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**Product quality and measures having
equivalent effect to quantitative
restrictions**

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Product quality and measures having equivalent effect to quantitative restrictions

Product quality is one of the most significant questions for consumers, lawyers as well as the lawmakers. It correlates to several field of law, such as consumer law, environmental law, criminal law and even constitutional law. In case of member states, the European law also regulates this issue. So it is worth taking a look at the topic in order to understand how it can contribute to our daily life. In my essay, I focus on the notion and its relationship with European Consumer Law. Firstly, I analyze the notion, then I try to find the common points with MEQR. My goal is to prove that this issue has a major effect on European Consumer Law, for this reason, I also refer to the case law in order to support my thesis.

The notion of product quality

As I said before, product quality is the topic which is the most discussed but also the most disputed one. We can say that almost everybody is aware of the importance of that. Buyers, who enter into a department store, look for the best product if they can afford it. But most of the time it simply means that they purchase brand items. This is the situation especially in the categories of food and clothing. Consumer protectors regularly publish guidelines where they draw attention on quality and the danger of its shortage. Lawmakers also try to follow the events, introduce more and more legal instruments to combat irregularities and to protect the interest of the weaker party, the consumers. But it does not mean that the society really understands the notion and its significance: there are a lot of definitions regarding the product quality because represents of academic literature have their own view. Despite these facts, it is worth finding a common definition. It is useful to start our analysis with the explanation of quality, although it makes the situation even more difficult that the notion is extremely complex and it is also a relative and subjective category. If we look at the academic literature, every author examines it from its function or role.

According to **Feigenbaum**, the quality is the absolute complexity of the features of sale, designing and production related to products and services where the expectations of the

purchaser are satisfied by the product and the service through use. **The International Standards Organisation** adopted the following definition: “*the totality of features and characteristics of product or service that bear on its ability to satisfy stated or implied needs revolving around customer¹*”. **Crosby** clearly declares that the quality means the compliance to demands and not elegance².

All these indicate that it is a hard task to find a common definition which precisely describes the meaning of quality, since every aspect of the notion has its own importance: sometimes the consumer part is emphasised, another time the manufacturer is placed in the centre. In my opinion, it is worth analyzing the elements one by one in order to understand the real meaning. In this situation, lay people can say that it is confusing because if we do not work with one unified notion how we can draw conclusions and set up theories. I can accept these objections from certain aspects but we will see that the apparent fragmentation does not necessary lead to misunderstanding. Only different approaches can explain the complexity of product quality. **Davis Garvin** shares this opinion and points out that the reliance on a single definition is a frequent source of problem.

Due to the different stages of company management, it is better to use multispectral concepts. Nevertheless, it does not mean that everything is solved: unfortunately, these approaches are still vague and imprecise when they try to describe the basic elements of product quality. Besides, the competing perspectives can undermine the remedial efforts: the same process can be viewed in other way related to the applied method. For instance, certain interest groups can argue that a certain measure contributes to the welfare of the employees but another group can emphasise the other side of the story: it endangers the prosperity and the functioning of the company. So it requires a careful way of thinking and planning to reconcile these without ruining the sense of them. **Garvin** suggest that every stage of the company management has its own approach. This way we can avoid the aforementioned conflicts and the complex application of methods can contribute to the effective operation.

¹ Minakshi Jain: Product Quality: Definition, Characteristics and Importance,
<http://www.yourarticlelibrary.com/products/quality/product-quality-definition-characteristics-and-importance/90711/>

² Prof. Tamás János, Dr. Juhász Csaba, Dr. Pregon Csaba, Dr. Nagy Attila, Szöllősi Nikolett, Gerőczy Viktória, Fórián Tünde: Globális környezeti problémák és társadalmi hatásuk II.- 3.2 A minőség fogalma, értelmezése;
http://www.tankonyvtar.hu/hu/tartalom/tamop425/0032_fogyasztovedelem/ch02s02.html

In the light of these, it is useful to overview them one by one. **Garvin** differentiates between **5 approaches** which are the following³:

- transcendent
- product-based
- user-based
- manufacturing-based
- value-based

Almost each of them reflect to the various stages of the supply chain. The only exception is the first one which declares that product quality is an absolute notion. So it is not tangible and also cannot be described properly. I think that we cannot work with philosophical method related to consumer protection. Legal instruments cannot be elaborated on indefinite bases. Only precise notions can contribute to the better understanding of this field and also to the welfare of the consumers.

