for which they are intended. Those provisions must be interpreted as meaning that, if they consider it to be necessary, Member States are at liberty to decide, so far as domestic production is concerned, that those indications and warnings should cover a greater surface area in view of the level of public awareness of the health risks associated with tobacco consumption.

In so far as those Member States cannot make subject to the same requirement products imported from the other Member States which comply with the minimum requirements of the directive, there is a risk of less favourable treatment for national products and of inequality in conditions of competition, although this is inherent in harmonization which confines itself to laying down minimum requirements.

# REPORT FOR THE HEARING
## in Case C-11/92 *

### I — Legal background

On 13 November 1989 the Council adopted Directive 89/622/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products (OJ 1989 L 359, p. 1, hereinafter 'the directive') for the purpose of eliminating differences in the provisions of the Member States in so far as such differences were likely to constitute barriers to trade and thus to impede the establishment and operation of the internal market. To that end, the Council considered that the marketing and free movement of tobacco products should be made subject to common rules concerning labelling (first and second recitals in the preamble to the directive).

Article 1 of the directive provides that its objective is the harmonization of the laws, regulations and administrative provisions concerning the warnings regarding health to appear on the unit packet of tobacco products and the indications of the tar and nicotine yields to appear on cigarette packets, taking as a base a high level of health protection by reducing the harm done to health by tobacco addiction.

The directive specifies in particular that on cigarette packets the warnings provided for in paragraphs 1 and 2 of Article 4 'shall cover at least 4% of each large surface of the unit packet' (Article 4(4) of the directive) and that the indications concerning tar and nicotine yields shall be printed on the side of cigarette packets 'so that at least 4% of the

* Language of the case: English.

corresponding surface is covered' (Article 3(3) of the directive). In each of these cases, this percentage is laid down for countries having one official language.

Article 8 of the directive also provides that Member States may not, for reasons of labelling, prohibit or restrict the sale of products which comply with the directive (paragraph 1); Member States may lay down requirements concerning the import, sale and consumption of tobacco products which they deem necessary in order to protect public health, provided such requirements do not imply any changes to labelling as laid down in the directive (paragraph 2).

Under Article 9(1) of the directive, Member States were required to adopt the national rules necessary to comply with the directive before 1 July 1990.

On 5 July 1991, the United Kingdom adopted the Tobacco Products Labelling (Safety) Regulations 1991 (Statutory Instrument 1991 No 1530, hereinafter 'the UK regulations') for the purpose of giving effect to the directive.

Regulation 5(2)(d) provides that the warnings on cigarette packets required by Article 4 of the directive must be printed on the packet 'so as to cover an area amounting to at least 6 per cent'. Regulation 6(3)(b) also provides that the statement of tar and nicotine yields shall 'cover an area amounting to at least 6 per cent of that side of the packet'.

Regulation 8(c) and (d) provides that a person who imports cigarettes of any brand into the United Kingdom from another Member State with a view to them being supplied for consumption in the United Kingdom shall be regarded as complying with the UK regulations if the packets carry warnings in English complying with requirements imposed by that other Member State pursuant to the directive.

According to the court making the reference, it follows from those provisions that cigarettes labelled under the law of another Member State which requires the relevant information and warnings to cover at least 4% of the relevant surface areas may be sold in the United Kingdom while domestically produced cigarettes may be sold only if they are labelled in accordance with the 6% requirement imposed by the UK regulations.

## II — Facts and procedure

Gallaher Limited, Imperial Tobacco Limited and Rothmans International Tobacco (UK) Limited (hereinafter 'the applicants in the main proceedings') manufacture tobacco products (including cigarettes for retail sale in the United Kingdom and export to other Member States). They have brought proceedings before the High Court of Justice (Queen's Bench Division) in which they contest the legality of Regulations 5(2)(d)

and 6(3)(b) of the UK regulations on the ground that they are inconsistent with Articles 3(3) and 4(4) of the directive and consequently unlawful and inapplicable.

