account not only the possible means of the applicant but the fact that he has already been in custody over a month. I am prepared to reduce the amount of deposit to £150. I so order. Had the matter gone before the Stipendiary Magistrate when the applicant last appeared before him, I think he would have done likewise.

Order accordingly.

[1980–87 Gib LR 460]

TRADE LICENSING AUTHORITY v. BIGIB LIMITED

SUPREME COURT (Kneller, C.J.): April 24th, 1987

Trade and Industry—trading licence—specifying premises—Trade Licensing Ordinance, s.3(1)(b) requires statement of specific place where business will be "carried on"—"on site" insufficient—by s.16, Trade Licensing Authority needs to be able to assess impact of business on surrounding area

European Community Law—free movement of goods—import restrictions—EEC Member State nationals to comply with Trade Licensing Ordinance, s.3(1)(b)—EEC Treaty, arts. 30–36 ending quantitative import restrictions not applicable to Gibraltar—in same position as before UK's accession to Treaty, as Gibraltar removed from the list of countries which accepted EEC liberalization of import restrictions but outside of customs union—EEC Treaty, art. 3(a) commits Member States to ending import restrictions, but this does not override Gibraltar's specific exclusion

The respondent, Bigib Ltd., appealed to the Magistrates' Court against the refusal of a trade licence by the Trade Licensing Authority.

Bigib was a Gibraltar company that wished to trade in fruit and vegetables imported from other countries, some of which were EEC Member States. The Trade Licensing Ordinance (1984 Edition) required Bigib to apply for a licence to trade; s.3(1)(b) required an applicant to state where the business would be carried on. Bigib claimed that its goods would be sold "on site," but gave no specific address. The Trade Licensing Authority refused the application.

On appeal to the Magistrates' Court against the refusal of the application, questions arose as to the validity of s.3(1)(b) and whether, if the sub-section were valid, the words "on site" were sufficient to comply with

it. The Magistrates' Court upheld Bigib's appeal in part, holding that (a) Bigib was entitled to a licence to import fruit and vegetables from EEC Member States as of right without needing to state a place of business, as s.3(1)(b) amounted to a quantitative restriction on imports from Member States contrary to arts. 30–36 of the Treaty Establishing the European Economic Community, which applied to Gibraltar, and was therefore void as far as imports from Member States were concerned; and (b) Bigib was not, however, entitled to a licence to import from states outside the EEC, as s.3(1)(b) still applied in relation to these states, and the words "on site" were insufficient to comply with its terms. Since Bigib needed to import from these states in order to do business, it did not take up its licence.

On appeal to the Supreme Court by way of case stated, the Authority sought the opinion of the court on four questions of law: (a) whether a national of a Member State was obliged to comply with the provisions of s.3(1)(b) of the Trade Licensing Ordinance; (b) whether s.3 was in breach of arts. 30–36 of the EEC Treaty and therefore null and void; (c) whether s.3(1)(b) in particular was in breach of arts. 30–36 and therefore unenforceable; and (d) whether for the purposes of art. 28 of the UK Act of Accession, art. 3(a) of the EEC Treaty was to be interpreted in such a way that the provisions in respect of customs duties and quantitative restrictions were not intrinsically bound up with one another as far as their application to Gibraltar was concerned.

The court considered how EEC legislation and amendments to the UK Act of Accession had affected the position of Gibraltar in relation to the EEC, and whether, if arts. 30–36 did apply, s.3 of the Trade Licensing Ordinance was nonetheless compliant with them as it did not discriminate between the sale of domestic and imported goods.

Held, allowing the appeal and giving the following answers:

(1) The Authority's refusal to grant a licence would be upheld; Bigib was not entitled to a licence on the application it made, as the phrase "on site" could not comply with s.3(1)(b) of the Ordinance. Without a specific location being named, the Authority could not, when deciding whether to grant a licence, consider factors relating to the local area—*e.g.* whether the need for such a business in the area was already provided for, and the risk of nuisance or annoyance to nearby residents—which s.16 of the Ordinance required it to consider (para. 14; para. 41).

