conditions under which goods are procured and marketed within the meaning of Article 37 (1) of the Treaty, where the prohibition does not apply to identical raw materials produced within the national territory.

There are no grounds for drawing a distinction between products duly put into free circulation in another Member State after having been imported from a third country and products originating in that Member State.

In Case 119/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance, Lure, for a preliminary ruling in the proceedings pending before that court between

S.A. DES GRANDES DISTILLERIES PEUREUX, Fougerolles (Haute-Saône),

and

DIRECTEUR DES SERVICES FISCAUX DE LA HAUTE-SAÔNE ET DU TERRITOIRE DE BELFORT, Vesoul,

on the interpretation of Articles 10 and 30 to 37 of the EEC Treaty,

THE COURT

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

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

gives the following

JUDGMENT

Facts and Issues

The order for reference and the written 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

Article 268, enacted by Decree No 74/91 of 6 February 1974 (Journal Officiel de la République Française of 8 February 1974), of Annex II to the Code Général des Impôts provides: "distillation of all imported raw material, with the exception of fresh fruit other than apples, pears or grapes shall be prohibited".

At the beginning of 1976 the Peureux company, the plaintiff in the main action, imported from Italy oranges steeped in alcohol, and by letter of 24 October 1976 asked the Administration des Contributions Indirectes [Indirect Taxation Department], the defendant in the main action, to confirm its right to distil these products. By letter of 1 March 1977 the said administration replied that the provisions of Article 268 of Annex II to the Code Général des Impôts prevented compliance with the request since the imported oranges were not fresh fruit as they were steeped in alcohol.

In the Tribunal de Grande Instance, Lure, before which the action was brought, the plaintiff in the main action alleged in the first place that the imported product (oranges steeped in alcohol) was not raw material within the meaning of the national provisions in question and alternatively in any event the national provisions were not applicable since they were incompatible with the provisions of Community law and in particular with Article 7 of the EEC Treaty (adjustment of commercial monopolies).

After deciding that oranges steeped in alcohol and imported from Italy were "raw material" within the meaning of Article 268 of Annex II to the Code Général des Impôts and thus accepting, at least by implication, that the product fell within the prohibition on distillation provided for in that Article on the same basis as all other raw material not covered by the exceptions expressly mentioned therein, the national court referred the following question to the Court of Justice for a preliminary ruling under Article 177 of the Treaty: "Is the prohibition in France on the distillation of spirits from any imported raw material, with the exception of fresh fruit other than apples, pears and grapes (Article 268 of Annex II to the Code Général des Impôts), compatible with Articles 10 and 37 or any other provision of the Treaty of Rome on the free movement and circulation of products coming from third countries, in particular as regards the distillation of spirits from oranges steeped in alcohol coming from Italy?"

The judgment of 21 April 1978 making the reference was registered at the Court of Justice on 19 May 1978. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC the plaintiff in the main action and the Commission submitted written observations.

After hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory enquiry.

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

A — Observations of the plaintiff in the main action

Taking the view that the Court in giving preliminary rulings under Article 177 of the Treaty cannot rule on the interpretation and validity of national provisions, the plaintiff in the main action proposes to read the question from the court making the reference as follows:

"Should Articles 10 and 37 of the EEC Treaty or any other provision of the Treaty on the free movement and circulation of products coming from third countries be interpreted as meaning that no national provision or measure is allowed prohibiting the distillation of certain raw material imported from other Member States of the EEC, such as oranges steeped in alcohol coming from Italy?"

Article 10 of the EEC Treaty

In referring to Article 10 on products coming from third countries and in free circulation in a Member State the national court was querying whether restrictive measures on the import of goods originating in third countries were compatible with the Treaty.

In the present case the oranges steeped in alcohol and imported into France originated in Italy or had been imported and then prepared in that Member State and accordingly were in free circulation there. As regards goods in free circulation Article 9 (2) of the Treaty provides for the application of Articles 30 to 37 of the Treaty. Where products originating in third countries have been added in the manufacture of goods originating in another Member State, Article 16 of Regulation No 516/77 of 14 March 1977 on the common organization of the market in products processed from fruit and vegetables (Official Journal 1977 L 73, p. 1) provides by implication that goods obtained from products in free circulation are to be admitted to free circulation within the Community.

