally, corrective action was not taken. The Authority, therefore, had to bring the matter to the Court where it will further pursue the case in accordance with the relevant procedures.

I need to add that the limited time available since we have received the draft text of the new legislation has only allowed to study the bill in a cursory manner. On an entirely personal basis I could say that, at a first glance, no incompatibilities with the EEA Agreement were identified as long as the different basis on which the tax is calculated on domestic products on the one hand and on imported products on the other hand does give the corresponding result. It should, however, be underlined that the criteria are whether the legislation might lead in certain cases to a tax burden on imports which exceeds the tax burden on domestic products or would in practice lead to discrimination.

As stated above, these are personal views, and the views of the Authority will have to be given within the framework of the formal proceedings. The Authority reserves its right to revert to the matter once the final legislation has been adopted by the Icelandic Parliament. A final assessment of the legislation can only be made in light of the application in practice of it. The Authority might therefore also have cause to comment upon the legislation in light of possible future complaints.

I would also like to draw your attention to a case which is before the EC Court of Justice (Grundig Italiana v. Ministero delle Finanze C-68/96), which addresses issues which might be relevant in the context of the modification of the Icelandic legislation.

Yours sincerely,

Björn Friðfinnsson
College Member

Encl.: Information about the mentioned court case

Translation

Case C-68/96-1

TRIBUNALE DI TRENTO
(District Court, Trento)

...

ORDER (15 February 1996)

Civil proceedings:

Grundig Italiana SpA,

plaintiff,

v

Ministero delle Finanze (Ministry of Finance)

defendant

Facts and Law

By writ served on 22 July 1993, Grundig Italiana SpA instituted proceedings before the Tribunale di Trento against the Ministry of Finance of the Italian Republic for a declaration that Article 4 of the Decree-Law of 30 December 1982, converted into law and amended by Law No 53 of 28 February 1983, and supplemented by the implementing provisions of Ministerial Decree

of 23 March 1983, introducing the national consumption tax on audiovisual and photo-optical products, is incompatible with Community law, and for an order that the defendant Administration refund to it the sum of LIT 112 236 330 770.00 (and interest thereon at the legally prescribed rate from the date of the claim to the date of payment) paid by the plaintiff whilst those provisions were in force (1 January 1983 to 31 December 1992). Grundig Italiana claimed that those provisions contravened Article 95 of the EEC Treaty, which prohibits the introduction of discriminatory tax provisions, and Article 33 of the Sixth Council Directive, 77/388, of 17 May 1977, which prohibits the introduction of national taxes in the nature of turnover taxes. With regard to the first alleged infringement, the plaintiff stated that the taxable amount for the tax in question was determined as follows by Article 4 of Law No 53 of 28 February 1983: for domestic products, on the basis of the ex-works (*franco fabbrica*) value, net of the costs of despatch, distribution and intermediaries' expenses and any other costs of marketing in Italy; and for imported products, on the basis of the free-at-national-frontier customs value.

The Ministerial Decree of 23 March 1995 laying down procedures for application of the tax laid down detailed arrangements for calculation of the taxable amount, as follows:

1. For domestic products, it is the overall industrial cost, including both the normal value and the costs of presentation and packaging; the Decree provided that, in respect of domestic products, the price due on sale of the products could be declared as the taxable amount, subject to a flat-rate deduction of 35% of that price;

2. For imported products, it is the free-at-Italian-frontier value, determined on the basis of the value for customs purposes within the meaning of Community Regulation No 1224/80/EEC, plus any costs and charges for delivery to the Italian frontier, including duties due for release into free circulation within the EEC, less any components of the price paid or to be paid for transport and marketing within national customs territory.

In the plaintiff's opinion, the specific procedures for the application of the tax led to unequal treatment as between Italian domestic products and imported Community products, in that the consumption tax payable on the latter was greater; the consequent discrimination was in breach of Article 95 of the Treaty, the aim of which is to guarantee the free movement of goods between Member States under normal conditions of competition, eliminating protectionism of any kind. As regards the alleged illegality of the legislative provisions introducing the consumption tax at issue, by virtue of their contravention of Article 33 of the Sixth Council Directive (77/388), Grundig Italiana maintained that certain characteristics of the tax placed it on the same footing as a tax on turnover; although not having certain characteristics peculiar to VAT, it was nevertheless liable to interfere with the Community VAT system.

The Ministry of Finance resisted the plaintiffs claim on the following grounds:

1. The national tax introduced by Article 4 of Law No 53 of 28 February 1983 formed part of the internal taxation system and therefore did not have an effect equivalent to that of a customs duty.

2. The allegation of discrimination was groundless because the taxable amount for imported products (value for customs purposes) ultimately turned out to be the same as that arrived at for domestic products (ex-works value).

3. There was no apparent infringement of Article 33 of the Sixth Directive because the tax at issue displayed characteristics entirely different from those of VAT.

In the alternative, the Finance Administration submitted that:

A. Any reimbursable debt related only to the difference between the tax levied on imported products and that levied on domestic products.

B. Pursuant to the first paragraph of Article 29 of Law No 428 of 29 December 1990, the right of action for reimbursement was time barred after three years; in addition there was a five-year time bar under Article 4 of Law No 53/1983.

C. The tax burden had been passed on to the buyers of the imported products and therefore reimbursement was excluded pursuant to Article 29(2) and (7) of Law No 428/1990.

...

This court considers that, as a preliminary to any other questions raised by the parties, it is necessary to determine whether or not the provisions introducing and applying the national consumption tax at issue are incompatible with Community law. It is clear that an essential precondition for the success of Grundig Italiana's claim for reimbursement of sums unduly paid is a finding that the said legislative provisions are incompatible with Community law.