(2) Question (a) would be answered in the affirmative: nationals of Member States had to comply with s.3(1)(b) of the Trade Licensing Ordinance. Articles 30–36 of the EEC Treaty did not affect this, as they did not apply to Gibraltar: Gibraltar was not subject to EEC commercial policy, and was in the same position as before the UK's accession, as Gibraltar had been excluded from the application of Annex II of the UK Act of Accession to the EEC, which led to it being removed from the list of countries outside the EEC Customs Union that accepted the Community's liberalization of import restrictions. Although art. 3(a) of the Treaty committed Member States to ending customs duties and quantitative

restrictions between them, this was not all-embracing, and could not override a specific exclusion of Gibraltar from any provision (para. 19; paras. 27–30).

(3) Questions (b) and (c) would be answered in the negative: none of the provisions of the Trade Licensing Ordinance were in contravention of arts. 30–36 of the EEC Treaty. The articles did not apply to Gibraltar, and even if they did, Community law recognized that trade may be subject to local laws if they were not discriminatory and reflected the general good. The Trade Licensing Ordinance did not mention an applicant's nationality or place of establishment, and it had not been proved that the Ordinance had a restrictive effect on intra-Community trade, or that it had a particular effect on the sale of imported goods, both of which were required to establish that arts. 30–36 had been breached (paras. 36–39).

(4) Question (d) would also be answered in the negative: for the purposes of para. 28 of the UK Act of Accession, art. 3(a) of the EEC Treaty was not to be interpreted in such a manner that the provision in respect of the elimination of customs duties and quantitative restrictions were inexorably or intrinsically bound up with one another so far as the laws of Gibraltar are concerned (para. 40).

Cases cited:

(1) *E.C. Commn.* v. *Germany*, *Re Ins. Servs.*, [1986] E.C.R. 3755; [1987] 2 C.M.L.R. 69, referred to.
(2) *E.C. Commn.* v. *Germany*, *Re Marketing of Pharmaceuticals*, [1984] E.C.R. 1111; [1985] C.M.L.R. 640, distinguished.
(3) *E.C. Commn.* v. *Germany*, *Re Purity Reqs. for Beer*, [1987] E.C.R. 1227, referred to.
(4) *E.C. Commn.* v. *UK*, *Re Origin Marketing*, [1985] 2 C.M.L.R. 259; [1985] E.C.R. 1201, distinguished.
(5) *Furniture Centre Ltd.* v. *Stipendiary Mag.*, 1980–87 Gib LR 313, considered.
(6) *Openbaar Ministerie* v. *Van Tiggele*, [1978] E.C.R. 25; [1978] 2 C.M.L.R. 528, referred to.
(7) *Parm-Anand* v. *Trade Licensing Auth.*, Supreme Ct., November 19th, 1980, unreported, *dicta* of Alcantara, A.J. referred to.
(8) *Procureur du Roi* v. *Dassonville*, [1974] E.C.R. 837; [1974] 2 C.M.L.R. 436, referred to.
(9) *Reydal Bldg. Constr. Ltd.* v. *Trade Licensing Auth.*, C.A., App. No. 76 of 1985, unreported, referred to.
(10) *S.A. Magnivision N.V.* v. *General Optical Council*, [1987] 1 C.M.L.R. 887, followed.
(11) *Webb (Alfred John)*, *Re*, [1981] E.C.R. 3305, followed.

Legislation construed:

Trade Licensing Ordinance (1984 Edition), s.3(1)(b): The relevant terms of this paragraph are set out at para. 13.

