provision affects only imported products, it is discriminatory.

The fact that the law in issue refers to the rules governing production in the exporting Member State does not affect the aforesaid conclusion since the discriminatory effect must be determined solely on the basis of the law of the State where the marketing takes place, that is to say, the importing Member State.

2. Although it is true that protection of consumers, in particular, may justify obstacles to the free movement of goods resulting from disparities in national rules in relation to the marketing of products, application of that criterion, which concerns only legislation which governs the marketing of national and imported products uniformly, is excluded if the national rule is discriminatory.

In Case 59/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Landgericht München [Regional Court, Munich] I (Seventh Commercial Chamber) for a preliminary ruling in the action pending before that court between

SCHUTZVERBAND GEGEN UNWESEN IN DER WIRTSCHAFT

and

WEINVERTRIEBS-GMBH

on the interpretation of Article 30 et seq. of the EEC Treaty,

THE COURT

composed of: P. Pescatore, President of the Second Chamber, acting as President, A. O'Keeffe and U. Everling (Presidents of Chambers), Lord Mackenzie Stuart, G. Bosco, T. Koopmans, O. Due, K. Bahlmann and Y. Galmot, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to 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

1. The plaintiff in the main action applied to the Landgericht München I for an injunction restraining the defendant in the main action from marketing in the territory of the Federal Republic of Germany vermouth imported from Italy on the ground that its alcoholic content was less than 16 % by volume.

According to Italian law (Article 7 of Decree-Law No 3 of 11 January 1956, transformed into Law No 108 of 16 March 1956) the alcoholic content of vermouth marketed in Italy must be at least 16 % by volume. Nevertheless, Article 20 of the said Law allows the Italian authorities to permit by way of exception the production of vermouth with an alcoholic content of less than 16 % by volume provided it is intended for export and the law of the country of destination is observed.

According to the German Law of 1971 on wine there is no minimum limit on the alcoholic content of vermouth. However, paragraph 32 (1) thereof provides:

"Wine-based beverages produced abroad (foreign wine-based beverages) may be imported only if the whole production has taken place in one and the same State according to the provisions applicable there and the product may be marketed there for the purpose of being consumed in an unaltered state; . . ."

The Seventh Commercial Chamber of the Landgericht München I considered it relevant to know whether such a prohibition was or was not contrary to Article 30 of the Treaty and therefore referred the following two questions to the Court for a preliminary ruling:

"1. Is the interpretation of a statutory provision in Member State A, whereby vermouth produced in Member State B is not marketable in Member State A because it has slightly less than the minimum alcoholic content prescribed by law in Member State B, compatible with Article 30 et seq. of the EEC Treaty even though no minimum content for domestic vermouth is prescribed in Member State A and accordingly had the vermouth been produced in Member State A it would have been freely marketable there?

If Question 1 is answered in the affirmative:

2. Is it still compatible with Article 30 et seq. of the EEC Treaty if the national provisions in Member State B provide that the vermouth need not comply with the national

provisions of Member State B on minimum alcoholic content if the vermouth is produced for export to Member State A?"

The order making the reference was lodged at the Court Registry on 11 February 1982.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by the plaintiff in the main action, represented by Dr Gerstenberg, Rechtsanwalt, Munich, by the defendant in the main action, represented by R. Klaka, by the Government of the Italian Republic, represented by Mr Conti, Avvocato dello Stato, by the Government of the French Republic, represented by Mr Prevel, Secretary General of the Comité Interministériel pour les Questions de Coopération Economique Européenne, acting as Agent, and by the Commission of the European Communities, represented by its Legal Adviser, Mr Wägenbaur, acting as Agent.

Upon 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.