The plaintiff in the main action accordingly takes the view that products in free circulation in a Member State of the Community which have either been completely obtained in a third country or have been prepared from products originating in third countries must be admitted to free circulation between the Member States, subject only to the protective commercial measures authorized by Article 115 of the Treaty.

Article 37 of the EEC Treaty

Article 268 of Annex II to the Code Général des Impôts prohibits the distillation of certain imported raw material; the prohibition is part of the economic system for alcohol which prohibited the import of pure alcohol and then in a supplemental provision prohibited the import of raw material for making alcohol. Article 37 of the Treaty provides that Member States shall adjust any State monopolies of a commercial character. The Court held in Case 59/75 *Pubblico Ministero* v *Manghera* [1976] 1 ECR 91 (judgment of 3 February 1976) that it follows from Article 37 and its structure "that the obligation laid down in paragraph (1) aims at ensuring compliance with the fundamental rule of

the free movement of goods throughout the Common Market, in particular by the abolition of quantitative restrictions and measures having equivalent effect in trade between Member States. This objective would not be attained if, in a Member State where a commercial monopoly exists, the free movement of goods from other Member States similar to those with which the national monopoly is concerned were not ensured".

Further the Court took the view in Case 91/75 *Miritz* [1976] 1 ECR 217 (judgment of 17 February 1976) that "Article 37 (1) is not concerned exclusively with quantitative restrictions but prohibits any discrimination, when the transitional period has ended, regarding the conditions under which goods are procured and marketed between nationals of Member States. It follows that its application is not limited to imports or exports which are connected with its existence and affect trade between Member States in certain products, whether or not subject to the monopoly . . .".

The plaintiff in the main action infers from this case-law that since the prohibition on distilling certain raw material is clearly connected with the existence of the monopoly it is an obstacle to import from other Member States and accordingly discrimination in the conditions of supply in so far as the same raw material of French origin can be freely distilled.

The appropriate answer to the national court is therefore that since the end of the transitional period Article 37 (1) no longer allows a Member State to prohibit distillation of raw material imported from other Member States.

Articles 30 to 33 of the Treaty

The plaintiff in the main action cites the ruling in the Judgment of the Court of 11 July 1974 in Case 8/74 Dassonville [1974] 1 ECR 837 to the effect that all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions. It also cites Commission Directive of 7 November 1966, No 66/683, on the abolition of all difference in treatment between national products and products which under Articles 9 and 10 of the Treaty must be allowed into free circulation (Journal Officiel 1966, p. 3748) and in particular Article 1 (a) thereof to argue that the prohibition in question constitutes a quantitative restriction on trade. The plaintiff in the main action cites the judgment of 16 March 1977 in Case 68/76 *Commission* v *French Republic*, "Potatoes", [1977] 1 ECR 515 and adds that the fact that a national economic system for a product should have been replaced by a Community system and this has not been done does not justify the maintenance of obstacles to trade until the entry into force of such a system. Since the prohibition in Article 30 *et seq.* of the Treaty is no longer subject after 31 December 1969 to the derogations in Article 37 (4) of the Treaty, the plaintiff in the main action concludes that since the end of the transitional period Articles 30 *et seq.* of the Treaty no longer allow a Member State to prohibit the complete or partial use of a product from another Member State of the EEC.

It accordingly proposes that the answer to the question raised should be that "Articles 30 to 37 of the EEC Treaty must be interpreted as meaning that as from the end of the transitional period national provisions or measures limiting or prohibiting the complete or partial use of products originating in another Member State or in free circulation there constitute measures having an effect equivalent to a quantitative restriction and prohibited by the said Articles".

B — Observations of the Commission of the European Communities

After referring to the history of the case the Commission observes that it has initiated a procedure against the French Republic for failure to fulfil an obligation, with a view to its abolishing the prohibition in question on distilling certain raw material imported from other Member States.

Turning to consideration of the question raised the Commission observes in the first place that it should be reworded. It adds that having regard to the wording of the question which refers *inter alia* to Article 10 of the Treaty on the entry into free circulation of products originating in third countries and to the recitals in the order for reference, it will give its views on the compatibility of the provision in question with Community law not only because the latter refers to products originating in a Member State or in free circulation there but also because it refers to products imported directly from a third country.

