

In Case 41/76

Reference to the Court of Justice pursuant to [Article 267 TFEU] by the Cour d'appel, Douai, for a preliminary ruling in the proceedings pending before that court between

SUZANNE CRIEL, NEE DONCKERWOLCKE, Manager, residing at Heusden, Belgium, and

HENRI SCHOU, Export Agent and Manager, residing at Saint-Denis-Westrem, Belgium,

v

THE PROCUREUR DE LA REPUBLIQUE AU TRIBUNAL DE GRANDE INSTANCE, LILLE, and THE DIRECTOR GENERAL OF CUSTOMS, PARIS,

on the interpretation of the concept of measures having an effect equivalent to quantitative restrictions on imports within the meaning of [Articles 34 TFEU] *et seq.*,

#### THE COURT

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

Advocate-General: F. Capotorti

Registrar: A. Van Houtte

gives the following

#### JUDGMENT

## Law

- 1 By judgment of 7 April 1976, which was received at the Court Registry on 13 May 1976, the Cour d'Appel de Douai referred, pursuant to [Article 267 TFEU], two questions concerning in particular the interpretation of [Article 28 TFEU], [Article 34 TFEU] and 115 of the [EEC] Treaty [repealed] in so far as they relate to the removal of restrictions on the free movement of goods within the Community as it affects goods coming from third countries and released into free circulation in one of the Member States.
- 2 It appears from the judgment making the reference that during 1969 and 1970 the accused in the main proceedings, merchants established in Belgium, imported into France cloth of synthetic fibres and packing sacks coming from the Lebanon and Syria which had been duly put into free circulation in Belgium and subsequently introduced into France under the [Union] goods movement certificates DD 1 issued by the Belgian Customs authorities.
- 3 It is accepted that the movement certificates which certify the due admission of goods to the status of free circulation within the meaning of [Article 28(2) TFEU] do not contain any indication of the actual origin of the product.
- 4 When the goods were imported into France they were declared on a national document of the French customs known as 'D 3' as having come from the Belgo-Luxembourg Economic Union on the territory of which they had been put into free circulation.
- 5 After the real origin of the goods in question had been established by the French authorities the appellants were sentenced by a judgment of 19 June 1975 of the Tribunal Correctionnel of Lille, for contravention of the customs legislation, to suspended terms of imprisonment of one month and three months respectively, to a fine equal to the value of the imported goods in lieu of the confiscation of the goods which could not be seized and to an additional fine equal to double the value of the same goods.

- 6 It appears from the file that for goods which do not as yet come within the common commercial policy the French rules provide for measures of customs monitoring comprising, for products in free circulation by virtue of the provisions of the Treaty, the obligation of the importer to declare on document D 3 not merely the State where they had thus been released to the market but also their original source.
- 7 These declarations, coupled with the issue of import licences, enable the national authorities to follow the trends in the imports of goods subject to this monitoring procedure and thus to detect any deflections of trade with a view to obtaining from the Commission the establishment of protective measures under Article 115 of the [EEC] Treaty [repealed].
- 8 It is with regard to this situation of fact and of law that the Cour d'Appel asked the following questions:
  - ' 1. Does the fact that the importing Member State requires the country of origin to be indicated in the customs declaration form for products in free circulation whose [Union] status is attested by the Community movement certificate constitute a measure equivalent to a quantitative restriction ?
  2. Do the national rules subjecting the importation of textile products coming from and in free circulation in a Member State, and originating in a third country, to an application for authorization for the purposes of a possible application of Article 115 of the Treaty establishing the European Economic Community [repealed] constitute a measure equivalent to a quantitative restriction:
    - (a) during the transitional period;
    - (b) since the end of the transitional period and more particularly between 1 January and 2 June 1970).
- 9 These questions must be examined, first, with regard to the rules applicable after the expiry of the transitional period.

