Judgment of the Court of Justice, Rewe-Zentral, Case 120/78 (20 February 1979)

Caption: This judgment, known as the 'Cassis de Dijon judgment', is a keystone of the development of case-law relative to the prohibition of quantitative restrictions on imports and of measures having equivalent effect on the free movement of goods (Article 30 of the EEC Treaty, now Article 28 of the EC Treaty).

Source: Reports of Cases before the Court. 1979. [s.l.]. "Judgment of 20 February 1979, Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein, Case 120/78", auteur:Court of Justice of the European Communities (CJEC) , p. 649.

URL: http://www.cvce.eu/obj/judgment_of_the_court_of_justice_rewe_zentral_case_120_78_20_february_1979-en-30e68ace-b09f-4340-b249-29bf692376a1.html
Publication date: 20/12/2013

Judgment of the Court of 20 February 1979 [1]

Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein

(preliminary ruling requested by the Hessisches Finanzgericht)

"Measures having an effect equivalent to quantitative restrictions"

Case 120/78

1. State monopolies of a commercial character — Specific provision of the Treaty — Scope
(EEC Treaty, Art. 37)

2. Quantitative restrictions — Measures having equivalent effect — Marketing of a product — Disparities between national laws — Obstacles to intra-Community trade — Permissible — Conditions and limits
(EEC Treaty, Art. 30 and 36)

3. Quantitative restrictions — Measures having equivalent effect — Concept — Marketing of alcoholic beverages — Fixing of a minimum alcohol content
(EEC Treaty, Art. 30)

1. Since it is a provision relating specifically to State monopolies of a commercial character, Article 37 of the EEC Treaty is irrelevant with regard to national provisions which do not concern the exercise by a public monopoly of its specific function — namely, its exclusive right — but apply in a general manner to the production and marketing of given products, whether or not the latter are covered by the monopoly in question.

2. In the absence of common rules, obstacles to movement within the Community resulting from disparities between the national laws relating to the marketing of a product must be accepted in so far as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer.

3. The concept of "measures having an effect equivalent to quantitative restrictions on imports", contained in Article 30 of the EEC Treaty, is to be understood to mean that the fixing of a minimum alcohol content for alcoholic beverages intended for human consumption by the legislation of a Member State also falls within the prohibition laid down in that provision where the importation of alcoholic beverages lawfully produced and marketed in another Member State is concerned.

In Case 120/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hessisches Finanzgericht for a preliminary ruling in the action pending before that court between

REWE-ZENTRAL AG, having its registered office in Cologne,

and

BUNDESMONOPOLVERWALTUNG FÜR BRANNTWEIN (Federal Monopoly Administration for Spirits),

on the interpretation of Articles 30 and 37 of the EEC Treaty in relation to Article 100 (3) of the German Law on the Monopoly in Spirits,

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

The principle activity of the limited liability company Rewe-Zentral AG (hereinafter referred to as Rewe), a central cooperative undertaking having its registered office in Cologne, is the importation of goods from other Member States of the Community. On 14 September 1976 it requested authorization from the Bundesmonopolverwaltung für Branntwein (Federal Monopoly Administration for Spirits) to import from France, for the purposes of marketing in the Federal Republic of Germany, certain potable spirits, including the liqueur “Cassis de Dijon”, containing 15 to 20% by volume of alcohol.

By letter of 17 September 1976 the Bundesmonopolverwaltung informed Rewe that authorization to import was not necessary: by notice of 8 April 1976 (Bundesanzeiger No 74 of 15 April 1976 and No 79 of 27 April 1976) the Bundesmonopolverwaltung had granted with general effect the authorization required by Article 3 (1) of the Branntweinmonopolgesetz (Law of 8 April 1922 on the Monopoly in Spirits, as last amended by the Law of 2 May 1976) for the importation of spirits into the Federal Republic, and at all events the importation of liqueurs was not subject to authorization. However, it informed Rewe that the “Cassis de Dijon” which it intended to import could not be sold in the Federal Republic of Germany, since Article 100 (3) of the Branntweinmonopolgesetz provides that only potable spirits having a wine-spirit content of at least 32% may be marketed in that country. The exceptions to that rule are the subject-matter of the Verordnung über den Mindestweingeistgehalt von Trinkbranntweinen (Regulation on the Minimum Wine-Spirit Content of Potable Spirits) of 28 February 1958 (Bundesanzeiger No 48 of 11 March 1958). “Cassis de Dijon”, which contains from 15 to 20% wine-spirit by volume, is not covered by that regulation and, pursuant to Article 100 (3) of the Branntweinmonopolgesetz, the Branntweinmonopolverwaltung is not empowered to authorize derogations in individual cases.