II — Observations pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The *plaintiff in the main action* is of the opinion that there is no room in the present case for the application of Article 30 of the EEC Treaty since the proceedings in its view represent only "a very ordinary dispute" on the provisions of German municipal law. Further, German consumers, and in particular those who each year visit Italy, expect Italian vermouth marketed in the Federal Republic of Germany to be identical with Italian vermouth marketed in Italy. It is irrelevant that German vermouth may have a lower alcoholic content than that of the Italian vermouth because "German vermouth is simply a different product from Italian vermouth".

The *defendant in the main action* first of all observes that the wording of the questions referred to the Court may be understood as meaning that the court making the reference is asking the Court of Justice to rule on the lawfulness of a German national provision and its compatibility with Article 30 et seq. of the EEC Treaty and must therefore be regarded as inadmissible. Nevertheless the court making the reference is concerned with obtaining an interpretation of the prohibition of measures having an effect equivalent to quantitative restrictions and an interpretation of the general principle of non-discrimination. Consequently the questions are admissible especially as the Court of Justice is always entitled to reformulate the questions put.

As regards the first question the defendant in the main action refers to the facts and to the German legislative provisions applicable to the case and expresses the view that according to the established case-law of the Court of Justice in relation to Article 30 the importing State is bound not to impose other or more extensive conditions on imported products than those applied to domestic products. To treat imported products differently from domestic products, which is the effect of the German Law, constitutes a measure having an equivalent effect within the meaning of Article 30 of the EEC Treaty.

According to the defendant in the main action that measure can in no way be justified under the first sentence of Article 36. In its view the quality of the imported Italian vermouth is not challenged by the plaintiff in the main action. It is thus inexplicable for it not to be possible to import Italian vermouth with an alcoholic content slightly less than 16 % by volume into the Federal Republic of Germany when the alcoholic content of German vermouth in no case exceeds 14 % by volume. In addition the defendant observes that vermouth is not drunk because of its alcoholic content but because of its special taste or its Italian origin and the defendant is of the opinion that the aim of the plaintiff in the main action is not primarily to protect the German consumer so much as the interests of the German producers of vermouth. It emphasizes that the consumer is not misled by the slightly lower alcoholic content of the Fiorenzo product in question and that in any event according to the case-law of the Court that would not justify the absolute prohibition of marketing which is claimed in the action.

In any case it is only by way of precaution that the defendant in the main action maintains that it is not possible to have recourse to the first sentence of Article 36 of the EEC Treaty because the measure in question constitutes a means of arbitrary discrimination or a disguised restriction on trade between Member States. Therefore even the protection of public health cannot be invoked, as is apparent from the case-law of the Court and in particular the judgment of 10 July 1980 in Case 152/78 *Commission* v *France* [1980] ECR 2299. In consequence the defendant in the main action considers that the first question should be answered to the effect that:

"There is a measure having an equivalent effect within the meaning of Article 30 of the EEC Treaty which cannot be justified under the first sentence of Article 36 of the EEC Treaty where vermouth produced in Italy for the purposes of exportation cannot be marketed in the Federal Republic of Germany because of national provisions of the German legislation relating to wine whereas comparable vermouth of German origin may be marketed in the Federal Republic of Germany."

In view of the answer to the first question the defendant in the main action considers that the second question does not call for an answer.

Ex abundanti cautela the defendant in the main action nevertheless discusses the second question. It contends that numerous national provisions of the various Member States contain derogations from certain prohibitions of municipal law as regards products intended for export. After citing several examples it maintains that in order to protect exporters from unfair competition in the importing Member State every Member State has a legitimate interest in providing in favour of exporters derogations from the national provisions and referring in that respect to the law of the importing State. Such an approach is not an obstacle to the movement of goods within the meaning of Article 30 but an adaptation to the differences still existing between the national rules in the food products sector within the Community. Moreover in the judgment of 5 February 1981 in Case 53/80 *Kaasfabriek* [1981] ECR 409 the Court did not consider that a similar clause on exportation in the Netherlands law constituted an arbitrary means of discrimination in the trade between Member States within the meaning of the

second sentence of Article 36 of the EEC Treaty.

