Implementing the Stabilisation and Association Agreement in Albania: Avoiding Discriminatory Practices in the Free Movement of Goods

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Abstract

This article offers a practical insight in the functioning of the SAA's chapter on the free movement of goods. It examines a perceived breach by Albania of SAA obligations over the importation of second-hand cars from EU Member States. The analysis of the Albanian tax on the import of such vehicles is offset with an examination of landmark ECJ jurisprudence on the matter. The authors argue that the Court's case-law offers a clear guideline for the Albanian authorities in their future crafting and enactment of legal measures and administrative practices in the area of free movement of goods, as indeed more generally. As such, the case study presented in this article offers an illustration of the need for the proper approximation of (potential) candidate countries' existing legislation to that of the EU and of the effective implementation of the former in one of the key operative areas of the SAA.

Keywords: European Union, Albania, Stabilisation and Association Agreement, free movement of goods, industrial products, imports, custom duties and measures having equivalent effect, standstill clause, internal discriminatory or protective taxes, second-hand cars.

A. Introduction

Based on strong political conditionality, the European Union's Stabilisation and Association Process for the Western Balkans offers a framework for trade liberalization, financial assistance and new contractual relations in the form of Stabilisation and Association Agreements, an extensive part of which relate to internal market issues.[1] On 1 April 2009, the Stabilisation and Association Agreement (SAA) concluded between the European Communities and their Member States, on the one hand, and the Republic of Albania, on the other, entered into force.[2] Under the terms of this Agreement, the parties have agreed

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[1] *See*, *generally*, S. Blockmans, Tough Love: the European Union's Relations with the Western Balkans (2007). *See also* S. Gstöhl, *Political Dimensions of an Externalization of the EU's Internal Market*, College of Europe, Department of EU International Relations and Diplomacy Studies, Working Paper 3/2007.

[2] The SAA Albania is published in the Official Journal of the EU, OJ 2009 L 107/166. With the

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to a progressive abolition of trade barriers so as to guarantee the free movement of goods between Albania and EU Member States and thus gradually create a free trade area between them. Throughout the European integration process, the free movement of goods has been a challenging aspect of trade liberalization. It entails a huge amount of reforms aimed at the abolition of laws, administrative and other practises that hinder the free flow of goods, and the adoption of new legal and administrative measures which stimulate trade in products among the states entering this phase of economic integration. Trade liberalisation is a moving target, as states engaged in the process must be cautious not to enact new laws or create new practices which discriminate goods imported from states participating in the free trade area, for instance by levying duties or imposing taxes higher than those levied on similar domestic goods. Implementing the SAA obligations on the free movement of goods is not only an essential precondition for the future accession of Albania to the European Union, it also represents a crucial element in the preparation of the Albanian market for the competitive pressures of the Union's internal market.

The purpose of this article is not to analyze the state of trade liberalization between the EU and Albania. Rather, this paper offers a practical insight in the functioning of the SAA's chapter on the free movement of goods. It examines a perceived breach by Albania of SAA obligations over the importation of second-hand cars from EU Member States. The first part of this article (section B) consists of an analysis of the Albanian tax on the import of used vehicles, a tax which was amended in May 2010 because it was deemed contrary to the SAA as it constituted either a discriminatory regime under the SAA or a charge having effects equivalent to that of custom duties. The second part of the paper will offset this analysis with an examination of ECJ jurisprudence on the taxation of second-hand vehicles imported from another EU Member State (section C). Arguably, the Court's case-law offers a clear guideline for the Albanian authorities in their future crafting and enactment of legal measures and administrative practices in the area of free movement of goods, as indeed more generally. As such, the case study on the taxation over used cars imported from the EU into Albania offers an illustration of the need for the proper approximation of Albania's and other (potential) candidate countries' existing legislation to that of the European Union and of the effective implementation of the former in one of the key operative areas of the SAA.[3]

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entry into force of the Lisbon Treaty on 1 December 2009, the European Communities have ceased to exist. In this article, we therefore only speak of the European Union, except when reproducing names of or quotes from official documents which use the pre-Lisbon terminology and treaty numbering.

[3] Art. 70(1) of the SAA provides that "The Parties recognise the importance of the approximation of Albania's existing legislation to that of the Community and of its effective implementation. Albania shall endeavour to ensure that its existing laws and future legislation shall be gradually made compatible with the Community acquis. Albania shall ensure that existing and future legislation shall be properly implemented and enforced." Para. 2 prescribes that "This approximation shall start on the date of signing of this Agreement, and shall gradually extend to all the elements of the Community acquis referred to in this Agreement by the end of the transitional period as defined in Article 6."

B. The Taxation Regimes over Imported Second-hand Vehicles

I. The SAA Regime on Free Movement of Goods

The SAA aims to support the efforts of Albania to strengthen its democracy, the rule of law and regional cooperation, and to develop its economy in order to complete the transition from a centrally planned to a freely functioning market integrated into the EU's single market.[4] Like those of other Western Balkan countries, Albania's reform agenda under the SAA is impressive, covering areas ranging from political dialogue, regional cooperation, justice and home affairs to the liberalisation of the flow of goods, services, workers and capital.[5] Through its provisions, its Annexes and Protocols, the SAA prescribes an asymmetric and gradual trade liberalization focused on different categories of products in favour of the associated country, *i.e*. Albania. The liberalization of trade is set to occur on the basis of a pre-determined timetable, whereby custom duties, charges having equivalent effect, quantitative restrictions or measures having equivalent effect are to be abolished within a period of 10 years from the moment of the entry into force of the Agreement (Arts. 6, 16 and 17-31 SAA). Apart the abolition of all tariff barriers, the SAA enshrines substantial provisions intended to produce non-tariff trade liberalization, such as those in the areas of standards, intellectual property, customs administration and competition (*cf*. Arts. 71, 73 and 75 SAA).

II. The SAA in the Albanian Legal Order

According to Articles 5, 116 and 122 of the Albanian Constitution, international agreements ratified by the Republic of Albania are binding and prevail upon the domestic legislation from the moment they enter into force. Thus, the SAA is an integral part of the Albanian legal order since it entered into force on 1 April 2009. The Albanian legal order represents the monist constitutional system, by which international agreements become part and parcel of the domestic legislation and their binding force in the hierarchy of norms is below the Constitution and above laws and administrative acts. This means that the SAA as an international agreement ratified by the Albanian Parliament is binding from the moment it enters into force and that all existing and future domestic legislation should comply with it.

