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Environmental protection and food self-sufficiency as justifications for state campaigns that enhance consumer ethnocentrism

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1. INTRODUCTION	3
2. CLIMATE CHANGE AND FOOD CRISES AS A CHALLENGE FOR GLOBAL FREE TRADE.....	5
3. ETHNOCENTRIC MARKET CAMPAIGNS OF EU MEMBER STATES	7
4. ETHNOCENTRIC CAMPAIGNS AS A BARRIER TO FREE MOVEMENT OF GOODS	13
5. ENVIRONMENTAL PROTECTION AS A JUSTIFICATION FOR BUYING DOMESTIC GOODS.....	16
6. FOOD SELF-SUFFICIENCY AS A POTENTIAL DEROGATION FROM FREE MOVEMENT OF GOODS PRINCIPLE.....	21
6.1. General observations	21
6.2. Food self-sufficiency and food security	22
6.3. Food security as a derogation from free movement of goods principle	25
7. PROMOTIONAL CAMPAIGNS AT THE EU LEVEL	28
8. CONCLUSION	31

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1. INTRODUCTION

In the last few decades consumers are becoming progressively concerned with their cultural and ethnic identities. As found by Vida and Fairhurst *"(t)hese ethnic sentiments are reflected in consumer behaviour through an inclination towards domestic products- ethnocentric consumer orientation- or towards imported products- polycentric consumer orientation."*² Some authors suggest that ethnicity and nationalism are some of the strongest motives in the behaviour of the modern market.³ In this respect a concept of consumer ethnocentrism was introduced by the American sociologist Sumner who defined it as *"the technical name for (the) view of things in which one's own group is the centre of everything, and all others are scaled and rated with reference to it."*⁴ He further characterized it as often leading to pride, vanity, beliefs of one's own group's superiority, and contempt of outsiders. In the research of consumer opinions towards foreign products a concept of *consumer ethnocentrism* was established representing *"beliefs accepted from the consumer about the appropriateness, that is, morality of the purchase of foreign products."*⁵ Ethnocentric consumers object to imported goods because they

² Vida, I., Fairhurst, A., *Factors underlying the phenomenon of consumer ethnocentricity: evidence from four central European countries*, International Review of Retail and Consumer Research, vol. 9, no. 4 (1999), pp. 321-37, at 322.

³ Keillor, B. D., Hult, T. G. M., *A five country study of national identity, implications for international marketing research and practice*, International Marketing Review, vol. 16, no.1, (1999), pp. 65-82.

⁴ Sumner, W. G., *Folkways*, Ginn, New York, 1906, p.13.

⁵ Shimp defines consumer ethnocentrism as a concept, where consumers believe in *»the superiority of their own countries' products. This perception is postulated to transcend mere economic and functional considerations, and, instead, to have a more noble foundation rooted in morality. That is, consumer ethnocentrism is intended to capture the notion that some consumers believe it is somehow wrong to purchase foreign-made products, because it will hurt the domestic economy, cause the loss of jobs, and, in short, because, from their view, it is plainly unpatriotic.«* - Shimp, T.A., *Consumer ethnocentrism: the concept and a preliminary empirical test*, Kinnear (ed.), *Advances in Consumer Research*, Provo, UT, Association for Consumer Research, vol. 11 (1984), p. 285.

are harmful to the national economy and cause unemployment, and therefore consider the purchase of imported goods to be an unpatriotic act.⁶

Various stakeholders at the global and EU level (trade unions, associations of entrepreneurs and state authorities) tend to turn the consumers' division and hesitation between ethnocentric and polycentric orientation towards the former, thereby protecting their respective workplaces, profit and budget's incomes. For this purpose they promote various "*buy domestic*" and "*buy local*" campaigns, national quality labels on the products etc., thus trying to protect the national economy to the detriment of foreign goods and services. Such campaigns that encourage the purchase of national products in preference to imported products have a long history around the globe. This is especially true for the food sector, where quality of the goods cannot always easily be recognised, while also considering that food is closely related to the land, nation's survival, prosperity and public security.

In the recent years, when we are facing three coincident crises (economic, food and environmental), these campaigns are particularly wide-spread, foremost in the central EU. However, such intentional boosting of consumer ethnocentrism contravenes the central idea of the EU single market. The Court of Justice of the European Communities⁷ found in the famous case *Buy Irish* that "*Ireland has (...) failed to fulfil its obligations under the Treaty by organizing a campaign to promote the sale and purchase of Irish goods within its territory*",⁸ thereby prohibiting state boosting of negative stereotypes against imported goods. For this reason this finding presents one of the cornerstones of the EU single market. However, the lack of solidarity and the rise of populism in many EU countries, which according to Weiler brought the EU to its "*lowest point in history*",⁹ jeopardise this achievement of EU market law.

⁶ Shimp, T. A., Sharma, S., *Consumer ethnocentrism: construction and validation of the CETSCALE*, Journal of Marketing Research, vol. 24, no. 3 (1987), p. 280. Shimp and Sharma developed a scale based on seventeen items called CETSCALE (Consumer Ethnocentric Tendencies Scale) the purpose of which is to estimate the degree of ethnocentric tendencies among consumers.

⁷ After the Treaty of Lisbon called »*the Court of Justice*«, henceforth »*the Court*« or "*the EU Court*".

⁸ Case 249/81, Commission v Ireland, [1982] ECR I-4005, para. 30.

⁹ EU has reached its 'lowest point in history', EurActiv, 10.5.2011, <http://www.euractiv.com/en/future-eu/eu-reached-lowest-point-history-news-504666> (31.7.2014).

The article explores, to what extent environmental protection and , food self-sufficiency could become a legitimate reason to justify national campaigns of the EU Member States that try to increase consumer ethnocentrism. It is argued that in the light of the recent food crises food self-sufficiency could present a new circumstance, in which the principle of free movement of goods, particularly of the food, is currently situated and that affects interpretation of this freedom. In this respect, in a recent Green Paper¹⁰ the Commission apparently adopted a new approach towards the local and regional food markets, by expressly recognising the importance of short distribution channels for the national tradition, foods security and climate change prevention. This “new approach” could have considerable consequences for the legitimacy of national initiatives to promote domestic purchase and thereby increasing food self-sufficiency of the Member States.

