2. The application in one Member State to margarine imported from another Member State and lawfully produced and marketed in that State of legislation prohibiting the marketing of margarine or edible fats where each block or its external packaging does not have a particular shape, for example the shape of a cube, in circumstances in which the consumer may be protected and informed by means which hinder the free movement of goods to a lesser degree constitutes a measure having an effect equivalent to a quantitatieve restriction within the meaning of Article 30 of the Treaty.

In Case 261/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Landgericht [Regional Court] Hamburg for a preliminary ruling in the case pending before that court between

WALTER RAU LEBENSMITTELWERKE, Hilter (Federal Republic of Germany),

and

DE SMEDT PVBA, Zemst (Belgium),

on the interpretation of Article 30 of the EEC Treaty,

THE COURT

composed of: J. Mertens de Wilmars, President, A. O'Keeffe, U. Everling and A. Chloros (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: G. Reischl
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted by the parties pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

The dispute which gave rise to this reference for a preliminary ruling concerns a contract of sale between Walter Rau Lebensmittelwerke [hereinafter referred to as "Rau"], a German undertaking, and De Smedt PvbA [hereinafter referred to as "De Smedt"], a company incorporated under Belgian law. Rau undertook to supply 15 000 kg of margarine packed in containers having the shape of a truncated cone. As a term of the contract Rau warranted that the margarine which it supplied could be marketed by virtue of the applicable provisions of the EEC Treaty on the free movement of goods.

At the time when the contract was concluded, the parties were in agreement that the goods in question were to be imported into Belgium and thus accepted and paid for only if the relevant provisions of Belgian law relating to margarine permitted the importation and marketing of margarine in containers having the shape of a truncated one.

At the time when the contract was concluded, the relevant Belgian provision on the packaging of margarine was Article 15 of the Law of 8 July 1935, which provided as follows:

"Margarine and prepared fats may be imported, held in stock or transported for the purpose of sale or delivery, exhibited for sale, consigned or delivered only in the form of cube-shaped blocks having a net weight of 250 g, 500 g, 1 kg or 2 kg and in sealed containers."

According to the Landgericht Hamburg, at the time when the contract was signed both parties asumed that the abovementioned provision would be repealed or would no longer be applied following the judgment of the Court of Justice in the *"Cassis de Dijon"* case (judgment of 20 February 1979 in Case 120/78 *REWE-Zentral AG* v *Bundesmonopolverwaltung für Branntwein* [1979] ECR 649). The provision in question was in fact replaced by Article 8 of the Royal Decree of 2 October 1980 on the manufacture and marketing of margarine and edible fats, which provides as follows:

"It shall be prohibited to sell by retail composite margarine and edible fats which are not completely liquid at 20 °C where each block or its external packaging is not cube-shaped. This provision shall not apply to products having a net weight of less than 50 g or more than 2 kg."

De Smedt, the defendant in the main proceedings, inquired of the Belgian Ministry of Health whether it could import the margarine which it had purchased.

By letter of 6 November 1980, the Belgian Ministry informed De Smedt that legislative provisions still existed which prohibited the sale of margarine where its external packaging was not cube-shaped. Following the receipt of that letter, De Smedt informed Rau that

it no longer wished to accept the goods. Rau therefore brought an action for performance of the contract before the Landgericht Hamburg. In its view, De Smedt should have accepted the goods since the Belgian provision is contrary to the provisions of Article 30 of the EEC Treaty. De Smedt contests that view.

In the opinion of the Landgericht, the intention of the parties was that the defendant was bound to fulfil its obligations only if margarine packed in containers having the shape of a truncated cone could be marketed in Belgium because the Belgian provision to the contrary contravened the law of the European Communities.

The Landgericht considered that even though the Belgian provision did not prevent the importation of margarine whose packaging was not cube-shaped, it might make more difficult the marketing of margarine lawfully packed in such containers in another Member State, in particular in the case of parallel imports. However, it was possible that such a provision might fall within the exceptions contained in Article 36 of the EEC Treaty.

