OUTLINE

FREE MOVEMENT OF GOODS UNDER THE TREATY OF ROME: UNFETTERED OR FICTION?

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INTRODUCTION

Free movement of goods as part of the Common Market

I. 1. Common Market constituted by 4 basic freedoms :

i) Free movement of goods;

ii) Free movement of persons;

iii) Free movement of services;

iv) Free movement of capital .

2. Free movement of goods supplemented by :

- Common Agricultural policy

Free movement of services supplemented by :

- Common transport policy.

II. Common Market "protected" against third countries by

- Common commercial policy (part of which is the Common Customs Tariff).

PART ONE

I. The different obstacles to the free circulation of goods

1. The EEC Treaty prohibits the following types of obstacles :

   i) Prohibition of customs duties and taxes of equivalent effect (Art. 9);

   ii) Prohibition of discriminating internal taxation (Art. 95);

   iii) Prohibition of quantitative restictions and measures having an equivalent effect (Articles 30 and 34 in combination with Article 36);

   iv) Discriminatory rules and practices of state monopolies (Art. 37)

   In addition, the EEC establishes a special regime for State aids (Articles 92 and 93)
   (See for details Annex I)

2. The prohibitions apply also to agricultural products (Article 38 (2))

3. The prohibitions apply to products originating in Member States and products coming from third countries which are in free circulation in the Member States (Article 9 (2)).

4. The prohibitions have direct effect , i.e. they can be invoked by private bodies (individuals and corporations).
By virtue of the principle of supremacy of Community Law, they have to be enforced against national laws of any kind. (statutes and even constitutions).

5. The prohibitions are adressed to Member States. However, they also have to be respected by the Community, unless Community law expressly allows for a derogation.

II. The prohibition of quantitative restrictions and measures of equivalent effect

1. In spite of its residual character, this is the most important of the prohibitions of obstacles to the free movement of goods.

Prohibitions with lex specialis character

- Customs duties and taxes having an equivalent effect (Article 9);

- Discriminatory internal taxation (Article 95);

- Discriminatory practices of monopoly bodies (Article 37);

- certain State aids (Articles 92 and 93)

2. Notion of quantitative restriction of imports and exports

Imports or exports are limited to a certain quantity (which can be zero)

Example : Quotas for EC Steel exports to US

Only justification : Article 36.

3. Notion of measure of equivalent effect to quantitative restriction of EXPORTS

"Measures which have as specific object or effect the restriction of export patterns and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for the domestic market of the State in question at the expense of the production or of the trade of other Member States."

Groenveld Case 15/79/[1979] p. 3409, 3415

4. Notion of measure of equivalent effect to quantitative restriction of IMPORTS

"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".

Dassonville, Case 8/74 [1974] ECR 837, 852

5. Measures of equivalent effect applicable to imported goods only

Exemple : Requirement of an import licence

These measures are forbidden, unless they can be justified by Article 36.

Obstacles to movement within the Community resulting from disparities between the national laws relating to the marketing of the products in question must be accepted in so far as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer.

6. Measures (of equivalent effect) applicable indistinctly to domestic and imported goods

Examples : Standards for production, marketing.

These measures are not measures of equivalent effect if they are justified

" in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer."

Rewe, Case 120/78 [1979] ECR p. 660, 665

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by " a purpose which is in the general interest and such as to take prevalence over the requirements of the free movement of goods".

Gilli, Case 788/79 [1980] ECR 2071, 2078

In addition, these measures can be justified by Article 36.

PART TWO

Comparison of jurisprudence of the US Supreme Court and the EC Court of Justice with respect to the Interstate Commerce Clause and the prohibition of measures of an effect equivalent to quantitative restrictions.

For the description of the jurisprudence of the US Supreme Court, we will refer to Blasi, Constitutional Limitations on the Power of States to Regulate the Movements of Goods in Interstate Commerce, in Sandalow - Stein, Courts and Free Markets, Perspectives from the United States and Europe, 1982, p. 174.