2. CLIMATE CHANGE AND FOOD CRISES AS A CHALLENGE FOR GLOBAL FREE TRADE

Climate change, which is dominated by human influences that considerably exceed the bounds of natural variability, is seriously influencing global free trade. The main source of global climate change is human-induced changes in atmosphere that result from emissions associated with energy use, urbanisation and land use changes.¹¹ Climate has varied naturally in the past, but today’s circumstances are unique because of human influences on atmospheric composition.¹² Although there is still considerable uncertainty about the rates of change that can be expected, it is clear that these changes will be increasingly manifested and the likely outcome of this process is more frequent heat waves, droughts, extreme precipitation events and related impacts (such as wild fires, heat stress, vegetation changes, and sea level rise). Distinguished climate analysts Karl and Trenbert say that “(w)e are venturing into the unknown with climate, and its associated impacts could be quite disruptive”,¹³ while the Nobel prize winner Al Gore is stressing that:

¹⁰ Green Paper on promotion measures and information provision for agricultural products: a reinforced value-added European strategy for promoting the tastes of Europe, COM (2011) 436 final.

¹¹ Karl, T.R., Trenberth, K.E., Modern Global Climate Change, Science, Vol. 302 (2003), no. 5651, p. 1719.

¹² Ibidem, p. 1721.

¹³ Ibidem, p. 1719.

“Each passing day brings yet more evidence that we are now facing a planetary emergency a climate crisis that demands immediate action to sharply reduce carbon dioxide emissions worldwide in order to turn down the earth's thermostat and avert catastrophe.”¹⁴

One of the main sources of carbon emissions is transport – of people, but even more transport of large quantities of goods across and between the continents. Efforts to reduce emissions from transport might therefore justify reduction of long-distance transport of goods when local substitutions are available and thereby considerably affect international trade in goods.

Additionally, crisis on commodity markets – including energy, metals and minerals, agriculture and food – is another challenge for free trade. These markets have exposed increased instability and unprecedented movements of prices in recent years. Prices in all major commodity markets reached a peak in 2008 and in 2011.¹⁵ These developments are the result of a series of changes in global supply and demand patterns as well as short term shocks. In addition, commodity markets are increasingly related to the financial markets and crisis on the financial markets inevitably leads to the crisis on the commodity markets.¹⁶ As regards the food market, that is most significant for this article, the price hikes caused a rapid increase in consumer food prices and although in the EU hunger is not a wide-ranging problem, high food prices reduced EU household purchasing power, especially damaging low income households.¹⁷

All these factors influence national food policies that are intensively oriented towards the increase of national self-sufficiency, which would isolate the countries from the turbulence in food prices on the international markets or in extreme circumstances even protect their nationals

¹⁴ Gore, A., Finding Solutions to the Climate Crisis, Transcript of the lecture at the New York University Law School, 18.9.2006, <http://www.astrosurf.com/luxorion/climate-crisis-al-gore.htm> (22.4.2015).

¹⁵ Communication tackling the challenges in commodity markets and on raw materials, COM (2011) 25 final.

¹⁶ Ibidem, see also Commission Communication "Food prices in Europe", COM (2008) 821 and its accompanying staff working document "Task force on the role of speculation in agricultural commodities price movements – Is there a speculative bubble in commodity markets?", SEC(2008) 2971.

¹⁷ Causes for the food price crisis include droughts in grain-producing nations and rising oil prices, the increasing use of biofuels in developed countries, structural changes in trade and agricultural production, changing eating habits, agricultural price supports and subsidies in developed nations, diversions of food commodities to high input foods and fuel, commodity market speculation, and climate change - http://news.bbc.co.uk/2/hi/in_depth/7284196.stm

from the risk of hunger. This process inevitably causes negative orientation towards the cross-border trade in foods. Furthermore, various diseases that occur on an annual basis (e.g. mad-cow disease – BSE, swine influenza – H1N1, avian influenza – HPAI and most recently the e.coli strain outbreak) speak in favour of more self-sufficient national economies (especially as far as food is concerned) and inevitably increase consumers' distrust in the foreign foods thereby damaging the trade flows.

In this sense increased consumer ethnocentrism is a frontline instrument that can help the state authorities in fighting all the three crises: increased consumption of domestic goods preserves domestic jobs and fills the state budget, gives incentive to the domestic farmers to produce domestic food and limits long-distance transport of goods from other parts of the world. For these reasons states are widely using campaigns to enhance consumer ethnocentrism. Notwithstanding this, however, not all such campaigns are legitimate, especially not in the EU – if they were, the formula to overcome the crises would just be too simple (of course, under the conditions that consumers responded to the campaigns and that a state somehow managed to hide this *win-win* formula from the other states, thus keeping the export markets open).

3. ETHNOCENTRIC MARKET CAMPAIGNS OF EU MEMBER STATES

“Buy domestic” or *“Buy local”* movements are nothing new. Going back to at least the Middle Ages, economies have pulled back from trade in tough economic times. The most famous campaign on the EU territory was run thirty years ago by the Irish Government, which established the Irish Goods Council to encourage all classes of purchasers within Ireland to buy Irish goods in preference to imported products. In this respect, a wide-ranging advertising campaign was conducted in which purchasers were asked to give preference to goods bearing the *“Guaranteed Irish”* label; furthermore, the company distributed catalogues of producers of particular types of products at trade fairs; finally, the promotion included a *“Sell Irish”* campaign trying to persuade shops to sell Irish goods in preference to imported goods.¹⁸ Almost thirty years later, when the economic crisis spread also to Ireland, the campaign was regenerated. A limited company *“Guaranteed Irish”* is conducting a fresh campaign with the aim *“to increase awareness of, and demand for, Irish products and services”*. The explicit goal of the campaign is to maximise employment and prosperity in Ireland. This time the campaign

¹⁸ Oliver P. (ed.), *Oliver on Free movement of Goods in the European Union*, Hart Publishing, Oxford, 2010, p. 168.