The free movement of goods is enshrined in Title IV of the SAA and more specifically regulated in the annexes and protocols, which form an integral part of the Agreement. Free movement of industrial product is foreseen in Articles 17 to 23 of the SAA. With regard to the latter, the SAA singles out two

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4 *See* Art. 1 of the SAA.

5 *See* Y. Zahariadis, *The Effects of the Albania-EU Stabilization and Association Agreement: Economic Impact and Social Implications*, ESAU Working Paper 17, Overseas Development Institute London, February 2007.

specific categories of products for which other regimes than that of the SAA apply: products falling within the realm of the Treaty establishing the European Atomic Energy Community (*cf*. Art. 17(2) SAA); and iron and steel, which – because of the importance they have in the development of Albania – are the object of Protocol 1 (*cf*. Art. 23 SAA). For all other industrial products the trade liberalization prescribed by the SAA is as follows:

- from the date of entry into force of the Agreement, industrial products originating from Albania will be imported into the EU:
  - free from custom duties (Art. 18(1) SAA) or any charges having an equivalent effect of custom duties (Art. 20 SAA);
  - without any quantitative restriction or any measures having an equivalent effect (Art. 18(2) SAA);
- upon the date of entry into force of the SAA, industrial products originating from the EU will be imported into Albania:
  - free from custom duties (Art. 19(1) SAA) and charges having an equivalent effect (Art. 20 SAA), except products listed in Annex 1 of the SAA. The latter are products which are deemed sensitive for the Albanian economy (*e.g*. salt suitable for human consumption, gas oils, shampoo, soap) and their liberalization will be implemented gradually, within a period of 5 years from the entering into force of the Agreement (Art. 19(2) SAA);
  - without quantitative restrictions or any measures having equivalent effect (Art. 19(3) SAA).

This legal framework is binding and shall apply to products originating in the EU or in Albania listed in Chapters 25 to 97 of the Combined Nomenclature, again with the exception of the products listed in Annex I (Art. 17 SAA). Chapter 87 of the Combined Nomenclature of Goods of 2009 classifies the different means of transportation, as well as their additional and functional parts. In this chapter, the motorized vehicles for the transportation of ten or more persons including the driver and the vehicles or other means of transportation mainly designated for the transportation of persons hold the codes 8702 and 8073, respectively. All the vehicles included under this list are classified as falling under a regime 'without tax'. So, with the entry into force of the SAA there is no more room to apply custom duties (*stricto sensu*) to the import into Albania of vehicles originating from the EU Member States.

III. Albanian Legal Framework on Import of Goods

Article 8 point 10 of the Albanian Custom Duties Code provides that 'import duties' are all the custom duties and other taxes that have the effects equivalent to that of custom duties which are paid on the moment of the importation of goods. With respect to used cars imported in Albania, the duties that should be paid are:

1. 'Custom duties', based on Article 28 of the Custom Code, Law no. 8449 dated on 27.01.1999, stand at a level of 0%.

2. The 'Environmental Tax' (ET, the so-called tax on imported used vehicles), based on Article 3 point 3/a and Article 4 point 3 of the Law 'On the National Taxes' no. 9975 dated on 28.07.2008, is calculated on the basis of the following formula:

   ET = (a fixed charge) x (the motor's volume) x (a coefficient for the years in use)

   a) The fixed rate is 20.000 leke for cars that run on normal fuel (benzene) and 25.000 leke for diesel cars;

   b) the car's capacity is expressed in 'cm^3' (cc);

   c) the coefficient differs according to the period of time the car has been used:

      i) up to 2 years of use, the coefficient is 0,0016;

      ii) from 2 to 4 years of use: 0,0024;

      iii) from 4 to 7 years of use: 0,0029;

      iv) 8 up to 10 years of use: 0,0032;

      v) over of 10 years of use: 0,0048.

   In any case the environmental tax should not be lower than 60.000 leke for vehicles used for more than 10 years and 40.000 leke for vehicles used for less than 10 years.[6]

3. 'VAT', based on Articles 2/b and 26 of the 'On the Value Added Tax' Law no. 7928 dated on 27.04.1995 (as amended), is calculated on the basis of the following formula:

   VAT = (CV+CD+ET) x 20%

   The Republic of Albania uses a system of taxation *ad valorem*, meaning that the VAT will be charged upon a percentage basis calculated on the basis of the sum of the customs value (CV, the base tax) of the imported goods, the custom duties (CD) and the environmental tax.[7] The first to be calculated is the base of the tax, in compliance with the Ministry of the Finance's Directive No. 1/3, dated on 19.04.2006 'On the custom duties of the vehicles'. This directive defines that the customs authorities, in order to calculate the price of a private vehicle in the trade with the EU, refer to the prices of vehicles indicated in the Italian magazine *Quattroroute*.[8] The value used for the calculation of the

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[6] The term 'years in use' should be understood to mean the difference of the year of its production and the year of its importation. Example: an Audi vehicle type A4, diesel, with a motor capacity of 1997 cm^3, production year 2005, imported in Albania in 2010, a fixed rate of 25.000 leke applies. The coefficient for years in use (5) is 0,0029. The Environmental Tax (ET) equals 25.000 x 1997 x 0,0029 = 144.782,50 leke.

[7] For new cars imported into Albania VAT is only paid in customs duties, because Art. 3, point 3/a of the 'On National Taxes' Law no. 9975 dated 28.07.2008, prescribes that the environment tax is applied only for imports of used vehicles.

[8] While this magazine reflects market prices in Italy, they not necessarily reflect those in Albania. Moreover, one could question the suitability of a commercial publication such as *Quattroroute* as an official source for calculating government taxes.

custom duties should be no less than 70% of the vehicle's value found in this source.[9]

4. Finally, the charge that should be paid to the customs authorities for import of a used vehicle (CUV) is calculated on the basis of the following formula:

$$CUV = CD + ET + VAT$$[10]

On 20 May 2010 the Albanian Parliament enacted Law no. 10280, "For some changes and additions to the Law no. 9975, dated 28.07.2008 'On National Taxes'", which brought some changes to the calculation of the environmental tax for imported second-hand vehicles. One of the most important changes is that the tax will extend not only to imported used cars but also to second-hand vehicles in circulation in Albania. This is reflected in the designation of the tax, which has been changed from 'environmental tax over imported second-hand cars' to 'tax for second-hand vehicles of transportation'. This tax will be levied either at the moment of importation or sale within the country. When the tax for a used vehicle is paid at the customs authorities on the moment of importation, and this car is resold within the country (Albania), the tax to be paid will be calculated as the difference between the value of the tax calculated in the moment of sale within the country and the tax paid to the customs authorities at the moment of importation. The new tax is calculated on the basis of the formula mentioned above, but the coefficients have been altered. The fixed rate for diesel cars will be 25 leke, and 20 leke for cars running on normal fuel. The fixed rate for the years of use have been changed to the following: i) cars: 0,5 for each year of use; ii) other vehicles: 0,25 for each year of use.[11]

In the explanatory report of the Council of Ministers, which by its legal initiative proposed this amended law to the Parliament, the changes to the calculation of the environmental tax on used cars were motivated on the basis of the obligation to approximate the legislation with the *acqui*s, in this case the relevant provisions of the SAA. In the next section, we will further explore the *rationale* for this change and examine its compliance with the SAA and the underlying case-law of the European Court of Justice.

