an obstacle is justified on the ground of the public interest underlying the national rules.

It is for the national court to make the findings of fact necessary in order to establish whether or not there is such equivalence.

2. The extension by a Member State of a provision which prohibits the sale of certain alcoholic beverages under a description other than that prescribed by national law to beverages imported from other Member States, thereby making it necessary to alter the label under which the imported beverage is lawfully marketed in the exporting Member State, is to be considered a measure having an effect equivalent to a quantitative restriction which is prohibited by Article 30 of the EEC Treaty and which is not justified on the ground of the public interest in consumer protection in so far as the details given on the original label supply the consumer with information on the nature of the product in question which is equivalent to that in the description prescribed by law.

3. A measure caught by the prohibition provided for by Article 30 of the EEC Treaty does not escape this prohibition simply because the competent authority is empowered to grant exemptions, even if this power is freely applied to imported products. On the other hand, in the case of a measure justified on grounds recognized by the Treaty, the Treaty does not forbid in principle provision being made for the possibility of granting derogations therefrom by individual decisions left to the discretion of the administration. However, exceptions must not lead to the favouring of domestic products because this would constitute arbitrary discrimination against or a disguised restriction on products imported from other Member States.

In Case 27/80

REFERENCE to the Court pursuant to Article 177 of the EEC Treaty by the Economische Politierechter [Magistrate in Economic Matters] of the Arrondissementsrechtbank [District Court] Assen for a preliminary ruling in the criminal proceedings pending before that court against

ANTON ADRIAAN FIETJE

on the interpretation of Article 30 of the EEC Treaty with a view to enabling the court making the reference to decide on the compatibility with that article of the Treaty of the obligation, contained in Article 1 of the "Likeurbesluit" [Decree on Liqueurs] of 11 September 1953 (Staatsblad 466), to use the word "likeur" in the case of the goods therein defined,

THE COURT

composed of: P. Pescatore, President of the Second Chamber, acting as President, T. Koopmans (President of the First Chamber), Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco, A. Touffait and O. Due, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

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 procedure

1. Mr Fietje, a dealer in beverages, was summoned to appear before the Economische Politierechter of the Arrondissementsrechtbank Assen charged with having supplied a product, imported from the Federal Republic of Germany, described as "Berentzen Appel — Aus Apfel mit Weizenkorn 25 vol.%" [Berentzen Appel — Made from apples and spirit distilled from wheat 25% by volume], which did not bear the description "likeur" prescribed by Article 1 of the "Likeurbesluit" of 11 September 1953 (Staatsblad 466).

2. Article 1 thereof at present reads as follows:

"Where it satisfies the provisions of Article 3, any product which has as its characteristic ingredients ethyl alcohol, sugar, aromatic substances and/or fruit juice may and must be described by one of the following words: 'likeur', 'tussenlikeur', 'verloflikeur' (it being permissible, where appropriate, to spell the word 'likeur' as 'liqueur'), or 'likorette', and the last description must be immediately followed by a statement of the percentage by volume of the alcoholic strength at 15 °C. These

descriptions may be used in conjunction with expressions specifying the taste or the aroma."

Article 2 of the "Likeurbesluit" sets forth a number of exceptions to the obligation to use the descriptions referred to in Article 1. The exception mentioned in Article 2 (a) applies to products "described with the help of a description generally used under normal commercial practice to describe a liqueur where those liqueurs have an alcoholic strength of at least 24% by volume at 15 ° C and the Director of the Department for the Approval of Products, who may seek the opinion of special experts within the meaning of Article 8 of this decree, considers that they are sufficiently similar, as far as concerns their aroma, taste and consistency, to products described in that way under normal commercial practice".

Article 2 (b) and (c) mentions other exceptions to the rule contained in Article 1. Briefly, they comprise a list of beverages having an alcoholic strength of at least 20% by volume at 15 ° C which are described by designations involving the name of a fruit followed by the word "brandewijn" [potable spirits] or "jenever" [geneva] (as well as certain typical Netherlands names such as "fladderak" and "voorburg"), and a list of beverages having an alcoholic strength of 13% to 15% by volume which are also described by approximately the same designations as the beverages on the first list but to which is added the prefix "verlof-" [licence]. Lastly, a final exception relates to "inmaakbrandewijn" [spirits for preserving].