The marketing of margarine in tubs is permitted in the Federal Republic of Germany by Article 2 (1) of the Gesetz über Margarine, Halbfettmargarine and Kunstspeisefett [Law on margarine, half-fat margarine and artificial edible fats] of 1 July 1975 (Bundesgesetzblatt I, p. 1841), which provides as follows:

"Packs or containers must have a square base or be in the form of a truncated cone. Packs or containers having a weight of at least 1 000 g may also take the form of a parallelepiped."

Consequently, the Landgericht decided to refer to the Court the following question:

"Is there a prohibited measure having an effect equivalent to a quantitative restriction on imports within the meaning of Article 30 of the Treaty establishing the European Economic Community if it is prohibited, as in Article 8 of the Belgian Royal Decree of 2 October 1980 on the manufacture and marketing of margarine and edible fats, to market margarine or edible fats if each block or its external packaging is not cube-shaped and because of that prohibition margarine packaged in a different shape in another Member State in accordance with the provisions of that State has to be specially packaged in cube-form in order for it to be imported into the Kingdom of Belgium?"

The order making the reference was received at the Court Registry on 25 September 1981.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by Rau, represented by J. Gündisch, Rechtsanwalt, Hamburg, De Smedt, represented by D. C. Ohlgart, Rechtsanwalt, Hamburg, the Commission, represented by its Legal Adviser, Rolf Wägenbaur, and by the Belgian Government, represented by Pierre Legros of the Brussels Bar.

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.

II — Summary of the observations submitted to the Court

(a) The *plaintiff in the main proceedings,* observes that the German

law permits the packaging of margarine in tubs and that that form of packaging has been in general use in Germany for the last twenty-five years since it offers certain advantages by comparison with grease-proof paper. Margarine manufacturers have brought their production into line with that development. In particular, they have adapted their expensive packaging and filling machines to the manufacture and filling of tubs.

Moreover, in most of the other Member States the cubic form is not prescribed. In Ireland, the United Kingdom and Italy there is no restriction on the form of packaging. In Denmark square, round or oval containers are permitted as well as the rectangular brick-shaped form and in the Netherlands rectangular, cylindrical or boat-shaped forms are permitted. In France the cubic form is prescribed but exceptions are permitted in the case of supplies to the processing industries and of exports.

The Belgian provision in question forms an appreciable obstacle to the importation of margarine into Belgium from nearly all the Member States of the European Community, in particular from the Federal Republic of Germany. If a German manufacturer wished to export margarine to Belgium in conformity with the requirement as to the cubic form contained in Article 8 of the Royal Decree of 2 October 1980, he would need to buy completely new packaging and filling machines in order to comply with the Belgian provisions, which would be extremely costly. That is why there is virtually no Community trade in margarine between the Federal Republic of Germany and Belgium in spite of the fact that prices of margarine in Belgium are appreciably higher than in neighbouring States in which margarine is also produced and consumed in substantial quantities.

In Annex 3 to its observations, Rau produces a table comparing the prices of margarine in the Netherlands and in Belgium.

Rau maintains that in 1975 it developed a new form of packaging. Two tubs of margarine were packed in a box exactly cubic in shape. Even that form of packaging was not accepted by the Belgian Ministry of Public Health and two Belgian undertakings which imported small quantities of margarine packed in that manner were prosecuted.

Rau also recalls that the Commission, upon receipt of a complaint lodged by Rau, instituted proceedings for a declaration that Belgium had failed to fulfil its obligation under the EEC Treaty. The Commission withdrew its action and the case (Case 177/80) was removed from the Court's register.

In Rau's view, the obstacle to the free movement of goods created by the Belgian provisions on the packaging and form of blocks of margarine is not justified by the need to safeguard one of the objectives granted legal protection by Article 36 of the EEC Treaty. The argument relating to consumer protection to the effect that the cubic form is intended to avoid confusion between butter and margarine cannot be accepted since that objective could just as easily be attained by means of appropriate labelling. In support of that view the plaintiff cites the judgments of the Court of Justice in the *"Cassis de Dijon"* case cited above, in Case 130/80 *Criminal Proceedings against Fabriek voor Hoogwaardige Voedingsprodukten Kelderman* [1981] ECR 527 and in Case 788/79 *Criminal Proceedings against Herbert Gilli and Paul Andres* [1980] ECR 2071 and refers to the communication from the Commission concerning the consequences of the judgment in the *"Cassis de Dijon"* case (Official Journal 1980, C 256, p. 2).