In consequence the defendant in the main action proposes that the second question put to the Court should be answered as follows:

"Where vermouth lawfully manufactured in Italy for export on the basis of the legal provisions in force there or on the basis of derogations therefrom cannot be marketed in the Federal Republic of Germany by reason of national provisions of the German law on wine whereas comparable vermouth of German origin may be so marketed, that amounts to a measure having an equivalent effect within the meaning of Article 30 of the EEC Treaty, which cannot be justified under the first sentence of Article 36 of the EEC Treaty."

The *Italian Government* shares the opinion of the defendant in the main action as regards the first question. It also emphasizes that according to the case-law of the Court and Commission Directive 70/50/EEC of 22 December 1969 (Official Journal, English Special Edition 1970 (I), p. 17) the discrimination arising from the contested German rules cannot in any event fail to constitute a typical form of quantitative restriction on import or at least a measure having equivalent effect within the meaning of Article 30 of the EEC Treaty.

The Italian Government states moreover that since the present case concerns measures applicable only to imported products the "Cassis de Dijon" case-law concerning the incompatibility with Article 30 of the EEC Treaty of national provisions applicable without distinction to national products and imported products cannot be taken into account. Consequently a national measure such as that in question in the present case, prohibiting the marketing only of imported vermouth the alcoholic content of which is less than 16 %, is incompatible with Article 30 et seq. of the EEC Treaty and it is impossible to rely on exceptions of the kind referred to by the Court in the "Cassis de Dijon" case.

The Italian Government adds that for the sake of completeness it is still necessary to consider whether the prohibition of import might perhaps be justified under the first sentence of Article 36. Even assuming that the concept of public policy may be extended to include the protection of consumers and fair trading the Italian Government considers that the measure in question cannot be justified under that head mainly on the ground that it is clear beyond doubt that a restrictive measure such as that which is the subject of the order making the reference cannot have any aim and practical effect other than to guarantee an advantage to domestic producers by keeping products originating from a given State (Italy) off the market or making them less competitive by subjecting them to more onerous marketing conditions. In consequence the measure is incompatible with Article 30 et seq. of the EEC Treaty.

The Italian Government further adds that its opinion is in no way affected by the fact that the conditions placed on the marketing of the imported product alone are copied from the provisions applicable in the market of origin of the product. In so far as in the absence of Community provisions in relation to the production and marketing of alcoholic beverages it is for each Member State to regulate within its territory everything concerning the production and marketing of such beverages the national rules must be

valid in themselves and, where they apply, all products, whatever their origin, should be treated in the same way. In the view of the Italian Government, at the present stage of development of Community law the introduction of a "kind of principle of country of origin" must be ruled out since it would be contrary to Article 30 of the EEC Treaty.

Finally, the Italian Government adds that according to Italian law the production of vermouth for export with an alcoholic content less than 16 % by volume is perfectly legitimate when it is authorized and checked. Consequently the national measure in question cannot be justified by the need to prohibit the marketing of products made unlawfully.

On those grounds the Italian Government considers that:

"The questions referred to the Court of Justice by the Landgericht München I must be answered to the effect that to prescribe different and more onerous marketing conditions for imported products as compared with those applicable to domestic products is not compatible with Article 30 et seq. of the EEC Treaty and that is so even if the conditions are modelled on those applicable in the State of origin of the imported products."

The *French Government* also states as a preliminary point that it is clear from the established case-law of the Court that in the present case the Court is called upon not to rule on the compatibility of German legislation with Community law but to give an interpretation of Article 30 et seq. of the Treaty and in particular of the concept of quantitative restriction and its discriminatory effect.

The French Government too proposes that an answer in the negative should be given to the first question. It states that the Court, especially in the judgment of 13 March 1979 in Case 119/78 (*Peureux* [1979] ECR 975) has laid down the principle that national laws must apply uniformly and without discrimination both to products manufactured within the national territory and to those imported from other Member States.