Article 3 (1) of the "Likeurbesluit" provides that:

"Any product described in accordance with Article 1 (1) or as 'inmaakbrandewijn', or products which are plainly such products, shall satisfy the following conditions:

(a) the alcoholic strength shall be:

at least 22% by volume at 15 °C in the case of a product described as 'likeur';

at least 15% by volume at 15 °C in the case of a product described as 'tussenlikeur';

at least 13% and less than 15% by volume at 15 °C in the case of a product described as 'verloflikeur';

a percentage which is not less than that of the alcoholic strength marked on the container in the case of a product described as 'likorette';

at least 28% and less than 30% at 15 °C in the case of a product described as 'inmaakbrandewijn';

(b) the sugar content shall be at least 10 grams per 100 millilitres; the sugar content shall be represented by the total amount of saccharose and invert sugar reduced to saccharose present in that quantity of the product."

As far as this case is concerned it should also be mentioned that Article 6 (1) of the "Likeurbesluit" provides that:

"Any product referred to in this decree which is contained in a receptacle intended or suitable for delivery with its contents to the consumer shall have marked on the receptacle the description prescribed for the product by this decree or the particulars referred to in Article 5. Those particulars are subject to the application of Article 9 ter (1), (3) and (5) of the Algemeen Besluit (Warenwet) [General Decree (Law on Goods)]".

3. The "Likeurbesluit" was promulgated on the basis of Articles 14 and 15 of the "Nederlandse Warenwet" [Netherlands Law on Goods] of 28 December 1935 (Staatsblad 793), which read as follows:

Article 14

"(1) In order to protect public health and to further fair trading, general administrative regulations may prescribe descriptions which, in trade in goods and other articles intended for trade or for putting into circulation,

(a) may be used only if the goods or articles are of a kind or composition provided for in the regulation (. . .)

(b) may not be used if the goods or articles are of a kind or composition provided for in the regulation (. . .)

(c) shall be used if the goods or articles are of a kind or composition provided for in the regulation (. . .)

(. . .)

(4) The Minister for Social Affairs and Public Health and the ministers concerned in the matter may by common accord grant exemptions from the rules laid down in paragraph (1); such exemptions may be granted subject to conditions. Any decision adopted under the preceding sentence shall be published in the Staatscourant [Official Gazette]".

(. . .)

Article 15

"(1) For the purpose of safeguarding public health, the importation of goods of a specific or general description and, for the purpose of furthering fair trading, the importation of goods of a specific or general description or other articles intended for trade may, by means of general administrative regulations:

(a) be prohibited;

(b) be prohibited in so far as importation takes place otherwise than in accordance with the conditions prescribed in the regulations;

(c) be prohibited in so far as importation takes place otherwise than through such first offices as may be jointly designated by the Minister for Social Affairs and Public Health and the ministers concerned in the matter in consultation with the Minister of Finance."

(. . .)

4. There is at present no secondary Community legislation relating to the alcoholic beverages in question since the regulation on which such legislation might be based, namely the Commission's proposal relating to a common organization of the market in alcohol, has not yet been accepted by the Council. This proposal and the amendments thereto were published in the Journal Officiel 1972, C 43, p. 1; Official Journal 1976, C 309, p. 2 and Official Journal 1979, C 193, p. 5.

Similarly, the period given to Member States to implement Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (Official Journal 1979, L 33, p. 1) has not yet expired. Article 6 (3) of that directive provides that:

"In the case of beverages containing more than 1.2% by volume of alcohol,

the Council, acting on a proposal from the Comission, shall, before the expiry of a period of four years following notification of this directive, determine the rules for labelling ingredients and, possibly, indicating the alcoholic strength".

5. By a judgment of 19 December 1979 the Economische Politierechter referred the following question to the Court:

"Does the concept 'measures having an effect equivalent to quantitative restrictions on imports' in Article 30 of the EEC Treaty cover the provisions of Article 1 of the Netherlands Likeurbesluit [Decree on Liqueurs] governing the obligation to use the word 'likeur' for beverages defined therein, as a result of which products from other Member States which have the characteristics defined in Article 1 of the Likeurbesluit, but in respect of which there is no obligation to use the description 'likeur' in those Member States, must be labelled differently for importation into the Netherlands?"