Rau proposes that the following answer be given:

"The concept of measures having an effect equivalent to quantitative restrictions within the meaning of Article 30 of the EEC Treaty must be interpreted as covering the prohibition by the legislation of a Member State of the marketing of margarine where each block or its external packaging is not cube-shaped, if the legislation also applies to the importation of margarine which has been lawfully manufactured and marketed in another Member State and has been labelled as margarine in a sufficiently clear manner."

(b) The *defendant in the main proceedings, De Smedt,* maintains first that the Belgian Royal Decree of 2 October 1980 cannot be considered as a measure having an effect equivalent to a quantitative restriction on imports since it merely prohibits the retail sale of margarine packed in tubs.

The decision in the *"Cassis de Dijon"* case is not applicable. That case was concerned with the exclusion of a product from the market on account of its intrinsic characteristics by means of prohibiting the product from crossing the frontier.

In this case, there is no question of such a prohibition; the rules relate only to packaging. Case 8/74 *Procureur du Roi* v *Benoît and Gustave Dassonville* [1974] ECR 837 was also concerned with a prohibition of importation.

Even if Article 8 of the Royal Decree were to be considered as equivalent to an indirect quantitative restriction on imports, it would nevertheless be justified by requirements relating to consumer protection and fair trading.

In so far as no common rules exist at Community level in this area, it is in principle for the Member States to adopt any relevant provisions.

The Commission, in withdrawing its action against Belgium, was clearly of the opinion that the new provisions were justified. In virtually all the Member States there are provisions relating to the form of packaging in which margarine is to be marketed. Even if certain Member States do not prescribe a cubic form, the other Member States retain the right to decide themselves how to prevent the consumer from confusing butter and margarine.

The Belgian rules do not constitute a means of arbitrary discrimination. Domestic products and foreign products are not treated differently. In its judgment of 16 December 1980 in Case 27/80 *Criminal Proceedings against Anton Adriaan Fietje* [1980] ECR 3839, the Court of Justice rightly observed that an obligation to use a precise description in order to prevent the consumer from being misled was compatible with the provisions of the Treaty on the free movement of goods, even if as a result it were necessary to alter the original labels of the imported products. Only if the alteration or original labels containing equivalent information were required, might it be considered that there was an infringement of Article 30 of the EEC Treaty.

In this case, the description "margarine", which the consumer may easily fail to notice, cannot be considered as equivalent, in terms of information, as the distinctive cubic form of packaging.

De Smedt proposes that the reply which should be given is that Article 8 of the Belgian Royal Decree of 2 October 1980 on the manufacture and marketing of margarine and edible fats is not contrary to Article 30 of the EEC Treaty.

(c) In the *Commission's* view, the Royal Decree clearly constitutes an impediment to trade. Its effect is that margarine packaged in the Federal Republic of Germany in accordance with its legislative provisions cannot be disposed of in Belgium by way of retail sale. For that purpose the margarine would have to be the subject of special treatment. It is immaterial that the Belgian Government has in view not importation as such but disposal by way of retail sale; it is hampering intra-Community trade "directly or indirectly, actually or potentially".

The provisions are not necessary in order to satisfy imperative requirements relating in particular to consumer protection. The cubic form may have been prescribed for margarine in order to avoid the risk of confusion with butter. It is undeniable that it may be in the legitimate interests of States to remove this risk of confusion. However, it is possible fully to attain this aim by other means. It would be sufficient to require that it must be stated clearly, that is to say in sufficiently large letters, on the external packaging of the margarine that the product is margarine. That information would be sufficient to inform the consumer of the contents of the pack. It is therefore unnecessary to have recourse to a prohibition of certain forms of packaging.

Paragraph 2 (4) of the German Law expressly provides that the packs or containers in which the goods are marketed must bear the word "margarine" in a conspicuous position in clearly visible and easily readable letters.