Rewe brought an action against that decision before the Verwaltungsgericht Darmstadt; by order of 27 December 1976 that court referred the case to the Hessisches Finanzgericht. The Finanzgericht decided, by order of its Seventh Senate of 28 April 1978, pursuant to Article 177 of the EEC Treaty, to stay the proceedings until the Court of Justice has given a preliminary ruling on the following questions:

1. Must the concept of measures having an effect equivalent to quantitative restrictions on imports contained in Article 30 of the EEC Treaty be understood as meaning that the fixing of a minimum wine-spirit content for potable spirits laid down in the German Branntweinmonopolgesetz, the result of which is that traditional products of other Member States whose wine-spirit content is below the fixed limit cannot be put into circulation in the Federal Republic of Germany, also comes within this concept?

2. May the fixing of such a minimum wine-spirit content come within the concept of “discrimination regarding the conditions under which goods are procured and marketed … between nationals of Member States” contained in Article 37 of the EEC Treaty?

The order of the Hessisches Finanzgericht was registered at the Court on 22 May 1978.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 22 June and 24 July 1978 by Rewe-Zentral AG, the plaintiff in the main action, on 27 July by the Commission of the European Communities, on 10 August by the Government of

the Kingdom of Denmark and on 16 August 1978 by the Government of the Federal Republic of Germany.

After hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. However, it invited the Government of the Federal Republic of Germany and the Commission to reply to a question at the hearing.

II — Written observations submitted to the Court

Rewe-Zentral AG, the plaintiff in the main action, observes that proceedings commenced against the Federal Republic of Germany by the Commission in 1974 for failure to fulfil an obligation led to the regulation of 7 December 1976 amending, albeit partially, the regulation of 28 February 1958 on the minimum wine-spirit content.

(a) The first question

According to the settled case-law of the Court any measure of such a kind as to hinder, directly or indirectly, actually or potentially, trade between Member States falls under the prohibition contained in Article 30 of the EEC Treaty. To prohibit the marketing of a product from one Member State in another Member State hinders the importation of that product in a direct and immediate manner; it is therefore a measure having an effect equivalent to a quantitative restriction on imports prohibited by Article 30 of the EEC Treaty, subject to the exceptions laid down by Community law.

The protection of the health of humans, within the meaning of the first sentence of Article 36 of the Treaty, can certainly not justify the fixing of a minimum wine-spirit content for potable spirits.

Nor is there any conviction in the argument to the effect that it is necessary to fix certain lower limits to the wine-spirit content by law in order to satisfy both general commercial practice within the Federal Republic and the wishes of consumers. That question can remain unanswered; commercial practice and the wishes of consumers are not in any event factors relating to public policy justifying recourse to Article 36.

Article 3 of Commission Directive No 70/50 of 22 December 1969 (Official Journal, English Special Edition 1970 (I), p. 17) considers as being measures having an effect equivalent to quantitative restrictions on imports, which must be abolished between the Member States, “measures governing the marketing of products which deal, in particular, with shape, size, weight, composition, presentation, identification or putting up and which are equally applicable to domestic and imported products, where the restrictive effect of such measures on the free movement of goods exceeds the effects intrinsic to trade rules”. According to the tenth recital in the preamble to that directive, such is the case “where imports are either precluded or made more difficult or costly than the disposal of domestic production and where such effect is not necessary for the attainment of an objective within the scope of the powers for the regulation of trade left to Member States by the Treaty”. The regulation on the minimum wine-spirit content of potable spirits in force in Germany renders it impossible, in that country, to market and therefore to import from other Member States certain liqueurs which are known and marketed there in that form, including “Cassis de Dijon”. The manufacture of those liqueurs in a form specifically designed for the German market would make their importation more difficult and more costly in relation to the disposal of national products.