is not run by the Irish state or a state-funded company but by *“like-minded business people as a non-profit organisation to educate, network, innovate and support our members and consumers”*. The campaign is trying to create consumer interest, awareness and passion for the Guaranteed Irish ethos and symbol and hence to help their members to increase their market share. The campaign is pointing out that the Irish consumers *“feel good about buying Irish and the Guaranteed Irish symbol helps them to do this while regular PR and Advertising campaigns remind them. Through schools we are hoping a whole new generation of consumers who are proud to buy Irish.”*¹⁹



Picture 1: Label of the campaign “Guaranteed Irish”

Soon after the Irish campaign, also the Greek socialist government in 1985 launched a campaign *“Buy Greek”* to cut down flow of luxury imports, thereby reducing unemployment and huge trade deficit. A press and television campaign launched by the Greek Goods Promotional Board was followed up by special discount offers in stores selling Greek-made consumer goods. Consequently, it is not surprising that also in the times of severe economic and public debt crisis Greeks are promoting buying domestic products. In this respect, a group of Greeks has created a campaign *“καταναλώνουμε ό,τι παράγουμε» (let's consume what we produce)*, with the purpose of encouraging Greeks to wear Greek clothes, eat Greek products and spend their holidays in Greece. This initiative was signed by 90 personalities from the Greek world arts, business and universities, as a remedy against the crisis.²⁰

¹⁹ The campaign's website: http://www.guaranteedirish.ie/why_who_we_are.html (22.8.2014). Likewise, Danish furniture is promoted by a campaign “Buy Danish” - <http://www.buydanish.dk/> (30.8.2014).

²⁰ Ντύνομαι ... τρώω ... κάνω τουρισμό ... ελληνικ ά, 18.1.2011, <http://www.inews.gr/141/ntynomai--troo--kano-tourismo--ellinika.htm> (30.8.2011). Furthermore, a website appealing to the Greeks abroad to help their motherland has been launched: <http://www.helpsavegreece.com/> (22.4.2015).

Already in 1969 Germany adopted a law on creation of a central fund for the promotion of the German agricultural, forestry and foods sector,²¹ which was amended on several occasions. According to its 1993 consolidated version, the Fund's aim was to promote the distribution and exploitation of products of the German agricultural and food sector. The promotional activities were performed through a central body (*Centrale Marketing-Gesellschaft, CMA*), which adopted a number of measures, including a special quality label (*Markenqualität aus deutschen Landen*), the use of which was reserved for products which were produced in Germany.



Picture 2: *Markenqualität aus deutschen Landen, 1993*

Similarly to the German label, the Austrian Agrarmarkt Marketing GmbH (known as *AMA Marketing*), established by the Austrian Ministry for Agriculture, is issuing a quality seal “*AMA-Gütesiegel – Geprüfte Qualität Austria*”, which guarantees that the food has been produced in Austria, is top quality and has been strictly monitored at all marketing stages, i.e. from the farm to the outlet where it is finally sold.²² Italy, too, has its company responsible for promoting and safeguarding Italian agricultural, food and wine products.



Picture 3: *AMA-Gütesiegel – Geprüfte Qualität Austria*

²¹ *Absatzfondsgesetz – AFG*.

²² <http://www.fleisch-teilstuecke.at/en/133/>; see also website: <http://www.ama-marketing.at/?id=232>; Landa F., *AMA-"Güte"siegel soll von EU verboten werden*, <http://www.tierschutz.cc/dachverband/docs/aussendungen/aus191.html>

BounItalia SpA,²³ a company established by the Italian ministry for agriculture in 2003, is promoting the value and quality of products that wear the “*Made in Italy*” label of quality, thereby protecting “*patrimonio alimentare d’Italia*”.²⁴ Similar to this is also the mission of Sopexa S.A.,²⁵ a company established and co-financed by the French Government already in 1961. It is the largest company for advertising agricultural and food products in the world, performing global promotion for the French authorities as well as for companies. Sopexa is not only promoting French food and wine, but also French “*art de vivre*”.²⁶ One such promotional campaign is “*Apéritif à la française*”, a traditional event, organised on behalf of the French ministry of agriculture around the world, celebrating the products and flavours of the French countryside, but also “*the culture and lifestyle so typical of France*”.²⁷ Furthermore, a label *viande bovine française* (*French beef*) is being promoted throughout France guaranteeing meat from animals born, raised and slaughtered in France.²⁸

Considering that ethnocentric market activities for protection of domestic production exist in the founding EU Member States, it is even less surprising that such activities exist in more recent Member States. One such example is Hungary where the Hungarian Centre for Agricultural Marketing,²⁹ established in 1996 by the Hungarian ministry for agriculture, is using promotional and marketing techniques to help Hungarian agricultural products on the domestic as well as on their export markets. Its activities are oriented into improvement of the Hungarian image as a food producer and into increasing their competitiveness on the international market. For this purpose the Centre is also promoting quality labels for high quality foods. The leading label is *Kiváló Magyar Élelmiszer* (*KME – Quality Food from Hungary*), which is worn by over

²³ Buonitalia – Società per la promozione e la valorizzazione dell’agroalimentare Italiano; the company’s name is presented with a slogan »*the real taste of Italy*«, appearing under its name.

²⁴ I.e. the Italian food heritage – Lardera, N., *Buonitalia SPA is stepping up efforts to protect authentic Italian Food*, http://www.altacucinasociety.com/features_detail.asp?id=37 (23.8.2014).

²⁵ Société pour l’Expansion des Ventes des Produits Agricoles et Alimentaires français.

²⁶ http://www.sopexa.com/food_wine_lifestyle_connections.php?lang=FR (23.8.2014)

²⁷ http://blog.sopexa.com/wp-content/uploads/2011/05/EN_Dossier_presse_Aperitif_a_la_francaise_2011.pdf (23.8.2011).

²⁸ <http://www.civ-viande.org/3-27-reglementation-tracabilite-des-viandes.html>

²⁹ Agrármarketing Centrum – AMC.

400 Hungarian products with the intention that consumers find them on the supermarket shelves from the crowd.³⁰ Similar to this is Czech Republic *KLASA značka*.



