

Press and Information Division

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Judgments in Cases C-12/00 and C-14/00

Commission v Spain and Italy

**SPAIN AND ITALY ARE FOUND TO HAVE WRONGLY PROHIBITED THE
MARKETING UNDER THE NAME ‘CHOCOLATE’ OF PRODUCTS
CONTAINING VEGETABLE FATS OTHER THAN COCOA BUTTER**

*The addition of those fats does not alter the nature of the product and an indication in
the label would inform consumers of their presence*

Chocolate manufactured in Denmark, Ireland, Portugal, Sweden, Finland and the United Kingdom complies with the minimum content for cocoa butter laid down in a 1973 directive¹ but contains vegetable fats other than cocoa butter up to a maximum of 5% of total weight. For that reason, Spain and Italy, in contrast to all the other Member States, prohibit the marketing of those products under the name ‘chocolate’, requiring them to be marketed as ‘chocolate substitutes’.

The Commission maintains that the 1973 directive allows the manufacture and marketing of chocolate products containing vegetable fats other than cocoa butter. It takes the view that the obligation to market those products in Spain and Italy as ‘chocolate substitutes’ therefore gives rise to a restriction on the principle of the free movement of goods enshrined in the EC Treaty.

Spain and Italy, for their part, submit that the 1973 directive definitively regulates which products can be sold under the name ‘chocolate’ and that products containing such vegetable fats are not among those. They maintain that their legislation is based on the need for consumer protection.

The Court finds, first, that the purpose of **the 1973 directive** is to lay down **common rules** in order to ensure the free movement of chocolate products within the Community. However, as regards the use of vegetable fats other than cocoa butter in those products, the legislature merely established **provisional rules**.

¹) Directive 73/241 on the approximation of the laws of the Member States relating to cocoa and chocolate products intended for human consumption.

In particular, the directive **expressly allows Member States to maintain national rules authorising or prohibiting the addition** of vegetable fats other than cocoa butter to products manufactured within their territory. The Court points out, however, that **Member States may not impose conditions contrary to the principle of the free movement of goods.**

The Court holds that **the requirement to alter the sales name** of the products in question to 'chocolate substitutes' may compel traders to incur additional packaging costs and, in any event, may adversely affect how customers perceive those products. That would lead to restrictions on the free movement of goods.

Nevertheless, the Court notes that such restrictions may be necessary in order to satisfy overriding requirements relating *inter alia* to consumer protection, in so far as they are applicable to domestic and imported products alike and are proportionate to the objective pursued.

The Court has already drawn a distinction between two situations:

-) the product has undergone substantial modification in terms of its composition, which makes it different from the products understood as falling within that description;
-) the product has undergone modifications of minor importance, so that appropriate labelling would be sufficient to provide the consumer with the necessary information.

The Court finds that, according to the 1973 directive, **the characteristic element of all products bearing the name 'chocolate' is the presence of a certain minimum cocoa and cocoa butter content. The addition of vegetable fats does not substantially alter the nature of those products.** Accordingly, **appropriate labelling** which notes the presence of vegetable fats other than cocoa butter **would be sufficient to ensure that consumers are informed, and thus protected.**

In those circumstances, **the Court holds that the Spanish and Italian rules are disproportionate and infringe the principle of the free movement of goods.**

NB: Directive 2000/36, which must be transposed by August 2003, contains provisions which authorise the addition of vegetable fats other than cocoa butter up to a maximum of 5%.

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