In contrast with that, the product based approach has completely the opposite idea: quality is a precise and measurable variable. According to this view, goods can be ranked by the desired attribute that they possess. However, it gives a subjective element to the method because it presumes that every buyer has the same preference. In my opinion it is a weird hypothesis. Preferences always based on the human personalities and habits concerned which continuously evolve and change from the beginning of our life. Thus, it can easily happen that person A likes product X in his childhood but not in the age of 45. Therefore, we should take into account these variables when we speak about consumer preferences. Besides, there is another cliché: higher quality always followed by higher cost. Is it really true in every case? People often associate quality with brand items which are naturally more expensive than non-brand products. However, the latter ones can have higher quality in certain cases which are completely excluded by this presumption. Therefore, it again simplifies a significant question. Despite these shortages, I think that this method can be useful in company management.

The next approach, similarly to the first one, is subjective because it only takes into account the preferences of the individual consumer. It means that it seeks to equalize maximum satisfaction with high quality. According to **Garvin**, it generates two problems:

- aggregation of individual preferences

³ David A. Garvin: What does Product quality really mean? in Sloan Management Review, Fall 1984; 25- 28 pages

- distinguishing between those product attributes which connote quality from those that simply maximize consumer satisfaction

The first one was discussed related to the product based approach, so I do not repeat it again. On the other hand, the second one raises interesting questions. Is it a better product which satisfies the consumer the most? According to **Garvin**, it is absolutely not. It can occur that people prefer lower quality instead of high quality. Therefore, in my opinion, the absolutization of consumer satisfaction misleads. The human factor is more complex than the average theoreticians and analysts think. It seems to be that quality is rather a relative notion: it depends on the judgement of the consumers which can be also unlogical in the sense of science.

The manufacturing-based approach focuses on primarily conformance to requirements and avoiding deviation. It acknowledges as the previous method, the interest of consumers but its goal is mainly internal. If we give an opportunity for deviation, it could cause decrease in quality which finally leads to financial loss. Therefore, it is essential to insist on standards which could result in cost reduction. However, it recognizes the role of improvement: sometimes it is better than the reworking or repairing of the product. In my opinion, the weakest point of this view is its rigidity: this policy could result in stagnation in extreme cases. Choosing the safety means giving up the chance to catch up with fashion, trends etc. So it is worth combining this approach with consumer perspectives to be balanced. A good strategist always takes into consideration the change in consumer habits. Since the people are always more flexible than companies: if the product concerned does not meet their expectations, they choose another one.

Last but not least, we have to speak about the value-based approach which gives one of the most radical interpretations of product quality. In connection with this view, it is worth referring to **Garvin** who says the following: *“a quality product is one that provides performance at an acceptable price or conformance at an acceptable cost”*. It clearly shows that the focus is exclusively on the price: quality product cannot be expensive because it would find few buyers. I see some reason in this argument, but I have to point out that this method is again simplification. Even if an item costs dearly, it should not be regarded as non-quality product: some articles are made for the upper class, besides the brand can also contribute to higher costs. Therefore, there is no direct link between quality and price. However, surveys indicate the opposite: it is getting more and more popular, especially in categories as food, clothing, personal care and beauty products. In my opinion it seems to be that in case of everyday items, the quality is not the most important factor. It is much more relevant that we can purchase cheaper. Besides, we can see again that the incalculable consumer habit prevails. It is worth mentioning **Garvin**

who says that the biggest problem with this approach is the lack of well-defined limits and also it is difficult to apply it in practice.

Drawing the conclusion, it is clear that the notion of quality is extremely complex which makes it hard to use one definition. Thus, as we saw, a multipolar approach is more effective. However, there are still doubts what the relationship is between quality and European consumer law.

First, we have to examine the problematic of poor quality to find common points. Because it causes damage not only for the company concerned but also for the consumers. In case of companies, it results in the reduction of sales which decreases the production and the profitability. Besides, it is detrimental to the goodwill of the manufacturer and we all know that trust is one of the most difficult things to be regained. In certain cases the firm has to pay damages for the consumer by virtue of product standards and quality could lead to the endangerment of the human health or even lives. Therefore, these kinds of failures hold significant risks for consumers⁴. It indicates a strong need on both sides of the parties for an effective guarantee system. So it is useful to take a quick skim on that.