In support of their application, the applicants in the main proceedings contend that the reference to 'at least 4%' is a labelling requirement which Member States must impose for cigarettes sold within their territory, rather than a minimum requirement which may be increased by Member States in the case of domestic production. Accordingly, the increase in the spatial requirement from 4% to 6% is inconsistent with the directive and in particular Article 8 thereof. Since they will be compelled in the future to adopt the 6% laid down by the UK regulations, the applicants in the main proceedings argue that their products will face possible disadvantage as compared with imports of competing products from other Member States, as will be the case if they export to other Member States where the 4% rule is applied. The applicants in the main proceedings contend that this is contrary to the terms of the directive and the general principles of Community law.

The Secretary of State for Health contends that the directive provides for partial harmonization and that Articles 3(3) and 4(4) lay down minimum requirements and do not preclude the adoption of stricter requirements in respect of domestic production in the interests of protecting public health. A Member State may not, however, restrict on labelling grounds the importation of tobacco products produced in another Member State if those products comply with the requirements laid down by that other Member State pursuant to the directive. According to the Secretary of State for Health, the UK regulations comply with those rules and are a correct implementation of the directive, as indeed the Commission confirmed in a letter of 17 October 1991 to the organization known as Action on Smoking and Health.

In the light of the foregoing, the High Court of Justice (Queen's Bench Division) decided by order of 12 December 1991 to stay the proceedings and seek from the Court of Justice a preliminary ruling on the following question:

'Is it consistent with Articles 3(3) and 4(4) of Directive 89/622 for national rules to require that the information and warnings specified in Articles 3(1) and 4(1) and (2) of the directive be printed on cigarette packets so as to cover an area amounting to at least 6 per cent of the surface areas specified in the directive, in circumstances where these requirements apply to domestic production but are deemed to be satisfied in the case of cigarette packets imported from another Member State if the packets in question comply with the spatial requirements imposed by that other Member State pursuant to Articles 3(3) and 4(4) of the directive?'

## III — Procedure before the Court

The order for reference was received at the Court Registry on 13 January 1992.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted:

— by the applicants in the main proceedings, represented by Kevin Mooney, Solicitor, and Derrick Wyatt, Barrister;

— by the United Kingdom, represented by S. Lucinda Hudson, of the Treasury Solicitor's Department, assisted by Stephen Richards and Eleanor Sharpston, Barristers;

— by Ireland, represented by Louis J. Dockery, Chief State Solicitor, acting as Agent, assisted by Richard Law Nesbitt, Barrister-at-Law; and

— by the Commission of the European Communities, represented by Marie Wolfcarius, assisted by Nicholas Khan, of its Legal Department, acting as Agents.

Upon 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 inquiry.

Pursuant to Article 95(1) and (2) of the Rules of Procedure, the Court decided by decision of 18 November 1992 to assign the case to the Fifth Chamber.

## IV — Written observations submitted to the Court

1. The *applicants in the main proceedings* first of all point out that the directive is based on Article 100a of the EEC Treaty and that its purpose is to eliminate possible barriers to trade resulting from differences in national labelling rules capable of obstructing the establishment and operation of the internal market, a precondition for which, under Article 8a of the EEC Treaty, is the existence of conditions of competition which are not distorted (Case C-300/89 *Commission* v *Council* [1991] ECR I-2867, at paragraph 14). Those differences may not only affect the free movement of the goods in question, but may also 'lead to unequal conditions of competition' (preamble to Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1)).

The adoption of common rules facilitates the free movement of goods not only between Member States sharing a common language, but also in other cases by giving producers the option of labelling the same unit package of a product in several languages according to the common rules and by relieving producers of the need to be apprised of the different legal regimes of the Member States, since if they label in accordance with the common rules, they can be confident that they will not suffer any disadvantage as a result. The adoption of common rules also contributes to 'the institution of a system ensuring that competition in the common market is not distorted' (Article 3(f) of the

EEC Treaty) inasmuch as the removal of barriers to trade is inseparably linked to the elimination of distorted conditions of competition (Case C-300/89, cited above, at paragraph 15).

The applicants in the main proceedings point out that since they are compelled to adopt larger health warnings and statements as long as the 4% rule is held to be a measure of partial harmonization rather than a uniform rule applicable to domestic production and imports alike, they face a disadvantage when competing with imports from other Member States where the 4% rule is applied. The larger the area specified for information and warnings, the less the area available to the domestic producer for commercially attractive presentation of the packet. This situation, which results in the preservation of different labelling rules in the various Member States and consequently the existence of unequal conditions of competition for those Member States, is incompatible with the requirements of the internal market as referred to by Article 100a of the EEC Treaty and gives rise to discrimination between domestic products and those imported from other Member States (Case 98/86 *Ministère Public* v *Mathot* [1987] ECR 809).