6. The judgment making the reference was registered at the Court Registry on 18 January 1980.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, written observations were submitted by Mr Fietje, represented by Ch. Gielen, of the Amsterdam Bar, by the Netherlands Government, represented by F. Italianer, Secretary-General of the Ministry for Foreign Affairs, and by the Commission, represented by P. Kuyper, acting Agent, assisted by P. Oliver, both members of its Legal Department.

7. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure and to request the Netherlands Government and the Commission to answer certain questions in writing prior to the hearing.

II — Written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

1. Observations of Mr Fietje, the accused in the main proceedings

Mr Fietje states that as a result of the "Likeurbesluit" the sale in the Netherlands of the beverage which he imports requires the alteration of the original labels and this increases costs since German legislation does not make it compulsory to use the word "Likör". From this he concludes that the "Likeurbesluit" forms an obstacle to the free movement of the beverage in question.

Mr Fietje admits that, taking into account the large quantities purchased, the official importer of the beverage may indeed enter into an agreement with the manufacturer with a view to keeping the additional cost caused by the altering of the labelling at as low a level as possible, but he claims that the manufacturer will be forced to keep a separate stock of bottles labelled for the Netherlands. It is also Mr Fietje's view that the "Likeurbesluit" has an even more restrictive effect on a parallel importer who buys from German traders, because the latter must open up the packaging, affix a special label to the bottles and finally close the packaging again after having replaced the bottles therein.

Mr Fietje takes the view that the impediment created by Article 1 of the "Likeurbesluit" is to be regarded as a

measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty, as defined by the Court in its case-law, for example in its judgment of 15 December 1976 in Case 41/76 *Suzanne Criel, née Donckerwolcke, and Henri Schou* v *Procureur de la République au Tribunal de Grande Instance, Lille, and Director-General of Customs* [1976] ECR 1921, since a beverage which has been lawfully placed on the market of one Member State may, in the circumstances of this case, only be sold in another Member State after the label has been altered.

According to Mr Fietje, not only has the applicability of Article 30 of the Treaty, even in those fields in which national laws have not yet been harmonized as provided for in Article 100, been confirmed by the Court, for example in Case 41/76 *Donckerwolcke*, cited above, but that applicability also appears clearly from Commission Directive 70/50/EEC of 22 December 1969 based on the provisions of Article 33 (7), on the abolition of measures which have an effect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty (Official Journal, English Special Edition 1970 (I), p. 17). In this context Mr Fietje refers in particular to Article 3 of the directive which provides that measures governing the marketing of products which are equally applicable to domestic and imported products are to be regarded as measures having an equivalent effect only where the restrictive effect of such measures on the free movement of goods exceeds that which is sought in the context of trade rules.

Mr Fietje then submits that Article 1 of the "Likeurbesluit" does not satisfy the tests formulated by the Court in paragraph 8 of its judgment of 20 February 1979 in Case 120/78 *Rewe-Zentral AG* v *Bundesmonopolverwaltung für Branntwein* [1979] ECR 649:

"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".

In this connexion Mr Fietje stresses that the effectiveness of fiscal supervision is not relevant in this case. He does not see in what way the protection of public health justifies the compulsory mention of the word "likeur", since an excessive consumption of alcohol is not thereby prevented.

Mr Fietje considers that the question whether the consumer is sufficiently protected without the word "likeur" being mentioned is more relevant. In this connexion he points out that the label on the product in question expressly states the composition of the beverage at issue: "aus Apfel mit Weizenkorn" [made from apples and spirit distilled from wheat], "reiche Fruchtfülle sonnenpraller Äpfel und milder, gereifter Weizenkorn" [the full richness of the fruit of sun-ripened apples and soft, matured spirit distilled from wheat] and "25 vol.%" [25% by

volume]. In his opinion, the word "likeur" in no way alters the details: on the other hand, the meaning of this word to the consumer will not differ very much from an alcoholic aromatic beverage with a generally sweet taste; on the other hand, the concepts used by the "Likeurbesluit", namely "tussenlikeur", "verloflikeur" and "likorette", do not mean anything to the consumer. Mr Fietje therefore takes the view that the public is given sufficient information on the particulars of the composition of the beverage and its alcoholic strength. As far as concerns the question whether the test of fair trading has been satisfied he reaches the same conclusion. He points out in this connexion that in Case 120/78 *Rewe,* mentioned above, the Court considered that question in the light of the problem of giving the consumer sufficient information.