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[9] In line with the example in footnote 8 above, the Audi vehicle type A4 from 2005, with a diesel motor capacity of 1997 cm^3, has a reference value of EUR 15.000 in the magazine. The custom duties are then calculated as 70% of EUR 15.000 = EUR 10.500. This is the base tax to which are added the expenditures of transport, which usually amount to EUR 155. This sum, i.e. the customs value (CV) of the vehicle, is then converted in Albania's currency 'leke': 10.655 x 137.65 (the exchange rate of the day of declaration before the customs authorities) = 1.466.660,75 leke. The VAT in our example would amount to (1.466.660,75 + 0,00 + 144.782,50) x 20% = 322.288,65 leke (or EUR 2,341,36).

[10] In our fictitious example, the CUV would amount to 0,00 + 144.782,50 + 322.288,65 = 467.071,15 leke (or EUR 3.393.18).

[11] One should note that the previous law only subjected cars to this environmental tax. The scope of application of the tax has now been extended to cover all vehicles used for transportation.

IV. Legal Classification of the Environmental Tax and Its Compliance with the SAA

The main question underpinning the recent amendment to the Law 'On National Taxes' is whether the environmental tax could have been interpreted as constituting a charge having equivalent effect according to Articles 18-20 SAA, or whether it ought to have been considered an internal tax pursuant to Article 34 SAA? To be sure, the SAA does not provide any definitions of the aforementioned terms. However, as these SAA provisions correspond to the wording of the Treaty on the Functioning of the European Union (TFEU, Arts. 30 and 110 resp.) and its predecessors (Art. 25 TEC resp. Arts. 95 EEC and 90 TEC), there is a need to refer to EU law directly, *i.e*. the jurisprudence of the European Court of Justice (ECJ, alternatively 'the Court'). After all, it was the elaborated work of the ECJ that produced the definitions and the regimes of application of the concepts at stake, since even the constituent treaties of the EU do not give any explanation of customs duties, charges having an equivalent effect, quantitative restrictions and measures having equivalent effect.

As a general rule, the Court has held that the prohibition of quantitative restrictions in Article 28 of the EC Treaty (TEC, now Art. 34 TFEU) does not extend to trade barriers covered by other specific Treaty provisions, such as obstacles having an effect equivalent to customs duties or barriers of a fiscal nature, which are covered by Articles 25 and 90 TEC (now Arts. 30 and 110 TFEU) respectively.[12] Nor can the provisions of the latter two articles be applied together: a charge cannot belong to both categories at the same time.[13] Since it is obvious that the tariffs paid before the Albanian custom authorities on imported second-hand cars are fiscal measures, we automatically exclude from the analysis the quantitative restrictions and measures having equivalent effect, since these are of a non-fiscal nature.[14]

The analysis then turns to the question whether the environmental tax on imported second-hand cars was to be regarded either as a charge having an effect equivalent to a custom duty on imports, or as an internal tax having discriminatory or protective effects? From the foregoing, it is clear that the environmental tax on imported used cars was not a custom duty *stricto sensu*, since it was not part of the general system of customs duties prescribed within the Albanian Custom Duties Code. To analyse the possibility of identifying this tax as a charge having

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[12] *See* Judgment of 11 March 1992 in *Joined Cases C-78-83/90*, *Compagnie Commerciale de l'Ouest and Others*, [1992] ECR I-1847, para. 20; and Judgment of 17 June 2003 in *Case C-383/01*, *De Danske Bilimportører v. Skatteministeriet,Told- og Skattestyrelsen*, [2003] ECR I-6065, para. 32.

[13] *See, for example*, Judgment of 29 April 2004 in *Case C-387/01*, *Weigel*, [2004] ECR I-4981, para. 63. According to the theory, Arts. 25 and 90 are mutually exclusive. *See* Judgment of 8 July 1968 in *Case 10/65*, *Deutschemann v. Germany*, [1965] ECR 469. *See also* C. Barnard, The Substantive law of the EU: The Four Freedoms 59 (2008).

[14] Judgment of 22 March 1977 in *Case 74/76*, *Iannelli & Volpi S.P.A. v. Ditta Paolo Meroni*, [1977] ECR 557.

equivalent effect of a custom duty, we should again refer to the definition provided by the ECJ in its jurisprudence, since neither the SAA nor the TFEU describe what these charges stand for:

> Any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic and foreign goods by reason of the fact that they cross a frontier […] constitutes a charge having equivalent effect […] even if it is not imposed for the benefit of the State, is not discriminatory or protective in effect and if the product on which the charge is imposed is not in competition with the domestic product.[15]

Therefore, one could reasonably argue that while Article 90 TEC (now Art. 110 TFEU) applies to a charge borne by imported, exported and domestic products internal to the Member State, Article 25 TEC (now Art. 30 TFEU) applies to charges levied at the frontier.[16] This means that the concept 'measures having equivalent effect' applies to charges levied at the border, while the phrase 'charges levied within the Member States' applies to internal taxes. In its *Co-Frutta* judgment, the Court emphasized:

> According to established case law of the Court, the prohibition laid down by [Art. 25 TEC] in regard to charges having equivalent effect covers any charge exacted *at the time* of or *on account of importation* which, being borne specifically by an imported product to the exclusion of the similar domestic product, has the result of altering the cost price of the imported product *thereby producing the same restrictive effect on the free movement of goods as a customs duty*.
>
> The essential feature of a charge having an effect equivalent to a customs duty which distinguishes it from an internal tax therefore resides in the fact that the former is borne solely by an imported product as such whilst the latter is borne both by imported and domestic products.[17]

The Court has consistently ruled that a pecuniary charge, which forms part of a general system of internal dues and which is applied systematically to categories of products according to objective criteria without regard to the origin of the products, falls within the scope of Article 90 of the EC Treaty (now Art. 110 TFEU).[18]