Nowadays, in the developed legal systems, several legal institutions evolved to handle these situations, namely:

- **Warranty:** The product shall comply with the conditions stipulated in the contract or in legal instruments at the date of transfer. It means that the burden of proof is on the buyer's side in the period of warranty after the transfer.
- **Guarantee:** the guarantor secures the perfection of the product for a defined period of time. Responsibility of the guarantor starts from the date of transfer. In this case, the burden of proof is reversed. The vendor has to prove that the fault appeared after the transfer.
- **Damages:** It is based on attributable behaviour. Legal actions mainly deal with product liability claim on objective grounds or claims on grounds of guiltiness. According to the judicial practice, the latter one is the stricter.⁵
- **Product liability:** It is a legal responsibility imposed on a company for the manufacturing or selling of defective goods which is based on the idea that no

⁴ Minakshi Jain: op. cit.

⁵ Surányi Miklós: A termékfelelősség alapjai és kockázatai, <http://mek.oszk.hu/01400/01447/01447.htm>

consumers shall be harmed by the products they buy. They are entitled to file a civil lawsuit before state court⁶.

We can see that the scales of legal remedies are relatively high. But it is still difficult for consumers not to be on the losing side. Thus, it is the duty of the states to construct an effective legal environment for them. Therefore, the role of consumer law became more significant nowadays than earlier. This is the situation especially in the member states of the EU where the functioning of the internal market and the consumer protection were interwoven: the latter one became the prerequisite of the effective internal market.

Therefore, in the last part of this chapter, I introduce briefly the common points between product quality and European consumer law.

It is an interesting field of law since it has been formed continuously for the last 40 years. In the beginning of the European integration, it was not an independent policy even the Treaty of Rome did not give any legal grounds for legislative competence. The first document which dealt with the issue was adopted in 1975: Preliminary Programme of EEC. It was unique because it listed for the first time the **core rights of consumers**:

- the right to protection of health and safety
- the right to protection of economic interests
- the right to redress
- the right to be informed
- the right to representation

After that, the development accelerated which materialised in several legal documents such as the 2nd(1981) and the 3rd(1985) European Programme. The Maastricht Treaty was the first treaty which dedicated a single chapter to the issue. Article 100a gave legal basis for introducing measures related to consumer law. In the Amsterdam Treaty this field evolved further: basic consumer rights appeared for the first time in the Founding Treaties. The current legal regime was established by the Treaty of Lisbon which came into force in 2009. The provisions on consumer rights were placed in the TFEU, namely consumer protection in Article 169. It again repeated the classical rights which were drafted for the first time in the Preliminary Programme 1975. Besides, it confirms the role of EU legal bodies in the harmonization of consumer law. It also allow the states to introduce stricter rules than minimum harmonization.

⁶ <http://legal-dictionary.thefreedictionary.com/product+liability>

As we can see, the European integration seeks to improve the level of this field in order to secure the functioning and stability of the internal market. But it is still a question whether we can find the connections to product quality. I think that we should start the examination with the core rights. In connection with them, the 10 principles of consumers also should be mentioned. In the broad sense, it seems to be that almost all of them affect product quality, so we have to make a restriction. By this, the relevant points can be reduced to a reasonable level. According to the 3rd principal, there are strict safety rules for food and consumer goods. It means that the whole supply chain must be checked from the farmers to the distributors. The producer's duty is to withdraw the dangerous product from trade and to notify the competent authorities.

In my opinion, these provisions complete what I said earlier: it is also the producer's interest to avoid poor quality because it entails a lot of costs. Besides, it confirms that safety implies or even requires quality products since the protection of consumers is primary.

If we overview the core rights, we can notice that one of these comprises almost word by word the same: the protection of the health and safety of consumers. In this field, there were several legal instruments adopted almost exclusively directives. It would exceed the extent of this study to analyze all of them. So it is worth emphasising the main schemes to indicate the relationship with product quality.