On the other hand, under a system in which the law gives a definition of the term "likeur" without making its use mandatory, a prohibition on the use of the word "likeur" in the case of a beverage which does not come within the definition is justified.

Mr Fietje adds that if account is also taken of the breadth of the range of alcoholic beverages offered for sale in the Netherlands it is impossible to say that it is absolutely essential to use the word "likeur" in order to further fair trading.

Mr Fietje therefore concludes that a product which has been lawfully marketed in Germany must be able to be sold freely in other Member States and that the consumer must be able to find the same label and therefore the same particulars wherever the product is offered for sale. Otherwise the consumer might wonder whether the product in question is the same in those other countries.

Consequently Mr Fietje submits that the answer to the question referred to the Court for a preliminary ruling should be as follows:

"The concept of 'measures having an effect equivalent to quantitative restrictions on imports' in Article 30 of the EEC Treaty applies to Article 1 of the Netherlands 'Likeurbesluit' governing the obligation to use the word 'likeur' in the case of all beverages therein defined and by virtue of which products of other Member States having the particular features defined in Article 1 of the 'Likeurbesluit', but in respect of which there is no obligation in the Member State to use the description 'likeur', must be labelled differently for importation into the Netherlands".

2. Observations of the Netherlands Government

The Netherlands Government observes first that the question referred to the Court for a preliminary ruling is incomplete. In its view, Article 1 of the "Likeurbesluit" must be considered in conjunction with Article 2 thereof, which provides exceptions to the obligation to use certain descriptions. Consequently, it submits that the Court should reframe the question as follows:

"Does the concept of 'measures having an effect equivalent to quantitative restrictions on imports', which is found in Article 30 of the Treaty, apply to the provisions contained in the 'Nederlandse Likeurbesluit (Warenwet)' regulating the obligation to apply to the beverages therein defined a description to which Netherlands authorities have given statutory or administrative approval so

that the products from other Member States which have the particular features defined in Article 1 (1) of the 'likeurbesluit', but as regards which there is no obligation in these Member States to use that description, must be differently labelled for the purpose of importation into the Netherlands?"

The Netherlands Government concedes that a labelling rule such as the one in this case indirectly impedes the importation of beverages which bear a different label, but it submits that the case-law of the Court, for example paragraphs 6 and 7 of the judgment of the Court of 11 July 1974 in Case 8/74 *Procureur du Roi* v *Benoît and Gustave Dassonville* [1974] ECR 852, is to the effect that so long as a Community system has not been set up in this field Community law does not preclude national measures provided that they are justified and reasonable in their results. Moreover, the Netherlands Government points out that the "Likeurbesluit" applies to national as well as imported products.

The Netherlands Government takes the view that the potential obstacles to trade which might result from the "Likeurbesluit" are justified by the principle of consumer protection, that is to say, by the concern to give the consumer information and to protect him from fraud and also to further the transparency of the market.

It also maintains that the fact that an alcoholic beverage bears an approved description constitutes a guarantee to the consumer that it meets certain requirements concerning the composition or the nature of the ingredients and it enables the authorities to take action should those requirements not be met.

Similarly, it considers that labelling foodstuffs in Dutch is justified. This opinion is corroborated by the first sentence of Article 14 (2) of Council Directive 79/112/EEC of 18 December 1978, by Article 7 (3) of Council Directive 73/241/EEC on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption (Official Journal 1973, L 228, p. 23), and also by several other similar directives relating to foodstuffs, some of which are covered by common organizations of the market.

