

# Joined Cases C-267/91 and C-268/91

## Criminal proceedings against Bernard Keck and Daniel Mithouard

(Reference for a preliminary ruling  
from the Tribunal de Grande Instance, Strasbourg)

(Free movement of goods — Prohibition of resale at a loss)

Report for the Hearing .....	I - 6099
Opinion of Advocate General Van Gerven delivered on 18 November 1992 .....	I - 6110
Opinion of Advocate General Van Gerven delivered on 28 April 1993 .....	I - 6117
Judgment of the Court, 24 November 1993 .....	I - 6126

### Summary of the Judgment

*Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Concept — Obstacles to trade resulting from disparities between national legislation laying down requirements to be met by goods — Included — Obstacles resulting from national provisions regulating selling arrangements in a non-discriminatory way — Inapplicability of Article 30 of the Treaty — Legislation prohibiting resale at a loss  
(EEC Treaty, Art. 30)*

Any measure which is capable of directly or indirectly, actually or potentially, hindering intra-Community trade constitutes a measure having equivalent effect to a quantitative restriction, prohibited between Member States by Article 30 of the Treaty.

That definition covers obstacles to the free movement of goods which, in the absence of harmonization of legislation, are the consequence of applying to goods coming from other Member States where they are lawfully manufactured and marketed, rules that lay down requirements to be met by such goods (such as those relating to designation, form, size, weight, composition, presentation, labelling, packaging). This is so even if those rules apply without distinction to all products unless their application can be justified by a public-interest objective taking precedence over the free movement of goods.

By contrast, the application to products from other Member States of national provisions

restricting or prohibiting certain selling arrangements is not such as to hinder trade between Member States, within the meaning of that definition, so long as those provisions apply to all relevant traders operating within the national territory and so long as they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States. Provided that those conditions are fulfilled, the application of such rules to the sale of products from another Member State meeting the requirements laid down by that State is not by nature such as to prevent their access to the market or to impede access any more than it impedes the access of domestic products. Such rules therefore fall outside of Article 30 of the Treaty.

It follows that Article 30 of the Treaty is to be interpreted as not applying to legislation of a Member State imposing a general prohibition on resale at a loss.