Act Concerning the Conditions of Accession and the Adjustments to the Treaties (Brussels, January 22nd, 1972; UK Treaty Series 1 (1973)), art. 28:

> "Acts of the institutions of the Community relating to the products in Annex II to the EEC Treaty and the products subject, on importation into the Community, to specific rules as a result of the implementation of the common agricultural policy, as well as the acts on the harmonisation of legislation of Member States concerning turnover taxes, shall not apply to Gibraltar . . . "

Treaty Establishing the European Economic Community (Rome, March 25th, 1957; UK Treaty Series 29 (1996)), art. 3: The relevant terms of this article are set out at para. 17.
art. 30: The relevant terms of this article are set out at para. 23.
art. 36: The relevant terms of this article are set out at para. 25.

J. Nuñez, Crown Counsel, for the appellant;
The respondent did not appear and was not represented.

1 **KNELLER, C.J.:** Bigib Ltd. is a company registered in Gibraltar. The address of its registered offices is 3 Library Ramp, Gibraltar. Its directors may be Spanish. Bigib did not brief counsel for the appeal in this court, which is a pity because although Mr. Nuñez, Crown Counsel, has rightly put before it all that he should have, the appeal has not been opposed by Bigib. Mr. Cecil Montegriffo of Hassan & Co. explained that Bigib could not afford to fulfil certain economic conditions before it began trading here or applied again for a licence, and did not wish to be heard in this appeal.

2 But to begin at the beginning. Bigib published a notice in one Gibraltar newspaper on April 20th, 1985, and in the *Gibraltar Government Gazette* on May 2nd, 1985, that it was applying for a trade licence to trade as wholesalers and retailers in fresh fruit and vegetables. Its goods were to be sold "on site" and its premises were said to be on site. I think that must mean a van or lorry.

3 Were there any objections to the grant of a licence to Bigib? One from Gibroc Ltd., another wholesaler and retailer of fresh fruit and vegetables in Gibraltar registered in Gibraltar with registered offices and premises here from which it sells these goods. A second company or firm with a similar licence did not object for reasons best known to itself.

4 The Trade Licensing Authority ("the Authority") heard Bigib's applications and Gibroc's objection on August 27th, 1985 in Gibraltar. It transpired that Bigib hoped to bring in from Spain fresh fruit and vegetables from warehouses in La Línea de La Concepción to Gibraltar's hotels, restaurants, markets and retail outlets, and there was a possibility

that it would obtain premises in Gibraltar to store bulk overnight (presumably before or after trying to sell it around Gibraltar in a van). The learned magistrate did not have any more laid before him than the Authority had. No evidence was led.

5 The Authority rejected Bigib's application under s.16 of the Trade Licensing Ordinance (1984 Edition)—to which in due course I will return—on August 27th, 1985 and Bigib appealed on September 27th, 1985. The Stipendiary Magistrate heard Mr. Peter Isola for Gibroc and Mr. Phillips for Bigib on January 1st, 11th, 17th and 28th, 1986.

6 Mr. Nuñez persuaded the Magistrate to rule on a preliminary point, namely whether under reg. 4 and Form 3 of the Schedule of the Trade Licensing (Forms) Regulations and s.3(1)(b) of the Trade Licensing Ordinance, the phrase "on site" complies with the requirement that the applicant must specify the premises at which its business will be "carried on."

7 Mr. Nuñez contended that Bigib's notice did not comply with the provisions of the Trade Licensing Ordinance. The applicant must specify the premises at which its business will be carried on and "on site" will not do.

8 Mr. Phillips submitted that—

(i) arts. 30–36 of the Treaty establishing the European Economic Community ("the EEC Treaty") entitled a Member State importer to obtain a licence as a formality;

(ii) art. 30 applied to Gibraltar;

(iii) the provisions of the Trade Licensing Ordinance insofar as they amounted to a quantitative restriction upon imports and exports between Member States were invalid because they were passed after 1973; and

(iv) there was no need for an applicant relying upon his rights as an importer and exporter of goods between EEC territories to specify the place of business in applying for a trade licence which was his by right, and for which the application was a mere formality.