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[15] Judgment of 1 July 1969 in *Case 24/68*, *Commission v. Italy*, [1969] ECR 193. *See generally* Barnard, *supra* note 13, at 35-63. In *Brzezisnski*, the Court held: "As regards the question whether such a duty is a charge having equivalent effect, it is settled case-law that any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 23 EC and 25 EC […]." *See* Judgment of 18 January 2007 in *Case C-313/05*, *Brzezinski v. Dyrektor Izby Celnej w Warszawie*, [2007] ECR I-513, para. 22, with reference to, *inter alia*, Judgment of 17 July 1997 in *Case C-90/94*, *Haahr Petroleum*, [1997] ECR I-4085, para. 20; Judgment of 2 April 1998 in *Case C-213/96*, *Outokumpu*, [1998] ECR I-1777, para. 20; and Judgment of 5 October 2006 in *Joined Cases C-290/05 & C-333/05*, *Nádasdi and Németh v. Vam es Penzugyorseg Ezak-Alfodi Regionalis Parancniksaga*, [2006] ECR I-10115, para. 39.

[16] *See* Barnard, *supra* note 13, at 38.

[17] Judgment of 7 May 1987 in *Case 193/85*, *Co-operative Co-Frutta v. Amministrazione delle Finanze dello Stato*, [1987] ECR 2085, paras. 8 and 9 (emphases added).

[18] *See, e.g.*, *Case C-383/01 De Danske Bilimportřrer*, *supra* note 12, paras. 33-35: "33. […] as

In *Denkavit*, the Court clarified the distinction between the two articles even more and added a positive obligation for Member States applying a general system of internal dues:

> 7. […] any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier and which is not a customs duty in the strict sense, constitutes a charge having an equivalent effect within the meaning of articles 9, 12, 13 and 16 of the [EEC] Treaty. Such a charge however […] *escapes that classification if it relates to a general system of internal dues supplied systematically and in accordance with the same criteria to domestic products and imported products alike*, in which case it does not come within the scope of articles 9, 12, 13 and 16 but within that of article 95 of the [EEC] Treaty.
> 8. It is however appropriate to emphasize *that in order to relate to a general system of internal dues, the charge to which an imported product is subject must impose the same duty on national products and identical imported products at the same marketing stage and that the chargeable event giving rise to the duty must also be identical in the case of both products* […].[19]

On the basis of the foregoing, we should analyse if the environmental tax has the features of a customs duty or a charge having equivalent effect, and/or whether it escapes the scope of the latter. Similarly, we would need to ask ourselves whether this charge forms part of a general system of internal dues paid systematically and whether it applies the same rate, at the same stage of production/marketing, for imported and domestic vehicles on the Albanian market?

Before embarking on this analysis, there is one important fact which should be taken into consideration in these analyses: Albania does not manufacture automobiles. This specific fact leads us to a different category of cases in which the borderline between the two Treaty articles is narrower. What would be the situation where a Member State levies a tax on an imported product, in circumstances where no similar or competitive domestic product is produced in that Member State? Would, indeed, the analysis differ from circumstances in

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regards the scope of Articles 25 EC and 90 EC, it is settled case-law that provisions relating to charges having equivalent effect and those relating to discriminatory internal taxation cannot be applied together, with the result that, under the system established by the Treaty, the same charge cannot belong to both categories at the same time (see Case C-234/99 *Nygård* [2002] ECR I-3657, paragraph 17). 34. In the present case, since a charge on the registration of new motor vehicles, such as the Danish registration duty at issue in the main proceedings, is manifestly of a fiscal nature and is charged not by reason of the vehicle crossing the frontier of the Member State which introduced the charge, but upon first registration of the vehicle in the territory of that State, the charge must be regarded as part of a general system of internal dues on goods and thus examined in the light of Article 90 EC. 35. The fact that a charge of that sort is in fact imposed solely on imported new vehicles, because there is no domestic production, is not such as to cause it to be characterised as a charge having equivalent effect, for the purposes of Article 25 EC, rather than internal taxation, within the meaning of Article 90 EC, since it is part of a general system of internal dues applied systematically to categories of vehicles in accordance with objective criteria irrespective of the origin of the products (*see*, to that effect, Case 90/79 *Commission* v *France* [1981] ECR 283, paragraph 14)."

[19] Judgment of 31 May 1979 in *Case 132/78*, *Denkavit Loire Sarl v. France*, [1979] ECR 1923 (emphases added).

which there is a similar of competitive product domestically? These questions were raised before the ECJ through the preliminary ruling procedure.[20] We will take the Court's answers up in the analysis which now follows.

A charge levied upon an imported product at the moment of a border-crossing is not classified automatically as a measure having an effect equivalent to that of customs duties in cases where the importing Member State does not manufacture such a product. If it were otherwise and thus Article 30 TFEU applied, then Member states would not be able to tax products they did not produce themselves.[21] Where the State can demonstrate that the charge is part of a system of general taxation, levied irrespective of the origin of the product, the charge will be considered under Article 110 TFEU, notwithstanding that it appears to affect imports only.[22] In the *Co-Frutta* case the Court ruled that:

> A tax on consumption of the type at issue in the main proceedings does form part of a general system of internal dues. The 19 taxes on consumption are governed by common tax rules and are charged on categories of products irrespective of their origin in accordance with an objective criterion, namely the fact that the product falls into a specific category of goods […]. The revenue from those taxes is not earmarked for a specific purpose; it constitutes tax revenue identical to other tax revenue and, like it, helps to finance state expenditure generally in all sectors.[23]

Thus the ECJ held that, notwithstanding that the product taxed had no domestic equivalent, it would nevertheless not automatically regard such a tax as measure falling under Article 25 TEC (now Art. 30 TFEU), but would rather allow it to be scrutinised in order to see if it was *in substance* a measure that more properly fell within the ambit of Article 90 TEC (now Art. 110 TFEU). Having found that the tax in *Co-Frutta* was indeed a measure which fell to be scrutinised under Article 90 TEC, the Court nevertheless proceeded to condemn it as being of a nature contrary to Article 90(2) TEC because it gave a protective effect to domestic Italian products which 'competed' with the imported products.[24]

Setting the Albanian tax on imported used vehicles in its pre-amended form off to the ECJ's jurisprudence, one has to reach the conclusion that the environmental tax was a measure having an effect equivalent to that of a customs duty. After all, the charge was levied *at the time of* or *on account of* the product crossing the border.[25] Moreover, the environmental tax was levied on imported products only and did not form a part of a general system of duties applied systematically on products irrespectively of their origin. In short, this tax did not escape the scope of Article 19 of the SAA. The tax was *per se* illegal and therefore had to be abolished. This measure could not be justified on any 'imperative requirement' of

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20 *Case 193/85*, *Co-operative Co-Frutta*, *supra* note 17.