Article 37 of the Treaty

In the Commission's view Article 37 of the Treaty is no longer applicable in the sector concerned because as a result of the adjustments made by Decree No 77/842 of 25 July 1977 (Journal Officiel de la République Française of 27 July 1977) alcohol no longer constitutes a commercial monopoly within the meaning of the article. Although France still has the exclusive right to produce alcohol reserved for the State, under Article 222 of the Treaty this right as such is compatible with the Treaty as is the exclusive right for a State to market its own production. Such an exclusive right is no longer a monopoly of a commercial nature within the meaning of Article 37 unless it extended to imported products originating in other Member States, which is not the case. The Service des Alcools therefore no longer has exclusive right to import, export and market in relation to alcohol reserved to the State. Since such rights are the very essence of the monopoly their disappearance will necessarily involve the disappearance of the latter. Even if Article 268 of Annex II to the Code Général des Impôts could be regarded as concerning the rules relating to the monopoly nevertheless as from the end of the transitional period it has to be considered in relation to Article 30 of the Treaty.

Article 30 of the Treaty

In the Commission's view the national court rightly observes that it would appear contradictory to allow oranges steeped in alcohol to enter France and to prohibit their distillation, for which purpose they seem normally to be intended. By making it pointless to acquire a product it is possible to restrict its import.

Since the prohibition on distillation does not apply to raw material of national origin the measure in question may be regarded as a measure having an effect equivalent to a quantitative restriction

within the meaning of Article 30 of the Treaty. In this respect it is right in the Commission's view to stress that among the measures having an effect equivalent to quantitative restrictions on imports the Commission Directive No 66/683 of 7 November 1966 lists provisions laid down by law, regulation or administrative action prohibiting the complete or partial use of an imported product in processing or incorporation. (Article 1).

The prohibition on measures having an effect equivalent to quantitative restrictions contained in Article 30 of the Treaty applies only to products originating in a Member State or in free circulation there. It is therefore necessary also to consider the case of products (here oranges steeped in alcohol) coming directly from a third country. The Commission observes that oranges steeped in alcohol come under heading No 20.06 B I (e) of the Common Customs Tariff and are therefore covered by the consolidated Council Regulation No 516/77 of 14 March 1977 on the common organization of the market in products processed from fruit and vegetables (Official Journal L 73, p. 1). Article 13 (2) thereof stipulates that save as otherwise provided in the said regulation or where derogation therefrom is decided by the Council, acting on a proposal from the Commission, the levying of any charge having equivalent effect to a customs duty and the application of any quantitative restriction or measure having equivalent effect shall be prohibited in trade with non-member countries. This prohibition applies to the products in question as from 1 October 1975 under the second paragraph of Article 9 of Regulation No 1927/75 of the Council of 22 July 1975 (Official Journal L 198, p. 7), which article is adopted in the consolidation represented by the said Regulation No 516/77.

In view of the above observations the Commission suggests that the question should be answered as follows:

"The prohibition on distillation of imported raw materials and in particular oranges steeped in alcohol originating in a Member State or in a third country but in free circulation in another Member State has since 1 January 1970 been contrary to Article 30 of the EEC Treaty. Such prohibition in so far as it relates to raw materials such as oranges steeped in alcohol imported from a third country has since 1 October 1975 also been contrary to Article 13 (2) of Council Regulation No 516/77 of 14 March 1977."

The plaintiff in the main action, represented by A. Tisserand of the Belfort Bar, Vesoul, and P. Didier of the Brussels Bar, and the Commission of the European Communities represented by its Agent, Mr Béraud, made oral observations.

The Advocate General delivered his opinion at the hearing on 14 December 1978.

Decision

1 By judgment of 21 April 1978 received at the Court on 19 May the Tribunal de Grande Instance, Lure, referred a question for a preliminary ruling under Article 177 of the EEC Treaty on the interpretation of Articles 10 and 37 and other provisions of the Treaty on the free movement of goods.

2 This question has arisen in proceedings which started in 1976 between the plaintiff in the main action and the competent French administrative authority and relates to the plaintiff's right to import into France for the purpose of distillation oranges steeped in alcohol coming from Italy where they have been in free circulation.

3 When the plaintiff informed the authority that it would import the product for the purpose of distillation, the authority replied that there was nothing to stop the import but no licence would be granted for the distillation since it would be contrary to Article 268 of Annex II to the Code Général des Impôts.

4 The article, as amended by Article 3 of Decree No 74/91 of 6 February 1974 (Journal Officiel de la République Française of 8 February 1974) provides "distillation of all imported raw material, with the exception of fresh fruit other than apples, pears or grapes shall be prohibited".

