

Case 121/85

Conegate Limited

v

HM Customs & Excise

(reference for a preliminary ruling
from the High Court of Justice)

(Restrictions on imports — Grounds of public morality)

Summary

1. *Free movement of goods — Derogations — Grounds of public morality — Prohibition on the importation of goods considered to be indecent or obscene — Permissibility — Condition — Prohibition on the manufacture and marketing of the same goods on the national territory — Differences in the laws in force in the territory of the same Member State — Overall assessment*
(EEC Treaty, Art. 36)
2. *International agreements — Agreements of the Member States — Agreements concluded prior to the EEC Treaty — Article 234 of the Treaty — Object — Scope — Justification of restrictions in intra-Community trade — Not acceptable*
(EEC Treaty, Art. 234)

1. A Member State may not rely on grounds of public morality within the meaning of Article 36 of the EEC Treaty in order to prohibit the importation of certain goods on the ground that they are indecent or obscene when its legislation contains no prohibition on the manufacture and marketing of the same goods on its territory.

The question whether such a prohibition exists in a State comprised of different constituent parts which have their own internal legislation can be resolved only by taking into consideration all the relevant legislation. Although it is not necessary, for the purposes of the application of Article 36, that the manufacture and marketing of the products whose

importation has been prohibited should be prohibited in the territory of all the constituent parts, it must at least be possible to conclude from the applicable rules, taken as a whole, that their purpose is, in substance, to prohibit the manufacture and marketing of those products.

That is not the case of rules under which such goods may be manufactured freely and marketed subject only to an absolute prohibition on the transmission of such goods by post, a restriction on their public display and, in certain areas, a system of licensing of premises for the sale of those goods to customers aged 18 years and over.

2. Article 234 of the EEC Treaty must be interpreted as meaning that an agreement concluded prior to the entry into force of the EEC Treaty may not be relied upon in order to justify restrictions on trade between Member States. That provision, which is intended to ensure that the application of the Treaty does not affect either the duty to observe the rights of non-member countries under an agreement previously concluded with a Member State, or the observance by that Member State of its obligations under that agreement, concerns only the rights and obligations established between the Member States and non-member countries.

OPINION OF ADVOCATE GENERAL
SIR GORDON SLYNN
delivered on 21 January 1986

My Lords,

On 7 and 11 October 1982 Conegate Ltd. sought to import into the United Kingdom through Heathrow Airport a number of articles which were described on the air waybills and the invoices as 'window display models'. The company has contended that, because of their realistic physical features, they were sold for use as models for the display of ladies' dresses and underwear. The customs authorities however inspected the consignments and found that they contained a number of rubber dolls inflatable to life size and variously described as 'Love Love Dolls', 'Miss World Specials'

and 'Rubber Ladies'; there were in addition a number of what are called 'Sexy Vacuum Flasks'.

The customs authorities seized the articles as being indecent or obscene within the meaning of Section 42 of the Customs Consolidation Act 1876 and thereby liable to forfeiture under the Customs and Excise Management Act 1979. In proceedings, which are civil in nature, they obtained an order from magistrates on 11 May 1983 that the goods be forfeited, an order which was upheld on appeal by the Crown Court. Both the Magistrates' Court and the Crown