

John Walker & Sons Ltd

v

Ministeriet for Skatter og Afgifter

(reference for a preliminary ruling  
from the Østre Landsret)

(Taxation of spirits — Fruit wine of the liqueur type)

Summary

1. *Tax provisions — Internal taxation — Prohibition of discrimination between imported products and similar domestic products — Similar products — Concept — Interpretation — Criteria — Scotch whisky and fruit wine of the liqueur type (EEC Treaty, Art. 95, first paragraph)*
2. *Tax provisions — Internal taxation — System of differential taxation — Permissibility — Conditions — Pursuit of objectives that are compatible with Community law — No discriminatory or protective effect (EEC Treaty, Art. 95)*

1. In order to determine whether products are similar within the terms of the prohibition laid down in the first paragraph of Article 95 of the Treaty, it is necessary to consider whether they have similar characteristics and meet the same needs from the point of view of consumers. As the concept of similarity must be given a broad interpretation, the similarity of products must be assessed not according to whether they are strictly

identical but according to whether their use is similar and comparable.

Hence, in order to determine whether two categories of beverages are similar, it is necessary first to consider certain objective characteristics, such as their origin, the method of manufacture and their organoleptic properties, in particular taste and alcohol content, and secondly to consider whether or not both

categories of beverages are capable of meeting the same needs from the point of view of consumers.

It is clear from a comparison of Scotch whisky and fruit wine of the liqueur type, which is based on those criteria, that they are not similar products.

2. At its present stage of development Community law, in particular the second paragraph of Article 95 of the Treaty, does not restrict the freedom of each Member State to lay down tax arrangements which differentiate between certain products on the basis of objective criteria, such as the nature of the raw materials used or the production

processes employed. Such differentiation is compatible with Community law if it pursues objectives of economic policy which are themselves compatible with the requirements of the Treaty and its secondary legislation, and if the detailed rules are such as to avoid any form of discrimination, direct or indirect, in regard to imports from other Member States or any form of protection of competing domestic products. A system of taxation which differentiates between certain beverages does not unduly favour domestic producers where a significant proportion of domestic production of alcoholic beverages falls within each of the relevant tax categories.

OPINION OF MR ADVOCATE GENERAL  
VERLOREN VAN THEMAAT

(see Case 106/84, p. 834)