9 Mr. Nuñez's reply was that:

(i) arts. 30–36 of the EEC Treaty did not apply to Gibraltar; and

(ii) if they did, the provisions of s.3(1)(b) of the Ordinance did not breach the articles.

10 The learned magistrate allowed Bigib's appeal in part and granted it a licence to import fruit and vegetables from EEC Member States. He held that art. 30 applied to Gibraltar, and that Bigib should have been granted as of right a licence to import fruit and vegetables from Member States.

The preliminary objection failed. He added a condition to the licence that any goods imported from Member States should comply with the requirements relating to the export of goods of that class from one Member State to another. The goods would be subject to the Gibraltar health laws. The lack of an address from which a business is carried on, for goods imported from anywhere other than a Member State, was fatal. Bigib could not carry on its business here without importing fresh fruit and vegetables from countries which were not Member States, so it did not collect its licence.

11 The opinion of this court is sought on these questions of law:

(i) whether, for the purposes of the Trade Licensing Ordinance, a national of a Member State of the Community was obliged to comply with the provisions of s.3(1)(b);

(ii) whether the provisions of s.3 of the Ordinance breached the provisions of arts. 30–36 of the EEC Treaty, as extended to Gibraltar by the European Communities Ordinance (1984 Edition), and were therefore null and void;

(iii) whether the provisions of s.3(1)(b) of the Ordinance breached the provisions of arts. 30–36 of the EEC Treaty as extended to Gibraltar by the European Communities Ordinance, and were therefore unenforceable in law; and

(iv) whether for the purpose of art. 28 of the United Kingdom Act Concerning the Conditions of Accession and the Adjustments to the Treaties ("Act of Accession"), art. 3(a) must be interpreted in such a manner that the provisions in respect of customs duties and quantitative restrictions are not inexorably and intrinsically bound up with one another insofar as their applicability to the laws of Gibraltar are concerned.

12 Mr. Nuñez pointed out that Bigib would probably sell its fruit and vegetables more cheaply than Gibroc or the other company did, which would cut their profits, and maybe lead to their ceasing to trade and their employees being made redundant. Bigib would sell to hotels and restaurants, which would not be in the best interests of local consumers. The local authorities could not enforce local rules about food hygiene. Accepting all that for the moment, I have to say that none of it is relevant to the four questions in the case stated, and I have excluded such matters from my deliberations.

13 The provisions of s.3(1)(b) of the Ordinance are that—

"no person [which, of course, includes a registered company incorporated in Gibraltar, under a Gibraltarian Ordinance, with its registered premises here] shall carry on business . . . other than at or (in

the case of a person who imports goods into Gibraltar in commercial quantities) from the premises specified in the licence."

A notice of intention to apply for a licence must indicate where those premises are (see s.11(2)). Otherwise, other persons or companies could not be sure whether or not to object under s.12.

14 The general principles affecting the issue of licences which the Authority has to consider are meaningless if the premises from which the business is to be carried on are not specified (see s.16). It could not be satisfied that the issue of such a licence would not cause a nuisance or annoyance to persons residing or occupying premises in the neighbourhood of the premises in respect of which the licence is sought (see s.16(1)(b)), or that the needs of the community either generally in Gibraltar or in the area thereof where the trade or business is to be carried on are adequately provided for (see s.16(1)(f)), or that the premises on which the applicant intends to conduct his trade or business would or would not conform to the requirements of any law for the time being in force (see s.16(1)(c)). The transfer of such a licence to other premises (see s.6), the investigation of matters which it must take into consideration (see s.15) and display of the licence (see s.23) are affected by the whereabouts of the specific premises.