Should a producer of cigarettes in the United Kingdom wish to label cigarettes for export, it would prove more advantageous to label in accordance with the regulations of a Member State applying the 4% rather than the 6% rule. That solution, however, is incompatible with the very purpose of the directive, which is to enable producers to label their products in accordance with the requirements of the directive without being disadvantaged in any Member State for having failed to adopt the labelling requirements of that State.

According to the applicants in the main proceedings, the UK regulations imposing the 'at least 6 per cent' rule are therefore incompatible with Articles 3(3) and 4(4) of the directive, which is a measure of exclusive harmonization. Those articles specify common rules which must be incorporated into national law in all Member States and made binding upon the producers of cigarettes. The 'at least' formulation does not define the scope of the discretion of the Member States and consequently does not allow Member States to impose a more rigorous requirement if they think fit. The UK regulations also use the same formulation ('at least 6 per cent') with a view to imposing an obligation on producers.

In the opinion of the applicants in the main proceedings, it is necessary to distinguish between the labelling rules laid down in the directive which expressly confer a discretion on Member States and those which do not confer any such discretion. Thus, while Member States have the competence to specify the applicable health warnings by choosing them from the list annexed to the directive (Article 4(2) and (3)), they do not have

any discretion with regard to the 'at least 4%' rule. If the draftsman of the directive had intended that Member States could vary that rule, the relevant provisions of the directive would have indicated that the Member States could specify a higher rate for home production (Article 3 of Council Directive 79/112 of 18 December 1978, cited above, lays down certain labelling rules for domestic products and imports alike, subject to Article 3(2) which makes an exception for 'home production').

This interpretation is confirmed by the text of the preamble, which states that 'the marketing and free movement of tobacco products should be made subject to common rules', and by Article 8 of the directive, which forbids Member States from restricting the sale of products complying with the directive, since those provisions are not compatible with a minimalist interpretation allowing discrimination between domestic goods and imports. It is also confirmed by the Court's case-law on certain Community directives on labelling adopted pursuant to Article 100 of the EEC Treaty for the purpose of removing barriers to trade and ensuring that conditions of competition are the same for everyone. The Court of Justice interpreted the labelling rules laid down in those directives as constituting exclusive measures of harmonization applying according to the same arrangements to national products and imported products alike, subject only to the specific exceptions provided for in the directive itself (Case 148/78 *Pubblico Ministero* v *Ratti* [1979] ECR 1629 concerning Council Directive 73/173/EEC of 4 June 1973 on the approximation of Member States' laws, regulations and administrative practices relating to the classification, packaging and labelling of dangerous preparations (solvents) (OJ 1973 L 189, p. 7); Case 278/85 *Commission* v *Denmark* [1987] ECR 4069 concerning Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ, English Special Edition 1967, p. 234), as amended by Council Directive 79/831/EEC of 18 September 1979 (OJ 1979 L 259, p. 10); Case C-150/88 *Parfümerie Fabrik 4711* v *Provide* [1989] ECR 3891 concerning Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products (OJ 1976 L 262, p. 169); Case 98/86, cited above, concerning Council Directive 79/112 of 18 December 1978, cited above; and Case C-241/89 *SARPP* v *Chambre Syndicale des Raffineurs et Conditionneurs de Sucre de France and Others* [1990] ECR I-4695).

The applicants in the main proceedings accordingly propose that the question posed by the High Court of Justice (Queen's Bench Division) should be answered as follows:

'It is inconsistent with Articles 3(3) and 4(4) of Directive 89/622 for national rules to require that the information and warnings specified in Articles 3(1) and 4(1) and (2) of the directive be printed on cigarette packets so as to cover an area amounting to at least 6 per cent of the surface areas specified in the directive.

The 4 per cent requirement specified in the directive applies to domestic products and imports alike.'

2. The *United Kingdom* points out first of all that the directive was adopted under Article 100a of the EEC Treaty and is consequently a measure adopted for the achievement of the objectives set out in Article 8a of the Treaty which takes into account differences in levels of development (see Article 8c) and therefore does not necessarily reflect the highest level of protection currently existing in any particular Member State. The fact that the directive provides, under Article 100a(3), for a high level of health protection by laying down minimum standards does not mean that it purports to provide the highest possible level of health protection.