Moreover, the Commission, after examining the provisions in force, decided to institute proceedings against Belgium pursuant to Article 169 of the EEC Treaty for a declaration that it had failed to fulfil its obligations under the Treaty.

The Commission proposes that the following reply be given to the question raised by the Landgericht:

"The concept of measures having an effect equivalent to quantitative restrictions on imports contained in Article 30 of the EEC Treaty must be interpreted as meaning that it also covers the prohibition by a Member State of the marketing of margarine where each block or its external packaging is not cube-shaped, if this has the effect of prohibiting the marketing of margarine lawfully packed in another Member State even though proper account is taken of the need to protect the consumer from any risk of confusion."

(d) The *Belgian Government* considers that it should be pointed out that the question referred to the Court for a preliminary ruling does not call in question the right of a Member State to lay down a specific form for margarine sold on national territory. The question is limited to the differences which may exist between Member States in the shape in which margarine is sold and has no bearing on the prescribing of a particular shape, whatever that may be. Since the

actual principle of a compulsory shape is not called in question, it should be observed that, according to the case-law of the Court, in the absence of the harmonization of the laws of the various States on this matter, it is for each Member State to lay down, in respect of its own territory, the most appropriate shape for the sale of the products.

The Belgian Government explains the history of the Belgian legislation on margarine since the Law of 4 May 1900.

The cubic form is "rooted" in the habits of Belgian consumers to such an extent that only minor privisions were laid down by the Royal Decree of 2 October 1980 with regard to the size of the description "margarine" on the packaging. The cubic form of packaging corresponding better to the habits of the population was considered sufficient in itself as a means of distinguishing margarine from other edible fats.

Following those explanatory remarks, the Belgian Government raises an objection of inadmissibility. De Smedt and its directors were summoned to appear before the Tribunal Correctionnel [Criminal Court], Courtrai, on a charge of having contravened the legal provisions on trade in butter, margarines and fats. An appeal lodged by the Ministère Public [Public Prosecutor's Office] is pending before the Cour d'Appel [Court of Appeal], Ghent. In view of the similarity of the interests at issue, the Court should consider whether the dispute which gave rise to the reference for a preliminary ruling is genuine or fictitious and whether, in the circumstances, it has jurisdiction to give a reply.

In the alternative, the Belgian Government maintains that Article 8 of the Royal Decree does not constitute a measure having an equivalent effect within the meaning of Article 30 of the Treaty. In contrast to the *"Cassis de Dijon"* case and Case 148/78 *Pubblico Ministero* v *Tullio Ratti* [1979] ECR 1629, it is not completely impossible to market products which do not comply with the legal provisions, in so far as it is merely necessary to adopt the external presentation of the product in order to market it.

In the above-mentioned cases the Court was confronted with national rules which had no counterpart in the legislation of the other Member States. In this case, the Belgian rules are to an appreciable extent identical to the German rules. The principle of equivalent requirements therefore applies since the obligation concerning the cubic form in the case of retail sale is also a rule of German national law. The Belgian Government again emphasizes that the Royal Decree does not in any way prohibit the importation of the product but merely lays down detailed rules concerning its release for sale by retail.

The Belgian Government refers to the *"nisin"* case (Case 53/80 *Officier van Justitie* v *Koninklijke Kaasfabriek Eyssen BV* [1981] ECR 409) in support of its view that a Member State which relies upon one of the derogations from Article 30 of the Treaty is not required to show that the derogation is justified.

The requirement in question was introduced into national legislation at the beginning of the century with a view to protecting the consumer from the risk of deception or confusion with butter.

The public has grown accustomed to distinguishing the two products when offered for retail sale solely by visual means, in the sense that anything which does not appear cubic in shape must be butter. The repeal of the requirement in question would give certain unscrupulous manufacturers the opportunity to place a margarine on the market in non-cubic form in the speculative hope of taking unfair advantage of the conditioned reflex of the consumer who, mistakenly believing that he was getting butter, would in fact be getting margarine.

In the absence of harmonization at European level, since the Belgian legislation has relaxed the provisions relating to labelling, it is important to maintain the visual distinction and in particular the cubic shape, which for consumers has been synonymous with margarine for 80 years.