15 Mr. Nuñez is right to say, in my view, that Bigib's application was defective and fatally so under the Ordinance. The learned magistrate had so ruled on a similar objection taken by Mr. Nuñez on October 25th, 1985 in *Reydal Bldg. Constr. Ltd.* v. *Trade Licensing Auth.* (9). And it is not clear how Bigib could submit it was not bound by the provisions of s.3(1)(b) of the Ordinance. Its counsel claimed it was an EEC "national" but it is, however, a company incorporated in Gibraltar under the local Companies Ordinance, with its registered office here.

16 The next issue was whether art. 30 of the EEC Treaty applied to Gibraltar. The Stipendiary Magistrate found as a fact that Bigib would import from Spain fruit and vegetables grown in Spain, and as Spain was an EEC Member State these products or goods were exempt from the provisions of the Ordinance; but, if they were grown in any country that was not a member of the EEC, such as Morocco, then they were caught by the local Ordinance's requirements. This was so even if they came through a Member State or States, whoever imported them.

17 The learned magistrate based all that on arts. 3(a) and 30–36. Mr. Nuñez contended that arts. 30–36 inclusive do not apply to Gibraltar or, if they do, the Ordinance and its regulations do not breach them. Let me get art. 3 of the EEC Treaty out of the way. It states that—

". . . the activities of the Community shall include, as provided by this Treaty and in accordance with the timetable set out therein:

> (a) the elimination as between Member States, of customs duties and of quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect . . ."

18 Article 3 begins with the phrase "For the purposes set out in Article 2 . . ." so art. 2 must also be brought in to this judgment. It says this:

> "The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it."

The latter declares the objectives of the Community. They are the Common Market and the drawing together of economic policies. It is very general in terms, as many articles of most treaties are.

19 Article 3 is a summary of the Treaty but it is not all-embracing. Commercial relations and relations with former or present colonies are dealt with in the Treaty, but not the Community's external relations. They are both used to define the scope of other articles or to interpret other provisions of the Treaty. They would not, in my judgment, override any express exclusion of Gibraltar from any article or provision.

20 Before January 1st, 1973, Gibraltar's own laws covered the sale of fruit and vegetables here. One of them is the Trade Licensing Ordinance. On that date, however, the United Kingdom joined the European Economic Community, and Gibraltar did too.

21 The European Communities Ordinance was "an Ordinance to make provision in connection with the inclusion of Gibraltar within the European Communities" and general implementation of the treaties was provided for by s.3 which provides:

> "(1) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in Gibraltar, shall be recognised and available in law, and be enforced, allowed and followed accordingly; and the expression 'enforceable community right' and similar expressions shall be read as referring to one to which this subsection applies . . .
>
> (2) In conformity with the provisions of section 2(6) of the European Communities Act 1972, a colonial law (within the meaning

> of the Colonial Laws Validity Act 1865) passed or made for Gibraltar, if expressed to be passed or made in the implementation of the Treaties and of the obligations of the United Kingdom in respect of Gibraltar thereunder, shall not be void or inoperative by reason of any inconsistency with or repugnancy to an Act of Parliament, passed or to be passed, that extends to Gibraltar or any provision having the force and effect of an Act in Gibraltar (but not including such section), nor by reason of its having some operation outside Gibraltar; and any such Act or provision that extends to Gibraltar shall be construed and have effect subject to the provisions of any such law."

22 So, if any EEC law and its provisions apply to Gibraltar and they conflict with a Gibraltar law then the EEC one prevails. The EEC Treaty was signed at Rome on March 25th, 1957. It is what is called a pre-accession treaty in Part I of Schedule 1 of the European Communities Ordinance. The treaty relating to the accession of the United Kingdom to the EEC was signed at Brussels on January 22nd, 1972 and is to be taken with the pre-accession treaties according to s.2 of the European Communities Ordinance.

23 Article 30 of the EEC Treaty provides that "quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States." And, briefly, art. 31 states that Member States will refrain from introducing between themselves any new quantitative restrictions or measure having equivalent effect.