21 *See* Barnard, *supra* note 12, at 60.

22 *Id*.

23 *Case 193/85*, *Co-operative Co-Frutta*, *supra* note 17, para. 12.

24 *See generally*, D. Cahill, T. Kennedy & V. Power, European Law (2008), ch. XVI: internal taxation.

25 *See* Law 'On National Taxes', no. 9975 dated on 28.07.2007, Art. 4, para. 3.1.3, and Directive no. 16 dated on 07.08.2008, Art. 2.5, which revised the Directive No 1/3, date 19.04.2006, *supra* note 7, at 5.

protection of the environment. Justifying grounds such as the protection of public policy, protection of public security, public morality, protection of health and life of humans, animals or plants, protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial or commercial property *cannot* be used in defence of maintaining a measure having an effect equivalent to that of customs duties. Such justifications are simply not taken into consideration by the Court when dealing with measures having an effect equivalent to that of customs duties.[26] The Court's ruling on this issue is absolute.

If there is one conclusion to be drawn by Albania from the foregoing, then it should be that it must be careful in crafting the tax regime for imported used cars. Even though the calculation of the environmental tax was recently changed so as to also apply to other vehicles of transportation in circulation in Albania, some problems may again arise with the application of the amended Law 'On National Taxes'. Albanian law-makers should be wary of the fact that a regime which obliges importers to pay charges for the completion of customs formalities to authorities located inside of the country instead of at its borders, will ultimately inflate the tax on imported vehicles in comparison to that imposed on domestic ones. Whereas such a charge cannot be considered as having an effect equivalent to that of customs duties since this tax is no longer paid on the moment the used cars cross the frontiers,[27] the analysis switches to a different category of charges: that of internal taxation.

At first sight, a tax collection procedure which treats domestic goods and those which come from another state unequally will lead to discrimination.[28] Thus, a situation where, for example, a state allows domestic traders more time to pay taxes than is allowed to importers of similar goods, constitutes discriminatory taxation in violation of Article 110 TFEU even though the level of the tax levied is identical.[29]

We will further analyse the features of the European Union's internal taxation law, a system which applies *mutatis mutandis* to the regime governed by the SAA.[30] The ECJ jurisprudence, as an integral part of the *acquis*, is of great importance and needs also to be taken into consideration by the Albanian

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[26] Judgment of 10 December 1968 in *Case 7/68*, *Commission v. Italy*, [1968] ECR 423. When a tax is caught by Art. 25 TEC (now Art. 30 TFEU) as a duty or charge that is of equivalent effect then it is in effect *per se* unlawful. Thus, attempts by Italy to argue that its tax could be defended on the basis of Art. 30 TEC (now Art. 36 TFEU) were rejected by the Court. Art. 30 can only be used as a defence in relation to quantitative restrictions, which are caught by Art. 23(1) (now Art. 28(1) TFEU). It cannot validate discriminatory fiscal measures, which are prohibited by Arts. 9-12 TEC (now Art. 30 TFEU).

[27] *See* Judgment of 5 April 1990 in *Case 132/88*, *Commission v. Greece*, [1990] ECR I-1567.

[28] *See* Judgment of 27 February 1980 in *Case 55/79*, *Commission v. Ireland*, [1980] ECR 491; Judgment of 17 June 1998 in *Case C-68/96*, *Gruding Italiana SPA v. Ministero delle Finanze*, [1998] ECR I-3775; *Joined Cases C-290/05 & 333/05*, *Nádasdi*, *supra* note 15.

[29] *See Case 55/79*, *Commission v. Ireland*, *supra* note 28.

[30] Resonating the wording of Art. 110 TFEU, Art. 34 of the SAA states: "The Parties shall refrain from, and abolish where existing, any measure or practice of an internal fiscal nature establishing, whether directly or indirectly, discrimination between the products of one Party and like products originating in the territory of the other Party."

administration when decisions are made to prepare the administrative measures and practice needed for the application of the amended law. In the next section we will therefore sketch the contours provided by the European Court of Justice.

C. ECJ Case-law Concerning Taxation of Imported Second-hand Vehicles

I. Guiding Principles

In the *Brzenzinzski* case the Court reiterated the purpose of Article 90 TEC (now Art. 110 TFEU):

> Its aim is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation that discriminate against products from other Member States (Joined Cases C-393/04 and C-41/05 *Air Liquide Industries Belgium* [2006] ECR I-5293, paragraph 55, and the case-law cited, and *Nádasdi and Németh*, paragraph 45).
>
> As far as the taxation of imported second-hand vehicles is concerned, the Court has also held that Article 90 EC seeks to ensure the complete neutrality of internal taxation as regards competition between products already on the domestic market and imported products (see Case C-387/01 *Weigel* [2004] ECR I-4981, paragraph 66, and the case-law cited).[31]

In line with the guiding principles of non-discrimination and the non-protective nature of Article 110 TFEU, the Court has consistently held that a Member State is not prohibited from levying a vehicle tax on the first registration of a vehicle in that Member State, provided that products originating from other Member States are not charged in excess of the taxes imposed on similar domestic products.[32] Advocate General Sharpston in *Brzezinski* held that:

> It may be distilled from that case-law that, in order to be compatible with the first paragraph of Article 90 EC, a national tax levied once only on each vehicle, on its first registration in a Member State, must, in so far as it affects second-hand vehicles, be calculated in such a way as to avoid any discrimination against such vehicles from other Member States. Such a tax must therefore not impose on imported second-hand vehicles a burden which exceeds the burden of residual tax included in the cost of an equivalent vehicle first registered in the same Member State at an earlier stage in its existence.[33]

So the first point to be taken into consideration when the Albanian authorities introduce a tax for imported second-hand vehicles is that it should be imposed without distinction, irrespective of the origin of the cars (limited, of course, to the

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[31] *Case C-313/05*, *Brzezinski*, *supra* note 15, paras. 27 and 28.

[32] *See* Judgment of 9 March 1995 in *Case C-345/93*, *Fazenda Pública and Ministério Público v. Américo João Nunes Tadeu*, [1995] ECR I-479.

[33] Advocate General Sharpston in *Case C-313/05*, *Brzezinski*, *supra* note 15, para. 11.

parties to the SAA). However, the same question arises: with which category of products should the comparison with the level of the tax be made, since Albania is not a manufacturer of vehicles?