The **87/357/EEC directive** on the approximation of the laws of the Member states concerning products which appearing to be other than they are, endanger the health or safety of consumers prohibits the production, marketing, import and export of the dangerous food forgeries. The most important document for our topic is the **General Safety Directive(2001/95/EC)** which prescribes general requirements for every products. According to that, it is the producer's duty to ensure the compliance to safety and if it is necessary, to notify the competent authorities. A sanction system was also established in order to secure these provisions. Besides, in order to facilitate the exchange of information in the field of dangerous products between the Commission and the Member States, a Rapid Information System was set up. In extreme cases, the Commission can adopt measures for 1 year by resolutions such as prohibition, special safety rules etc⁷.

It is clear that the EU acknowledged the fact that product quality sticks to the safety and health of consumers. Hence this notion is not an abstract one as the transcendent approach states but it is rather a living one which has an impact on our daily life. Therefore its ensurance is the

⁷ Szolnoki-Nagy Rita: Fogyasztóvédelem az Európai Unióban in Európai Tükör 2014/2; 146-151 pages

common interest of all relevant parties: producers, consumers. But the states are also involved in this issue: their constitutional commitments require regulating this field of law. The EU role is still to facilitate consumer law harmonization by directives but in certain areas, regulations have been already adopted. There is still a debate how we can ensure product quality: by harmonization or unification? The future will definitely give the answer...⁸

Product quality and MEQRs

It is clear from the previous chapter that product quality has a dominant role in European consumer law. Now, it is time to examine it related to the free movement of goods, especially in the field of MEQRs.

At first, it is worth dealing with the basic notions and the framework in order to define the place of product quality in the system. Articles 34 and 35 TFEU declare that quantitative restrictions on export and import as well as MEQR are prohibited between Member States. However, it was the task of the European Court to elaborate these notions which was taken place in the Dassonville case: *“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 MEQR”*.

Just before taking a look at the system of exceptions, it should be noted here that the European Commission adopted the **70/50/EEC directive** related to this issue. It is not in force now but it marks measures relevant to MEQRs which prefer domestic products to import products in special treatment⁹. Based on this directive, I have to point out that the Commission also found significant the fact when Member States prescribe conditions in connection with product quality such as form, size, weight, composition, external appearance etc. Besides, it indicates that there is still no trust in products coming from other Member States. It traces back to the basic problem that the level of consumer protection is different in the states despite the efforts of harmonization. The Lisbon Treaty enables to adopt stringer measures in the field of consumer law which contribute to this situation. Thus, it is inevitable that there is an aim to define product

⁸ Aksamovic Dubravka-Márton Márai: Consumer Acquis, de lege lata, de lege ferenda in Drinóczi Tímea-Takács Tamara: Cross-border and EU legal issues: Hungary-Croatia; Pécs : University of Pécs, Faculty of Law ; Osijek : J. J. Strossmayer University of Osijek, Faculty of Law, 2011 ; 15-19 and 23-26 pages

⁹ Osztovits András: EU-jog, HVGORAC, 2012; 396 p.

quality by Member States. As in other fields of the European law, there are rooms to justify state actions.

Discriminative measures can only be substantiated by contractual exceptions set out by Article 36 TFEU. In case of non-discriminative ones, states can refer to mandatory requirements construed by the Court¹⁰. It is important to emphasise that none of the provisions of the relevant Treaty articles deal with product quality as an option for derogation. So we have to take a look at the case law in order to find how the Court treats these kinds of argumentations.

We start the analysis with the **first group of derogations**, namely:

- public morality
- public policy
- public security
- protection of health and life of humans, animals or plants
- protection of national treasures possessing artistic, historic or archaeological value
- protection of industrial and commercial property

If we follow the analogy set up in the previous chapter, we only have to deal with option 4.

It should be stressed that states often bring it up before the Court¹¹ since it represents also a significant field in constitutional law¹². For instance, according to the Fundamental Law of Hungary, the state shall protect consumer rights(article M). It shall also ensure the GMO-free agriculture and access to healthy food in order to contribute to physical and spiritual healthiness of the citizens(article XX.).