24 Article 32 was transitional and asserted that Member States would refrain from making more restrictive quotas and measures than those existing at the date the Treaty came into force. Article 33 turned bilateral quotas between certain Member States into global quotas open without discrimination to all other Member States. Article 34 was concerned with exports and repeated the provisions of art. 30 which dealt with imports. Article 35 declared that Member States would abolish quantitative restrictions on imports from or exports to other Member States as rapidly as "the economic situation of the economic sector concerned" permitted.

25 Article 36 was as follows:

> "The provision of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security: the protection of health and life of humans, animals or plants: the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."

26 Coming back to art. 30, the European Court of Justice has held in *Openbaar Ministerie* v. *Van Tiggele* (6) and *Procureur du Roi* v. *Dassonville* (8) ([1974] 2 C.M.L.R. at 436) 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."

27 Alcantara, A.J. in *Furniture Centre Ltd.* v. *Stipendiary Mag.* (5) gave his views on whether art. 30 applied to Gibraltar. He said, among other things, that Gibraltar was part and parcel of the European Community and as such the full force of EEC legislation applied to Gibraltar except on two matters on which there had been specific derogation, namely, agricultural policy and VAT. It is, with respect, true that in general, the position of Gibraltar with respect to the Communities is the same as that of the United Kingdom. The exceptions are:

(i) Gibraltar is not included in the customs territory of the enlarged EEC Community. It is a "free port" so it is not in the list of countries making up that customs territory in art. 1 of the Commission Reg. (EEC) No. 1496/68 adapted by art. 29 of the Act of Accession and Annex I of that Act.

(ii) It is not affected by certain acts of the institutions of the Community, *e.g.* it is excluded from the ambit of the Agricultural Regulations, acts relating to processed foods and VAT legislation.

(iii) It is also outside the EEC Community's commercial policy.

It is in the position it was before it acceded to the Community so far as its imports are concerned. It was deleted from Annex II to the Act of Accession which provided for adaptation of Commission Reg. (EEC) No. 1025/70 which was, in turn, modified by Commission Regs. (EEC) Nos. 1984/70, 724/71, 1429/71 and 2384/71. They concern third countries which accept the Community's relaxing of restrictions on imports measures. Gibraltar is not such a third country. (See generally 17 *Halsbury's Statutes of England and Wales*, 4th ed., at 33 and 1 *Encyclopedia of European Community Law,* Part B, European Community Treaties, at 9164 and B9–307.)

28 Matters relating to importation of fresh fruit and vegetables from the Community's Member States would be part of its trade relations and come under art. 113 of the EEC Treaty which deals with their common commercial policy. This, among other objects, aims to achieve uniformity in measures of liberalization. Article 113(3) speaks of third countries with which agreements on such measures have to be negotiated.

29 An outline of the history of all this is as follows. Importation into the Community of certain products listed in Annex I are not to be subject to

any quantitative restriction in relation to third countries set out in Annex II to Council Reg. (EEC) No. 1025/70 of May 25th, 1970 published on June 8th, 1970 in L124/6 of the Official Journal of the European Communities. There in Annex II, under the United Kingdom of Great Britain and Northern Ireland, Gibraltar is noted as a third country. The Regulation was to establish common rules for imports from third countries and referred to art. 113 in particular and the Treaty establishing the EEC in general as its foundation. Gibraltar was kept in the list of third countries when a new Annex II was substituted by Council Reg. (EEC) No. 1025/70 on July 1st, 1971 and vegetables and fruit were listed in Annex I.

30 But Council Reg. (EEC) No. 2748/72 of December 19th, 1972, published in L29151 on December 28th, 1971 and to enter into force on accession, amended Council Reg. (EEC) No. 1025/70 on the common rules for imports from third countries by "completing" Annex II of Council Reg. (EEC) No. 1025/70 with the addition of the following words: "As regards the system of liberalization of imports laid down in this Regulation, Gibraltar shall be placed in the same situation as territories listed in this Annex." From then on Gibraltar is not therefore part of the EEC so far as its commercial policy is concerned. It was and is in the same position that it was before its accession, and arts. 30–36 do not apply to it any more than they do to, say, Trinidad or Tobago.