According to the second sentence of Article 36 of the EEC Treaty prohibitions on imports shall not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States; the Court has ruled that there is a disguised restriction within the meaning of that provision where it is established that the exercise of trademark rights by the holder of the trademark, having regard to the marketing system operated by him, contributes to the artificial partitioning of the markets between Member States. The German regulation on the minimum wine-spirit content of potable spirits and Article 100 (3) of the Branntweinmonopolgesetz create precisely such an artificial partition between the market of the Federal Republic of Germany and the market of the other Member States; they are therefore also contrary to the second sentence of Article 36.

The first question put by the Hessisches Finanzgericht should therefore be answered as follows:

The concept of “quantitative restrictions on imports and all measures having equivalent effect” within the meaning of Article 30 of the EEC Treaty must be interpreted as meaning that the fixing at national level of a minimum wine-spirit content for potable spirits as a condition for authorization to market within the Member State concerned, where its result is that traditional products of other Member States whose wine-spirit content is below the fixed limit cannot be put into circulation in the Federal Republic of Germany, constitutes such a measure.

(b) The second question

The second question for a preliminary ruling is put in the alternative and not as a subsidiary matter.

It raises a preliminary question as to whether, at the time when the request for authorization to import which gave rise to the main action was made, there still existed, in the Federal Republic of Germany, for potable spirits, a State monopoly of a commercial character. The view supported in this matter by the Commission in various proceedings before the Court, according to which such is no longer the case following the judgments of the Court of 17 February 1976 in Cases 45/75 *Rewe* and 91/75 *Miritz* ([1976] ECR 181 and 217), is erroneous.

According to Article 1 (3) of the Branntweinmonopolgesetz, as last amended by the Law of 14 December 1976, the monopoly includes, subject to the exceptions laid down in the law, the importation of spirits; according to Article 3, the federal monopoly administration alone is empowered to import spirits, save for certain exceptions, onto the territory covered by the monopoly; under Article 106 trade in spirits is conditional upon authorization by the monopoly administration.

It is true that following the Notice of 8 April 1976 a licence is no longer required for imports of spirits in free circulation in a Member State of the Community; however, that notice might be withdrawn at any moment. According to the spirit of the case-law of the Court, a State monopoly of a commercial character cannot be held to be adjusted, within the meaning of Article 37 of the Treaty, so long as provisions laying down an import monopoly are maintained, albeit only in a formal way.

According to the second subparagraph of Article 37 (1) which contains a legal definition of the concept “State monopoly of a commercial character”, it is sufficient for there to be a monopoly that imports are supervised, determined or appreciably influenced in law. It cannot be said that Article 3 of the Branntweinmonopolgesetz gives the monopoly administration the exclusive right to import liqueurs; however, as a result of the prohibition on marketing arising from the rules relating to the minimum wine-spirit content the importation of certain liqueurs is totally prohibited.

Indeed, the present activities of the German spirits monopoly appreciably influence the importation of spirits and alcoholic beverages from other Member States. That is the effect of the special tax arrangements applied to alcohol which is exempt from the obligation of sale to the monopoly (Articles 58, 76, 79 (2), 79a and 151 (1) of the Branntweinmonopolgesetz) and, in essence, of the fact that the Bundesmonopolverwaltung sells alcohol which is subject to that obligation well below its cost price, which varies according to the supply situation in the other Member States, and of the fact that the monopoly’s considerable deficit is covered by federal resources. This gives rise to discrimination regarding the conditions under which goods are procured and marketed between nationals of the Member States, that is to say discrimination between sellers from other Member States and the Bundesmonopolverwaltung.

