ABSTRACT. The purpose of this paper is to examine the extent to which the Treaty on European Union agreed at Maastricht will alter European Community consumer protection law and policy. Two aspects of the Treaty have attracted most interest from the consumer viewpoint: the potential forward impetus resulting from the inclusion in the Treaty of a specific Title devoted to consumer protection and the potential reverse impetus of the principle of subsidiarity. The paper surveys the broad scope of Community consumer protection law and policy and analyses subsidiarity as a means for sharpening the debate about responsibility for regulating the Community, not as a basis for renationalisation of Community competence. The paper attempts to build alongside the process of market integration a set of enforceable consumer rights to market regulation. This, more than the new Title, could give real shape to the notion of consumer rights, which in the earlier development of Community law has arisen only in the context of the consumer as the passive beneficiary of free trade.

MARKET INTEGRATION AND THE CONSUMER

The Concealed Place of Consumer Policy in the Treaty of Rome

Although explicit reference to the consumer is largely absent from the Treaty of Rome,¹ the Treaty proceeds on the basis that the consumer is the ultimate beneficiary of its economic objectives. The transformation of relatively small-scale national markets into a large single Community market will stimulate competition and induce producers to achieve maximum efficiency in order to protect, and a fortiori to expand, their market share. As a matter of economic theory, this intensification of competition should serve the consumer by increasing the available choice of goods and services, thereby inducing improvements in their quality and reduction in their price.

The Treaty offers no catalogue of consumer rights or interests which exists independently of the general notion that the consumer will benefit from the process of market integration. In this sense Community consumer law revolves around the application of the substantive provisions of the Treaty which act as an instrument for the achievement of the economically efficient integrated market. Provisions such as Articles 30, 48, 52 and 59, which are designed

to remove barriers to the free circulation of goods, persons and services, and Articles 85, 86 and 90, the Treaty provisions which regulate the competitive conduct of commercial firms, are indirectly part of EC consumer law and policy.

Consumer Choice in the Court’s Jurisprudence

On occasion, the Court has made explicit its view that one of the functions of substantive Community law is to abolish national rules which restrict consumer choice in favour of a freer market where widened consumer choice may act as a spur to the development of an efficient Community-wide market. The Court has declared that the legislation of a Member State must not crystallize given consumer habits so as to consolidate an advantage acquired by national industries concerned to comply with them.

The Court has employed this phrase both in the context of fiscal rules which favour typical national products and technical rules which exert a similar protectionist effect. In De Kikvorsch Groothandel the Court considered the compatibility with Article 30 of a Dutch rule which required beer marketed in the Netherlands to be made according to stipulated typical Dutch techniques. Such a rule impeded the marketing in the Netherlands of imported beers made according to different traditions. The Court insisted on the primacy of consumer choice over State regulation as a determinant of market availability. It declared that no consideration relating to the protection of the national consumer militates in favour of a rule preventing such consumers from trying a beer which is brewed according to a different tradition in another Member State and the label of which clearly states that it comes from outside the said part of the Community.

Consumer choice has also played a part in the interpretation of the application of the Treaty competition rules. In Cooperatieve vereniging Suiker Unie UA and others v Commission arrangements which led to the isolation of national markets from cross-border competition were condemned. The Court ruled such practices to be “to the detriment of effective freedom of movement of the products in the common market and of the freedom of consumers to choose their suppliers.”