31 Looking at it in another way, the Council of the European Communities, still having regard to the Treaty and in particular art. 113 of it in its Council Reg. (EEC) No. 288/82 of February 5th, 1982 published on February 9th, 1982 in L35/1 has included Gibraltar among the third countries to which Member States may apply quantitative restrictions. Annex I sets out the products subject to national quantitative restriction on their entry into free circulation. Fruit and vegetables, fresh, chilled or frozen, are covered by various CIT headings in 2007 and 2008 and Gibraltar is listed as Zone 044, Zone 1 for France and Zone A3 for Italy.

32 When Spain and Portugal became Member States, the Council of the European Communities had to—

(i) incorporate Annex I into Council Reg. (EEC) No. 288/82 of February 5th, 1982 on common rules for imports, the quantitative import restrictions of which the new Member States are to, or may, apply *vis-à-vis* other countries from January 1st, 1986 by virtue of the transitional provisions in their Act of Accession; and

(ii) authorize Spain and Portugal to maintain a number of quantitative restrictions until such time as the common import rules are completed.

33 So by art. 1 of Council Reg. (EEC) No. 571/86 of February 24th, 1986 quantitative restrictions are inserted into Annex I to Council Reg. (EEC) No. 288/82 and, once again, Gibraltar is included. The reality is

that a very small quantity of fruit and vegetables is grown in Gibraltar and it is not exported from Gibraltar. Large quantities grown in Morocco could be imported into Gibraltar and exported to Member States which could then impose quantitative restrictions on such imports from Gibraltar.

34 Yet such restrictions cannot be imposed by one Member State on another. They can be imposed by a Member State on Gibraltar because art. 30 (and arts. 31–36 inclusive) of the Treaty do not apply to Gibraltar. Reciprocity suggests or calls for the same privilege for Gibraltar. Supposing, however, that is wrong and arts. 30–36 do apply to Gibraltar, the next conundrum is whether s.3 of the Ordinance, or the Ordinance as a whole, is in breach of them?

35 On November 19th, 1980 (when Mr. Felix Pizzarello appeared for the Licensing Authority) Alcantara, A.J. (as he then was) in *Parm-Anand* v. *Trade Licensing Auth.* (7) held, *inter alia*, that the laws of the Community recognize that trading may be subject to local or municipal licensing laws so long as they are equitable and untainted by discrimination. He added: "In Gibraltar we have the Trade Licensing Ordinance which is not subject to invalidity by a court of law, either Gibraltarian or European, because it is not discriminatory . . ."

36 Articles 30–36 do not prohibit Member States having a rule in their national legislation (such as that in s.3(1)(b) of the Ordinance) whereby restrictions against people in or from a Member State may be enforced against them unless they have a licence issued by a competent authority in that State. For example, *Re Webb (Alfred John)* (11) was concerned with arts. 59 and 60 dealing with freedom to supply services and manpower and which are analogous to arts. 30–36. The European Court of Justice held on December 17th, 1981 that the freedom to provide services is a fundamental principle of the Treaty. It may be restricted only by provisions in national legislation which are justified by the general good and which apply to all persons or undertakings in the Member State. No distinction based on the nationality or place of establishment in another Member State may be made. The guarantees already furnished by the provider of services for his work in the Member State where he is established must be taken into account (see also *E.C. Commn.* v. *Germany, Re Ins. Servs.* (1)).

37 The Ordinance has no word about the nationality of an applicant or place of establishment elsewhere. Neither Bigib or its counsel mentioned it had a place of establishment elsewhere or a licence to import fruit and vegetables into, say, Spain from a Spanish trade licensing authority. Anyway it is, it should be remembered, a Gibraltarian company.