The second question should be answered as follows:

The concept “discrimination regarding the conditions under which goods are procured and marketed … between nationals of Member States” within the meaning of Article 37 (1) of the EEC Treaty must be

interpreted as referring to the fixing of a minimum wine-spirit content for liqueurs, as well as any other measure adopted by a State monopoly of a commercial character, in so far as they constitute an obstacle in the Member State concerned to the sale of liqueurs coming from other Member States, where the minimum wine-spirit content of those liqueurs is below that authorized by the system in force in the State concerned for the purposes of admission onto the market.

The *Government of the Federal Republic of Germany* recalls the content, context, antecedents and purpose of the national provisions on the minimum wine-spirit content of potable spirits. Those provisions were prompted, in particular, by the wish to protect the consumer against adverse effects on his health: a limitless authorization for all varieties of potable spirits, whatever their alcohol content, would be likely to lead to an increase in the consumption of alcohol as a whole and therefore to increase the specific dangers of alcoholism; the provisions are also intended to protect the consumer against abuses and unfair practices during the manufacture and sale of spirits. Settled commercial practices concerning all the essential requirements relating to manufacture, composition and appellation of spirits have developed pragmatically within the Federal Republic and these find their expression in the Begriffsbestimmungen fur Spirituosen (definitions of spirits).

(a) The first question

The scope of the questions of interpretation referred to the Court goes well beyond the subject-matter of the main action: in most Member States there exist provisions, very diverse in nature, relating to the minimum wine-spirit content of potable spirits and those provisions constitute merely a small part of the complex problem raised by the existence of a considerable number of divergent national “technical standards” for numerous goods. Pursuant to Articles 3 (h) and 100 of the Treaty, the resulting obstacles to trade must be reduced by recourse to the procedure for the approximation of such provisions laid down by law, regulation or administrative action in Member States as they directly affect the establishment or functioning of the common market. Until such time as the national rules relating to manufacture and marketing have been harmonized, Article 30 of the EEC Treaty is to be applied only in so far as those provisions lead to discrimination against imported goods in relation to domestic goods.

Measures which are applicable without distinction to domestic products and imported products do not, according to Directive No 70/50, have effects equivalent to those of quantitative restrictions and do not therefore, in principle, fall within the scope of Article 30.

The conditions regarding minimum quantities in force in the Federal Republic quite clearly do not involve different treatment for imported goods and there can therefore be no question of the application of Article 30.

Quite apart from formal equality of treatment, it should be noted that the provisions relating to the minimum alcohol content do not give national producers any material advantage. Any obstacles to trade are due solely to the fact that the legal orders of the two Member States have traditionally laid down different minimum requirements in relation to the alcohol content of various spirits. The mere fact that German law contains stricter minimum requirements, which, when viewed objectively, give no advantage to national producers, cannot constitute a material discrimination within the meaning of Article 30 of the Treaty.

The arguments adduced by the plaintiff from the proceedings commenced in respect of failure to fulfil an obligation against the Federal Republic of Germany do not carry conviction in this context: that case, which was essentially concerned with aniseed liqueurs, differed fundamentally from the main action in this case, in particular in that the German rules required a minimum alcohol content which was higher for foreign aniseed liqueurs than for similar national liqueurs.

In view of the fundamental importance to an assessment of the technical specifications of all other sectors of production of the line of argument adopted by the plaintiff in the main action, it should be noted that its consequence would be that the minimum alcohol content of a given product in the Federal Republic of

Germany would no longer be governed by German law but by French law; in consequence, the lower minimum alcohol content fixed by French law should also be extended to the whole of German national production. In the final analysis, the rules of the least exigent Member State would be authoritative in all the others; this legal effect, supposedly the result of Article 30, which is a directly applicable provision, should have been attained as from 1 January 1970 at the latest. By reason of the automatic effect of Article 30 other amendments to national legal provisions could take place continually in the future, whenever a single Member State tempered the requirements laid down by its rules; in an extreme case, a single Member State could enact legislation for the whole Community, without the collaboration or even the knowledge of the other Member States. The result would be to lower minimal requirements to the lowest level set in any given national rules, in the absence of the authorization required by Article 100 of the Treaty, which presupposes the consent of the Member States.