Thus, it is not surprising that they insist on their rights to define the level of protection. **The most frequently applied measures** are the following:

- prohibition of import
- product prescriptions
- prohibition of use of additives related to food
- medical supervisions/scrutinies related to humans, animals and plants
- import permissions or certificates

¹⁰ Szabó Marcel-Láncos Petra Lea-Gyenyey Laura: Az Európai Unió jogi fundamentumai, Szent István Társulat, 2014; 226. old

¹¹Szabó Marcel: op. cit.; 229 p.

¹² Osztovits András: op. cit.; 415 p.

It should be emphasised that these measures can only be applied if there was no scrutiny in the exporter country or the importer country has to execute its scrutiny due to dangerous materials and products¹³.

In order to prevent unjustified restrictions, the Court set up its 3-element criteria system. According to that, the real purpose of state measures must be public health. Pure economic reasons can never be justified. Secondly, this claim must be sustainable if there is no scientific or medical evidence. Finally, it has to meet the Court's proportionality criteria. It means that these actions must be well-founded by relevant data or evidences¹⁴. In my opinion, the last condition is the most difficult one for the Member States: the Court's discretionary competence is broad; almost everything can fall under this category.

Last but not least, it also should be mentioned that if there is no harmonization, it is up to the country to define the level of protection¹⁵. Nevertheless, it does not mean that states have exclusive competence: they cannot restrict the marketing of products from other Member states having the same level of protection¹⁶.

After that, it is worth looking at the case law in order to find common points with product quality. In my opinion, health and quality closely stick together, so it will be interesting to see how the Court settled cases related to this issue. Here, the product quality was dealt within consumer protection. Therefore, I also follow this pattern.

Generally, it can be stated that room for derogations are less than the Member States calculated before. It also should be mentioned that in some cases they tried to conceal their economic interest in the form of consumer protection. However, the Court accepted only those arguments which met its previously elaborated criteria system.

Coming to the point, in **Biersteuergesetz**(C-178/84)¹⁷, **Sandoz**(C-174/82)¹⁸ and **Commission v. Italy**(C-420/01)¹⁹ cases, the question was whether product composition could be prescribed.

¹³ Osztovits András: op. cit.; 415 p.

¹⁴ Paul Craig- Gráinne de Búrca: EU Law, Oxford University Press, 2015; 699-701 pages

¹⁵ Szabó Marcel: same; 229 p.

¹⁶ Pázmándi Kinga : A mennyiségi korlátozásokkal kapcsolatos kérdések az Európai Bíróság gyakorlatában in Ünnepi tanulmányok Balásházy Mária tiszteletére, 2010

¹⁷ C-178/84, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61984CJ0178>

¹⁸ C-174/82,

<http://curia.europa.eu/juris/celex.jsf?celex=61982CJ0174&lang1=en,t,f&lang2=EN&type=TXT&ancre=>

¹⁹ C-420/01, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62001CC0420>

It is obvious that Member State did not want to give up their rights defining product quality which is a key factor in consumer protection. The Court examined these cases rather in respect of the free movement of goods than consumer protection. Therefore, the only question was whether the proportionality principle was fulfilled or not. As I already mentioned, there is a wide scale of discretionary competence in this field. Thus, it is not surprising to me that only the Sandoz case met these criteria.

Sandoz wanted to sell muesli bars contained vitamins in the Netherlands but it was rejected by the state on the grounds of endangering public health. The Court accepted this argument because of scientific uncertainty: it is on the Member State's duty to decide the level of protection. For lay people, it seems to be that the EU clearly chose the side of its interest. However if we look these cases thoroughly, we should see that the hidden goal was to promote domestic products. They used consumer protection as a tool to back their claims. This was also confirmed in **Commission v. UK**²⁰ where poultry meat importation was banned from other Member States to prevent Newcastle disease. But the Court ruled that the main reason was to block French meat.

All of this points out that without appropriate data or evidences; there is no chance to justify these measures. Mere bulk of argumentations will be immediately refused.

After that, we have to take a look at the second group of derogations, namely the mandatory requirements.

As we saw, the criteria system of Article 36 TFEU was considerably strict: it was difficult to comply with the requirements. Thus, the Court formulated step by step other ways of justifications in order to mitigate the rigidity of the regulation. Its cornerstone was laid down in **Cassis de Dijon** where the following statement was made: *“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”*²¹. Later, this list extended with other exceptions such as environmental protection, media pluralism, supply of the local population, road safety, social

²⁰ C-40/82, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61982CJ0040\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61982CJ0040(01))

²¹ C-120/78, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A61978CJ0120>

security²², improvement of working conditions, fight against crime and protection of animal welfare²³.