If such a requirement may be prescribed by Member States in respect of products for which there is a common organization of the market, *a fortiori* it may be prescribed in respect of products for which there is no such organization.

The Netherlands Government also refers to Article 4 (2) of the above-mentioned Directive 79/112/EEC which states that Community provisions applicable to specified foodstufs may provide that other particulars in addition to those listed in the directive must appear on the labelling and that, where there are no Community provisions, Member States may make provision for such particulars. In its opinion this principle must apply especially as the period given to the Member States to implement the directive has not yet expired.

It goes on to say that, in contrast to the position in Case 120/78 *Rewe*, cited above, the "Likeurbesluit" does not prevent a product originating in another Member State from being offered for sale in the Netherlands but only contributes to ensuring the transparency of the market. On this point the Netherlands Government refers to Article 5 (1) of Directive 79/112/EEC

which provides that the name under which a foodstuff is sold shall be the name laid down by whatever laws, regulations or administrative provisions apply to the foodstuff in question or, in the absence of any such name, the name customary in the Member State where the product is sold to the ultimate consumer, or a description of the foodstuff that is sufficiently precise to inform the purchaser of its true nature and to enable it to be distinguished from products with which it might be confused.

According to the Netherlands Government, the scheme of the "Likeurbesluit" is not unreasonable since Article 2 (b) also permits names other than "likeur" which have been established for a long time and Article 2 (a) allows the use of a name commonly used in the trade. It also refers to the remaining possibility of applying Article 14 (4) of the "Warenwet", which permits exemptions from the rules laid down in *inter alia* the "Likeurbesluit". The Netherlands Government concludes that, so far as trade is concerned, the system introduced by the "Likeurbesluit" does not therefore produce any arbitrary discrimination or disguised obstacles within the meaning which the Court has given to these concepts, and it consequently submits that the Court should answer in the negative the question referred to it by the national court.

3. Observations of the Commission

The Commission makes the preliminary observation that the descriptions which include the word "likeur" and correspond to different alcoholic strengths were probably framed with reference to the former licensing system rather than with a view to consumer protection. Under that former system different kinds of licences, namely A and B licences, were granted to bars and restaurants for the sale of beverages described as being of "low" or "high" alcoholic strength respectively. The dividing line between these categories lay at the level of 15% by volume at 15 °C.

The Commission goes on to say that according to the information which it has gathered the categories of "verlof-likeur" and "likorette" were specially created for bars holding an A licence. It observes that these beverages, most of which are manufactured in the Netherlands, are now scarcely ever sold directly to consumers. According to the Commission the same applies, although it is less certain about this, to "tussen-likeuren". It seems to the Commission that the only reason for the creation of this category was to fix the minimum alcoholic strength of "likeuren" at 22% and fill the gap between "verlof-drankjes" and "likeuren". It adds that it has been unable to obtain any satisfactory explanation of the difference between the 22% minimum alcoholic strength referred to in Article 3 and the 24% and the 20% minimum alcoholic strengths laid down in Article 2 for certain exceptions.

The Commission's observations concerning the possible reframing of the question referred to the Court for a preliminary ruling are substantially the same as those submitted by the Netherlands Government on this point in so far as the Commission considers that Article 1 (1) of the "Likeurbesluit" cannot be considered without taking into account the other provisions of the "Likeurbesluit".

The Commission then recalls the three criteria laid down by the Court in Case 120/78 *Rewe*, cited above, and points

out that paragraph 13 of that judgment cannot be understood as meaning that all labelling requirements are compatible with Article 30 of the Treaty.

As far as the need for consumer protection is concerned, the Commission stresses that a particular description may not be reserved for specifically described products and that the use of such a description may not be prescribed unless its meaning is sufficiently clear to the consumer so as to justify its mandatory use.

The Commission takes the view that the word "likeur" does not necessarily apply to a product which contains 22% alcohol by volume at 15 °C or which has some minimum alcoholic strength or other. In this context it refers to several Dutch, English, French and German dictionaries none of which mentions alcoholic strength in its definition of the word "liqueur", except for one Dutch dictionary which mentions an alcoholic strength of 20% to 55%.

