

In Case 8/74

Reference to the Court under [Article 267 TFEU] by the Tribunal de Première Instance of Brussels for a preliminary ruling in the criminal proceedings pending before that court between

PROCUREUR DU ROI (Public Prosecutor)

and

BENOIT AND GUSTAVE DASSONVILLE

and in the civil action between

SA ETS. FOURCROY

SA BREUVAL ET CIE

BENOIT AND GUSTAVE DASSONVILLE

and

on the interpretation of [Article 34 TFEU] to Article 33 EEC Treaty [repealed], [Article 36 TFEU] and [Article 101 TFEU],

THE COURT

composed of: R. Lecourt, President, A. M. Donner, M. Sørensen, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore, H. Kutscher, C. O. Dalaigh, A. J. Mackenzie Stuart (Rapporteur), Judges,

Advocate-General: A. Trabucchi

Registrar: A. Van Houtte

gives the following

JUDGMENT

Law

- 1 By Judgment of 11 January 1974, received at the Registry of the Court on 8 February 1974, the Tribunal de Premiere Instance of Brussels referred, under [Article 267 TFEU], two questions on the interpretation of [Article 34 TFEU], Articles 31 [repealed], 32 [repealed], 33 of the EEC Treaty [repealed], [Article 36 TFEU] and [Article 101 TFEU], relating to the requirement of an official document issued by the government of the exporting country for products bearing a designation of origin.
- 2 By the first question it is asked whether a national provision prohibiting the import of goods bearing a designation of origin where such goods are not accompanied by an official document issued by the government of the exporting country certifying their right to such designation constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of [Article 34 TFEU].
- 3 This question was raised within the context of criminal proceedings instituted in Belgium against traders who duly acquired a consignment of Scotch whisky in free circulation in France and imported it into Belgium without being in possession of a certificate of origin from the British customs authorities, thereby infringing Belgian rules.
- 4 It emerges from the file and from the oral proceedings that a trader; wishing to import into Belgium Scotch whisky which is already in free circulation in France, can obtain such a certificate only with great difficulty, unlike the importer who imports directly from the producer country.
- 5 All trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-[Union] trade are to be considered as measures having an effect equivalent to quantitative restrictions.

- 6 In the absence of a [Union] system guaranteeing for consumers the authenticity of a product's designation of origin, if a Member State takes measures to prevent unfair practices in this connexion, it is however subject to the condition that these measures should be reasonable and that the means of proof required should not act as a hindrance to trade between Member States and should, in consequence, be accessible to all [Union] nationals.
- 7 Even without having to examine whether or not such measures are covered by Article 36 [TFEU], they must not, in any case, by virtue of the principle expressed in the second sentence of that Article, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.
- 8 That may be the case with formalities, required by a Member State for the purpose of proving the origin of a product, which only direct importers are really in a position to satisfy without facing serious difficulties.
- 9 Consequently, the requirement by a Member State of a certificate of authenticity which is less easily obtainable by importers of an authentic product which has been put into free circulation in a regular manner in another Member State than by importers of the same product coming directly from the country of origin constitutes a measure having an effect equivalent to a quantitative restriction as prohibited by the Treaty.
- 10 By the second question it is asked whether an agreement the effect of which is to restrict competition and adversely to affect trade between Member States when taken in conjunction with a national rule with regard to certificates of origin is void when that agreement merely authorizes the exclusive importer to exploit that rule for the purpose of preventing parallel imports or does not prohibit him from doing so.
- 11 An exclusive dealing agreement falls within the prohibition of [Article 101 TFEU] when it impedes, in law or in fact, the importation of the products in question from other Member States into the protected

territory by persons other than the exclusive importer.

- 12 More particularly, an exclusive dealing agreement may adversely affect trade between Member States and can have the effect of hindering competition if the concessionaire is able to prevent parallel imports from other Member States into the territory covered by the concession by means of the combined effects of the agreement and a national law requiring the exclusive use of a certain means of proof of authenticity.
- 13 For the purpose of judging whether this is the case, account must be taken not only of the rights and obligations flowing from the provisions of the agreement, but also of the legal and economic context in which it is situated and, in particular, the possible existence of similar agreements concluded between the same producer and concessionaires established in other Member States.
- 14 In this connexion, the maintenance within a Member State of prices appreciably higher than those in force in another Member State may prompt an examination as to whether the exclusive dealing agreement is being used for the purpose of preventing importers from obtaining the means of proof of authenticity of the product in question, required by national rules of the type envisaged by the question.
- 15 However, the fact that an agreement merely authorizes the concessionaire to exploit such a national rule or does not prohibit him from doing so, does not suffice, in itself, to render the agreement null and void.

Costs

- 16 The costs incurred by the Governments of Belgium and of the United Kingdom as well as by the Commission of the European [Union], which have submitted observations to the Court, are not recoverable.

- 17 As these proceedings are, insofar as the parties to the main action are concerned, a step in the action pending before the Tribunal de Premiere Instance of Brussels, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tribunal de Premiere Instance of Brussels by Judgment of 11 January 1974, hereby rules:

1. The requirement of a Member State of a certificate of authenticity which is less easily obtainable by importers of an authentic product which has been put into free circulation in a regular manner in another Member State than by importers of the same product coming directly from the country of origin constitutes a measure having an effect equivalent to a quantitative restriction as prohibited by the Treaty.
2. The fact that an agreement merely authorizes the concessionaire to exploit such a national rule or does not prohibit him from doing so does not suffice, in itself, to render the agreement null and void.

Lecourt
Wilmars

Donner

Sorensen

Monaco

Mertens de

Pescatore

Kutscher

O Dalaigh

Mackenzie Stuart

Delivered in open court in Luxembourg on 11 July 1974.

A. Van Houtte
Lecourt

R.

Registrar

President

Robert Schütze European Union Law Lisbonised Cases