The directive also does not purport to prevent the Member States from applying higher levels of health protection, provided that the measures taken do not impede the free movement of goods. The degree of flexibility as to the actual level of health protection selected by the Member States is indicated by the fifth recital in the preamble to the directive, which refers to the resolution of 7 July 1986 of the Council and the representatives of the Governments of the Member States, meeting within the Council, on a programme of action of the European Communities against cancer (OJ 1984 C 184, p. 19). Item 5(a) of that programme states *inter alia* that measures to limit and reduce the use of tobacco 'should be based on the practical experience gained in the various Member States and should contribute to increasing the effectiveness of national programmes and actions'.

The directive thus achieves a partial harmonization aimed at facilitating the free movement of goods but not at requiring Member States to adopt a lower level of health protection than they would otherwise have wished to adopt or at negating progress made in national campaigns against cancer. Since the above programme is intended to encourage Member States to employ more effective measures, it was clearly the Council's intention to leave Member States free to impose stricter measures on domestic producers, provided that such measures did not operate as a barrier to imported products.

So far as the implementation of the directive in the United Kingdom is concerned, the United Kingdom points out that for some 17 years before the adoption of the directive a voluntary code of practice had been in operation under which manufacturers of tobacco products affixed health warnings to such products before offering them for sale within the United Kingdom.

The presence of such warning notices on tobacco products over a period of many years has meant that, to some extent, the public has become inured to the warning notices. Following the consultations which preceded the enactment of the UK regulations and a consideration of the interests of the manufacturing industry, the consumer interest and the general public health interest, as well as the representations made by the organization Action for Smoking and Health (ASH), to the effect that 4% would

be much too low, the Minister determined to implement the directive by providing for spatial requirements for warnings and for tar and nicotine yield indications of 'at least 6%'.

The UK regulations were notified to the Commission on 13 August 1991. In reply to a letter from ASH, the Commission expressed its view on the correctness of the United Kingdom's implementation of the directive (Annex 2 to the United Kingdom's observations). Among the issues covered in that reply, the Commission expresses its view that the UK regulations constitute a correct implementation of the directive and indicates that it accepts that there may be discrepancies in national provisions implementing the directive, a fact which demonstrates the directive's status as a measure introducing partial rather than total harmonization.

It also follows from an examination of the teleology of the directive that it must be interpreted as containing a partial harmonization of labelling designed to promote the completion of the single market whilst permitting Member States to give suitable emphasis to the protection of public health (eighth recital in the preamble to the directive, according to which the provisions of the directive 'will be reviewed on the basis of experience gained and the development of medical knowledge in this area, the objective being to achieve greater protection of individuals').

The directive is intended to give Member States discretion in certain areas when implementing the directive (Article 4(2) and (3)). Given the different levels of public awareness in the different Member States of the health risks associated with smoking, the United Kingdom submits that the spatial requirement of 'at least 4%' is similarly intended to allow Member States to choose to require that a larger proportion of the available space be devoted to enhancing public awareness if they deem that to be desirable.

According to the United Kingdom, Article 8 of the directive protects manufacturers of products that have been labelled in accordance with a Member State's implementation of the directive from having to relabel those products in order to sell them in another Member State. That article, however, does not confer upon manufacturers a right to market their products in their home Member State by labelling them in accordance with the directive independently of the implementation of the directive by that Member State.

The 'at least 6%' spatial requirements imposed by the UK regulations accordingly represent a legitimate exercise by a Member State of a power that it retained in the context of the partial harmonization introduced by the directive. Such a measure, applicable only to national products, in no way restricts the free movement of goods.

Furthermore, the argument that, in transposing other directives containing an 'at least' formulation (for example, Directive 67/548 of 27 June 1967 and Directive 73/173 of 4 June 1973, cited above), the United Kingdom treated that expression as a provision

requiring to be reproduced in the same terms and so incorporated it in its national implementing legislation (for example, Statutory Instrument 1978 No 209, Regulation 6(4), and Statutory Instrument 1984 No 1244, Regulation 13(5)) does not affect in any way the outcome of the present proceedings. According to the United Kingdom, each directive must be interpreted in the light of its own wording, purpose and the degree of harmonization (total or partial) which it imposes.