The Commission concludes that it is far from certain that when a consumer in the Netherlands drinks "likeur" he knows that he is consuming a liquid with a minimum alcoholic strength of 22% by volume.

The Commission acknowledges that in order to define certain concepts it is sometimes not possible to avoid laying down fairly strict limits which, for that reason, will always be somewhat arbitrary. It also acknowledges that the national legislature is free to act in that way without coming into conflict in that respect with Article 30 of the Treaty. However, the Commission considers that where it may be doubted whether the consumer is aware of the existence of a limit of that kind the obligation to use a particular name does not constitute a sufficiently effective guarantee of consumer protection to justify a derogation from the principle of the free movement of goods. Furthermore, even if the consumer were fully aware of the limit, for example, because he knows the law, he would still be just as badly informed of the effects which this beverage may have on him, because the alcoholic strength might very well greatly exceed 22%. Accordingly it is also not possible to regard the mandatory use of the word "likeur" as an effective guarantee protecting the individual.

As far as concerns the legal context in which the obligation to use the word "likeur" arises, the Commission points out that to the consumer the words "tussenlikeur", "verloflikeur" and "likorette" are even less clear and that none of them is found in the two Dutch dictionaries consulted. According to the Commission these words are capable of being understood only if it is recalled that they derive from the former licensing system.

According to the Commission, the consumer would be much better informed if there were general regulations relating to the giving of particulars of the alcoholic strength and ingredients on bottles of spirituous beverages.

The Commission also takes the view that the exception provided for in Article 2 (a) of the "Likeurbesluit" in fact discriminates against relatively new products and products coming from other Member States which are comparatively little known on the market in the Netherlands. Similarly there does not seem to it to be any rational explanation of the fact that the exception only applies to products with an alcoholic strength exceeding 24% by volume. The same reasoning applies, according to the Commission, to the exception provided for in Article 2 (b) which refers to the Netherlands products mentioned by

name and certain products of which the minimum alcoholic strength is fixed at 20%.

The fact that the provisions of the "Likeurbesluit" in question are not justified from the point of view of consumer protection means, in the opinion of the Commission, that they are not justified from the point of view of public health either: they do not give the consumer sufficient information on the alcoholic strength.

Similarly the Commission thinks that the provisions at issue cannot be justified either by the need to avoid unfair competition because, where a name is at issue, this ground of justifcation follows the same fate as that based on consumer protection.

Finally it notes that the provisions at issue appear to be particularly unjustified in the light of the facts of this case, since the goods in question already bore the legend "Berentzen Appel — Aus Apfel mit Weizenkorn 25 vol.%", which were sufficient to inform the consumer in the Netherlands of the alcoholic strength and the fact that the product was made from apples and must therefore have the taste of apples.

Consequently the Commission submits that the Court should answer the question referred to it for a preliminary ruling as follows:

"A provision of national law which stipulates that the word 'likeur' must be placed on the container of certain spirituous beverages which are defined on the basis of alcoholic strength but without the actual alcoholic strength having to be mentioned is a measure having an effect equivalent to a quantitative restriction on imports within the meaning of Article 30 which is prohibited where such a description does not give the consumer sufficiently clear information".

III — Oral procedure

At the sitting on 1 July 1980 the Netherlands Government, represented by Maas Geesteranus, acting as Agent, Mr Fietje, represented by Ch. Gielen of the Amsterdam Bar, and the Commission, represented by P. Kuyper, a member of its Legal Department, presented oral argument.

The Advocate General delivered his opinion on 30 September 1980.

Decision

1 By a judgment of 19 December 1979, which was received at the Court on 18 January 1980, the Economische Politierechter of the Arrondissementsrechtbank Assen referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 30 of the EEC Treaty which a view to considering the compatibility with Community law of Article 1 of the Netherlands "Likeurbesluit", in so far as that article

makes the use of the word "likeur" mandatory in the case of the beverages therein defined.

2 The question has been raised in the context of criminal proceedings against a dealer in beverages who is charged with having supplied a beverage, imported from the Federal Republic of Germany and described as "Berentzen Appel — Aus Apfel mit Weizenkorn 25 vol.%", which did not bear the description "likeur" even though it fell within the above-mentioned provision.