Here, the judgment of the Court in *Commission v Denmark* is instructive.[34] The case concerned a tax registration on imported second-hand vehicles in Denmark, a country which does not manufacture its own brand of vehicles. The tax registration was calculated on the basis of a flat-rate taxable value. The tax base of imported used vehicles was equal to 100% of the price of the new vehicle in case it was less than six months old, and 90% of that price when more than six months old. On the other hand, the sale of vehicles already registered in Denmark did not give rise to payment of a further registration duty. Since the tax was manifestly of a fiscal nature and was charged not by reason of the vehicle crossing the frontier of the Member State which introduced the charge, but upon first registration of the vehicle in the territory of that state, the charge had to be regarded as part of a general system of internal dues on goods and thus examined in the light of Article 95 EEC (later Art. 90 TEC, now Art. 110 TFEU).[35] Both the Danish authorities and the European Commission agreed in this respect. Yet, the Danish authorities claimed that there was no violation of Article 95 EEC and that there no real discrimination existed in favour of Danish products, since Denmark did not produce cars and that thus all used cars were of foreign origin. The Court decided differently:

> It must be observed at the outset that, as the Commission has correctly observed, the fact that there is no Danish production of motor vehicles does not signify that Denmark has no used-vehicle market. A product becomes a domestic product as soon as it has been imported and placed on the market. Imported used cars and those bought locally constitute similar or competing products. Article 95 therefore applies to the registration duty charged on the importation of used cars.[36]

The Albanian market of second hand vehicles is structured in a similar fashion. Albania can therefore not apply higher tax rates on imported used vehicles than on similar used vehicles which have been already registered on the domestic market. Nor can Albania maintain tax calculation modalities which would lead to a heavier taxation regime for cars imported from EU Member States. According to settled case-law, Article 110(1) TFEU is infringed when the tax charged on the imported product and that charged on a similar domestic product are calculated in a different manner on the basis of different criteria which lead, if only in certain cases, to higher taxation being imposed on the imported product.[37]

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[34] Judgment of 11 December 1990 in *Case 47/88*, *Commission v. Denmark*, [1990] ECR I-4509.

[35] *See also Case C-383/01*, *De Danske Bilimportører*, *supra* note 12.

[36] *Case 47/88*, *Commission v. Denmark*, *supra* note 34, para. 17.

[37] *See Case C-313/05*, *Brzezinski*, *supra* note 15, para. 40 and the case-law cited therein (*Haahr Petroleum*, para. 34, and Case C-375/95 *Commission* v. *Greece* [1996] ECR I-5981, para. 29).

II. Tax Rates and Impediments to Free Movement of Goods

With regard to tax rates it must be noted that as long as taxes imposed indiscriminately on domestic and imported products, even very high tax levels are compatible with EU law. The European Court of Justice has ruled in *Commission v Denmark* that Article 95 EEC (now Art. 110 TFEU) does not serve to censure the excessiveness of taxation levels and that Member States can set the tax rates at the levels they see fit.[38] In the *Bergandi* case the Court gave a wide interpretation to the concept of excessiveness of tax rates according to Article 95 EEC:

> As the court held in its judgments of 27 February 1980 (case 168/78 *Commission v France* [1980] ECR 347; case 169/78 *Commission v Italy* [1980] ECR 385; and case 171/78 *Commission v Denmark* [1980] ECR 447), within the system of the EEC Treaty, Article 95 supplements the provisions on the abolition of customs duties and charges having equivalent effect. Its aim is to ensure free movement of goods between the member states in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation that discriminates against products from other member states. Thus Article 95 must guarantee the complete neutrality of internal taxation as regards competition between domestic products and imported products.
>
> The Court stated in the same judgments that *Article 95 must be interpreted widely so as to cover all taxation procedures which, directly or indirectly, conflict with the principle of equality of treatment of domestic products and imported products*; *the prohibition contained in that article must therefore apply whenever a fiscal levy is likely to discourage imports of goods originating in other member states to the benefit of domestic production*.[39]

The Court reiterated its position in the early *Stier* judgment and applied it even to cases in which no similar or competitive domestic products existed to the ones imported:

> […] Article 95 does not prohibit Member States from imposing internal taxation on imported products when there is no similar domestic product or other domestic product capable of being protected. […] Nevertheless it *would not be permissible* for them to impose on products which, in the absence of comparable domestic production, would escape from the application of the prohibitions contained in Article 95, *charges of such an amount that the free movement of goods within the common market would be impeded as far as those products were concerned*.[40]

Furthermore, in order to assess the compatibility of a given tax with the second paragraph of Article 95 EEC, it was necessary to determine "whether or not the tax is of such a kind as to have the effect, on the market in question, of reducing potential consumption of imported products to the advantage of competing domestic products."[41] For the second paragraph of Article 95 EEC to apply, it was

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38 *Case 47/88*, *Commission v. Denmark*, *supra* note 34, para. 10.

39 Judgment of 3 March 1988 in *Case 252/86*, *Bergandi*, [1988] ECR 1343, paras. 24 and 25 (emphasis added).

40 Judgment of 4 April 1968 in *Case 31/67*, *Stier*, [1968] ECR 235, para. 21.

41 Judgment of 9 July 1987 in *Case 356/85*, *Commission v. Belgium*, [1987] ECR 3299, para. 1.

not necessary that protective effect should be shown statistically; it was sufficient if it were shown "that a given tax mechanism is likely, in view of its inherent characteristics, to bring about the protective effect referred to by the Treaty."[42]

Calculations of the tax on cheap imported second-hand cars in Albania will reveal that the level of the tax is so high, that there are cases where it practically surpasses the value of the second-hand vehicle itself. This might be considered as an impediment to free trade, or at least as a measure that discourages the importation of second-hand vehicles.

III. The Basis for Assessment and the Rules for Levying the Tax

According to well-established case-law of the Court it follows that "in order to apply Article 95 of the [EEC] Treaty, not only the rate of direct and indirect internal taxation on domestic and imported products but also the basis of assessment and detailed rules for levying the tax must be taken into consideration."[43] As a rule, the Treaty is violated "where the taxation on the imported product and that on the similar domestic product are calculated in a different manner on the basis of different criteria which lead, if only in certain cases, to higher taxation being imposed on the imported product."[44] However, states may impose differential taxation on similar, yet different, products on the basis of objective criteria in pursuit of objectives compatible with EU law. In principle, it is not contrary to EU law for a Member State to levy registration taxes on motor vehicles the amount of which may differ depending on objective criteria – like the type of fuel used, emission standards or in some cases engine capacity, when this differentiation aims at encouraging the purchase of less polluting cars and preserving the environment, provided of course that Article 110 TFEU is respected. In the absence of harmonizing measures at the EU level, Member States are free to distinguish among different levels of pollution for the purposes of car registration tax and thus set the tax level as they see fit.[45]

In a string of cases, the Court decided that a registration tax paid on a new vehicle forms a part of its market value and that Member States must take the car's actual depreciation value into account when calculating the registration

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[42] Judgment of 27 February 1980 in *Case 170/78*, *Commission v. United Kingdom*, [1980] ECR 417, para. 10.