We will also use Blasi's categories of US cases for the comparison.

A. State laws restricting the exploitation for out-of-State markets of economic resources located within the State.

I. Situation in the U.S.

Blasi, op. cit. p. 192:

" When goods, or resources are in scarce supply, States sometimes seek to retain them for the benefit of local residents and enterprises. The Supreme Court has invalidated all State laws which embody such favouritism, with the historical exception of a few recently over-ruled cases involving special resources which States where considered to hold "in trust" for the benefit of their citizens. Measures designed to conserve resources or prevent the production of unwanted goods are invariably upheld when the impact of the law does not fall disproportionaly on#out-of State economic interests."

II. Situation in EEC

1. No appropriate case law for the retaining of resources.

2. For the prevention of the production of unwanted goods, see Case nr. 1 in B (Groenveld).

B. State laws regulating the methods by which goods produced within the State are prepared for and marketed in interstate commerce

I. Situation in the USA

Blasi, Op. Cit, p. 197

"As a general matter, the Court has looked favourably upon laws designed to ensure the quality of products in order to protect the regulation of the State's producers, has adopted a mixed and uncertain course regarding laws that regulate business transactions in order to protect producers from being deceived or exploited by interstate dealers, and has invariably struck down laws that seek to generate employment opportunities for residents, by requiring that certain operations, in the process of production and distribution be done within the confines of the State."

II. Situation in the EEC

1. Gronveld v. Produktschappen voor Vee en Vlees,

Case 15/79 [1979] ECR 3413 , 3415 concerning a Dutch regulation which prohibits any manufacturer of sausages from having in stock or processing horsemeat :

"

the regulation in question was adopted for the purpose of protecting Netherlands exports of meat products both to Member States and to non-member countries which constitute important export markets and where there are objections to the consumption of horsemeat or indeed where the importation of products containing horsemeat is prohibited. As it is practically impossible to determine the presence of horsemeat in meat products the sole means of ensuring that such products do not contain horsemeat is to prohibit manufacturers of meat products from having in stock, preparing or processing horsemeat.

Art. 34 concerns national measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for the domestic market of the State in question at the expense of the production or of the trade of other Member States. This is not so in the case of a prohibition like that in question which is applied objectively to the production of goods of a certain kind without drawing a distinction depending on whether such goods are intended for the national market or for export. "

2. Procureur de la République v. Bouhelier, Case 53/76 [1977] ECR 203 to 206 concerning a French regulation requiring exporters of watches and watch movements to obtain a license.

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.

3. Commission v. France, Case 173/83 not yet reported :

A French regulation setting a system of collection and destruction of used oils which excludes the export of such oils even for delivery to those authorised to collect, destroy or recycle the same in other Member State, is incompatible with the prohibition of measures having an effect equivalent to quantitative restrictions of exports.

c. State laws formally excluding out-of-state sellers from local market

1. Situation in the USA

Blasi, op. cit., p. 207 - 208

a) "When a State formally disadvantages out-of-state producers in the competition for local markets by varying the terms of regulations according to whether the enterprise affected is located within or out of the State, State laws ..... have been considered virtually unconstitutionnal per se ".

b) "The only exception to this otherwise absolute principle concerns laws that grant subsidies rather than impose restrictions; these laws, the Court has said, are not to be viewed as placing burdens on commerce and hence are not subject to the normal restrictions that derive from the negative implications of the Commerce Clause."

2. Situation in the EEC

a) With respect to a), the situation is the same.
No case is available for comparison.

b) With respect to b), see the special regime (Article 92 and 93 of the EEC Treaty) for State aids.

D. State laws regulating the prices at which goods may be sold

I. Situation in the US

" In effect, if not explicitly in theory, States now appear to have virtually unlimited authority so far as the Commerce Clause is concerned to set minimum, maximum, or fixed prices at which goods may be bought and sold within the boundaries of the regulating State. This authority extends both to imported goods, for which retail and wholesale prices may be regulated and to exported goods, for which the prices paid to producers and distributors may be regulated".