In this connexion it should be borne in mind that the abolition of minimal requirements in force in a Member State cannot be limited to imported products; on the contrary, it must also be mandatory in respect of national production, otherwise fresh discrimination would be created. Nor would it be possible to limit the requirements of Article 30 as so defined to so-called “traditional” products; from the point of view of Article 30, there is no convincing reason for treating new products differently from traditional products.

Those consequences are incompatible with the principle of legal certainty.

They are excluded above all by the functional separation of powers between the national authorities and the Community authorities. In relation to the interpretation of Article 30, that fundamental principle of the Treaty implies that the application of that provision reaches its limit at the point where the functional exercise of the powers retained by the Member States would be jeopardized. The Member States must continue to be able effectively to exercise those powers, until the achievement of harmonization transfers their freedom of action to the Community. This respect for the separation of functions is particularly important in the field of technical specifications.

In accordance with the case-law of the Court concerning the interpretation of Article 95 of the EEC Treaty it must be accepted that the general framework of the national legislative system must remain the determining factor, even as regards products which do not normally exist within the importing country, in those fields requiring harmonization which still come under the control of the Member States.

The solution sought by the plaintiff in the main action, which amounts to the adoption of the lowest national minimum requirements, is further to be discounted on the basis that the provisions in question serve purposes which are legitimate in relation to Community law and fall within the ambit of social, consumer or fiscal law, in which there is a wide margin of discretion. Pending harmonization at the Community level, that margin of discretion can of necessity belong only to the Member States.

For all those reasons national rules relating to the minimum percentage of components which determine the value of certain products, the purpose of which is legitimate with regard to Community law and the restrictive effects of which on trade arise solely because of their traditional differences, cannot be covered by Article 30 of the EEC Treaty merely because of the division of powers between the Member States and the Community which results from the system of the Treaty.

Article 3 of Directive No 70/50 does not alter this conclusion.

The protection of the consumer against fraud and against dangers to his health and the maintenance of fair competition are legitimate aims which are in conformity with Community law. The means chosen in order to attain that end are not subject to any condition under Community law, which itself contains numerous provisions relating to minimum contents in the foodstuffs sector. The restrictive effect on trade of such provisions does not exceed the normal limits of the “effects intrinsic to mere trade rules”. The principle of proportionality is not threatened: a mere requirement as to labelling cannot replace the fixing of a minimum alcohol content; the fact that manufacturers must adapt their products intended for export to the specifications of the importing country pending harmonization is merely the necessary consequence of the

differences between national specifications.

The first question referred to the Court should be answered as follows:

The concept of “measures having an effect equivalent to quantitative restrictions on imports” within the meaning of Article 30 of the EEC Treaty does not cover differences existing between the rules in force within various legal orders of the Member States relating to the minimum wine-spirit content of potable spirits, which lead to the consequence that products which are traditionally suitable for marketing in Member States where the minimum requirements are lower may be marketed in other Member States only with a higher wine-spirit content.

(b) The second question

Article 37 of the Treaty cannot be applied to the fixing of a minimum alcohol content: the provision at issue does not relate to monopoly law, in the sense that its existence or maintenance in force depends upon the existence or development of the commercial alcohol monopoly; it is, on the contrary, a provision of the law relating to foodstuffs, which appears in the Branntweinmonopolgesetz for purely historical reasons.

The application of Article 37 of the Treaty is also to be discounted on the ground that there is no discrimination, whether formal or factual, to the disadvantage of foreign products in relation to domestic products.

The *Government of the Kingdom of Denmark* wishes to draw the Court’s attention to the fact that fruit-based wines, such as the Danish cherry wine, are also affected by the marketing prohibition under the German rules in relation to the minimum wine-spirit content of potable spirits.

The German rules are neither rules relating to the quality of products nor a technical obstacle to trade which may be eliminated by the adoption of harmonization directives pursuant to Article 100 of the Treaty. Nor do they appear to belong to the category of measures referred to by the Court in its judgment of 16 November 1977 (Case 13/77 INNO [1977] ECR 2115) which, although forming an obstacle to inter-State trade, do not fall within the ambit of Article 30 because they are specifically referred to in the Treaty, in particular as fiscal measures, or are *per se* permitted as being the visible or hidden expression of powers retained by the Member States. Nor can Article 36 be relied upon in order to justify the prohibition on the marketing of certain potable spirits.

