WRITTEN QUESTION P-0417/05
by Ari Vatanen (PPE-DE)
to the Commission

Subject: Discriminatory treatment of non-professional car importers in Finland

When a private person imports a used car to Finland, two kinds of taxes have to be paid: (a) car tax and (b) a value added tax for the car tax (autoverolaki para 5, arvonlisäverolaki para 1). According to the ECJ (Case–101/00, Siilin) the 'VAT' paid for the car tax is not VAT within the meaning of the 6th VAT Directive 77/388/EE[1] [1] (hence 'non-VAT', a surcharge on car tax), and only the residual value thereof can be collected on imported used cars, provided that non-VAT is actually incorporated in the value of a similar car already registered in the national territory.

However, in the Finnish legal system, 'non-VAT' is treated as VAT, and this creates a conflict with the 6th VAT Directive and Article 90 in the event of private import. According to the Finnish VAT law (arvonlisäverolaki para 102), non-VAT is deductible from VAT, and that leads to two conclusions: (a) the deductibility is against the 6th VAT Directive (it is not possible to allow taxpayers to deduct taxes other than VAT) and (b) the non-VAT being de facto collected only in the event of private import, there is no non-VAT at all left in the initial or residual value of a similar car already registered in Finland. Accordingly, collecting the non-VAT is discriminatory, just like the collecting of 'Zuschlag für NoVA' in Austria (Case C-387/01, Weigel and Weigel).

The purpose of 'non-VAT' and its deductibility is to compensate for a VAT 'undercharge' that arises where the car tax is not included in the chargeable value for VAT purposes: in the case of privately imported cars, VAT is collected on importation, at which point the chargeable value for VAT purposes does not yet include the car tax which has to be paid when the cars are registered first. However, in Case C-387/01, para's 33 and 87 - 89, the ECJ has explicitly denied the possibility of offsetting compensate the lower basis of the VAT in private import with an extra tax like non-VAT and, in this way, discriminating against private import. The non-VAT, unlike the NoVA surcharge, is at first collected from all the importers, irrespective of whether the car tax is included in the chargeable value for VAT. However, the purpose and the result of both taxes are de facto the same, since the non-VAT is deductible from VAT, if the car tax is included in the chargeable value for VAT (commercial import). The practical arrangement which determined whether the tax is first collected from everybody and then returned to some importers, as in Finland, or at first collected from only some importers, as in Austria, cannot possibly have any impact on deciding whether the tax is breaching Article 90. Also, because of the deduction, there is no initial, and thus no residual, non-VAT in the value of a similar car registered in Finland.

What action does the Commission intend to take, in order to end the collecting of a clearly discriminatory tax (possibly thousands of euros in some 15 000 to 20 000 cases per year) and to end the breach of the 6th VAT Directive?

[1] OJ L 145, 13.6.1977, p. 1.