Blasi, Constitutional Limitation of the Power of States to Regulate the Movements of Goods in Interstate Commerce, in Sandelow-Stein, Court and Free Market, 1982, Vol I, p. 175 to 188.

Blasi refers specifically to Milk Control Board v. Eisenberg
Parker v. Brown and
Cities Services Co v. Peerless Co.

II. Situation in EEC

1. Openbaar Ministerie van Nederland v. Van Tiggele, Case 82/77(1978) 37, 39-40,

Concerning a Dutch system of minimum retail prices which varies according to each category of products.

/ Whilst national price-control rules applicable without distinction to domestic products and imported products cannot in general produce such an effect they may do so in certain specific cases.

Thus imports may be impeded in particular when a national authority fixes prices or profit margins at such a level that imported products are placed at a disadvantage in relation to identical domestic products either because they cannot profitably be marketed in the conditions laid down or because the competitive advantage conferred by lower cost prices is cancelled out.

These are the considerations in the light of which the question submitted must be settled since the present case concerns a product for which there is no common organization of the market.

First a national provision which prohibits without distinction the retail sale of domestic products and imported products at prices below the purchase price paid by the retailer cannot produce effects detrimental to the marketing of imported products alone and consequently cannot constitute a measure having an effect equivalent to a quantitative restriction on imports.

Furthermore the fixing of the minimum profit margin at a specific amount, and not as a percentage of the cost price, applicable without distinction to domestic products and imported products is likewise incapable of producing an adverse effect on imported products which may be cheaper, as in the present case where the amount of the profit margin constitutes a relatively insignificant part of the final retail price.

On the other hand this is not so in the case of a minimum price fixed at a specific amount which, although applicable without distinction to domestic products and imported products, is capable of having an adverse effect on the marketing of the latter in so far as it prevents their lower cost price from being reflected in the retail selling price.

This is the conclusion which must be drawn even though the competent authority is empowered to grant exemptions from the fixed minimum price and though this power is freely applied to imported products, since the requirement that importers and traders must comply with the administrative formalities inherent in such a system may in itself constitute a measure having an effect equivalent to a quantitative restriction.

The temporary nature of the application of the fixed minimum prices is not a factor capable of justifying such a measure since it is incompatible on other grounds with Article 30 of the Treaty. /

2. Tasca, Case 65/75 (1976) ECR 304, 308,

Concerning an Italian system of maximum prices for sugar:

13. Although a maximum price applicable without distinction to domestic and imported products does not in itself constitute a measure having an effect equivalent to a quantitative restriction, it may have such an effect, however, when it is fixed at a level such that the sale of imported products becomes, if not impossible, more difficult than that of domestic products. A maximum price, in any event in so far as it applies to imported products, constitutes therefore a measure having an effect equivalent to a quantitative restriction, especially when it is fixed at such a low level that, having regard to the general situation of imported products compared to that of domestic products, dealers wishing to import the product in question into the Member State concerned can do so only at a loss.

E. State laws regulating hte method by which goods produced out-of-State are marketed within the State

I. Situation in the USA

Blasi, op. cit. at 197, : " In the absence of supervising federal legislation, the Court has given the States great leeway to regulate the marketing of imported goods when the laws are designed to protect consumers against deception or sellers against undesirable practices". In support of this position, Blasi refers to :

i) Plumley v. Massachussets [155 U.S. 461 [1894]]
which upheld a Massachussets State law permitting oleomargarine to be sold only if it was free from coloration or ingredients that causes it to look like butter.

ii) Pacific States Box and Basket Co v. White [296 U.S. 176 [1935]]
which upheld an Oregon law which perceived a particular type of container, by no means standard in the trade, to be used for the sale of berries.

However, Blasi mentions also :

iii) Hunt v. Washington Apple Advertising Commission [432 U.S. 333 [1977]]
which held unconstitutional a North Carolina law prohibiting apples shipped in closed containers from displaying any grade other than the applicable US grade or standard.