Picture 4: Czech KLASA značka



Picture 5: KME – Quality Food from Hungary

Furthermore, in March 2011 the Slovenian Parliament adopted a special statute on promotion of agricultural and food products.³¹ The Slovenian minister for agriculture and food has clarified that the Act is extremely important for the Slovenian food producers as well as for enhancing loyalty between the Slovenian producers and buyers. According to the minister, the Act has four aims: “a buyer, who buys Slovenian food gives work to our farmer and worker; this way the state budget is being filled; high food safety is being guaranteed and an important step towards climate change prevention is being done (the transport is the greatest polluter)”.³² The minister added that a new aim was recently highlighted – i.e. that in combating world hunger

³⁰ See: <http://www.amc.hu/vedjegyek/kme/kivalo-magyar-elelmiszer-kme> (23.8.2014).

³¹ Promotion of Agricultural and Food Product Act, Official Gazette, No. 26/2011, in force since 23 April 2011. The Act and its compliance with EU law is discussed in the author’s article in the forthcoming edition of the European Food and Feed Law Review.

³² Ministry for Agriculture, News, Svet za promocijo kmetijskih in živilskih proizvodov na svoji ustanovni seji, 16.5.2011, <http://www.mkgp.gov.si/nc/si/splosno/cns/novica/article//6589/> (22.8.2014).

each country must grow as much food as possible. The enhanced promotion should lead to greater consumption of promoted categories of products – thereby indirectly positively affect the development of the domestic agriculture and food industry as well as eating habits of the population. Slovenian neighbour country Croatia is also performing booming campaigns “*Buy Croatian*”³³ and “*Let’s be Croative*”.³⁴



Picture 6: Buy Croatian

On the other side of the continent, in Lithuania, various promotional campaigns of domestic goods take place, too. One such campaign is called “*rinkis prekę lietuvišką*” (*Fix in Lithuania*), which is trying to protect volume of sales of Lithuanian goods, while preserving jobs and the companies’ existence – the organisers of the campaign explain, that these goals can only be achieved by promoting the use of local production with emphasis on the quality of Lithuanian products, inviting the public support of the Lithuanian manufacturers.³⁵ Furthermore, at the outbreak of the economic crisis, a Member of the Lithuanian Parliament requested the Government to take all possible measures to protect the Lithuanian producers and consumers and to encourage the country's economy, foremost by requiring labels of origin, so that consumers will know which products are of Lithuanian origin and which are not, thereby diminishing Lithuanian consumers’ “*delight of other countries, farmers and companies*”.³⁶

³³ Campaign’s website: <http://www.kupujmo-hrvatsko.hr/> (22.8.2014).

³⁴ Campaign advertisement of the Croatian Industry Chamber: <http://www.youtube.com/watch?v=TvN6nZtZpI0> (22.8.2014).

³⁵ For a review of “Buy Lithuanian” initiatives see: <http://pirkprekelietuviska.lt/> (29.8.2014).

³⁶ Premjero prašoma apsaugoti lietuvišką prekę, 14.5.2009, <http://verslas.delfi.lt/business/premjero-prasoma-apsaugoti-lietuviska-preke.d?id=22131564> (29.8.2014).

4. ETHNOCENTRIC CAMPAIGNS AS A BARRIER TO FREE MOVEMENT OF GOODS

As the EU Court emphasised on many occasions, the EU *»by establishing a common market and progressively approximating the economic policies of the Member States seeks to unite national markets in a single market having the characteristics of a domestic market«*.³⁷

Consumer ethnocentrism as such does not contravene this idea; neither does patriotic upbringing devoted to the respect for national history, culture and tradition.³⁸ On the other hand, certain campaigns to boost ethnocentrism may contravene the EU internal market principles. Leaving aside the issue, whether the campaigns are run by states or private entities, spreading economic nationalism is clearly conflicting trade liberalisation process and general efforts to limit nationality discrimination in the EU. Article 18 TFEU prohibition of *“any discrimination on grounds of nationality”*³⁹ clearly operates against state measures to increase ethnocentrism and Article 34 TFEU prohibition of quantitative restrictions on imports and all measures having equivalent between Member States is specifically trying to prevent state measures to enhance consumer ethnocentrism within the EU. State boosting of the consumer ethnocentrism is namely opposing and harming the EU internal market and is conflicting decades-long efforts of various EU institutions to integrate the EU market and remove ancient barriers between the states.

Dating back to 1974 the Court famously stated that *“all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions”*⁴⁰ and are as such prohibited. On the basis of this *“Dassonville formula”* also the abovementioned Irish campaign was assessed, when the Commission brought an action against Ireland before the Court.⁴¹ Advocate General Capotorti was of opinion that, despite the fact that the campaigns sought to give domestic producers a competitive advantage over foreign

³⁷ See e.g. case 207/83, *Commission v United Kingdom*, [1985] ECR 1202, para. 17.

³⁸ See also the Preamble to the Treaty on European Union, OJ 2010, C83/15, stating that the EU leaders desire to *»deepen the solidarity between their peoples while respecting their history, their culture and their traditions«*.

³⁹ Discrimination on grounds of nationality is also specifically prohibited by the Charter of Fundamental Rights of the European Union, Article 21, para. 2.

⁴⁰ Case 8/74, *Procureur de Roi v Dassonville*, [1974] ECR I-837, para. 5.

⁴¹ Case 249/81, *Commission v Ireland*, [1982] ECR I-4005.

producers, the non-binding nature of the ethnocentric campaigns saved them from application of Article 34 TFEU: “(In both Articles 34 and 35 TFEU) there is an implied reference to (...) phrase “prohibitions or restrictions”: a phrase which may not be extended so as to include recommendations”.⁴² In contrast to this, the Court held that the implementation of a programme defined by the government of a Member State which affects the national economy as a whole and which is intended to check the flow of trade between Member States by encouraging the purchase of domestic products is to be regarded as a measure having an effect equivalent to quantitative restrictions.⁴³ The Court condemned the campaign, because it reflected the Irish government’s desire to achieve “the substitution of domestic products for imported products and was liable to affect the volume of trade between Member States”.⁴⁴ Even though the sale of the domestic products fell for six per cent during the campaign, this has not convinced the EU Court to change its decision that the campaign breached the Article 34 TFEU.⁴⁵

The decision in the *Buy Irish* case should be distinguished from the British establishment of the Apple and Pear Development Council.⁴⁶ The Council was established by law with the main purpose to promote English apples and pears. Within this promotion advertising on television, in newspapers and in shops took place. The campaign was based foremost on the diversity of apples and pears from England and Wales. The Court in 1983 concluded that the purpose of the campaign was neither to discourage the purchase of products from other Member States nor to advise the consumers to purchase domestic products solely by reason of their national origin. The Court said that it is legitimate to draw attention to the specific qualities of fruit grown in

⁴² Ibidem, opinion of the AG, p. 4031.