In reply to a written question put to it by the Court, the Belgian Government informed the Court that the proportion of butter sold in Belgium in plastic containers was in the order of 8 %. In the vast majority of cases, this butter is presented to consumers in a plastic packaging in parallelepipedal form.

The Belgian Government proposes primarily that the Court should declare the reference for a preliminary ruling to be inadmissible.

In the alternative, it should give the following reply to the question raised:

"Article 8 of the Royal Decree of 2 October 1980 on the manufacture and marketing of margarine and edible fats, which prohibits the marketing of margarine or edible fats where each block or its external packaging is not cube-shaped, does not constitute a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 of the Treaty establishing the European Economic Community."

III — Oral procedure

At the hearing on 15 June 1982 oral argument was presented by the following: Dr Jürgen Gündisch, for Rau: Dr Dietrich Ohlgart, for De Smedt; Pierre Legros, for the Belgian Government; and R. Wägenbaur, for the Commission of the European Communities.

The Belgian Government produced a photograph of a truncated-cone-shaped packaging for butter and Rau produced a selection of forms of packaging for butter and margarine.

The Advocate General delivered his opinion on 21 September 1982.

Decision

1 By order dated 16 September 1981 which was received at the Court on 25 September 1981 the Landgericht [Regional Court] Hamburg referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question as to the interpretation of Article 30 of the EEC Treaty in order to

enable it to decide whether a requirement laid down by Belgian legislation as to the shape of packaging of margarine sold by retail (Royal Decree of 2 October 1980, Moniteur Belge of 14 October 1980, p. 11845) is compatible with Community law.

2 That question was raised in an action between a German seller and a Belgian buyer concerning a contract to supply margarine. By that contract, which was made on 23 July 1980, the seller warranted that the margarine which it supplied and which was packaged in plastic tubs having the shape of a truncated cone could be marketed in Belgium by virtue of the provisions of Community law. At the time when the contract was signed the legislation applicable in Belgium provided that margarine could not be imported or held in stock for the purpose of sale except in the form of cube-shaped blocks. The goods in question did not satisfy that requirement.

3 That legislation was replaced by the Royal Decree of 2 October 1980 which prohibits the retail of margarine where each block or its external packaging is not cube-shaped.

4 After being informed by the competent authorities that the marketing of margarine packed in tubs having the shape of a truncated cone was still prohibited the defendant company in the main action refused to accept deliveries under the contract. The plaintiff did not accept its refusal and sued the defendant before the Landgericht Hamburg.

5 The defendant contended before that court that the Belgian Royal Decree under which margarine may be marketed only in cube-shaped packaging was not contrary to Article 30 of the EEC Treaty for the reason that Belgium could properly adopt that decree because it was necessary to distinguish correctly between butter and margarine sold by retail. The defendant therefore considered that it was not under the duty to fulfil the obligations which it had under the contract with the plaintiff to accept and pay for the margarine which it ordered.

6 The Landgericht Hamburg does not exclude the possibility that the Belgian rules, which apply only to the retail trade, may conceal a measure having an effect equivalent to a quantitative restriction on imports. It considers that such rules may make it more difficult to market margarine lawfully packed in another Member State in containers having the shape of a truncated cone.

7 So by its order of 16 September 1981 the Landgericht Hamburg stayed the proceedings and submitted the following question to the Court:

"Is there a prohibited measure having an effect equivalent to a quantitative restriction on imports within the meaning of Article 30 of the Treaty establishing the European Economic Community if it is prohibited, as in Article 8 of the Belgian Royal Decree of 2 October 1980 on the manufacture and marketing of margarine and edible fats, to market margarine or edible fats if each block or its external packaging is not cube-shaped and because of that prohibition margarine packaged in a different shape in another Member State in accordance with the provisions of that State has to be specially packaged in cube-form in order for it to be imported into the Kingdom of Belgium?"

The jurisdiction of the Court

8 The Belgian Government points out that the importation of margarine into Belgium by the defendant in the main action is already the subject of criminal proceedings in Belgium and that the Court should therefore inquire whether the dispute which gave rise to the request for a preliminary ruling is a genuine dispute. In this regard the Belgian Government recalls the judgment of the Court of 16 December 1981 in Case 244/80 *Foglia* [1981] ECR 3045.