II. Situation in the EEC

1. Rewe v. Bundesmonopolverwaltung für Brandwein, Case 120/78 [1979] concerning the prohibition to import a French liqueur Cassis de Dijon as its alcool content was inferior to the minimum imposed by German legislation :

8. In the absence of common rules relating to the production and marketing of alcohol — a proposal for a regulation submitted to the Council by the Commission on 7 December 1976 (Official Journal C-309, p. 2) not yet having received the Council's approval — it is for the Member States to regulate all matters relating to the production and marketing of alcohol and alcoholic beverages on their own territory.

Obstacles to movement within the Community resulting from disparities between the national laws relating to the marketing of the products in question must be accepted in so far as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer.

With respect to the argument that the German legislation protects public health :

11. The German Government also claims that the fixing of a lower limit for the alcohol content of certain liqueurs is designed to protect the consumer against unfair practices on the part of producers and distributors of alcoholic beverages.

With respect to the argument that the German measure protects the consumer :

13. As the Commission rightly observed, the fixing of limits in relation to the alcohol content of beverages may lead to the standardization of products placed on the market and of their designations, in the interests of a greater transparency of commercial transactions and offers for sale to the public.

14. However, this line of argument cannot be taken so far as to regard the mandatory fixing of minimum alcohol contents as being an essential guarantee of the fairness of commercial transactions, since it is a simple matter to ensure that suitable information is conveyed to the purchaser by requiring the display of an indication of origin and of the alcohol content on the packaging of products.

It is clear from the foregoing that the requirements relating to the minimum alcohol content of alcoholic beverages do not serve a purpose which is in the general interest and such as to take precedence over the requirements of the free movement of goods, which constitutes one of the fundamental rules of the Community.

In practice, the principle effect of requirements of this nature is to promote alcoholic beverages having a high alcohol content by excluding from the national market products of other Member States which do not answer that description.

It therefore appears that the unilateral requirement imposed by the rules of a Member State of a minimum alcohol content for the purposes of the sale of alcoholic beverages constitutes an obstacle to trade which is incompatible with the provisions of Article 30 of the Treaty.

There is therefore no valid reason why, provided that they have been lawfully produced and marketed in one of the Member States, alcoholic beverages should not be introduced into any other Member State; the sale of such products may not be subject to a legal prohibition on the marketing of beverages with an alcohol content lower than the limit set by the national rules.

2. Similar decision :

a) Gilli & Andres, Case 788/79(1980) ECR 2071

concerning the Italian prohibition to make vinegars other than those made of wine.

b) Fietje Case 27/80 (1980) ECR 3839 , 3855

concerning the Dutch requirement of a certain labelling for alcoolic beverages :

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

c) Keldermann, Case 130/80 [1981] ECR 527,

concerning a Dutch prohibition to market rolls ("brioches") as their minimum content of wheat was below the minimum imposed by Dutch legislation.

3. Rau v. Desmedt, Case 261/81 [1982] 3961, 3972 - 3973,

concerning a Belgian regulation prohibition the retail of margarine where each block or its internal packaging is not cube shaped:

"Although the requirement that a particular form of packaging must also be used for imported products is not an absolute barrier to the importation into the Member State concerned of products originating in other Member States,

nevertheless it is of such a nature as to render the marketing of those products more difficult or more expensive either by barring them from certain channels of distribution or owing to the additional costs brought about by the necessity to package the products in question in special packs which comply with the requirements in force on the market of their destination.

It cannot be reasonably denied that in principle legislation designed to prevent butter and margarine from being confused in the mind of the consumer is justified. However, the application by one Member State to margarine lawfully manufactured and marketed in another Member State of legislation which prescribes for that product a specific kind of packaging such as the cubic form to the exclusion of any other form of packaging considerably exceeds the requirements of the object in view. Consumers may in fact be protected just as effectively by other measures, for example by rules on labelling, which hinder the free movement of goods less."

