

Case C-443/02

Criminal proceedings against Nicolas Schreiber

(Reference for a preliminary ruling
from the Tribunale di Pordenone)

(Article 28 EC — Directive 98/8/EC — Placing of biocidal products on the market —
National measure requiring authorisation for the placing on the market of blocks of
red cedar wood having natural anti-moth properties)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 12 February
2004 I - 7278
Judgment of the Court of Justice (First Chamber), 15 July 2004 I - 7296

Summary of the Judgment

1. *Approximation of laws — Restriction on the marketing of certain dangerous substances and preparations — Directive 98/8 concerning biocidal products — Concept of biocidal*

products — Blocks of red cedar wood — Included — National measure requiring prior authorisation for placing on the market — Whether permissible

(Directive 98/8 of the European Parliament and of the Council, Arts 2(1)(a) and 3(2)(ii))

2. *Approximation of laws — Biocidal products — Directive 98/8 — Product placed on the market in a Member State without prior authorisation — Legislation of another Member State requiring authorisation for the marketing of that product — Whether permissible*

(Directive 98/8 of the European Parliament and of the Council, Art. 4(1))

3. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — National legislation prohibiting the placing on the market of biocidal products without prior authorisation — Justification — Protection of public health — Proportionality of the measure — Whether permissible*

(Arts 28 EC and 30 EC)

1. Article 3(2)(ii) of Directive 98/8 concerning the placing of biocidal products on the market does not preclude a Member State from requiring prior authorisation for the marketing of blocks of red cedar wood having natural anti-moth properties.

sold as an anti-moth product containing an active substance that repels moths and are mentioned on the list of biocidal products drawn up under Annex V to that directive. In this respect, the fact that the repellent effect of the active substance is natural does not obviate the need for the blocks in question to be classified as 'biocidal products'.

Such blocks cannot be classed as a product containing only a 'basic substance' used for biocidal purposes such that they may be placed on the market in a Member State without prior authorisation or registration, but must be classed as a 'biocidal product' within the meaning of Directive 98/8 if they are

(see paras 28, 30, 32, 33, operative part 1)

2. Article 4(1) of Directive 98/8 concerning the placing of biocidal products on the market does not preclude a Member State from requiring prior authorisation for the marketing of blocks of red cedar wood having natural anti-moth properties, which have been lawfully placed on the market in another Member State in which there is no requirement of authorisation or registration.

(see para. 39, operative part 2)

having natural anti-moth properties, which have been lawfully placed on the market in another Member State in which there is no requirement of authorisation or registration, constitutes a measure having equivalent effect contrary to Article 28 EC, which may nevertheless be regarded as justified on grounds of the protection of public health under Article 30 EC when such an authorisation system corresponds to the level of protection of public health that the Member State concerned intends to assure, in that it concerns the placing on the market of all biocidal products and is thus not disproportionate to that objective.

3. A national system requiring prior authorisation for the placing on the market of blocks of red cedar wood

(see paras 49, 50, operative part 3)