In those circumstances an affirmative answer should be given to the first question referred to the Court.

The *Commission* outlines the state of German law relating to the fixing of the minimum wine-spirit content of potable spirits, to the “definitions of spirits” and to foodstuffs; it recalls the procedure for failure to fulfil an obligation initiated
against the Federal Republic of Germany in 1974 and the fact that following the various complaints referred to it it decided to undertake a general study relating to the compatibility with Article 30 of the EEC Treaty of national rules relating to the composition, quality and designation of foodstuffs and, more particularly, alcoholic beverages.

(a) The problem as a whole

The Commission’s present attitude on the problem as a whole may be summarized as follows:

In so far as provisions relating to the composition or nature of the components of certain beverages or foodstuffs are not designed to ensure protection of health, restrictions on trade may be justified, in accordance with Article 36 of the Treaty, only on the basis of the principle of the protection of the consumer (consumer information and protection against fraud) and that of fair competition between producers.

The question arises here of the extent to which such objectives may be attained by provisions relating to designations and by information indicating the properties and composition of the product in question rather than by a total prohibition on sale.

In view of the very high sensitivity of prices of the products in question and of the fact that the consumer can only with difficulty compare the various alcohol contents of similar products, mandatory rules concerning the minimum wine-spirit content such as those at issue in the main action may contribute to ensuring fair competition and consumer protection.

Where suitable designation or labelling of the product is not sufficient to avoid any error on the part of the consumer or where it is wholly or largely impossible to supply the requisite information, a prohibition on sale may be justified.

In the final analysis, the essential question is whether rules which are applicable without distinction concerning the composition of products, in conjunction with the designation of those products, must be considered to be “out of proportion”. Where that is not the case restrictions on trade between Member States resulting from disparities between those rules can be abolished only by means of the approximation of laws or the creation of a Community law.

The first question should be answered as follows:

The fixing of a minimum wine-spirit content for potable spirits, which is applicable to domestic products and imported products without distinction, may be justified in the interests of consumer protection and fair competition between producers of potable spirits.

However, such rules are excessive and therefore constitute a prohibited measure having an effect equivalent to quantitative restrictions on imports where their consequence is that, notwithstanding a suitable indication, typical products from other Member States, manufactured according to a particular process and characterized traditionally by an alcohol content which is lower than the limit fixed may not be put into circulation in the Member State concerned or may be put into circulation there only if they conform to unreasonable requirements.

(b) The second question

The second question is devoid of purpose: Article 100 (3) of the Branntweinmonopolgesetz forms part of the law relating to foodstuffs. In any event, following the abolition of the German spirits monopoly, any discrimination regarding the conditions under which goods are procured and marketed is no longer linked to the existence of the monopoly and must therefore be assessed according to the general provisions of the Treaty, in this case Articles 30 and 36.

III — Oral procedure

Rewe-Zentral AG, the plaintiff in the main action, represented by Gert Meier, Advocate of Cologne, the Government of the Federal Republic of Germany, represented by Jochim Sedemund, Advocate of Cologne, and the Commission of the European Communities, represented by its Legal Adviser, Heinrich Matthies, submitted oral observations and their replies to questions put by the Court at the hearing on 28 November 1978.

The Advocate General delivered his opinion at the hearing on 16 January 1979.

Decision

1 By order of 28 April 1978, which was received at the Court on 22 May, the Hessisches Finanzgericht

referred two questions to the Court under Article 177 of the EEC Treaty for a preliminary ruling on the interpretation of Articles 30 and 37 of the EEC Treaty, for the purpose of assessing the compatibility with Community law of a provision of the German rules relating to the marketing of alcoholic beverages fixing a minimum alcoholic strength for various categories of alcoholic products.