3 The "Likeurbesluit" was enacted on the basis of Articles 14 and 15 of the Netherlands "Warenwet" of 28 December 1935 (Staatsblad 793). Those articles provide, *inter alia*, that, in order to protect public health or fair trading, general administrative regulations may specify the descriptions which must be used in trade in goods where the goods are of a kind or composition provided for in the regulation.

4 Article 1 (1) of the "Likeurbesluit" of 11 September 1953 (Staatsblad 466) is at present worded as follows:

"Where it satisfies the provisions of Article 3, any product which has as its characteristic ingredients ethyl alcohol, sugar, aromatic substances and/or fruit juice may and must be described by one of the following words: 'likeur', 'tussenlikeur', 'verloflikeur' (it being permissible, where appropriate, to spell the word 'likeur' as 'liqueur'), or 'likorette', and the last description must be immediately followed by a statement of the percentage by volume of the alcoholic strength at 15 °C. These descriptions may be used in conjunction with expressions specifying the taste or the aroma."

Article 3 of the "Likeurbesluit" provides that every product described in accordance with Article 1 (1) must have a certain minimum sugar content. It also provides that a product described as "likeur" must have an alcoholic strength of at least 22% by volume and it lays down different and lower alcoholic strengths for the other products which it mentions. In addition Article 3 contains various other provisions on the composition and quality of

the products. According to Article 6, the name specified for the product must appear on any receptacle which is intended or suitable for delivery with the product to the consumer.

5 Article 2 of the "Likeurbesluit" sets forth a number of exceptions to the obligation to use the descriptions referred to in Article 1. One of these exceptions relates to products "described with the help of a description generally used under normal commercial practice to describe a liqueur", provided that those liqueurs have an alcoholic strength of not less than 24% by volume and the director of the appropriate government department has given his approval. Other exceptions apply to the beverages which are listed in the article and described by names which for the most part are typically Dutch. Finally, Article 14 (4) of the "Warenwet" empowers the appropriate ministers to grant exemptions from *inter alia* the rules of the "Likeurbesluit".

6 The accused submitted that these national rules are incompatible with Article 30 of the EEC Treaty and the Economische Politierechter considered it necessary that, prior to his giving judgment in the criminal proceedings, the Court should give a ruling on the following question:

"Does the concept 'measures having an effect equivalent to quantitative restrictions on imports' in Article 30 of the EEC Treaty cover the provisions of Article 1 of the Netherlands Likeurbesluit [Decree on Liqueurs] governing the obligation to use the word 'likeur' for beverages defined therein, as a result of which products from other Member States which have the characteristics defined in Article 1 of the Likeurbesluit, but in respect of which there is no obligation to use the description 'likeur' in those Member States, must be labelled differently for importation into the Netherlands?"

7 Before the Court answers the question referred to it, it should be emphasized that, in the absence of common rules relating to the production and marketing of alcohol, it is, in principle, for the Member States to regulate all matters relating to the marketing of alcoholic beverages on their own territory, including the description and labelling of these beverages, subject

to any Community measure adopted with a view to approximating national laws in these fields.

8 At the present stage in the development of Community law the factors to which the national court need have regard in its interpretation do not relate therefore to the compatibility with Community law of the obligation to use a particular description in marketing certain alcoholic beverages. As the national court has itself indicated in the wording of the question to the Court of Justice for a preliminary ruling, the issue is whether the extension of such an obligation to beverages imported from the other Member States in such a way as to make it impossible to market the imported product without altering the label under which the beverage is lawfully marketed in the exporting Member State is to be regarded as a measure having an effect equivalent to a quantitative restriction which is prohibited by Article 30 of the Treaty.

9 In order to answer this question it is necessary to consider whether the extension of the national rules is capable of impeding the free movement of goods between Member States and, if so, to what extent such an obstacle is justified on the ground of the public interest underlying the national rules.

10 Although the extension to imported products of an obligation to use a certain name on the label does not wholly preclude the importation into the Member State concerned of products originating in other Member States or in free circulation in those States it may none the less make their marketing more difficult, especially in the case of parallel imports. As the Netherlands Government itself admits in its observations, such an extension of that obligation is thus capable of impeding, at least indirectly, trade between Member States. It is therefore necessary to consider whether it may be justified on the ground of the public interest in consumer protection, which, according to the observations of the Netherlands Government and according to the "Warenwet", underlies the rules in question.

