JUDGMENT OF THE COURT
3 FEBRUARY 1977 [1]

Procureur de la République, Besançon v Bouhelier and Others (preliminary ruling requested by the Tribunal Correctionnel of Besançon)

'Lever escapement watches'

Case 53/76

Quantitative restrictions on exports — Measures having equivalent effect — Concepts — Export licence — Requirement — Prohibition (EEC Treaty, Article 34)

The expression 'quantitative restrictions on exports and any measures having equivalent effect' contained in Article 34 of the EEC Treaty must be understood as applying to rules adopted by a Member State which require in respect only of the export of certain goods either a licence or a standards certificate which is issued in place of such licence and may be refused if the quality does not conform to certain standards laid down by the body issuing the said certificate, even if such certificate does not give rise to the imposition of a charge.

In Case 53/76

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal Correctionnel (Criminal Court) of Besançon, for a preliminary ruling in the action pending before that court between

PROCUREUR DE LA REPUBLIQUE (Public Prosecutor), Besançon,

and

BOUHELIER AND OTHERS, residing in the Département of Doubs,

on the interpretation of the concept of quantitative restrictions on exports and measures having equivalent effect appearing in Article 34 of the EEC Treaty,

1 — Language of the Case: French.

THE COURT

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

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

gives the following

JUDGMENT

Facts

The judgment referring the case and the written 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 procedure

1. A system of rules has been adopted in France which governs the quality inspection of certain types of watches intended for export.

Law No 441228 of 22 July 1948 fixed the constitution of the Technical Centres for Industry — replacing that fixed by a provisional Law of 17 November 1943 — whose purpose is the encouragement of technical progress, collaboration in improving output and in guaranteeing high standards of quality in the industry. Article 1 of that law provides that 'in any sector of activity where the need appears ... public utility institutions known as 'Technical Centres for Industry' may be established by decree of the Ministers for Finance, Economic Affairs, Industry and Commerce. Article 8 of the same law provides that the funds of these Technical Centres shall be provided principally by compulsory contributions from undertakings pursuing an activity in the sector in question.

Within the framework of that law, the Technical Centre for the watch- and clock-making industry was transformed by a Joint Ministerial Decree of 22 April 1949 into a Technical Centre for Industry (Cetehor), a public utility institution for whose benefit a Decree of 21 September 1966 introduced a parafiscal charge calculated on the basis of the price of blanks and the price of watches and movements, whether or not intended for export.

The principal task of the public utility institution in question is to guarantee the quality of the products exported by the watch- and clock-making industry. To this end it examines samples of consignments of pressed lever watches and movements of French manufacture intended for export to check that they conform with certain quality standards. As a general rule, when such examinations are carried out — the process does not normally take more

than 48 hours — no duty is imposed or charge made where the consignments meet the relevant quality standards. Only where the first inspection has revealed defects of manufacture which are sufficiently serious to warrant a second test being made of the consignments are additional costs charged to the exporters. On the principle that the inspection shows that the standards have been complied with, the standards certificate issued by Cetehor may replace the export licence required in the absence of such a certificate, by virtue of two notices to exporters published in the Journal Officiel de la République Française on 30 October 1962 and 24 November 1964.

2. The action which led the Tribunal Correctionnel, Besançon, to ask the Court of Justice for a preliminary ruling arose precisely out of a case in which the Cetehor certificates replaced the export licence.

Before the Tribunal Correctionnel the Ministère Public accused Claude Bouhelier, Charles Girardet and Rémy Zimmermann of forgery, the uttering of forged documents and customs offences and Bernard Thiery of customs offences. The first three named are accused of having forged the Cetehor certificates by adding a '0' or another figure to the figure '4' originally appearing thereon and of having subsequently exported from the franc area under cover of the forged standards certificates a large quantity of lever escapement watches and watch movements which had not been inspected or did not correspond to the descriptions given in the relevant certificate.

3. The accused have admitted the facts but claim that they do not constitute criminal offences. They requested the Tribunal Correctionnel, Besançon, to release them and referred in support of their request to Articles 34 and 36 of the EEC Treaty and to the restrictive interpretation of the exceptions contained in the latter article, given by the Court of Justice in Joined Cases 51 to 54/71 *(International Fruit Company NV and Others* v *Produktschap voor Groenten en Fruit,* jugdment of 15 December 1975 [1971] ECR 1107). Bouhelier and the other defendants maintain that the requirement of the Cetehor certificate solely for watches intended for export constitutes a quantitative restriction which is prohibited by the terms of those articles as interpreted by the Court. The Administration Générale des Douanes, the plaintiff claiming damages, nevertheless requested that the texts governing the export of watches of the type in question be applied. Faced with the foregoing contradictory arguments the Tribunal Correctionnel, Besançon, stayed the proceedings and by a decision of 19 May 1976 requested the Court of Justice to give a preliminary ruling on a question which is in the following form:

The Tribunal finds that before reaching any decision in either the criminal or the civil proceedings it is necessary to refer the matter to the Court of Justice of the European Communities for a preliminary ruling in order to determine whether the words 'quantitative restrictions on exports and any measures having equivalent effect' contained in Article 34 of the EEC Treaty must be understood as also applying to the legal rules of a Member State which require in respect of the export of certain goods either a licence or a standards certificate in place of such licence, where such certificate does not give rise to the imposition of a charge and may be refused if the quality does not conform to certain standards laid down by the body issuing the certificate in substitution for the licence.

The Tribunal ordered a copy of the judgment to be sent to the Registrar of the Court of Justice. The decision referring the matter was received at the Court Registry and was registered on 28 June 1976.

Written observations were submitted under Article 20 of the Protocol on the Statute of the Court of Justice by the three accused in the main action (Bouhelier, Girardet and Zimmermann), the Commission of the European Communities and the Government of the French Republic.

4. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure without holding any preparatory inquiry.

II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court

1. *Bouhelier and the other accused in the main action* submit that the Court should rule that the provisions of the Code Général des Impôts Français (French General Tax Code), which require the production of an export licence for lever watches, are contrary to the provisions of the Treaty of Rome.

The export of lever escapement watches is not covered by any of the types of exception provided for in Article 36 of the EEC Treaty. Article 34 is therefore directly applicable and, by virtue of the judgment of 15 December 1971 in Joined Cases 51 to 54/71 *(International Fruit Company NV and Others* v *Produktschap voor Groenten en Fruit* [1971] ECR 1107) it is not possible to permit the application of a national provision which 'requires, even as a pure formality, import or export licences or any other similar procedure'. The provision of French law which requires the production of a licence or, where appropriate, of a Cetehor certificate, constitutes such a provision.

2. The *Commission* refers to the facts and the procedure and emphasizes that, while the procedure is taking place, its departments are preparing a file which will enable them, if necessary, to bring proceedings against the French Republic to establish a failure to take action in relation to the provisions concerning the export of lever escapement watches and watch movements. The Commission sets out the content and the scope of the French legislation whose application is in question. It insists that the system of licences is comparable to the system of Cetehor certificates, whose aim is to guarantee quality in the French watch- and clock-making industry. It emphasizes that, in its opinion, there is no doubt that the provisions in question only apply to goods intended for export, whatever their origin and destination, and that the purpose of the rules applicable to exports of watches and watch movements is to promote the products of the French watch- and clock-making industry in external markets by means of a guarantee of quality.

As regards the legal principles applicable, the Commission maintains that any national rules which make exports to other Member States dependent upon production to the customs authorities of either a licence or a standards certificate constitute a direct or indirect, actual or potential, obstacle to trade within the Community. The Commission refers to numerous cases decided by the Court of Justice and, in particular, to the judgment of 15 December 1971 in the *International Fruit Company* case (Joined Cases 51 to 54/71 [1971] ECR 1107), which precludes the application of any national legislation which requires, even as a pure formality, a procedure similar to a licence. The judgment of 20 February 1975 in *Commission of the European Communities* v *Federal Republic of Germany* (Case 12/74 [1975] ECR 181) indicates that if a provision could constitute an obstacle to the free movement of goods that is sufficient for it to be regarded as actually doing so. The argument put forward by the French Customs in this instance that the application of the rules in dispute have

brought about an improvement in quality and therefore an increase in exports of French watches does not alter the fact that the said rules constitute a measure having an effect equivalent to a quantitative restriction on exports. Moreover, in the light of the complications and delays inherent in the issue of the standards certificates, that argument is merely conjectural.

The Commission then raises the question whether the requirement of a licence or a standards certificate falls within the area of sovereignty retained by the Member States. It maintains that, in considering that question, the two elements of the choice (the obligation to obtain a licence or a Cetehor certificate) cannot be separated. In fact, the quality inspection inherent in the issue of one or the other of those documents enables the reputation of the national products to be enhanced. However, the Commission maintains that such a requirement is incompatible with Community law.