In the present case it is not denied that the imported vermouth conforms to German law. The German authorities cannot therefore require that the product conforms to the law of the Member State where it was produced before its sale may be authorized in the Federal Republic of Germany.

In consequence the French Government proposes that the Court

"should rule in relation to the first question that national law cannot require more of imported products than it requires of domestic products. With this answer in the negative to the first question the French Government considers that the second question has lost its purpose".

The *Commission* also shares that opinion. It emphasizes that the result of the national provision in question is to discriminate against the imported product in favour of the similar national product and that such a disadvantage inflicted on imported products constitutes an obstacle to intra-Community trade which clearly cannot be justified. Consequently the national rule in question must be regarded as a measure having an effect equivalent to a quantitative restriction.

The Commission also informs the Court that following a complaint from a German trade association its attention has recently been drawn to the anomalies resulting from the position in question and that after considering the legal position it has decided to take proceedings against the Federal Republic of Germany as provided for in Article 169 of the EEC Treaty. The German Government has already received a letter giving formal notice thereof.

In those circumstances the Commission proposes that the first question from the Landgericht München I should be answered as follows:

"The concept of measures having an effect equivalent to quantitiative restrictions referred to in Article 30 of the EEC Treaty must be interpreted as including a provision which, by applying the rules governing production in another Member State and thus preventing the importation of vermouth originating in that other Member State even though no such rule governs production in the importing State, constitutes discrimination against the imported product."

In view of that answer to the first question the second question, in the Commission's view, does not call for an answer.

III — Oral procedure

At the sitting on 10 February 1983 the plaintiff in the main action, represented by Dr Gerstenberg, Rechtsanwalt, the defendant in the main action, represented by Dr Nieder and Mr Gaedertz, Rechtsanwälte, the French Government, represented by Mr Carnelutti, acting as Agent, the Italian Government, represented by Mr Conti, acting as Agent, and the Commission of the European Communities, represented by its Legal Adviser, Mr Wägenbaur, acting as Agent, presented oral argument and answered questions put by the Court.

The Advocate General delivered his opinion at the sitting on 10 March 1983.

Decision

1 By order of 20 January 1982, received at the Court on 11 February 1982, the Landgericht München referred two questions to the Court on the interpretation of Article 30 et seq. of the EEC Treaty for a preliminary ruling under Article 177 of the EEC Treaty to enable it to determine the compatibility with Community law of a provision of German law on the marketing in the Federal Republic of Germany of wine-based beverages produced abroad (Article 32 (1) of the Weingesetz (Law on wine) of 14 July 1971, Bundesgesetzblatt 1971, No 63, p. 893).

2 The question was raised in proceedings between the Schutzverband gegen Unwesen in der Wirtschaft [hereinafter referred to as "the Schutzverband"], the plaintiff in the main action, and the Weinvertriebs-GmbH in relation to a ban on the marketing in the Federal Republic of Germany of Italian vermouth the alcoholic content of which is less than 16 % by volume.

3 According to Italian law (Article 7 of Decree-Law No 3 of 11 January 1956, published in the Gazzetta Ufficiale della Repubblica Italiana No 14 of 18 January 1956 and converted into Law No 108 of 16 March 1956), the alcoholic content of vermouth marketed in Italy must be at least 16 % by volume. Nevertheless by way of exception vermouth with an alcoholic content of less than 16 % may be produced in Italy provided that it is intended for export and the law of the country of destination is observed.

4 The German Law on wine imposes no minimum limit on the alcoholic content of vermouth. However, paragraph 32 (1) thereof provides:

"Wine-based beverages produced abroad (foreign wine-based beverages) may be imported only if the whole production has taken place in one and the same State according to the provisions applicable there and the product may be marketed there for the purpose of being consumed in an unaltered state; . . .".