11 If national rules relating to a given product include the obligation to use a description that is sufficiently precise to inform the purchaser of the nature

of the product and to enable it to be distinguished from products with it might be confused, it may well be necessary, in order to give consumers effective protection, to extend this obligation to imported products also, even in such a way as to make necessary the alteration of the original labels of some of these products. At the level of Community legislation, this possibility is recognized in several directives on the approximation of the laws of the Member States relating to certain foodstuffs as well as by Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (Official Journal 1979, L 33, p. 1).

12 However, there is no longer any need for such protection if the details given on the original label of the imported product have as their content information on the nature of the product and that content includes at least the same information, and is just as capable of being understood by consumers in the importing State, as the description prescribed by the rules of that State. In the context of Article 177 of the EEC Treaty, the making of the findings of fact necessary in order to establish whether there is such equivalence is a matter for the national court.

13 In their observations both the Commission and the Netherlands Government put forward arguments based on the existence in the Netherlands rules of several provisions providing for exemptions. The Netherlands Government stresses that, under Article 2 of the "Likeurbesluit", a description in general use under normal commercial practice may be allowed for the purpose of describing a liqueur and it also places emphasis on Article 14 (4) of the "Warenwet", which provides for the granting of exemptions from any rule adopted pursuant to the said article. The Commission, on the other hand, takes the view that the exceptions provided by Article 2 of the "Likeurbesluit" have the result of discriminating against imported products which are relatively little known on the market in the Netherlands.

14 When considering these arguments it must be borne in mind that a measure caught by the prohibition provided for by Article 30 of the EEC Treaty does not escape this prohibition simply because the competent authority is

empowered to grant exemptions, even if this power is freely applied to imported products. On the other hand, in the case of a measure justified on grounds recognized by the Treaty, the Treaty does not forbid in principle provision being made for the possibility of granting derogations therefrom by individual decisions left to the discretion of the administration. However, exceptions must not lead to the favouring of domestic products because this would constitute arbitrary discrimination against or a disguised restriction on products imported from other Member States. Subject to that reservation, it does not appear that the exemptions provided for by the Netherlands rules provide any new factors in relation to the question put by the national court.

15 The answer to the question referred to the Court for a preliminary ruling should therefore be that the extension by a Member State of a provision which prohibits the sale of certain alcoholic beverages under a description other than that prescribed by national law to beverages imported from other Member States, thereby making it necessary to alter the label under which the imported beverage is lawfully marketed in the exporting Member State, is to be considered a measure having an effect equivalent to a quantitative restriction, which is prohibited by Article 30 of the Treaty, in so far as the details given on the original label supply the consumer with information on the nature of the product in question which is equivalent to that in the description prescribed by law. It is for the national court to make the findings of fact necessary in order to establish whether or not there is such equivalence.

Costs

16 The costs incurred by the Government of the Kingdom of the Netherlands 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 accused in the main proceedings is concerned, in the nature of a step in the criminal proceedings before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Economische Politierechter of the Arrondissementsrechtbank Assen by judgment of 19 December 1979, hereby rules:

1. **The extension by a Member State of a provision which prohibits the sale of certain alcoholic beverages under a description other than that prescribed by national law to beverages imported from other Member States, thereby making it necessary to alter the label under which the imported beverage is lawfully marketed in the exporting Member State, is to be considered a measure having an effect equivalent to a quantitave restriction, which is prohibited by Article 30 of the Treaty, in so far as the details given on the original label supply the consumer with information on the nature of the product in question which is equivalent to that in the description prescribed by law.**

2. **It is for the national court to make the findings of fact necessary in order to establish whether or not there is such equivalence.**

Pescatore Koopmans Mackenzie Stuart

O'Keeffe Bosco Touffait Due

Delivered in open court in Luxembourg on 16 December 1980.

A. Van Houtte
Registrar

P. Pescatore
President of the Second Chamber,
acting as President