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Consumer Protection and Misinterpretation of Cassis de Dijon

The decision in what has become known as the *Cassis de Dijon case*[1] turns on the single phrase in paragraph 9, "defense of consumer." *Cassis* defines this as a legitimate exception to the mutual recognition doctrine. Because this clause was inserted alongside another significant exception – public health issues – I think "defense of consumers" was meant to mean a type of serious fraud perpetrated upon consumers that would be grave enough to be prohibited. However since the Court did not elaborate just exactly what it meant by the phrase, it left the door wide open for the flurry of lawsuits that followed. In each of the cases we read, the ECJ upholds the *Cassis* principle of mutual recognition and free movement of goods almost without considering the unique circumstances of the individual cases.

I agree with the decision in *Cassis*. I think the ECJ correctly determined that if a product is made to a legally acceptable standard in its own country, there is no reason bar the import of cassis to other member states, even if those states have slightly different standards, as France and Germany have in this instance.

It's interesting that the United States Supreme Court case, *Hunt v. Washington State Apple Advertising Commission*, [2] is included in this set of readings. *Hunt* highlights what I think the ECJ mean to enunciate in *Cassis,* but did not. The Supreme Court held that the burden on Washington apple growers favored North Carolina growers and was a form of protectionism.

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[1] *Rewe -Zentral v. Bundesmonopolverwaltung fur Branntwen,* Case 120/78 [1979] ECR 649
[2] *Hung v. Washington State Apple Adversiting Commission*, 432 U.S. 333 (1977)

I think the court stumbles when it tries to force the *Cassis* doctrine on every importation dispute without taking into account the totality of circumstances in the individual case.

Rather than work to refine *Cassis,* the ECJ is almost completely inflexible in its interpretation of the *Cassis* doctrine, perhaps to impress the importance of mutual recognition and free movement of goods. However, I think the court should have adopted a more flexible attitude in situations where requirements by member states won't place an undue burden on foreign manufacturers and will actually benefit local consumers. *Commission v. Ireland* [3] and *Commission v. United Kingdom*[4] seem to be overly strict and unnecessary enforcements of *Cassis.* The United Kingdom's argument that consumers -- as well as importers -- would probably fare better in the single market if they knew "whether leather shoes have been made in Italy, woolen knitwear in the United Kingdom, fashionwear in France and domestic electrical products in Germany.[5] The court rejects this theory stating labeling decisions should not be a bar to mutual recognition and free movement. In *Commission v. Ireland*, the ECJ also upheld the *Cassis* doctrine ruling it was permissible for any member state to manufacture and market certain Irish souvenirs.

I understand the need for the ECJ to impress the importance of mutual recognition upon the Member states and discourage any sort of protectionism. However I don't think blindly applying the *Cassis* doctrine in its entirety in each case is the correct solution to individual importation issues.

[3] *Commission v. Ireland*, Case 113/80 [1981] ECR 1625
[4] *Commission v. United Kingdom* Case 207/83 [1985] ECR 1201
[5] *Id.,* 19.