The other directives cited by the applicants in the main proceedings are directives laying down exhaustive rules in the sectors concerned, whereas the present directive introduces partial harmonization only. Those directives and the decisions relied on by the applicants in the main proceedings indicate the interpretation that is to be placed on certain provisions but are in no sense conclusive in respect of the question referred by the national court in the present proceedings.

The United Kingdom accepts that the UK regulations treat domestic producers of tobacco products for supply in the United Kingdom market in a way that is less favourable than the treatment afforded, in accordance with the directive, to suppliers of tobacco products imported into the United Kingdom from other Member States. However, it submits that that treatment contravenes no principle of Community law, in accordance with the case-law cited by the applicants in the main proceedings (judgment in Case 98/86, at paragraphs 9, 11 and 12, and judgment in Case C-241/89, at paragraph 16, both cited above).

The United Kingdom accordingly submits that the question referred by the High Court of Justice (Queen's Bench Division) should be answered in the following terms:

'Articles 3(3)and 4(4) of Directive 89/622 are to be interpreted as permitting the national authorities of a Member State to require that domestic producers of cigarettes comply with a spatial requirement greater than 4%, provided that those rules do not preclude or restrict imports of cigarettes from another Member State that comply with the spatial requirements imposed by that other Member State pursuant to Articles 3(3) and 4(4) of the directive.'

3. In its observations submitted in support of those of the United Kingdom, *Ireland* takes substantially the same position as the United Kingdom and proposes that the question referred should be replied to in the following terms:

'It is consistent with Articles 3(3) and 4(4) of Directive 89/622 for national rules to require that information and warnings specified in Articles 3(1) and 4(1) and (2) of the directive be printed on cigarette packets so as to cover an area amounting to more than the surface area specified in the directive, provided always that such requirement is of equal application to all domestic producers and notwithstanding the fact that tobacco products manufactured in another Member State may be sold within England in packets with a smaller health warning provided always the

packet carries warnings in English complying with the requirements imposed by the Member State where they are manufactured pursuant to the relevant provisions of the directive.'

4. The *Commission* first of all points out that the harmonization of laws provided for under the Treaty can be of three main types:

(i) *total*: the national rules are replaced by a uniform set of standards from which Member States cannot derogate in any circumstances other than those provided for by Community law;

(ii) *optional*: Member States are prevented from using their national standards as barriers to the free circulation of goods but remain free to maintain lower standards for the sale of goods on their own territory, adoption of the harmonized standards in each Member State being at the option of the Member States;

(iii) *minimal*: Member States may introduce or maintain stricter standards which may be applied to imported goods on a non-discriminatory basis, whereby the harmonization establishes a baseline for the laying down of national standards. The compatibility of minimal harmonization with the Treaty can be ensured by using a differentiated approach: the free movement of goods can be guaranteed on the basis of the minimum standard laid down, leaving Member States free only to apply a stricter standard in situations which do not impinge on the free movement of goods.

According to the Commission, Article 100a of the EEC Treaty permits the approximation of national laws carried out pursuant to that article to be a total harmonization (Council Directive 89/458/EEC of 18 July 1989 amending with regard to European emission standards for cars below 1.4 litres, Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution by emissions from motor vehicles, OJ 1989 L 226, p. 1, seventh recital in the preamble and Article 2(2)), an optional harmonization (Council Directive 88/436/EEC of 16 June 1988 amending Directive 70/220/EEC on the approximation of the laws of the Member States relating to measures to be taken against air pollution by gases from engines of motor vehicles (Restriction of particulate pollutant emissions from diesel engines), OJ 1988 L 214, p. 1) or a minimal harmonization (Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, OJ 1990 L 158, p. 59, seventh recital in the preamble and Article 4(2)(a)). It is therefore for the Community legislature to decide if the achievement of the internal market requires the imposition of total harmonization or if, taking into account the nature of the goods in question and the principle of subsidiarity, it suffices to lay down a minimal harmonization.