⁴³ Ibidem, para. 29.

⁴⁴ Ibidem, para. 25.

⁴⁵ The decision is in line with Article 2 (3) (k) of the Commission Directive No 70/50/EEC, which states that “measures which encourage the purchase of domestic products only must be regarded as contrary to the prohibitions contained in the Treaty” – Commission Directive No 70/50/EEC of 22 December 1969, based on the provisions of article 33 (7), on the abolition of measures which have an effect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty (OJ, English Special Edition 1970 (i), p. 17). Understandably, national requirements of domestic purchase are *a fortiori* prohibited by EU law, unless justified by legitimate reasons – case 72/83, *Campus Oil Limited and others v Minister for Industry and Energy and others*, [1984] ECR 2727; and case C-137/91, *Commission v Greece*, [1992] ECR I-4023.

⁴⁶ Case 222/82, *Apple and Pear Development Council v K.J. Lewis Ltd*, [1983] ECR I-4083.

the UK and to organize campaigns to promote the sale of certain varieties, mentioning their particular properties, even if those varieties were typical of national production.⁴⁷ From the *Apple and Pear* decision one can conclude that the state-sponsored promotion of national goods in general is not legitimate, if only national origin of the goods is highlighted, on the other hand, the promotion of specific goods having distinctive qualities, besides those of the national origin, is permissible.⁴⁸

The line delimitating the two types of promotion is obviously a very fine one. To clarify open questions after the two Court's cases the Commission issued Guidelines for the Member States' involvement in promotion of agricultural and fisheries products in 1986.⁴⁹ In this document the Commission emphasised: *»Identification of the producing country by word or symbol may be made providing that a reasonable balance between references, on the one hand to the qualities and varieties of the product and, on the other hand, its national origin is kept. The references to national origin should be subsidiary to the main message put over to consumers by the campaign and not constitute the principal reason why consumers are being advised to buy the product.«*⁵⁰ The Commission added that references to quality control should only be made where the product is subjected to a genuine and objective system of control of its qualities.⁵¹

⁴⁷ Ibidem, para. 19.

⁴⁸ Barnard, C., *The substantive law of the EU: the four freedoms*, Oxford University Press, Oxford, 2014, p. 95. See also Gormley, L.W., *EU Law on Free Movement of Goods and Customs Union*, Oxford University Press, Oxford, 2009, p. 420 and Oliver, P., 2010, p. 168.

⁴⁹ Commission communication concerning State involvement in the promotion of agricultural and fisheries products, OJ 1986 C 272/3.

⁵⁰ Database of EU law, <http://eur-law.eu/EN/Commission-communication-concerning-State-involvement-promotion-agricultural-fisheries,130669,d>, para 2.3.1.

⁵¹ One can agree with the advocates of ethnocentric market campaigns that origin of the goods does matter, but this is true only for certain goods. In such circumstances also the EU Court recognises the importance of origin-marking, however, the origin of the goods must truly affect the quality – see e.g. case 113/80, *Commission v Ireland (Irish Souvenirs)*, [1981] ECR 1625. A specific case is EU legislation in the food sector, where the need to assure traceability of the food justifies requirements of origin marking – see Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ 2002 L31/1. Further specifics are geographical indications and designations of origin – see Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, OJ 2006 L93/12. In general,

These principles were toughened by the EU Court in 2002 in relation to the German quality label for domestic agricultural produce.⁵² The Court found that the contested scheme had, at least potentially, restrictive effects on the free movement of goods between Member States. *»Such a scheme, set up in order to promote the distribution of agricultural and food products made in Germany and for which the advertising message underlines the German origin of the relevant products, may encourage consumers to buy the products with the CMA label to the exclusion of imported products«,* ruled the Court, adding that *»(t)he fact that the use of that quality label is optional does not mean that it ceases to be an unjustified obstacle to trade«.*⁵³

5. ENVIRONMENTAL PROTECTION AS A JUSTIFICATION FOR BUYING DOMESTIC GOODS

As demonstrated above, a widespread justification for “*buy domestic*” campaigns is environmental protection. Sponsors of such campaigns often hold that domestic production must be increased and long-distance transport reduced, considering that transport is one of the main polluters. Environmental protection is a legitimate objective that is increasingly relied on by the Member States when justifying barriers to free movement of goods. Advocates of free trade and environmental activists are usually seen as opponents defending opposite goals. The former emphasise economic benefits of increased competition on the global market, whereas the latter stress that increased economic growth jeopardises natural environment.⁵⁴ Nevertheless, trade and environmental interests are not necessarily irreconcilable: open market namely enables wider sale of environmentally friendly products thereby increasing protection of the environment.⁵⁵ Most of the time, however, an appropriate balance must be established between enhancing liberalised trade and environmental protection, where proportionate barriers to trade are tolerated and disguised restrictions to trade are prohibited. In this sense also the

however, the Court opposes state requirements of origin-marking – see case 207/83, *Commission v United Kingdom*, [1985] ECR 1202, para. 17.

⁵² Case C-325/00, *Commission v Germany*, [2002] ECR I-9977.

⁵³ *Ibidem*, paras. 23-24. Thereby referring to the case 13/78, *Eggers*, [1978] ECR 1935, para. 26.

⁵⁴ Communication of 8 June 1999 from the Commission to the European Parliament and the Council: Single Market and Environment, COM (99) 263 final.