[43] *Case 74/76*, *Iannelli v. Meroni*, *supra* note 14, para. 21.

[44] Judgment of 16 February 1977 in *Case 20/76*, *Schoettle v. Finanzamt Freudenstadt*, [1977] ECR 247, para. 20.

[45] Illustrative is Petition 0331/2007 before the European Parliament, by Mr Ioan Păun Cojocariu (Romanian), on problems with the registration in Romania of a vehicle bought in Germany. This Romanian gentlemen had bought a 2000 Seat Ibiza in Germany, but when trying to register it in Romania he was asked to pay a high registration fee as the Romanian authorities considered that the vehicle only met the EURO 2 standards and not the EURO 4 ones as specified in its German identity card. The petitioner wondered if, indeed, there was a difference between Romania and Germany as regards the setting of pollution standards of vehicles. He considered himself a victim of an abuse designed to have him pay a higher registration tax and requested the European Parliament to look into his case.

tax.[46] In *Commission v. Denmark*, the defending Member State was condemned for applying to imported used cars an assessment rate of 90%, thereby limiting the depreciation to 10%, irrespective of the age or condition of the vehicle. In the Court's view, the levying of a registration duty for which the basis of assessment is at least 90% of the value of a new vehicle constitutes a manifest surcharge of such vehicles in comparison with the residual registration duty to be paid for previously registered second-hand cars bought on the national market, whatever their age or condition.[47] In *Gomes Valente*, the car tax varied according to the cylinder capacity and was assessed in accordance with the tables annexed to the Decree-Law in which the calculation of the tax was enshrined.[48] The Court found that the Portuguese legislation in force at the material time was calculated without taking the vehicle's actual depreciation into account:

> The first paragraph of Article 95 of the [EEC] Treaty does not permit a Member State to apply to second-hand vehicles imported from other Member States a system of taxation in which the depreciation in the actual value of those vehicles is calculated in a general and abstract manner, on the basis of fixed criteria or scales determined by a legislative provision, a regulation or an administrative provision, unless those criteria or scales are capable of guaranteeing that the amount of the tax due does not exceed, even in a few cases, the amount of the residual tax incorporated in the value of similar vehicles already registered in the national territory.[49]

In this ruling the ECJ established two general points to judge if a system of taxation of imported used vehicle is compatible with Article 95 EEC (now Art. 110 TFEU):

– the degree of precision with which the fixed scale reflects the actual depreciation of the vehicle; and
– the opportunity for the owner of an imported second-hand vehicle to bring an action challenging the application to his vehicle of a scale based on general criteria.

Regarding the first point, apart from the age of the car, other factors of depreciation, such as the brand, the model, the mileage, the method of propulsion, the mechanical state or the state of maintenance of the vehicle, is likely to result in the fixed scale reflecting the actual depreciation of vehicles much more precisely and permits the aim of ensuring that the tax charged on imported second-hand vehicles does not in any case exceed the amount of the residual tax incorporated in the value of similar second-hand vehicles already registered in the national territory to be achieved much more easily.[50]

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[46] *See Case 47/88*, *Commission v. Denmark*, *supra* note 34; *Case C-345/93*, *Fazenda Pública and Ministério Público v. Américo João Nunes Tadeu*, *supra* note 32; and Judgment of 23 October 1997 in *Case C-375/95*, *Commission v. Greece*, [1997] ECR I-5981.

[47] *Case C-47/88*, *Commission v. Denmark*, *supra* note 34, para. 20.

[48] Judgment of 22 February 2001 in *Case C- 393/98*, *Ministero Publico and Gomes Valente v. Fazenda Publica*, [2001] ECR I-1327.

[49] *Id*., para. 44.

[50] *Id*., para. 28.

Regarding the second point, referring to its judgment in *Lütticke v. Hauptzollamt Saarlouis*,[51] the Court held that even when the system to evaluate the depreciation is imprecise, the system of taxation might still be compatible with the Treaty, if the owner of an imported vehicle had an opportunity to challenge the application of that scale to his vehicle before a court, which would prevent any possible discriminatory effects of a system of taxation based on such a scale.[52]

In its judgment in *Commission v. Greece*, the ECJ held that by applying a single criterion of depreciation (based on age) for the purpose of determining the taxable value of second-hand vehicles transferred from another Member State into Greece in order to establish the registration tax, and by adopting a reduction in value which may lead, even if only in certain cases, to a discrimination of second-hand cars from other Member States, Greece failed to fulfil its obligations under Article 90 TEC (now Art. 110 TFEU).[53]

Also in its judgement in *Nádasdi*, the Court held that certain provisions of the Hungarian legislation on registration taxes, in its version in force between 1 May 2004 and 31 December 2005, were contrary to Article 90 TEC, in that the tax was calculated without taking into account the true depreciation of second-hand vehicles.[54] The tax applied to second-hand vehicles from other Member States exceeded the residual tax incorporated in the value of similar used vehicles already registered in Hungary. Hungary introduced, following the judgment in *Nádasdi*, the individual tax assessment procedure which provides the importer with the option of requesting a case-by-case assessment of the car registration tax of his vehicle, taking account of its individual features.[55]

In neither of these judgments, nor in *Commission v. Hungary*, did the Court rule that the national authorities were obliged to assess imported used cars individually. It does not follow from those judgments that Article 110 TFEU requires that Member States evaluate on the basis of an individual assessment of the value of imported used cars. Advocate General Fennelly stated in his opinion on *Gomes Valente*, that Member States may adopt general criteria for assessing the amount of car tax due on the importation of used vehicles, on condition that these are such as to guarantee that this amount does not exceed, even if only in certain cases, the residual tax in comparable vehicles on the domestic market:

> It is inherent in the recognition by the Court of the direct effect of the first paragraph of Article 95 [EEC] that an individual should be able to challenge the scale for the assessment for tax on his imported used car. I should add that the practical difficulties of determining precisely the value of an individual used car do not preclude Member State authorities' relying as a guideline on average values of used cars recognised as such in the domestic market, subject to the requirements of Article 95 referred to above.[56]

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51 Judgment of 16 June 1966 in *Case 57/65*, *Lütticke v. Hauptzollamt Saarlouis*, [1966] ECR 205.