The rules applying after the expiry of the transitional period

- 10 The questions referred concern the rules applicable to products originating in third countries not yet subject to common provisions of commercial policy and which, after being put into free circulation in one Member State, are re-exported to another Member State.
- 11 They concern more particularly the compatibility with the Treaty of monitoring measures introduced unilaterally by the importing Member State before obtaining a derogation, pursuant to the second sentence of the first paragraph of Article 115 [EEC] [repealed], from the rules of free circulation within the [Union].
- 12 The monitoring measures in question consist of the importer's obligation to declare the actual origin of the imported goods and the issue of an import licence.
- 13 The answer to these questions must be derived from the provisions of the Treaty concerning the customs union and from the closely related provisions concerning the common commercial policy.
- 14 According to [Article 28 TFEU] the [Union] shall be based upon a customs union which shall cover all trade in goods between Member States.
- 15 According to [Article 28(2) TFEU] the provisions adopted for the liberalization of intra-[Union] trade apply in identical fashion to products

originating in Member States and to products coming from third countries which are in 'free circulation' in the [Union].

16 Products in free circulation are to be understood as meaning those products which, coming from third countries, were duly imported into any one of the Member States in accordance with the requirements laid down by [Article 29 TFEU].

17 It appears from [Article 28 TFEU] that, as regards free circulation of goods within the [Union], products entitled to 'free circulation' are definitively and wholly assimilated to products originating in Member States.

18 The result of this assimilation is that the provisions of [Article 34 TFEU] concerning the elimination of quantitative restrictions and all measures having equivalent effect are applicable without distinction to products originating in the [Union] and to those which were put in to free circulation in any one of the Member States, irrespective of the actual origin of these products.

19 Measures having an effect equivalent to quantitative restrictions prohibited by the Treaty include all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-[Union] trade.

20 This provision precludes the application to intra-[Union] trade of a national provision which requires, even purely as a formality, import licences or any other similar procedure.

21 In addition [Article 28(2) TFEU] excludes any administrative procedure

intended to establish between products different rules with regard to movement depending on whether they originate in the [Union] or, having originated in third countries, were put into free circulation in one of the Member States, since both types of product are included without distinction in the same system of free circulation.

22 Consequently the movement certificate DD1 established by the Decision of the Commission of 5 December 1960 (JO 1961, p. 29) and intended to cover the movement of goods which comply with the conditions required for the application of the Treaty provisions concerning the elimination of customs duties and quantitative restrictions and any measures having equivalent effect between the Member States contains no indication concerning the origin of the products.

23 In the system of [Union] law this authorization must, of itself and without the addition of any measure of national law, guarantee to the person holding it the benefit of free circulation for the goods which it is intended to cover.

24 However it results from the system of the Treaty that the application of the principles referred to above is conditional upon the establishment of a common commercial policy.

25 The assimilation to products originating within the Member States of goods in 'free circulation' may only take full effect if these goods are subject to the same conditions of importation both with regard to customs and commercial considerations, irrespective of the State in which they were put in free circulation.

26 Under [Article 207 TFEU] this unification should have been achieved by the expiry of the transitional period and supplanted by the establishment of a common commercial policy based on uniform principles.

- 27 The fact that at the expiry of the transitional period the Community commercial policy was not fully achieved is one of a number of circumstances calculated to maintain in being between the Member States differences in commercial policy capable of bringing about deflections of trade or of causing economic difficulties in certain Member States.
- 28 Article 115 [EEC] [repealed] allows difficulties of this kind to be avoided by giving to the Commission the power to authorize Member States to take protective measures particularly in the form of derogation from the principle of free circulation within the [Union] of products which originated in third countries and which were put into free circulation in one of the Member States.
- 29 Because they constitute not only an exception to the provisions of [Articles 28 and 34 TFEU] which are fundamental to the operation of the Common Market, but also an obstacle to the implementation of the common commercial policy provided for by [Article 207 TFEU], the derogations allowed under Article 115 [EEC] [repealed] must be strictly interpreted and applied.
- 30 It is in the light of this interpretation that the compatibility of the 'monitoring measures' described above with the rules concerning the free circulation of goods within the [Union] should be considered.
- 31 First of all it should be stressed with regard to the scope of such provisions, that under Article 115 [EEC] [repealed] limitations may only be placed on the free movement within the [Union] of goods enjoying the right to free circulation by virtue of measures of commercial policy adopted by the importing Member State in accordance with the Treaty.