As regards Article 33 of the Sixth Directive, the plaintiff's allegation of an infringement appears unfounded. The Court of Justice has already made it clear that the purpose of that provision is to prevent the introduction of taxes, duties or charges which, through being levied on the movement of goods and services in the same way as VAT, would jeopardize the functioning of the common system of VAT. For that reason, it is prohibited to introduce taxes, duties or charges displaying the essential characteristics of VAT (judgment of 7 May 1992 in Case C-347/90 and judgment of 31 March 1992 in Case C-200/90). The same Court of Justice has described the essential characteristics of VAT as follows: VAT applies generally to transactions relating to goods or services; it is proportional to the price of those goods or services; it is charged at each stage of the production and distribution process; and, finally, it is imposed on the added value of goods and services, since the tax payable on a transaction is calculated after deduction of the tax paid on the previous transaction (see the judgments cited above). It can be easily seen that none of those characteristics (which, let it be repeated, are regarded by the Court of

Justice as constituting the essential features of VAT) is to be found in the national consumption tax governed by Law No 53/1983, since the latter does not represent a burden of a general nature, it is applied in a single phase upon release of the goods for consumption, and it does not incorporate machinery for the deduction of tax paid at an earlier stage.

As regards the alleged infringement of Article 95 of the EEC Treaty, this court considers that there is a reasonable doubt as to the possibility of a conflict with Community law, for which reason it is necessary to make a reference to the Court of Justice for preliminary ruling under Article 177 of the EEC Treaty.

The national consumption tax introduced by Article 4 of the Decree-Law of 30 December 1982, converted into law by Law No 53 of 28 February 1983, for which implementing provisions are laid down by the Ministerial Decree of 23 March 1983, is levied on the audiovisual and photo-optical products described in detail therein, both domestic and imported, at the same rates. However, the taxable amount is determined in different ways:

1. In the case of *domestic products,* the taxable amount is determined by reference to the overall industrial cost of the individual item, including, as well as the normal value referred to in Article 14 of Presidential Decree No 633 of 26 October 1972, or the value for customs purposes of processed or assembled goods that have been supplied by others in order to be made up or have been made up under the temporary import procedure, the cost of preparation and packaging; excluded are the costs of despatch, distribution, intermediate costs and all other expenditure relating to release for consumption on the national market. Domestic producers are entitled to indicate as the taxable value the price charged when the products are sold, after a flat-rate deduction of 35% of the said price. The Ministry of Finance may determine a flat-rate deduction of a different percentage for certain categories of products after assessing the impact of the costs of internal marketing on the price normally charged. Recourse to the flat-rate deduction precludes any other deduction from the price charged for the purpose of determining the taxable value. The authorities must treat the taxable value thus arrived at as appropriate unless the

price charged differs from the normal value for the products sold, as defined in Article 4 of Presidential Decree No 633/1972.

2. For *imported products,* the taxable value is the value at the Italian frontier determined on the basis of the value for customs purposes as defined by Community Regulation (EEC) No 1224/80, plus any costs and charges for delivery to the Italian frontier, including duties payable for release into free circulation in the Community, less any price components paid or to be paid in respect of carriage and marketing within national customs territory.

The different taxable amounts for domestic products and products from other Member States and the grant only to domestic producers of the right to make a flat-rate deduction of 35% of the selling price point to the possibility of an infringement of Article 95 of the Treaty as a result of the discrimination deriving from the abovementioned rules, to the detriment of foreign producers.

The latter, in fact, may only deduct from the taxable amount part of the costs of carriage, marketing and distribution (by contrast with domestic producers, who can deduct them in their entirety): the taxable value still includes the costs of carriage and marketing as far as the Italian frontier and all the further costs of distribution and advertising incurred outside Italian national customs territory.

It is difficult to avoid the conclusion that, as a result of this difference in the determination of the taxable value, the tax will have a greater impact on imported products than on domestic products.

Unless it is concluded -- the view contended for by the Finance Administration -- that it is justified to exclude, for the purposes of calculating the taxable amount, any deduction of the expenses incurred outside national customs territory, having regard to the nature of the tax at issue, which is based on the assumption that the products are to be released (onto the market) for domestic consumption: that gives rise to

further doubt as to the legality of the legislative provisions at issue, which makes it appropriate to seek a ruling from the Court of Justice.

The alleged discrimination may, finally, be looked at from another standpoint: under the procedures for collection of the tax at issue, domestic producers are required to submit a quarterly return containing the essential details needed for assessment within the month following the relevant calendar quarter and to pay the tax within that period; for importers, the tax is assessed and collected at the time of import through customs. This involves different payment times for the same tax and the provision to that effect, if not justified on technical grounds, may have a discriminatory effect.

It will be recalled that the Court of Justice has repeatedly made it clear that, for the purposes of applying Article 95 of the Treaty, it is necessary to consider, in addition to the taxable amount, the procedures for collection of the tax (judgment of 22 March 1977 in Case 74/76 and judgment of 27 February 1980 in Case 55/79).

On those grounds,

having regard to Article 177 of the EEC Treaty,

this court directs that the proceedings be stayed and that the following question be referred to the Court of Justice for a preliminary ruling:

"Must Article 95 of the EEC Treaty be interpreted as prohibiting a Member State from introducing and collecting a national consumption tax of the kind provided for by Article 4 of the Decree-Law of 30 December 1982, converted into law by Law No 53 of 28 February 1983, and further governed by the Decree of the Ministry of Finance of 23 March 1983, in so far as different taxable amounts are determined for domestic products and for those imported from other Member States and different procedures are laid down for collection of the tax on the same products?"