

## Case C-21/88

**Du Pont de Nemours Italiana SpA**

**v**

**Unità sanitaria locale No 2 di Carrara**

(reference for a preliminary ruling  
from the tribunale amministrativo regionale della Toscana)

(Public supply contracts — Reservation of 30% of  
such contracts to undertakings located in a particular region)

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### Summary of the Judgment

- 1. Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Reservation of a proportion of a public supply contract to undertakings located in a particular region of the national territory — Not permissible — Measure benefiting only part of domestic production — No effect*  
(EEC Treaty, Art. 30)
- 2. Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Measure which might be regarded as aid within the meaning of Article 92 of the Treaty — Applicability of the prohibition of measures having equivalent effect not precluded by that possibility*  
(EEC Treaty, Arts 30 and 92)

1. Article 30 of the Treaty precludes national rules which reserve to undertakings established in particular regions of the national territory a proportion of public supply contracts.

Although the restrictive effects of a preferential system of that kind are borne in

the same measure both by products manufactured by undertakings from the Member State in question which are not situated in the relevant region and by products manufactured by undertakings established in the other Member States, the fact remains that all the products benefiting by the preferential system are

domestic products. Moreover, the fact that the restrictive effect exercised by a State measure on imports does not benefit all domestic products but only some cannot exempt the measure in question from the prohibition set out in Article 30.

2. The Treaty provisions on aid may in no case be used to frustrate the Treaty rules

on the free movement of goods. They both pursue a common purpose, namely to ensure the free movement of goods between Member States under normal conditions of competition. The fact that a national measure might be regarded as aid within the meaning of Article 92 is therefore not a sufficient reason to exempt it from the prohibition contained in Article 30.

## REPORT FOR THE HEARING

### delivered in Case C-21/88 \*

#### I — Legal background

of 6 October 1950 made the reserved quota system no longer optional but mandatory.

##### 1. *National provisions*

1. The facts which gave rise to the main proceedings are essentially concerned with Italian rules under which a percentage of public supply contracts is reserved to undertakings located in the regions of the Mezzogiorno (Southern Italy).

3. The reserved quota system was confirmed and maintained in force by the various laws governing the question of assistance for Southern Italy; the most recent such provision is Law No 64 of 1 March 1986 (*Disciplina organica dell'intervento straordinario nel Mezzogiorno*, hereinafter referred to as 'Law No 64/86').

2. The principle of the 'reserved quota' was already to be found in the Italian Decree Law CPdS No 40 of 18 February 1947 which authorized the State authorities to obtain up to one-sixth of their supplies from undertakings located in certain regions of Southern Italy. Subsequently, Law No 835

4. Article 17(16) and (17) of Law No 64/86 provides as follows:

'16. The requirement relating to the reserved quota of supplies and services

\* Language of the case: Italian.