4. Most important case, actually "sub-judice" :

Commission v. Germany concerning German restrictions on imports of beer not produced according to the German "purity principle".

5. Commission v. France, Case 152/88 [1980] ECR 2311 , 2314-2316 ,

Concerning French restrictions on advertising for certain alcoholic beverages :

11. Although such a restriction does not directly affect imports it is however capable of restricting their volume owing to the fact that it affects the marketing prospects for the imported products.

13. French natural sweet wines enjoy unrestricted advertising whilst imported natural sweet wines and liqueur wines are subjected to a system of restricted advertising. Similarly, whilst distilled spirits typical of national produce, such as rums and spirits obtained from the distillation of wines, ciders or fruits, enjoy completely unrestricted advertising, it is prohibited in regard to similar products which are mainly imported products, notably grain spirits such as whisky and geneva.

14. nevertheless the fact remains that the classifications which determine the application of those provisions put products imported from other Member States at a disadvantage compared to national products and consequently constitute a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 of the Treaty.

18. The fact cannot be disputed that several alcoholic beverages on which there are no advertising restrictions under the French legislation, have, from the point of view of public health, the same harmful effects in the event of excessive consumption as similar imported products which, as such, are subjected to prohibitions or restrictions on advertising. Even though it is true that grounds relating to the protection of public health are not wanting in the disputed legislation, none the less its effect is to transfer the effort to restrict excessive alcohol consumption above all to imported products. It is therefore apparent that although the disputed legislation is in principle justified by concern relating to the protection of public health, none the less it constitutes arbitrary discrimination in trade between Member States to the extent to which it authorizes advertising in respect of certain national products whilst advertising in respect of products having comparable characteristics but originating in other Member States is restricted or entirely prohibited. Legislation restricting advertising in respect of alcoholic drinks complies with the requirements of Article 36 only if it applies in identical manner to all the drinks concerned whatever their origin.

F. State laws prohibiting or regulating the importation of products thought to be unhealthy, dangerous or otherwise undesirable

I. Situation in the USA

Blasi, op. cit, p. 211

" In general, the Constitution has been interpreted to grant the States wide power to inspect, regulate and even prohibit imported products in order to promote values of health, safety, or ecological balance. In virtually all the cases in which State laws have been invalidated, the law in question had the discriminatory effect of excluding out-of-state, but not local, producers from the local market. It remains an open question whether the Court would strike down a genuine health, safety or environmental law that significantly burdened commerce in a more discriminatory way".

II. Situation in the EEC

1. Frans Nederlandse Maatschappij voor Biologische Produkten, Case 272/80 [1981] ECR 3288 , 3290 - 3291,

concerning the Dutch legislation relating to the approval of plant protection products

12. It should be noted that, at the time of the alleged offences, there were no common or harmonized rules relating to the production or marketing of plant protection products. In the absence of harmonization, it was therefore for the Member States to decide what degree of protection of the health and life of humans they intended to assure and in particular how strict the checks to be carried out were to be (judgment of the Court of 20 May 1976 in Case 104/75 *De Peijper* [1976] ECR 613 at p. 635), having regard however to the fact that their freedom of action is itself restricted by the Treaty.

13. In that respect, it is not disputed that the national rules in question are intended to protect public health and that they therefore come within the exception provided for by Article 36. The measures of control applied by the Netherlands authorities, in particular as regards the approval of the product, may not therefore be challenged in principle. However, that leaves open the question whether the detailed procedures governing approvals, as indicated by the national court, may possibly constitute a disguised restriction, within the meaning of the last sentence of Article 36, on trade between Member States, in view, on the one hand, of the dangerous nature of the product and, on the other hand, of the fact that it has been the subject of a procedure for approval in the Member State where it has been lawfully marketed.