⁵⁵ Davies P. G. G., *European Union Environmental Law, An Introduction to Key Selected Issues*, Ashgate, 2004, p. 186.

preamble to the WTO Agreement highlights the goal of “*the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so*». In several cases the WTO panels tried to determine an appropriate balance between free trade and national measures for protection of environment.⁵⁶ The same questions are being imposed also in the EU, which is committed to assuring free movement of goods, but at the same time having increasingly clear environmental objectives.

The task to balance free trade and environmental aspects was assigned to the Court. The leading judgment in this respect was issued in the *Commission v Denmark*,⁵⁷ where the Court accepted that environmental protection justifies barriers to free movement of goods, provided they are proportionate and that the respective issue is not regulated at the EU level.⁵⁸ This allowed broader justification of environmental protection than on the basis of the Article 36 TFEU. Nevertheless, it was not yet decided whether environmental protection may serve as a justification for campaigns that increase consumer ethnocentrism.

In context of the environmental impact of food a term “*food miles*” was developed referring to the distance food is transported from the time of its production until it reaches the consumer. This type of metric is sometimes used as a carbon emission label on packaging.⁵⁹ On average, food travels 4,000 km every time that it is delivered to the consumer and is constantly increasing.⁶⁰ This modern long-distance food system offers unparalleled choice, but recent intensified concerns over global warming, compounded by food poisoning scandals linked to contaminated pet, poultry and deadly bacteria in vegetables have many people thinking about

⁵⁶ *Shrimps (India v USA, 1998)*, *Tuna Dolphin I (Mexico v USA, 1991)*, *Tuna Dolphin II (1994)*, *Asbestos (Canada v EC, 2001)*.

⁵⁷ Case 302/86, *Commission v Denmark*, ECR. 1988, p. 4607. See also case C-389/96, *Aher-Waggon*, ECR 1998, p. I-4473, para. 20.

⁵⁸ Gl. Maduro M. P., *Reforming the Market or the State?*, Article 30 and the European Constitution: Economic Freedom and Political Rights, *European Law Journal*, vol. 3 (1997), p. 60.

⁵⁹ Engelhaupt, E. (2008). Do food miles matter? *Environmental Science & Technology*, 42, p. 3482. The concept of food miles was conceived in 1990 by Andrea Paxton, who wrote a research paper that used the term to describe the distance that food travels from the farm where it is produced on to the kitchen in which it is consumed. Iles, A. (2005). Learning in sustainable agriculture: Food miles and missing objects. *Environmental Values*, 14, p. 163.

⁶⁰ Priesnitz W., *Counting Our Food Miles*, 2007, <http://www.life.ca/wendy/articles/foodmiles.html> (22.4.2015).

where our food comes from – thus counting our “*food miles*” (or kilometers). A range of studies compare emissions over the entire food cycle, including production, consumption and transport. The goal of environmental protection agencies is to make people aware of the environmental impacts of food miles and to show the pollution percentage and the energy used to transport food over long distances.

Popularity of environmental protection and climate change debate presents water to the mill for private and public campaigns that encourage consumption of domestic products. Considering large size of (certain) states, “*buy domestic*” campaigns are often substituted with “*buy local*” or even “*Think Global, Act Local*” campaigns as they are more convincing in terms of environmental protection than the former. “*Buy local*” campaigns are thus significantly more widespread than “*buy domestic*” campaigns.⁶¹ For reasons of application of the Article 34 TFEU, only state campaigns promoting local goods are considered in this article.

In this respect, we can conclude that within the EU internal market law “*buy local*” means the same as “*buy domestic*”. Although geographically speaking “local” is usually a narrower concept than “domestic”, we can assume that it rarely means “foreign”. In that regard in the *Commission v Italy*⁶², that concerned Italian reservation of public works to companies having their registered office in the region where the works were to be carried out, the Italian Government contended that that provision also excluded undertakings established in Italy which

⁶¹ For example, they take place on the U.S. internal market, where similar rules to the EU internal market apply: from Michelle Obama's White House garden to grants from the U.S. Department of Agriculture's “*Know Your Farmer, Know Your Food*” initiative, an agenda has emerged to give local foods more prominence on the dinner plates of the American citizens. In this respect, there are farm to school programs in 48 states and in all 50 states in the U.S. there are agricultural branding programs, such as “*Jersey Fresh*” or “*Simply Kansas*”. U.S. Representative Chellie Pingree wanted to help the farmers by recently introducing the *Eat Local Foods Act* (HR 5806) to assist schools in providing local foods in school lunches. The Act requires school food authorities to use their credits to purchase locally or regionally produced agricultural food products to serve in the school lunch program. People who value local as their primary food criterion are sometimes referred to as locavores. Nevertheless, it remains unclear, how local is local. Practically speaking, local food production can be thought of in concentric circles that start with growing food at home. The next circle might be food grown in our immediate community – then region and state. This is also dependent on a concrete product: for some parts of the year or for some products that thrive in the local climate, it may be possible to buy closer to home, at other times, or for less common products, an expanded reach may be required.

⁶² Case C-360/89, *Commission v Italy*, ECR 1992, p. I-3401.

had their registered offices outside the region in question from that part of the works, however, the Court concluded that the fact remains that all the sub-contractors which it favours are Italian undertakings. The measure therefore discriminated foreign providers of the relevant works and Italy was found to breach its obligations under the freedom to provide services. That “*buy local*” is not much different from “*buy domestic*” also derives from the following promotion of one “*buy local*” campaign:

*“Remember, by buying local your food will be fresher and more nutritious, your goods made by your neighbors and you will be contributing to a healthier economy and less fossil fuel being used to transport items long distances. You pay for freshness and taste, not packaging, refrigeration, and freight. You are supporting local jobs for local people!”*⁶³