However it must be stressed that they can be applied only to indistinctly applicable measures and the list is not exhaustive. Besides, the mandatory requirements were criticised in the recent years. Some author raised concerns whether provisions of Article 36 TFEU should have been exhaustive.

Others argued that the whole system had to be revised: same justifications for discriminatory and indistinctly applicable measures²⁴. Further phenomenon is that the Court seeks to classify directly discriminatory measures as indistinctly applicable in order to use mandatory requirements. It is aid that *“the Court is now moving away from its traditional categorisation of the mandatory requirements towards acceptance that they should be treated in the same way as the grounds of justification expressly set out in Article 30 EC(now article 36 TFEU)”*²⁵.

In my opinion, the development of the jurisprudence was necessary in order to react to the flexibility of the cases concerned. For instance, the contractual exceptions contain no direct provisions for consumer protection, only implied one. As a result, it was difficult for the Member States to substantiate their claims. However, consumer law is getting more and more important in the EU(see previous chapter), so it was the Court’s duty to handle this disparity. Moreover, this exception is the most referred one by Member States since they want to maintain their national regulations which ensure certain level of product quality²⁶.

First of all, the so called labelling cases should be mentioned. Here, countries argued that certain names could be confusing for consumers. For instance, in the **Rau case**²⁷, Belgium prescribed that margarine had to be packaged in cube shape in order to prevent confusion between margarine and butter. In **Commission v. Italy**²⁸, the government enabled the variety name “vinegar” only for wine-vinegar due to the habits of Italian consumers. The Court refused these

²² Osztovits András: op. cit.; 418 p.

²³ Free movement of goods,

<http://ec.europa.eu/DocsRoom/documents/104/attachments/1/translations/en/renditions/pdf>, 29-30 pages

²⁴ Paul Craig- Gráinne de Búrca: op. cit.; 704-705 p.

²⁵ Anthony Dawes: A freedom reborn? The new yet unclear scope of article 29 EC in (2009) 34 European Law Review, August; 643-645 p.

²⁶ Osztovits András: op. cit., 419 p.

²⁷ C-261/81, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61981CJ0261>

²⁸ C-193/80, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61980CJ0193>

arguments and held that these measures violated the principle of proportionality. According to its rulings, putting labels on the relevant products would be enough to facilitate distinguishing between them.

Another question was whether Member States could prohibit the marketing of certain products due to its composition. In **Cassis de Dijon**²⁹, the German regulation prescribed that every fruit liqueur had to contain at least 25% alcohol concentration. But the French liqueur concerned did not meet this requirement since it had only 15-20% alcohol concentration. Germany based its argumentation on 2 pillars: public health and consumer protection. The Court rejected that and pointed out that this measure accomplished trade restriction which could not be justified. It must meet the proportionality criteria. Besides, it elaborated the principle of mutual recognition. It followed this pattern, even in harsher cases. For instance, **France**(C-25/88)³⁰ prescribed that every person has criminal responsibility for product description, who marketed a certain product in case of for the first time, being in contrast with reality. The producer had to bear the consequences in respect of French products but in case of imported one, it was the distributor. The Court ruled again that it could not be substantiated by consumer protection because of violating the proportionality principle which prevented distributors from marketing imported products.

In my opinion, these cases indicate that consumer protection is not a universal justification even in case of mandatory requirements. It is more important whether the measures concerned meet the 3-element criteria system. It should be mentioned that product quality was not analyzed in the examined cases by the Court. I think that it would have been contributed to the better understanding of the notion and also to the more effective enforcement of the European law. Besides, it is observable that the Court puts emphasis on removing every possible obstacle from the free movement of goods. Therefore, economic interests have priority before consumers in most of the examined cases. Despite these facts, I do not think that it tries to neglect consumers: it is the duty of the states to create efficient legal environment and not to conceal pure economic interest in the form of consumer protection.

²⁹ C-120/78, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A61978CJ0120>

³⁰ C-25/88, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61988CJ0025&from=FR>

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