52 *Case C-345/93*, *Fazenda Pública and Ministério Público v. Américo João Nunes Tadeu*, *supra* note 32.

53 Judgment of 20 September 2007 in *Case C-74/06*, *Commission v. Greece*, [2007] ECR I-7585.

54 *Joined Cases C-290/05 & 333/05, Nádasdi*, *supra* note 15.

55 European Commission, press release no. IP/09/1643, 29 October 2009.

56 Advocate General Fennelly in *Case C-393/98*, *Gomes Valente*, *supra* note 48.

The Court, when rendering judgment in this case, followed AG Fennelly's rationale.[57] So, in order for the Member State to set the general criteria for calculating the value of the tax, it should borne in mind that those criteria should reflect the real depreciation value of the used car, to escape the scope of discriminatory taxation.

IV. Objective Justification (Imperative Requirement)

General objective justification used by the national authorities in the cases referred to above are: (i) the protection of the environment; ii) the necessity to avoid illegal practices in the price declaration of second-hand vehicles; iii) to necessity to restore equal treatment qua pricing between domestic and imported second-hand vehicles; iv) roadworthiness test. We will now deal with each of these issues in turn.

1. The Protection of Environment

In the *Brzezinski* case, Advocate General Sharpston opined that the objective justification at hand, *i.e*. the protection of the environment, should be accepted *only* if it passes the test of proportionality and non-discrimination: "A tax does not escape that prohibition simply because, in addition to its fundamental purpose of raising revenue, it seeks to favour environmentally-friendly products or habits. On the contrary, if it pursues such an aim, it must do so in a manner which does not burden domestic products less than those imported from other Member States."[58] Following this rationale, the ECJ stated that it is settled case-law that a system of taxation may be considered compatible with Article 90 TEC (now Article 110 TFEU) only if it is so arranged so as to exclude any possibility of imported products being taxed more heavily than similar domestic products, so that it cannot in any event have discriminatory effect.[59]

2. The Roadworthiness Test

Member States may require, as part of the car registration procedure, a roadworthiness test, the objective of which is to verify – for purposes of protecting the health and life of humans, that the specific motor vehicle is actually in a good state of repair at the moment of registration.[60] However, the ECJ has ruled that a roadworthiness test is contrary to the Treaty, if, in same circumstances, it is not required for the vehicles of a national origin. The test can be justified on the basis of the Article 30 of the TEC (now Article 36 TFEU) if the imported vehicle has

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[57] *Case C-393/98*, *Gomes Valente*, *supra* note 48, paras. 20 and 21.
[58] *Case C-313/05*, *Brzezinski*, *supra* note 15, para. 53.
[59] *Id*., para. 40.
[60] Communication from the Commission, "Interpretative communication on procedures for the registration of motor vehicles originating in another Member State", SEC(2007) 169 final, Brussels, 14 February 2007.

been in use in another Member State before the registration. Then the test has to be done in similar conditions without distinction between national origin and imported vehicles.[61]

Apart from the non-discrimination and the mutual recognition principle that the roadworthiness testing procedure should respect in order not be contrary to the Treaties, the Commission is of the opinion that it must also concern a test that is readily accessible and can be completed within a reasonable time. To restrict roadworthiness testing for imported vehicles to specific and separately designated control stations can constitute an obstacle to trade between Member States.[62]

3. The Under-declaration Problem

As considered above, there will be a breach of Article 110 TFEU if the scale of depreciation of the car does not reflect the real value of it. Member States apply different methods in order to find an evaluation system which is in compliance with the Treaty. The Polish administration in *Brzezinski* had chosen the system of reference in order to calculate the tax basis, similar with the Albanian situation so far. The Polish argument for using the reference system, and not the price of the purchase of the second-hand vehicle, was because of the belief (or rather suspicion) that in many if not all cases the purchase price declared to the authorities was significantly less than the actual price paid. According to the Polish government this justified a higher duty, so as to compensate for its presumed declaration at an artificially low level. Both the Advocate General and the Court refused to accept this argument as a reasonable and proportional one.[63]

It is of course quite possible that the problem of under-declaration exists, in the absence of any means of verifying the true price paid. To deal with that problem, however, it is necessary to find an objective means of assessing the true value of vehicles, or at least a good approximation of that value which may, if appropriate, be challenged.

4. The Equality of Prices

In *Gomes Valente* the Portuguese government argued at the hearing that the system of taxation of imported second-hand cars was in fact intended to restore equality of treatment in principle between the commercial value of domestic second-hand vehicles and that of imported second-hand vehicles. The Court did not accept that argument. A national tax system which is liable to eliminate a competitive advantage held by imported products over domestic products would

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[61] *See* Judgment of 12 June 1986 in *Case 50/85*, *Bernhard Schloh v. Auto contrôle technique SPRL*, [1986] ECR 1855.

[62] Communication from the Commission, "Interpretative communication on procedures for the registration of motor vehicles originating in another Member State", SEC(2007) 169 final, Brussels, 14 February 2007, at 9.

[63] *See further*, Advocate General Sharpston, *Case C-313/05*, *Brzeziński*, *supra* note 15, para. 55.

be manifestly incompatible with Article 90 TEC (now Art. 110 TFEU), which seeks to guarantee that internal charges have no effect on competition between domestic and imported products.[64]

D. Concluding Remarks

Albania is making progress on the road towards future integration into European Union. The road map of its success is drawn up for an essential part by the timely and correct implementation of the Stabilisation and Association Agreement. Trade liberalization and the approximation of national legislation to EU law are important elements thereof, tied to a gliding timescale laid down in the Agreement itself. The Albanian authorities should be mindful of the fact that, in the approximation process, the legal concepts, guiding principles and operational tests are often not laid down in the 'black letter' law. One cannot just take the SAA, not primary and secondary EU law at face value, but should attach great importance to the interpretation thereof by the Court of Justice.

Through a case study on the approximated legislation on taxes charged over the import of second-hand vehicles in Albania, this article has exposed the multi-layered legal framework in which the authorities of (potential) candidate countries are operating. In crafting their national law and administrative practice, these countries can benefit from the experience of old and new EU Member States alike. On the basis of a comparative analysis of ECJ jurisprudence in concrete and similar cases, we have identified the general principles that might serve as guidelines for their authorities when drafting the new provisions on national taxes for used vehicles imported from the EU.

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[64] *Case C-393/98*, *Ministério Público and António Gomes Valente v. Fazenda Pública*, *supra* note 48, para. 43.