Since “*buy local*” campaigns are discriminatory they cannot rely on environmental protection justification.⁶⁴ But even if we adopted a flexible approach towards this question, “*buy domestic*” and “*buy local*” campaigns are hard to justify by reasons of environmental protection as the contribution of increased local consumption to the reduction of global warming and energy consumption is not clear-cut. Many scholars namely state that the most of the greenhouse gas emissions created by food have their origin in the production phases, which create 83% of overall emissions of CO₂.⁶⁵ Small (local) farms require substantially more land, water, and other inputs than do larger (nonlocal) farms and the community as a whole does not actually save money because consumers have to spend more on the more expensive local products, they say. Hence they argue “*buying local*” trend is just a watered down version of protectionism, and would not benefit communities as proponents envisage. Moreover, even locally grown and organic food can be kept chilled for months; refrigeration requires energy; trying to cheat our climate by growing fruit and vegetables outside their natural season is also contributing to climate change. Finally, economic theorists argue that transportation costs

⁶³ <http://www.buylocalthinkglobal.com/>

⁶⁴ For a comment see: Scott J., Mandatory or Imperative Requirements in the EU and the WTO, in: Barnard C., Scott J. (ed.), *The Law of the Single European Market, Unpacking the Premises*, Hart Publishing, Oxford, 2002, *The Law of the Single European Market, Unpacking the Premises*, Hart Publishing, Oxford, 2002, p. 269.

⁶⁵ Weber, C., & Matthews, H. (2008). Food-Miles and the Relative Climate Impacts of Food Choices in the United States. *Environmental Science & Technology*, 42(10), 3508-3513, at p. 3511.

actually account for a small fraction of overall production prices and that choosing less efficient local products over more efficient nonlocal products is pure economic loss.

Consequently, the Court would hardly interpret environmental protection as a justification for promotional campaigns that try to enhance consumer ethnocentrism, in order to hinder imports, while still relying on increased export. Furthermore, there is a great variety of products on the market and although we can accept that long distance transportation harms the quality of e.g. fresh strawberries and tomatoes, it does not in the same way lowers the quality of dry salami. Should the states really aim to limit transportation of goods in order to reduce global warming, they should also stand up for export limitations or even refuse tourists that fill national roads in the holiday seasons... but it is rather unlikely that they will do that. In this respect, the Court consistently states that environmental protection will not always justify national barriers to free movement, especially when there is not sufficient evidence on the risk and when the measures are not proportionate to the importance of free movement of goods.⁶⁶ Furthermore, despite the principle of high level of protection, which is considered the most important substantive principle of European environmental policy⁶⁷ the Court clarified that such a level of protection does not necessarily has to be the highest that is technically possible.⁶⁸ It can therefore be concluded that the principle reflects a moving target, the idea of continuous improvement of the environmental protection standards across the Member States, but not a clear-cut rule that would justify all kinds of national measures, which perhaps only by far include environmental considerations. Should the environmental dimension be decisive when regulating trade in the food area, why not requiring that shops can only market foods that originate in e.g. 50 kms radius be it within or outside the national borders?! “*Buy local*” campaigns are in this respect widely manipulated and subject to varying interpretations. Critics therefore call the term “*buy*

⁶⁶ Case C-297/05, *Commission v Netherlands*, ECR 2007, p. I-7467; case C-463/01, *Commission v Germany*, ECR. 2004, p. I-11705.

⁶⁷ Jans J., Vedder H., *European Environmental Law*, Groningen: Europa Law Publishing, 2008, p. 36; see also: Morgera, E., *Introduction to European Environmental Law from an International Environmental Law Perspective*, University of Edinburgh Law School, Working paper 2010/37, accessible at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1711372.

⁶⁸ Case C-284/95 *Safety Hi-Tech Srl. V. S. & T. Srl* [1998] ECR I-4301.

local” “*local washing*”,⁶⁹ considering that it is also being used by HSBC, one of the biggest banks on the planet, which is calling itself “*the world's local bank*” and that food giant Unilever is advertising the Hellmann’s mayonnaise with “*Eat Real, Eat Local*” initiative. It is therefore to wonder, how much good this campaigns really do to the environment.

6. FOOD SELF-SUFFICIENCY AS A POTENTIAL DEROGATION FROM FREE MOVEMENT OF GOODS PRINCIPLE

6.1. General observations

It is the established law that national measures that *prima facie* hinder free movement may nevertheless be justified and take precedence over the free movement of goods, where they serve important interests recognized by the EU, provided that they are proportionate and do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.⁷⁰ A list of recognized public interests is provided in the Article 36 TFEU, including *inter alia* public morality, public policy, public security, the protection of health and life of humans, animals or plants and protection of industrial property. Furthermore, the Court expanded the list to include various other matters, such as guaranteeing fair commercial transactions and consumer protection.⁷¹ Notwithstanding this, however, in its case law on campaigns that were boosting consumer ethnocentrism the Court never made any serious consideration of possibilities to justify such campaigns.

In the *Buy Irish* case the Court completely ignored this possibility, only finding that measures of the Goods Council were caught by the Article 34 TFEU and that they were indeed a measure having equivalent effect to quantitative restrictions. In German Quality Label case this approach has not changed significantly. The Court namely hesitated little in dismissing the German Government’s argument that the quality label was within the derogation in the Article 36 TFEU for the protection of industrial and commercial property in so far as it constituted a geographical indication of provenance. In that regard, the Court explained that since the quality label defined

⁶⁹ Mitchell, S., The Corporate Co-Opt of Local, New Rules Project, 9.7.2009, <http://www.newrules.org/retail/article/corporate-coopt-local> (22.4.2015).

⁷⁰ Barnard C., 2014, p. 64.

⁷¹ Case 120/78, Rewe-Zentral AG proti Bundesmonopolverwaltung für Branntwein (Cassis de Dijon), ECR 1979, p. 649.

the provenance as the extent of German territory and applied to all agricultural and food products fulfilling certain quality requirements, it could not be considered as a geographic indication capable of justification under the Article 36 TFEU.⁷² Advocate General Jacobs further explained that principles developed by the Court in relation to intellectual property rights were an “*inherently inappropriate framework*” for assessing the lawfulness of geographical indications of source – in the absence of an allocation of the geographical indication of source to a specified exclusive holder, it was “*inappropriate to speak in terms of intellectual property*”.⁷³

A specific legal problem (for the Member States) in relation to justifications of promotional campaigns is that they are intrinsically (directly) discriminatory and hence limited to the exhaustive list of justifications in the Article 36 TFEU and thus prevented from relying on further justifications, established by the Court under the rule of reason, such as consumer protection.⁷⁴ Considering current economic, climate change and food crises the Court might be forced to consider potential justifications for campaigns that enhance consumer ethnocentrism into more detail than it has been doing it so far. Otherwise, it might risk its own legitimacy and establish law that does not correspond to the “*market on the ground*”.