In fact, there is discrimination between the products intended for export and those intended for the internal market and as a result the reputation for high quality does not apply to all the goods produced in the Member States in question:

An ordinary optional guarantee label would enable the quality of certain products to be indicated without adversely affecting the free movement of all the comparable products;

However, the fixing of new quality standards may enable patterns of trade to be diverted away from certain categories of products and into other channels, which may be prejudicial to both the concept of free movement, and to conditions of competition (as regards the danger of deciding on arbitrary classifications, see the judgment in Case 12/74, *Commission* v *Federal Republic of Germany* [1975] ECR 181);

Even if it were accepted that, in addition to the reasons set out in Article 36, certain standards could be justified by a desire to protect foreign consumers (see Commission Directive 70/50/EEC of 22.12.1969, OJ, English Special Edition 1970 (I), p. 17), a Member State would only be entitled to apply such standards in favour of its own customers. For that reason, quality standards which are imposed only on exports to other Member States are *a fortiori* excluded.

On the basis of the foregoing submissions the Commission suggests that the following answer be given to the question referred by the Tribunal Correctionnel, Besançon:

'Apart from the exceptions for which provision is made by Community law itself, Article 34 of the Treaty precludes the application to intra-Community trade of a national provision which requires, even as a pure formality, import or export licences or any other similar procedure.

For a Member State to subject the export to other Member States of specific goods produced within its territory to the issue of a certificate showing conformity with certain quality standards, without any such certificate being required for the same goods to be marketed within the Member State where they are produced, constitutes a measure having effect equivalent to a quantitative restriction on exports prohibited by Article 34 of the Treaty.

Rules adopted by a Member State which subject the export to other Member States of specific goods not produced within its territory to the production of a similar standards certificate also constitute a measure having effect equivalent to a quantitative restriction on exports.'

3. After summarizing the facts and outlining the background to the rules governing the quality inspection of certain watches intended for export, the

Government of the French Republic examines the compatibility of those rules with the Treaty of Rome. It refers to the case-law of the Court and the arguments put forward before it by the Commission and Mr Advocate-General Roemer in the *International Fruit Company* case and concludes that quantitative restrictions are:

— 'all national measures directly excluding, totally or partially, the import or export of a product on the basis of numbers or quantities'
— 'all national measures which wholly or in part preclude direct imports (or exports) which are not based on technical features ... but rather solely relate to the number and quantity of the products in question,

whilst measures having equivalent effect produce the same effect indirectly as a result of the fact that 'imports or exports are rendered more difficult or costly in comparison with the marketing of the domestic product'. The effect to be taken into account may only be 'potential'. Furthermore, the essential criterion is the 'comparability of the effects', whatever designation is given to the process and technique is used.

The French Government considers the French legislation and rules governing the quality inspection of pressed lever watches and watch movements intended for export in the light of the foregoing definitions and concludes that the provisions in question do not answer to the abovementioned criteria since:

— The inspection in question is one of quality rather than quantity and concerns the national product alone;
— It is clear that there has never been any intention of curbing exports;
— The fraud as regards the number of watches exported is only taken into consideration because it distorts the significance of the quality inspection;
— The French watch- and clock-making trade recognizes that quality inspection constitutes a useful guarantee and gives French products a good image on foreign markets and that view is justified by the sales statistics produced by the intervening government;
— The quality inspection does not render exports more difficult, since the expenses incurred by Cetehor in the inspection and research operations are financed by a levy on the total turnover of the undertakings concerned and therefore affect the cost prices of the watches whatever their destination. The exported watches only bear the cost of a second inspection in the very rare cases in which the quality is clearly unsatisfactory;
— The period of two days required for the inspection is not excessive in order to achieve the aim sought.

In conclusion the French Government emphasizes the technical nature of the measures which enable foreign customers to be given a guarantee of the quality of the articles offered. The recent annual rise which has taken place in the export of watches (30 % in value and 20 % in quantity) is evidence that the measures in question have stimulated exports.

The accused in the main action, represented by Mr Tisserand of the Belfort Bar, and the Commission of the European Communities, represented by its Agents, J. Amphoux and S. Ziegler, presented oral argument at the hearing on 7 December 1976.

The accused in the main action laid particular emphasis on certain factual aspects of the case, such as the financing of Cetehor and the composition of its Administrative Council.

The Commission developed the arguments set out in its written statement and disputed the argument put forward before the Tribunal Correctionnel concerning the allegedly proven lack of any restrictive effect of the system in dispute, on the ground that French

exports might have increased even more if they had not been curbed by the existence of the system in question.

The Commission emphasized the fact that a guarantee of quality may have beneficial effects provided that is merely optional.

The parties replied to two questions raised by the Advocate-General by stating, first, that the delays involved in obtaining the licences meant that exporters preferred to use the Cetehor certificates and, secondly, that the requirement of either a certificate or a licence applied to any export of watches whether wholly or partly manufactured in France or merely in free circulation in that country.