- 32 As full responsibility in the matter of commercial policy was transferred to the [Union] by means of [Article 207(1) TFEU] measures of commercial policy of a national character are only permissible after the end of the transitional period by virtue of specific authorization by the [Union].
- 33 Within the context thus defined the Member States are not prevented from requiring from an importer a declaration concerning the actual origin of the goods in question even in the case of goods put into free circulation in another Member State and covered by a [Union] movement certificate.
- 34 In these circumstances it may be admitted that knowledge of that origin is necessary both for the Member State concerned, so that it may determine the scope of commercial policy measures which it is authorized to adopt pursuant to the Treaty, and for the Commission, for the purpose of exercising the right of supervision and decision conferred on it by Article 115 [EEC] [repealed].
- 35 Nevertheless the Member States may not require from the importer more in this respect than an indication of the origin of the products in so far as he knows it or may reasonably be expected to know it.
- 36 In addition the fact that the importer did not comply with the obligation to declare the real origin of goods cannot give rise to the application of penalties which are disproportionate taking account of the purely administrative nature of the contravention.
- 37 In this respect seizure of the goods or any pecuniary penalty fixed according to the value of the goods would certainly be incompatible with

the provisions of the Treaty as being equivalent to an obstacle to the free movement of goods.

38 In general terms any administrative or penal measure which goes beyond what is strictly necessary for the purposes of enabling the importing Member State to obtain reasonably complete and accurate information on the movement of goods falling within specific measures of commercial policy must be regarded as a measure having an effect equivalent to a quantitative restriction prohibited by the Treaty.

39 *A fortiori* the requirement of an import licence for the introduction into a Member State of goods put into free circulation in another Member State is incompatible with the provisions of the Treaty in so far as the goods are not the subject of a derogation properly authorized by the Commission by virtue of the second sentence of the first paragraph of Article 115 [EEC] [repealed].

40 Consequently the refusal to issue an import permit, as an interim measure with a view to a possible application of Article 115 [EEC] [repealed], constitutes a restriction which is incompatible with [Article 34 TFEU].

41 The reply to be given to the first question is, therefore, that the requirement by the importing Member State of the indication of the country of origin on the customs declaration document for products in free circulation whose [Union] status is attested by the [Union] movement certificate does not in itself constitute a measure equivalent to a quantitative restriction if the goods in question are covered by measures of commercial policy adopted by that State in conformity with the Treaty.

42 Such a requirement would, however, fall under the prohibition contained in [Article 34 TFEU] if the importer were required to declare, with regard

to origin, something other than what he knows or may reasonably be expected to know, or if the omission or inaccuracy of that declaration were to attract penalties disproportionate to the nature of a contravention of a purely administrative character.

- 43 The reply to be given to the second question is, therefore, that national rules making the importation of products coming from and in free circulation in a Member State and originating in a third country subject to the issue of a licence for the purposes of a possible future application of Article 115 of the [EEC] Treaty [repealed] in any event constitute a quantitative restriction prohibited by [Article 34 TFEU].

The rules applying during the transitional period

- 44 In view of the fact that the importations which gave rise to the criminal conviction of the appellants in part took place before 1 January 1970, the date of the expiry of the transitional period, the national court asks to what extent during that period national rules subjecting the importation of products coming from and in free circulation in a Member State and originating in a third country to an application for authorization for the purposes of a possible application of Article 115 of the Treaty establishing the European Economic Community [repealed] constituted a measure equivalent to a quantitative restriction.
- 45 Under [Articles 34 to 35 TFEU], considered in conjunction with Article 8 (7), quantitative restriction and all measures having equivalent effect were to be progressively eliminated in intra-[Union] trade during the transitional period and the abolition was to be completed by the end of that period.
- 46 Therefore before the expiry of that period Member States were entitled to maintain in being, albeit on a purely residuary basis, restrictive

measures in intra-[Union] trade.