The Commission goes on to point out that the Treaty confers no special competence on the Community in the area of public health generally and that the directive constitutes

the first Community legislation on the subject of health warnings on cigarette packets. In ensuring the free movement of goods, the Commission would not wish to undermine Member States' efforts in this area of public health. To this end, it may take as a base for its proposal a high level of protection (Article 100a(3)) and keep medical developments under review (eighth recital in the preamble to the directive) or ensure that the directive leaves Member States free to develop their own policies in this area where this is consistent with the principle of the free movement of goods.

The Commission notes in this regard that Member States have an unconditional right (subject to the rules of the Treaty) to introduce more stringent measures under Article 118a(3). The fact that Article 100a contains no unconditional safeguard of this kind does not mean that the possibility of Member States taking such measures is excluded in an Article 100a directive, as is demonstrated by, *inter alia*, Council Directive 80/1107/EEC of 27 November 1980 on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work (OJ 1980 L 327, p. 8), which is based on Article 100.

Similarly, in the area of control of the free movement of firearms, Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (OJ 1991 L 256, p. 51), which was adopted pursuant to Article 100a, lays down certain minimum standards to be applied by Member States in issuing firearm permits in their territory (Article 5) but also confers on Member States the right to adopt more stringent provisions (Articles 3 and 12(2)). It is thus an area in which the Community legislature took the view that it was not opportune totally to harmonize national rules in an effort to accommodate both the interests of free movement and public safety.

With regard to the directive in question, the Commission takes the view that Article 8(1) thereof serves to render the minimal nature of the directive compatible with the objective of the free movement of goods by requiring each Member State to permit the sale of cigarettes imported from another Member State whose laws are in conformity with those minimal rules.

The judgments of the Court relied on by the applicants in the main proceedings (Cases 148/78, 278/85 and C-150/88, cited above) would be relevant only to a situation where, for example, a Member State required producers to apply warnings other than those listed in the annex to the directive, since the warnings are to be 'taken exclusively' from those listed in the annex. Reference to the above judgments, however, does not resolve the question of the interpretation of a provision in a directive intended for the national legislature and expressed in terms of 'at least' a stated amount. In addition, the present case is not to be compared with case 60/86 *Commission* v *United Kingdom* [1988] ECR 3921 because that case concerned a national requirement that was additional to the requirements laid down in a directive which included a provision substantially similar to Article 8(1) of the directive in this case.

The Commission also takes the view that the approach of differentiated minimal harmonization followed by the directive meets the same concerns as motivated the adoption of Article 100a(4) of the EEC Treaty, whilst being less restrictive of the free movement of goods. In the Commission's view, where the Community is legislating for the first time in an area relating to one of the 'major needs' referred to in Article 100a(4), the possibility of Member States wishing to invoke Article 100a(4) in the event of a total harmonization should be deflected by recourse to the differentiated approach to minimal harmonization if the Community legislature considers it opportune in order to avoid the creation of the obstacles to the free movement of goods which would result from the use of Article 100a(4).

As regards the application of Community law to the applicants in the main proceedings, the Commission notes that the Court has ruled that Article 30 is of no assistance in such a situation (Case 355/85 *Driancourt* v *Cognet* [1986] ECR 3231, at paragraph 10; Case C-241/89, cited above).

The Commission rejects the argument of the applicants in the main proceedings that there was a breach of the principle of non-discrimination. It points out in that regard that the Court ruled at paragraph 11 of its judgment in Case 355/85 that 'Community law does not apply to treatment which works to the detriment of national products as compared with imported products or to the detriment of retailers who sell national products as compared with retailers who sell imported products and which is put into effect by a Member State in a sector which is not subject to Community rules or in relation to which there has been no harmonization of national laws'.

The Commission takes the view that the principle enunciated in that decision is applicable to the present case in view of the fact that labelling requirements going beyond the 4% minimum required by the directive have not been made subject to harmonization of national laws.

The Commission accordingly proposes that the question referred should be answered as follows:

'Articles 3(3) and 4(4) of Directive 89/622 must be interpreted in the sense that a Member State, in implementing the obligations therein, retains the power to require the warnings and notices on packets of cigarettes specified by the directive sold in its territory to cover an area of the relevant surface greater than the minimum prescribed in the said articles, provided that the Member State allows the sale on its territory of packets of cigarettes imported from other Member States which conform with the minimum requirements laid down by the said articles.'

J. C. Moitinho de Almeida
Judge-Rapporteur