The Advocate-General delivered his opinion at the hearing on 19 January 1977.

Law

1 By judgment dated 19 May 1976, received at the Court Registry on 28 June 1976, the Tribunal Correctionnel, Besançon, referred to the Court of Justice under Article 177 of the EEC Treaty a question concerning the interpretation of Article 34 of the Treaty.

2 The French Law No 48-1228 of 22 July 1948 fixed the legal constitution of the technical centres for industry, the principal purpose of which is to guarantee quality in the industry.

3 A Ministerial Decree of 22 April 1949 adopted in implementation of that law established the technical centre for industry (a public utility institution) known as Cetehor.

4 Among its tasks, Cetehor is required to examine the quality of all lever escapement watches and watch movements intended for export.

5 Two notices to exporters from the Ministry for Finance and Economic Affairs of 30 October 1962 and 24 November 1964 require exporters of such watches and watch movements to obtain a licence for all articles except those accompanied by a standards certificate issued by Cetehor, which replaces the export licence.

6 The judgment referring the case shows that the accused forged inspection certificates issued by Cetehor and under cover of the forged documents exported lever escapement watches to other Member States.

7 The accused justified the said forgeries on the ground that the speed of commercial transactions was not compatible with the delays inherent in the preparation of the certificates in question.

8 It is in the light of the factual and legal position described above that the Tribunal Correctionnel referred the following question:

'Must the words "quantitative restrictions on exports and any measures having equivalent effect" contained in Article 34 of the EEC Treaty be understood as also applying to the legal rules of a Member State which require in respect of the export of certain goods either a licence or a standards certificate in place of such licence, where such certificate does not give rise to the imposition of a charge and may be refused if the quality does not conform to certain standards laid down by the body issuing the certificate in substitution for the licence?'

9 The question asks, first, whether the requirement of a licence for the export to a Member State of a product manufactured in another Member State constitutes a quantitative restriction on exports or a measure having equivalent effect.

10 Article 34 provides that 'Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States'.

11 The general nature of the principle laid down by that provision, and the interpretation which has already been given to it, mean that in intra-Community trade export licences cannot be required by national legislation, even as factors in a quality inspection.

12 The second part of the question asks whether a quality inspection instituted by a Member State and carrying with it a prohibition on the export of products which do not satisfy the quality standards provided for by the

national rules may be regarded as a quantitative restriction on exports or a measure having equivalent effect.

13 However desirable may be the introduction of a policy on quality by a Member State, such policy can only be developed within the Community by means which are in accordance with the fundamental principles of the Treaty.

14 Rules such as those at issue in this instance cannot be regarded as compatible with the aforementioned principles.

15 The fact that the obligatory quality standards only apply to products intended for export and are not imposed on products marketed within the Member State leads to arbitrary discrimination between the two types of products which constitutes an obstacle to intra-Community trade, governed by Article 34 of the Treaty;

16 Thus, apart from the exceptions for which provision is made by Community law, the Treaty precludes the application to intra-Community trade of a national provision which requires export licences or any other similar procedure in respect of exports alone, such as the issue of standards certificates, the requirement of which constitutes a measure having effect equivalent to quantitative restrictions in so far as such certificates are capable of constituting a direct or indirect, actual or potential obstacle to intra-Community trade.

17 Such measures are prohibited, regardless of the purpose for which they have been introduced.

18 The reply to be given to the question referred must therefore be that the expression 'quantitative restrictions on exports and any measures having equivalent effect' contained in Article 34 of the EEC Treaty must be understood as applying to rules adopted by a Member State which require in respect only of the export of certain goods either a licence or a standards certificate which is issued in place of such licence and may be refused if the quality does not conform to certain standards laid down by the body issuing the said certificate, even if such certificate does not give rise to the imposition of a charge.

Costs

19 The costs incurred by the Government of the French Republic and the Commission of the European Communities which have submitted observations to the Court are not recoverable.

20 Since the 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 Tribunal Correctionnel, Besançon, a decision as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Tribunal Correctionnel, Besançon, by judgment of 19 May 1976, hereby rules:

The expression 'quantitative restrictions on exports and any measures having equivalent effect' contained in Article 34 of the EEC Treaty must be understood as applying to rules adopted by a Member State which require in respect only of the export of certain goods either a licence or a standards certificate which is issued in place of such licence and may be refused if the quality does not conform to certain standards laid down by the body issuing the said certificate, even if such certificate does not give rise to the imposition of a charge.

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 3 February 1977.

A. Van Houtte
Registrar

H. Kutscher
President