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EU: Case 8/74
Celex No. 674J0008

European Union Cases

Court of Justice

Judgment of the Court of 11 July 1974. **Procureur du Roi v Benoît and Gustave Dassonville**. Preliminary ruling requested by the Tribunal de première instance de Bruxelles - Belgium. Case 8-74.

European Court Reports 1974 page 0837

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Text

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1. QUANTITATIVE RESTRICTIONS - ABOLITION - MEASURES HAVING EQUIVALENT EFFECT - CONCEPT

(EEC TREATY, ARTICLE 30)

2. QUANTITATIVE RESTRICTIONS - ABOLITION - MEASURES HAVING EQUIVALENT EFFECT - DESIGNATION OF ORIGIN OF A PRODUCT - PROTECTIVE MEASURES - ADMISSIBILITY - CONDITIONS

(EEC TREATY, ARTICLE 30, 36)

3. COMPETITION - AGREEMENTS - EXCLUSIVE DEALING AGREEMENT - PROHIBITION - APPLICATION - CRITERIA

(EEC TREATY, ARTICLE 85)

4. COMPETITION - AGREEMENTS - EXCLUSIVE DEALING AGREEMENTS - PROHIBITION - APPLICATION - ECONOMIC AND LEGAL CONTEXT

(EEC TREATY, ARTICLE 85)

SUMMARY

1. All trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions.

2. In the absence of a Community system guaranteeing for consumers the authenticity of a product's designation or origin, Member States may take measures to prevent unfair practices in this connexion, on condition that such measures are reasonable and do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

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.

3. An exclusive dealing agreement falls within the prohibition of Article 85 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.

4. 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.

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.

Price differences found to exist between Member States are an indication to be taken into account.

ISSUE 1

In case 8/74

Reference to the court under Article 177 of the EEC Treaty by the tribunal de premiere 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

And

Benoit and gustave dassonville

ISSUE 2

On the interpretation of Articles [30](#) to 33, [36](#) and [85](#) of the EEC Treaty,

FOUNDATIONS

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 177 of the EEC Treaty, two questions on the interpretation of Articles [30](#), 31, 32, 33, [36](#) and [85](#) of the EEC Treaty, 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 [30](#) of the Treaty.

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-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions.

6 In the absence of a Community 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 Community nationals.

7 Even without having to examine whether or not such measures are covered by Article 36, 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 85 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 Communities, 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.

RULING

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.

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Subject

Free movement of goods; Quantitative restrictions; Measures having equivalent effect; Competition; Rules applying to undertakings; Exclusive agreements

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Date lodged

1974/02/08

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References

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Case citations

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EEC Treaty Article 36 [\[11957E036\]](#) p 851 852

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A9 Tribunal de 1re instance de Bruxelles, 18e chambre, jugement du 11/01/1974 (61.97.1241/71)

P1 Tribunal de 1re instance de Bruxelles, 18e chambre, jugement du 20/03/1975 (61.97.1241/71)

Nationality
Belgium

Commentary

Tummers, Arlette

Carpay-Herve, Michèle: L'arrêt relatif aux certificats "Scotch Whisky", Revue de droit intellectuel : l'ingénieur-conseil 1974 p.297-309

Slot, P.J.: S.E.W.

Sociaal-economische wetgeving 1975 p.130-136

Joliet, René: EEC Law and Appellations of Origin: The Scotch Whisky Case, The Modern Law Review 1975 p.200-206

De Montblanc, Laure: Revue de jurisprudence commerciale 1975 p.195-206

De Caluwé, A.: Jurisprudence commerciale de Belgique 1975 p.94-99

Wellinghausen, Walter: Europarecht 1975 p.322-326

Slot, P.J.: Annotaties Hof van Justitie EG (Ed. W.E.J. Tjeenk Willink - Zwolle) 1995 p.156-161

Banu, Mihai: Libera circulaie a bunurilor. Art. 28 CE. Msuri cu efect echivalent. Vânzare ambulant.

Înceierea de abonamente pentru periodice. Autorizaie prealabil, Revista română de drept comunitar 2006 Nr.1 p.133-137

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European Court reports 1974 Page 00837

Greek special edition Page 00411

Portuguese special edition Page 00423

Spanish special edition Page 00383

Swedish special edition Page 00343

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