2 It appears from the order making the reference that the plaintiff in the main action intends to import a consignment of “Cassis de Dijon” originating in France for the purpose of marketing it in the Federal Republic of Germany.

The plaintiff applied to the Bundesmonopolverwaltung (Federal Monopoly Administration for Spirits) for authorization to import the product in question and the monopoly administration informed it that because of its insufficient alcoholic strength the said product does not have the characteristics required in order to be marketed within the Federal Republic of Germany.

3 The monopoly administration’s attitude is based on Article 100 of the Branntweinmonopolgesetz and on the rules drawn up by the monopoly administration pursuant to that provision, the effect of which is to fix the minimum alcohol content of specified categories of liqueurs and other potable spirits (Verordnung über den Mindestweingeistgehalt von Trinkbranntweinen of 28 February 1958, Bundesanzeiger No 48 of 11 March 1958).

Those provisions lay down that the marketing of fruit liqueurs, such as “Cassis de Dijon”, is conditional upon a minimum alcohol content of 25%, whereas the alcohol content of the product in question, which is freely marketed as such in France, is between 15 and 20%.

4 The plaintiff takes the view that the fixing by the German rules of a minimum alcohol content leads to the result that well-known spirits products from other Member States of the Community cannot be sold in the Federal Republic of Germany and that the said provision therefore constitutes a restriction on the free movement of goods between Member States which exceeds the bounds of the trade rules reserved to the latter.

In its view it is a measure having an effect equivalent to a quantitative restriction on imports contrary to Article 30 of the EEC Treaty.

Since, furthermore, it is a measure adopted within the context of the management of the spirits monopoly, the plaintiff considers that there is also an infringement of Article 37, according to which the Member States shall progressively adjust any State monopolies of a commercial character so as to ensure that when the transitional period has ended no discrimination regarding the conditions under which goods are procured or marketed exists between nationals of Member States.

5 In order to reach a decision on this dispute the Hessisches Finanzgericht has referred two questions to the Court, worded as follows:

1. Must the concept of measures having an effect equivalent to quantitative restrictions on imports contained in Article 30 of the EEC Treaty be understood as meaning that the fixing of a minimum wine-spirit content for potable spirits laid down in the German Branntweinmonopolgesetz, the result of which is that traditional products of other Member States whose wine-spirit content is below the fixed limit cannot be put into circulation in the Federal Republic of Germany, also comes within this concept?

2. May the fixing of such a minimum wine-spirit content come within the concept of “discrimination regarding the conditions under which goods are procured and marketed … between nationals of Member States” contained in Article 37 of the EEC Treaty?

6 The national court is thereby asking for assistance in the matter of interpretation in order to enable it to assess whether the requirement of a minimum alcohol content may be covered either by the prohibition on all measures having an effect equivalent to quantitative restrictions in trade between Member States contained in Article 30 of the Treaty or by the prohibition on all discrimination regarding the conditions under which goods are procured and marketed between nationals of Member States within the meaning of Article 37.

7 It should be noted in this connexion that Article 37 relates specifically to State monopolies of a commercial character.

That provision is therefore irrelevant with regard to national provisions which do not concern the exercise by a public monopoly of its specific function — namely, its exclusive right — but apply in a general manner to the production and marketing of alcoholic beverages, whether or not the latter are covered by the monopoly in question.

That being the case, the effect on intra-Community trade of the measure referred to by the national court must be examined solely in relation to the requirements under Article 30, as referred to by the first question.

8 In the absence of common rules relating to the production and marketing of alcohol — a proposal for a regulation submitted to the Council by the Commission on 7 December 1976 (Official Journal C 309, p. 2) not yet having received the Council's approval — it is for the Member States to regulate all matters relating to the production and marketing of alcohol and alcoholic beverages on their own territory.

Obstacles to movement within the Community resulting from disparities between the national laws relating to the marketing of the products in question must be accepted in so far as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer.

9 The Government of the Federal Republic of Germany, intervening in the proceedings, put forward various arguments which, in its view, justify the application of provisions relating to the minimum alcohol content of alcoholic beverages, adducing considerations relating on the one hand to the protection of public health and on the other to the protection of the consumer against unfair commercial practices.