- 47 As the Treaty had not yet laid down as an objective for that same period the establishment of a common commercial policy, differences could legitimately continue to exist between the external trade policies pursued by the various Member States.
- 48 In conformity with the spirit of these provisions the second paragraph of Article 115 [EEC] [repealed] authorized Member States in case of urgency during the transitional period to take the necessary measures to guard against deflections of trade on condition that they notify such measures to the other Member States and to the Commission and without prejudice to the Commission's right to require amendment or abolition of measures adopted unilaterally.
- 49 It therefore appears that the obligations imposed on the importer of goods put into free circulation in another Member State to obtain an import licence was, so far as its principle is concerned, compatible with [Union] law in its state of development at that time.
- 50 Nevertheless the Member States did not enjoy an absolute discretion in this respect during the period in question.
- 51 By virtue of Articles 31 and 32 of the [EEC] Treaty [repealed] the Member States had to refrain from introducing any new quantitative restrictions or measures having equivalent effect or from making more restrictive the rules existing on the entry into force of the Treaty.
- 52 It is therefore for the national court to examine whether the measures applicable at the time of the imports in question, in so far as those

imports took place before the end of the transitional period, were possibly more restrictive than those which existed on 1 January 1958, the date of the entry into force of the Treaty.

- 53 The reply to be given to the question put is, therefore, that during the transitional period national rules making the importation of products coming from and in free circulation in a Member State and originating in a third country subject to an application for authorization for the purposes of a possible application of Article 115 of the [EEC] Treaty [repealed] did not constitute a quantitative restriction prohibited by the Treaty in so far as that requirement did not render more onerous the rules applicable on the entry into force of the Treaty.

#### **Costs**

- 54 The costs incurred by the Government of the French Republic and the Commission of the European Communities which submitted observations to the Court, are not recoverable.
- 55 As these proceedings are, 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, costs are a matter for that court.

On those grounds,

#### **THE COURT**

in answer to the questions referred to it by the Cour d'Appel de Douai by judgment of 7 April 1976, hereby rules:

- 1. The requirement by the importing Member State of the indication of the country of origin on the customs declaration document for products in free circulation whose [Union] status is attested by the [Union] movement certificate does not in itself constitute a measure equivalent to a quantitative restriction if the goods in question are covered by measures of commercial policy adopted by that State in conformity with the Treaty.**

Such a requirement would, however, fall under the prohibition contained in [Article 34 TFEU] if the importer were required to declare, with regard to origin, something other than what he knows or may reasonably be expected to know, or if the omission or inaccuracy of that declaration were to attract penalties disproportionate to the nature of a contravention of a purely administrative character.

2. National rules making the importation of products coming from and in free circulation in a Member State and originating in a third country subject to the issue of a licence for the purposes of the possible future application of Article 115 of the [EEC] Treaty [repealed] in any event constitute a quantitative restriction prohibited by [Article 34 TFEU].

During the transitional period national rules making the importation of products coming from and in free circulation in a Member State and originating in a third country subject to an application for authorization for the purposes of a possible application of Article 115 of the [EEC] Treaty [repealed] did not constitute a quantitative restriction prohibited by the Treaty in so far as that requirement did not render more onerous the rules applicable on the entry into force of the Treaty.

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|----------|-----------|-----------|--------------------|
| Kutscher | Donner    | Pescatore | Mertens de Wilmars |
|          |           | O'Keeffe  | Bosco Touffait     |
| Sorensen | Mackenzie |           |                    |
|          | Stuart    |           |                    |

Delivered in open court in Luxembourg on 15 December 1976.

A. Van Houtte  
Registrar

H. Kutscher  
President