5 Article 268 is part of a set of provisions concerning the commercial monopoly in ethyl alcohol included essentially in the Code Général des Impôts (Book 1, Part 1, Title III, Indirect Taxation and Fiscal Monopolies, Chapter I, Section 1 (alcohol), Letter B, Economic System (Articles 358 to 399) and Annex II (Articles 268 to 275) to the Code).

6 According to Article 358 *et seq.* of the Code Général des Impôts the effect of the monopoly is that producers of ethyl alcohol established in France or at least in metropolitan France must reserve to the State their production of ethyl alcohol save certain alcohol expressly mentioned in that article.

7 The volume produced is determined by fixed annual quotas allocated, by the Minister responsible, to the manufacturers according to their technical capacity.

8 In return for the obligation on the producer to supply it, the monopoly has an obligation to buy the said alcohol at prices periodically fixed by order of the Minister for Finance.

9 The alcohol bought by the State is resold by it for all uses at fixed official prices.

10 Under Article 385 of the Code Général des Impôts the import of alcohol from abroad is also reserved to the State.

11 Nevertheless as regards ethyl alcohol usable or consumable without further processing and spirits and spirituous beverages coming from other Member States Decree No 74/91 of 6 February 1974 in particular, adopted in the context of adjusting the monopoly in implementation of Article 37 of the Treaty, terminated the import monopoly so that since entry into force of the decree such alcohol, spirits and spirituous beverages may be imported from other Member States and marketed in France subject to the payment of certain taxes which are nevertheless not in question in the main action.

12 The prohibition contained in Article 268 of Annex II on distilling certain imported raw material must be related to the distinction made in Article 358 of the Code Général des Impôts between alcohol reserved to the State (monopoly alcohol) and that not so reserved (free alcohol).

13 It appears from a comparison of the two provisions that Article 268 prohibits the distillation of imported raw material when it is suitable for the production of alcohol which has to be reserved to the monopoly whereas that which is suitable for the production of alcohol not subject to delivery to the monopoly can be freely used.

14 The plaintiff maintained that the prohibition contained in the said Article 268 was incompatible with Community law and brought the matter before the Tribunal de Grande Instance, Lure, which referred the following question for a preliminary ruling:

"Is the prohibition in France on the distillation of spirits from any imported raw material, with the exception of fresh fruit other than apples, pears and grapes (Article 268 of Annex II to the Code Général des Impôts), compatible with Articles 10 and 37 or any other provision of the Treaty of Rome on the free movement and circulation of products coming from third countries, in particular as regards the distillation of spirits from oranges steeped in alcohol coming from Italy?"

15 It further appears from the judgment of the national court that criminal proceedings have been taken against the plaintiff in the main action for having disregarded the prohibition in question and that a penalty of FF 17 804 343.19 has been imposed for breach of the economic system for alcohol.

16 Although the Court has no jurisdiction under Article 177 of the Treaty to rule on the compatibility of a national provision with Community law, it may nevertheless, having regard to the particulars supplied by the national court, extract from the wording of the question the factors relating to the interpretation of Community law.

17 Understood in this way the question comes in substance to asking whether Article 37 of the Treaty on the one hand and Article 30 together with Article 10 on the other allow a Member State which has a commercial monopoly in alcohol to maintain, or on the contrary prohibit it from maintaining, restrictions on distilling certain raw material suitable for processing into alcohol and imported from other Member States when similar raw material, in the present case oranges steeped in alcohol, produced in the territory of the same Member State, are not subject to such restrictions.

18 In referring to the provisions of the Treaty on "the free movement of goods" the question amounts to asking whether a measure of the kind provided for by the national provision in question constitutes a measure having an effect equivalent to a quantitative restriction on imports within the meaning of Article 30 of the Treaty.

19 In referring to Article 10 of the Treaty the national court appears to be seeking elucidation on the question whether the fact that the oranges steeped in alcohol originate in a third country and are in free circulation in Italy has a bearing on the way the case is decided.

20 Finally, referring to Article 37 of the Treaty, the court asks whether in the event of measures such as those contained in Article 268 of Annex II having to be regarded as measures having an effect equivalent to quantitative restrictions on imports, they may nevertheless be regarded as permissible in the context of a commercial monopoly adjusted in accordance with the obligation imposed on Member States by the said Article 37.