10 As regards the protection of public health the German Government states that the purpose of the fixing of minimum alcohol contents by national legislation is to avoid the proliferation of alcoholic beverages on the national market, in particular alcoholic beverages with a low alcohol content, since, in its view, such products may more easily induce a tolerance towards alcohol than more highly alcoholic beverages.

11 Such considerations are not decisive since the consumer can obtain on the market an extremely wide range of weakly or moderately alcoholic products and furthermore a large proportion of alcoholic beverages with a high alcohol content freely sold on the German market is generally consumed in a diluted form.

12 The German Government also claims that the fixing of a lower limit for the alcohol content of certain liqueurs is designed to protect the consumer against unfair practices on the part of producers and distributors of alcoholic beverages.

This argument is based on the consideration that the lowering of the alcohol content secures a competitive advantage in relation to beverages with a higher alcohol content, since alcohol constitutes by far the most expensive constituent of beverages by reason of the high rate of tax to which it is subject.

Furthermore, according to the German Government, to allow alcoholic products into free circulation wherever, as regards their alcohol content, they comply with the rules laid down in the country of production would have the effect of imposing as a common standard within the Community the lowest alcohol content permitted in any of the Member States, and even of rendering any requirements in this field inoperative

since a lower limit of this nature is foreign to the rules of several Member States.

13 As the Commission rightly observed, the fixing of limits in relation to the alcohol content of beverages may lead to the standardization of products placed on the market and of their designations, in the interests of a greater transparency of commercial transactions and offers for sale to the public.

However, this line of argument cannot be taken so far as to regard the mandatory fixing of minimum alcohol contents as being an essential guarantee of the fairness of commercial transactions, since it is a simple matter to ensure that suitable information is conveyed to the purchaser by requiring the display of an indication of origin and of the alcohol content on the packaging of products.

14 It is clear from the foregoing that the requirements relating to the minimum alcohol content of alcoholic beverages do not serve a purpose which is in the general interest and such as to take precedence over the requirements of the free movement of goods, which constitutes one of the fundamental rules of the Community.

In practice, the principle effect of requirements of this nature is to promote alcoholic beverages having a high alcohol content by excluding from the national market products of other Member States which do not answer that description.

It therefore appears that the unilateral requirement imposed by the rules of a Member State of a minimum alcohol content for the purposes of the sale of alcoholic beverages constitutes an obstacle to trade which is incompatible with the provisions of Article 30 of the Treaty.

There is therefore no valid reason why, provided that they have been lawfully produced and marketed in one of the Member States, alcoholic beverages should not be introduced into any other Member State; the sale of such products may not be subject to a legal prohibition on the marketing of beverages with an alcohol content lower than the limit set by the national rules.

15 Consequently, the first question should be answered to the effect that the concept of “measures having an effect equivalent to quantitative restrictions on imports” contained in Article 30 of the Treaty is to be understood to mean that the fixing of a minimum alcohol content for alcoholic beverages intended for human consumption by the legislation of a Member State also falls within the prohibition laid down in that provision where the importation of alcoholic beverages lawfully produced and marketed in another Member State is concerned.

Costs

16 The costs incurred by the Government of the Kingdom of Denmark, the Government of the Federal Republic of Germany and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

Since these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action before the Hessisches Finanzgericht, costs are a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Hessisches Finanzgericht by order of 28 April 1978, hereby rules:

The concept of “measures having an effect equivalent to quantitative restrictions on imports” contained in Article 30 of the EEC Treaty is to be understood to mean that the fixing of a minimum alcohol content for alcoholic beverages intended for human consumption by the legislation of a

Member State also falls within the prohibition laid down in that provision where the importation of alcoholic beverages lawfully produced and marketed in another Member State is concerned.

Kutscher
Mertens de Wilmars
Mackenzie Stuart
Donner
Pescatore
Sørensen
O'Keeffe
Bosco
Touffait

Delivered in open court in Luxembourg on 20 February 1979.

A. Van Houtte
Registrar
H. Kutscher
President

1 — Language of the Case: German.