Editorial

Buy-National Policies Are Still Bad For You

The judgement in Case C-243/89 *Commission* v. *Denmark* on 22 June 1993 on the Storebaelt bridge procurement saga, though somewhat for the record in view of the undertaking offered by the Danish government during the hearing on 22 September 1989 (which, also for the record, is included in the text of the judgement) is a useful reminder of the strict attitude which Community law takes towards buy-national policies or practices by national or local authorities or other bodies for whose acts the States are in Community law responsible. Outside the somewhat special circumstances of the agricultural sector in which there is often a fine dividing line between the promotion of (typically) local produce because of its qualities for certain purposes and outright or even more subtle promotion of the produce because of its origin, the Court and the Commission have consistently condemned attempts to protect the local market place by giving preference to local goods or services. Thus local authorities must not give preferential rate car loans to those who buy "British" cars; ministers must not make speeches encouraging people to buy Irish goods; licenses for exploration and exploitation rights in the North Sea may not be awarded by the Secretary of State on the basis of the extent to which tenderers intend to use or have used British goods and services; local authorties may not be obliged to source a percentage of their supplies requirements from companies established in a particular region, and national compulsory origin-marking rules are perceived as encouraging consumers to resurrect pro-national prejudices and thus as detrimental to imported products. The Court's attitude to local grab rules in relation to a requirement to recruit a percentage of the workforce for a particular contract from the long-term unemployed registered at a particular office has been rather more flexible; as long as there is no discrimination on grounds of nationality such a requirment does not infringe Community law (Case 31/87 *Beentjes* [1988] ECR 4635).

Despite all the rhetoric about commitment to an open market there appears to be little let-up in the stream of complaints and cases dealing with national preferences. Judgements such as that in the Storebaelt case serve as a timely reminder to politicians and lawyers alike that the fundamental freedoms of the EEC Treaty are to be taken seriously and must be strictly adhered to. Given that it is now accepted that damages can be sought for loss sustained by breaches of Community law by public authorities, it will be interesting to see whether the incidence of infringements of Article 30 EEC starts to decline. National civil servants sometimes tend to try to 'pooh-pooh' judgements of the Court which are merely declaratory (an example in the recent condemnation of the United Kingdom in relation to Blackpool Beach – a case in which Xavier Lewis invoked his granny's holiday habits in answer to the argument that Blackpool's beaches were not bathing beaches and in doing so made the front page of *The Times*). Where, however, a financial sanction may be sought in the form of damages their tune tends to change. Precisely what the measure of damages is and what is to be taken into account in calculating loss is now the subject of a reference to the Court of Justice (*Factortame III*). When that case is decided it may be expected that the line will be toed, if reluctantly, with rather more care.

Laurence Gormley