38 It was not proved by Bigib that the Ordinance has a hindering impact on intra-Community trade or a restrictive effect. It had to do this to succeed. In *E.C. Commn.* v. *UK, Re Origin Marketing* (4), British

legislation required certain goods when sold retail to indicate their country of origin. This was not discriminatory but in practice it added to the production costs of goods imported from other EEC States. The addition to those costs would be continuous. But so far as the Ordinance is concerned, there is the cost of a notice in the *Gazette* which is about £4 and one in a Gibraltar newspaper—another £2 or £2.50—and the fees of a solicitor and counsel, though their services are not essential. Then come the fees for the licence and its annual renewal. Only the last cost is repeated. The Ordinance regulates in an equal fashion the sale of fruit and vegetables but not their importation from anywhere which is regulated by the Consumer Protection Officer, and it had to be proved that it did truly affect imports adversely, and not just their sale (see *S.A. Magnivision N.V.* v. *General Optical Council* (10)). Bigib failed to prove this.

39 The judgment of the European Court of Justice in *E.C. Commn.* v. *Germany, Re Marketing of Pharmaceuticals* (2) on February 28th, 1980 was concerned with the Federal Republic of Germany's 1976 Act revising its law on medicinal preparations so that it reached the highest level of safety. It stipulated, among other measures, that they could only be marketed by an enterprise which had its "seat" in Germany. The term "seat" meant headquarters. The court held that there was no adequate harmony in the Community of measures to protect public health so each Member State could legislate on it but only so as to reach that protection and no more than was necessary. Furthermore, its laws must have been those that least restricted trade within the Community. This German one was unnecessary for the protection of public health there, involved additional costs to exporters of such goods to Germany and hindered trade within the Community especially for importers of similar goods. Therefore it was caught by art. 30 and not saved by art. 36(4) (see also *E.C. Commn.* v. *Germany, Re Purity Reqs. for Beer* (3)) and for breach of arts. 59 and 60 by a Member State requiring an insurer duly established in another Member State being required to maintain an establishment but not by the requirement that such an insurer be authorized to provide co-insurance (see, again, *E.C. Commn.* v. *Germany, Re Ins. Servs.* (1)).

40 The opinion of this court, then, on the questions of law in the case stated is:

(i) For the purposes of the Trade Licensing Ordinance of Gibraltar a national of a Member State of the European Economic Community is obliged to comply with the provisions of s.3(1)(b) of the Ordinance when applying for a licence to import or export goods between Member States. This is so whether or not arts. 30–36 apply to Gibraltar.

(ii) The provisions of s.3 of the Trade Licensing Ordinance do not breach the provisions of arts. 30–36 of the Treaty if they are extended to Gibraltar by the European Economic Communities Ordinance of Gibraltar

because they do not constitute an actual or potential quantitative restriction on trade between Member States and so they are not null and void.

(iii) The provisions of s.3(1)(b) of the Trade Licensing Ordinance do not breach the provisions of arts. 30–36 of the EEC Treaty if they are extended to Gibraltar by the European Communities Ordinance insofar as they may be applied to applicants intending to import or export between Member States of the Community and therefore they are enforceable in law in Gibraltar.

(iv) For the purposes of art. 28 of the United Kingdom Act of Accession, art. 3(a) of the EEC Treaty is not to be interpreted in such a manner that the provisions in respect of the elimination of customs duties and quantitative restrictions are inexorably or intrinsically bound up with one another so far as the laws of Gibraltar are concerned.

41 The upshot is that the learned Stipendiary Magistrate's rejection of the preliminary objection raised by Mr. Nuñez on behalf of the Authority is set aside and an order upholding it is substituted. Bigib was not entitled to a licence on the application it made. The grant of a licence to Bigib to import fruit and vegetables from EEC countries was, with respect, an error. Mr. Nuñez said he did not ask for the costs of this appeal and so no order for costs is made.

Order accordingly.