9 In this instance there is nothing in the file on the case which provides grounds for doubting that the dispute is genuine. Therefore there is no reason for concluding that the Court has no jurisdiction.

The substance of the case

10 The question submitted by the Landgericht seeks to ascertain whether the application in one Member State to margarine imported from another Member State of legislation which does not allow that product to be retailed unless packaged in a particular form, in this case in cube-shaped blocks or packs, constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30.

11 The defendant in the main action and the Belgian Government maintain that the Belgian Royal Decree may not be classified as a measure equivalent to a quantitative restriction. The previous judgments of the Court concerned only a prohibition against the importation and marketing of products arising from national legislation on product quality, which was not the case in this instance because it was sufficient to adapt the presentation of the product in order to market it. Furthermore the form of packaging does not constitute a real obstacle to trade. In any case, even if sale by retail were prohibited, there are alternative possibilities such as the wholesale trade.

12 In this regard it must be recalled, as the Court has repeatedly held since its judgment of 20 February 1979 in Case 120/78 *REWE* [1979] ECR 649, that in the absence of common rules relating to the marketing of the products concerned, obstacles to free movement within the Community resulting from disparities between the national laws must be accepted in so far as such rules, applicable to domestic and to imported products without distinction, may be recognized as being necessary in order to satisfy mandatory requirements relating *inter alia* to consumer protection. It is also necessary for such rules to be proportionate to the aim in view. If a Member State has a choice between various measures to attain the same objective it should choose the means which least restricts the free movement of goods.

13 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.

14 In this case the protective effect of the Belgian rules is moreover demonstrated by the fact, affirmed by the Commission and not disputed by the Belgian Government, that despite prices appreciably higher than those in some other Member States there is practically no margarine of foreign origin to be found on the Belgian market.

15 Therefore it may not be claimed that the requirement of special packaging for the product is not an obstacle to marketing.

16 Furthermore, the Belgian Government contends that the requirement of the cubic form is necessary for the protection of the consumer in order to prevent confusion between butter and margarine. It states that the cubic form used for the sale of margarine is "rooted" in the habits of Belgian consumers and is therefore an effective safeguard in that respect.

17 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.

18 At the hearing the representative of the Belgian Government also argued that Belgium is bound by Article 11 (2) of 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 (Official Journal 1979, L 33). He contended that that provision of Community law governs the way in which a pack of margarine or butter may be marked and prevents the Belgian Government from prescribing sufficiently large markings to warn the public of a change affecting its habits.

19 The article in question provides that the particulars which must appear on the packaging must "be easy to understand and marked in a conspicuous place in such a way as to be easily visible, clearly legible and indelible". That provision authorizes and requires the Member States to adopt the measures necessary to inform the consumer while leaving them considerable scope for the exercise of discretion. It by no means prevents the Belgian Government from adopting appropriate rules as to labelling applicable in a uniform manner to margarine produced in Belgium and in other Member States.

20 The reply to the question submitted to the Court should therefore be that the application in one Member State to margarine imported from another Member State and lawfully produced and marketed in that State of legislation prohibiting the marketing of margarine or edible fats where each block or its external packaging does not have a particular shape, for example the shape of a cube, in circumstances in which the consumer may be protected and informed by means which hinder the free movement of goods to a lesser degree constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the EEC Treaty.

Costs

21 The costs incurred by the Belgian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question submitted to it by the Landgericht Hamburg by order of 16 September 1981, hereby rules:

The application in one Member State to margarine imported from another Member State and lawfully produced and marketed in that State of legislation prohibiting the marketing of margarine or edible fats where each block or its external packaging does not have a particular shape, for example the shape of a cube, in circumstances in which the consumer may be protected and informed by means which hinder the free movement of goods to a lesser degree constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty.

Mertens de Wilmars O'Keeffe Everling Chloros

Pescatore Mackenzie Stuart Bosco Koopmans Due

Delivered in open court in Luxembourg on 10 November 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President