21 It is appropriate to reply to the question in the order followed above.

Article 30 of the Treaty

22 In prohibiting between Member States measures having an effect equivalent to quantitative restrictions on imports Article 30 of the Treaty covers all trading rules of Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade.

23 Obstacles to intra-Community trade resulting from differences between the provisions of national laws which have not yet been harmonized in relation to the marketing and use of certain products constitute, in principle, measures having an effect equivalent to quantitative restrictions unless those provisions apply without discrimination to products imported from other Member States and to those produced or manufactured in the national territory.

Article 10 of the Treaty

24 Article 10 (1) provides "Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member

State, and if they have not benefited from a total or partial drawback of such duties or charges".

25 Article 9 (2) lays down that the provisions of the Treaty on the elimination of quantitative restrictions between Member States (Part Two, Title I, Chapter 2 of the Treaty) shall apply to products coming from third countries which are in free circulation in a Member State.

26 It follows that the prohibition of measures having an effect equivalent to quantitative restrictions in intra-Community trade has the same scope as regards products imported from another Member State after being in free circulation there as for those originating in the same Member State.

Article 37 of the Treaty

27 Article 37 of the Treaty is a specific provision aiming not at the abolition but the adjustment of State monopolies of a commercial character on the one hand so as to ensure that when the transitional period has ended no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States (Article 37 (1)) and on the other hand to ensure respect for the obligation on Member States to refrain in the management and adjustment of a commercial monopoly from introducing any new measure which is contrary to the principles laid down in paragraph 1 or which restricts the scope of the articles dealing with the abolition of customs duties and quantitative restrictions between Member States (Article 37 (2)).

28 The rules contained in Article 37 (1) and (2) concern only activities intrinsically connected with the specific business of the monopoly and are irrelevant to national provisions which have no connexion with such specific business.

29 The question raised relates to a commercial monopoly specifically concerned with the obligation on national producers of certain alcohol to maintain production of such alcohol within the limits of annual quotas fixed by the public authority and to deliver their production only to the monopoly with the corresponding obligation on the monopoly to buy the said products at officially fixed prices.

30 It follows from the national character of the commercial monopolies referred to in Article 37 and the possibility of maintaining them after adjustment in accordance with the same provision that the fact that the obligation to deliver to the monopoly and the corresponding obligation on it to purchase concerns only national alcohol cannot be regarded as discrimination within the meaning of Article 37 (1) nor as a quantitative restriction within the meaning of Article 37 (2). However the prohibition on any discrimination between the nationals of Member States regarding the conditions under which goods are procured and marketed prevents a distinction from being made between the same kind of nationally produced alcohol according to whether it has been obtained from the distillation of national raw material or on the contrary by the distillation of raw material originating in another Member State.

31 This is all the more so when as a result of the system governing the monopoly the authorities of the Member State are entitled to fix annually the quantities of alcohol which may be produced and which must be delivered to the monopoly.

32 The appropriate answer to the question raised by the national court is therefore:

(a) A national provision prohibiting the distillation, for the purpose of manufacturing products reserved to a national commercial monopoly, of raw materials coming from other Member States constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty and a discrimination regarding the conditions under which goods are procured and marketed within the meaning of Article 37 (1) of the Treaty, where the prohibition does not apply to identical raw materials produced within the national territory.

(b) There are no grounds for drawing a distinction between products duly put into free circulation in another Member State after having been imported from a third country and products originating in that Member State.

Costs

33 The costs incurred by the Commission of the European Communities which has submitted observations to the Court are not recoverable.

34 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 Tribunal de Grande Instance, Lure, by judgment of 21 April 1978, hereby rules:

1. **A national provision prohibiting the distillation, for the purpose of manufacturing products reserved to a national commercial monopoly, of raw materials coming from other Member States constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty and a discrimination regarding the conditions under which goods are procured and marketed within the meaning of Article 37 (1) of the Treaty, where the prohibition does not apply to identical raw materials produced within the national territory.**

2. **There are no grounds for drawing a distinction between products duly put into free circulation in another Member State after having been imported from a third country and products originating in that Member State.**

Kutscher Mertens de Wilmars Mackenzie Stuart

Sørensen O'Keeffe Bosco Touffait

Delivered in open Court in Luxembourg on 13 March 1979.

A. Van Houtte — Registrar

H. Kutscher — President