5 Since that provision results in a ban on the importation into the Federal Republic of Germany of Italian vermouth the alcoholic content of which is less than 16 %, the national court considered it necessary to know whether such a ban constituted a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the EEC Treaty. It therefore stayed the proceedings and referred the following questions to the Court:

"1. Is the interpretation of a statutory provision in Member State A, whereby vermouth produced in Member State B is not marketable in Member State A because it has slightly less than the minimum alcoholic content prescribed by law in Member State B, compatible with Article 30 et seq. of the EEC Treaty even though no minimum content for

domestic vermouth is prescribed in Member State A and accordingly had the vermouth been produced in Member State A it would have been freely marketable there?

If Question 1 is answered in the affirmative:

2. Is it still compabtible with Article 30 et seq. of the EEC Treaty if the national provisions in Member State B provide that the vermouth need not comply with the national provisions of Member State B on minimum alcoholic content if the vermouth is produced for export to Member State A?"

6 In the first question the national court asks for the criteria of interpretation to enable it to determine whether or not a ban on importing vermouth, the alcoholic content of which is less than the minimum prescribed in the exporting Member State for its domestic market, when no such minimum is prescribed for marketing vermouth produced in the importing Member State, falls within the class of quantitative restrictions on import or measures having an equivalent effect referred to in Article 30 of the EEC Treaty.

7 It is apparent from the argument before the Court, which has not been challenged in that respect by the plaintiff in the main action, that a provision of the importing Member State fixing a minimum degree of alcohol only for imported vermouth prevents the marketing of a product lawfully made in the exporting Member State, whereas it imposes no condition in relation to the minimum content of alcohol for the marketing of similar domestic products.

8 Since such a provision affects only imported products, it is of a discriminatory nature.

9 The fact that the law in issue refers to the rules governing production in the exporting Member State does not affect the aforesaid conclusion since the discriminatory nature must be determined solely on the basis of the law of the State where the marketing takes place, that is to say, the importing Member State.

10 The Schutzverband nevertheless maintained that the rule was justified on the ground that German consumers, in particular the very large number which visits Italy each year, expect Italian vermouth marketed in the Federal Republic of Germany to be identical to the vermouth marketed in Italy and that they would therefore be misled by Italian vermouth the alcoholic content of which by volume is less than that of the same vermouth drunk by them in Italy.

11 Although it is true that since its judgment of 20 February 1979 in Case 120/78 (*REWE* [1979] ECR 649) the Court has repeatedly stated that protection of consumers, in particular, may justify obstacles to the free movement of goods resulting from disparities in national rules, the discriminatory nature of the rule in issue excludes application of that criterion, which concernes only legislation governing the marketing of national and imported products uniformly. Therefore in the present case it is not possible to plead consumer protection to exclude Article 30 since the same protection is not given in relation to the national products.

12 The first question must therefore be answered to the effect that a ban on the import of vermouth the alcoholic content of which is less than the minimum precribed in the exporting Member State for marketing on its domestic market, when no such minimum is prescribed for the marketing of vermouth produced in the importing Member State, is to be regarded as a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 of the Treaty.

13 In those circumstances the second question does not call for a reply.

Costs

14 The costs incurred by the Governments of the French and Italian Republics and by the Commission of the European Communities which have submitted observations to the Court are not recoverable. As these proceedings are, in so

far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Landgericht München by order of 20 January 1982, hereby rules:

A ban on the import of vermouth the alcoholic content of which is less than the minimum prescribed in the exporting Member State for marketing on its domestic market, when no such minimum is prescribed for the marketing of vermouth produced in the importing Member State, is to be regarded as a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 of the Treaty.

Pescatore O'Keeffe Everling Mackenzie Stuart

Bosco Koopmans Due Bahlmann Galmot

Delivered in open court in Luxembourg on 20 April 1983.

P. Heim
Registrar

P. Pescatore
President of the Second Chamber
Acting as President