14. Whilst a Member State is free to require a product of the type in question, which has already received approval in another Member State, to undergo a fresh procedure of examination and approval, the authorities of the Member States are nevertheless required to assist in bringing about a relaxation of the controls existing in intra-Community trade. It follows that they are not entitled unnecessarily to require technical or chemical analyses or laboratory tests where those analyses and tests have already been carried out in another Member State and their results are available to those authorities, or may at their request be placed at their disposal.

15. For the same reasons, a Member State operating an approvals procedure must ensure that no unnecessary control expenses are incurred if the practical effects of the control carried out in the Member State of origin satisfy the requirements of the protection of public health in the importing Member State. On the other hand, the mere fact that those expenses weigh more heavily on a trader marketing small quantities of an approved product than on his competitor who markets much greater quantities, does not justify the conclusion that such expenses constitute arbitrary discrimination or a disguised restriction within the meaning of Article 36.

2. Commission v. United Kingdom, Case 124/81 (1983) 231 to 237-239

Concerning the UK regulations which require UHT milk imported into the UK to be packed on premises within the UK :

21. // the need to subject that product to a second heat treatment causes delays in the marketing cycle, involves the importer in considerable expense and, moreover, is likely to lower the organoleptic qualities of the milk. In fact, the requirement of re-treatment and repacking constitutes, owing to its economic effects, the equivalent of a total prohibition on imports,

28. ... the United Kingdom, in its concern to protect the health of humans, could ensure safeguards equivalent to those which it has prescribed for its domestic production of UHT milk, without having recourse to the measures adopted, which amount to a total prohibition on imports.

29. To that end, the United Kingdom would be entitled to lay down the objective conditions which it considers ought to be observed as regards the quality of the milk before treatment and as regards the methods of treating and packing UHT milk of whatever origin offered for sale on its territory. The United Kingdom could also stipulate that imported UHT milk must satisfy the requirements thus laid down, whilst however taking care not to go beyond that which is strictly necessary for the protection of the health of the consumer. It would be able to ensure that such requirements are satisfied by requesting importers to produce certificates issued for the purpose by the competent authorities of the exporting Member States.

30. As the French Government correctly stated in its intervention in support of the Commission's application, the Court has consistently held (cf. judgment of 20. 5. 1976 in Case 104/75 *De Peijper* [1976] ECR 613 and 8. 11. 1979 in Case 251/78 *Denkavit* [1979] ECR 3369) that, where cooperation between the authorities of the Member States makes it possible to facilitate and simplify frontier checks, the authorities responsible for health inspections must ascertain whether the substantiating documents issued within the framework of that cooperation raise a presumption that the imported goods comply with the requirements of domestic health legislation thus enabling the checks carried out upon importation to be simplified. The Court considers that in the case of UHT milk the conditions are satisfied for there to be a presumption of accuracy in favour of the statements contained in such documents.

31. That necessary cooperation does not, however, preclude the United Kingdom authorities from carrying out controls by means of samples to ensure observance of the standards which it has laid down, or from preventing the entry of consignments found not to conform with those standards. //

3. Commission v. France

not yet decided,

Concerning the French prohibition to market substitutes for skimmed milk.

The French government defends its prohibition with arguments similar to Justice Holmes' opinion in Hebe v. Stuart [248 US.297 [1919]] upholding a law prohibiting the sale of condensed skimmed milk. Justice Holmer accepted as a sufficient justification for the prohibition the interest of the State in ensuring that the admittedly wholesome product contain a certain minimum of nutritive elements and in preventing consumers from thoughtlessly using the clearly labelled product as a substitute for more nutritious whole milk.

According to Blasi, op. cit., p. 217, it is questionable whether States could be granted such a power to disrupt the nation wide system of food marketing were the issue to be presented directly to the modern Court.

4. No case available to be compared with Palladio v. Diamond 321 F Supp. 630 S.D. N.Y.) aff'd 440 F 2d 1319 (2d Cir. 1971) in which a federal Court of Appeal upheld a law from New York which prohibited the sales of shoes made from alligator and crocodile skin.

National measures would probably be considered to be justified by Article 36.