6.2. Food self-sufficiency and food security

National food self-sufficiency is another justification, lately often given by the Member States for national campaigns that try to enhance consumer ethnocentrism.⁷⁵ It refers to the question,

⁷² C-325/00, *Commission v Germany*, para. 27.

⁷³ *Ibidem*, para. 43 of the Opinion. For a comment see Jarvis M., 2003, p. 727.

⁷⁴ *Mutatis mutandis* application of the Irish Souvenirs case – case 113/80, *Commission v Ireland*, [1981] ECR 1625, where in para. 10 the Court held: “*it is only where national rules, which apply without discrimination to both domestic and imported products, may be justified as being necessary in order to satisfy imperative requirements relating in particular to ... the fairness of commercial transactions and the defence of the consumer that they may constitute an exception to the requirements arising under article (34)*”. See also joint cases C-1/90 and C-176/90, *Aragonesa de Publicidad Exterior*, ECR 1991, p. I-4151, para. 13. For criticism of this approach see e.g.: Barnard C., *Fitting the Remaining Pieces into the Goods and Persons Jigsaw*, *European Law Review*, vol. 26 (2001), p. 54; Weiler J. H. H., *The Constitution of the Common Market Place: The Free Movement of Goods*, in: Craig P., de Burca C. (ed.), *The Evolution of EU Law*, Oxford University Press, 1999, p. 366.

⁷⁵ E.g. the Slovenian Act on promotion of agricultural and food products aims to increase national agricultural self-sufficiency, considering that it considerably fell in the last years. But it is not the only country with this goal.

whether a country can meet its own food needs. Food self-sufficiency is closely related to food security that is a legitimate goal to be achieved by every state in the world and has become a key global challenge, which is highly political. However, as Allaby and Bunyard put it, “*there is nothing really new in the search of self-sufficiency.*” The pioneers who first colonized the New World were self-sufficient because they had to be and, in this context, the term suggests a kind of rugged independence associated with mastering a new and rather hostile environment. While the term “*food security*” has mainly been used in relation to the security of food supply in developing countries, at both national and at household levels, the issue has recently moved up the policy agenda in developed world. Therefore not only countries in Asia, Africa and the Middle East have moved towards self-sufficiency by boosting agricultural production at home through subsidies and import tariffs, but also USA⁷⁶ and EU are committed to this goal.⁷⁷ The rapid increase in food commodity prices and in food retail prices from 2006 through to 2008 has namely raised political awareness of the potential vulnerabilities and volatilities of national food supply. Consequently, Conway said in 2009 that “*(f)ood security, which was not on the agenda of anyone but agriculture ministries only three years ago, is now very central to governments*”.⁷⁸ Farming organizations have taken the opportunity to lobby the government for more support for food producers and the nation’s food production capacity for both domestic and international markets. Food self-sufficiency is therefore also a slippery slope to protectionism or national autarky. In this respect, the OECD defines food security as a

⁷⁶ In the US, the food security agenda, usually left to the Department of Agriculture, has become one of secretary of state Hillary Clinton’s strategic projects.

⁷⁷ As a whole, the EU has a high level of self-sufficiency in foodstuffs (Table 13), though soya products are a conspicuous exception (used primarily as animal feed and to a lesser extent as minor but pervasive ingredients in manufactured foods). Source: Agriculture in the European Union Statistical and Economic Information 2007, http://ec.europa.eu/agriculture/agrista/2007_UK issued: Ensuring the UK’s Food Security in a Changing World, Discussion paper, 2008, <http://www.ifr.ac.uk/waste/Reports/DEFRA-Ensuring-UK-Food-Security-in-a-changing-world-170708.pdf> (17.4.2015).

In 2006, the EU became, for the first time since the introduction of the CAP, a net exporter of agrifood products, with a surplus of €3bn.

⁷⁸ Blas, J., Food self-sufficiency “is a nonsense”, Financial Times, 9.11.2009, <http://www.ft.com/intl/cms/s/0/bad4d152-cd53-11de-8162-00144feabdc0.html#axzz1W8M1Ritl> (23.8.2011). Conway is a senior vice-president at Cargill food security initiatives, the world’s largest trader of agricultural commodities.

*“[c]oncept which discourages opening the domestic market to foreign agricultural products on the principle that a country must be as self-sufficient as possible for its basic dietary needs.”*⁷⁹

Nevertheless, the conventional definition of food security is that given by FAO in 1996: *“food security exists when all people, at all times, have access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life”*.⁸⁰ It is a basic economic policy aim for any government, and an objective around which there is broad national and international consensus. The main concern is about the strategy by which food security should be attained: the paradox with food insecurity namely is that it involves less a global insufficiency in terms of the quantity of food produced, but rather a problem of access. The first option to guarantee food security is a combination of domestic production and imports, thus diversifying sources of supply of agricultural commodities, even though most politics advocate that domestic production has to be given preference over imports.⁸¹ The second option is self-sufficiency – it is based on the assumption that domestic suppliers are more reliable than foreign ones and means that in time of war or food crisis the access of the population to food is in no way dependent on foreign suppliers.⁸² If self-sufficiency was a legitimate justification for barriers to free movement of goods in the EU, it would mean that such an assumption is in accordance with EU law. This leads us back to the question, how plausible it is for the EU Member States performing *“buy domestic”* campaigns to successfully justify them by relying on the need to increase self-sufficiency, thus enhancing food security.

⁷⁹ OECD (2008) OECD Glossary of Statistical Terms: Food Security, <http://stats.oecd.org/glossary/detail.asp?ID=5006> (accessed June 19 2008). Paris: Organisation for Economic Co-operation and Development

⁸⁰ FAO (1996) Rome Declaration on World Food Security. Rome: Food and Agriculture Organisation.

⁸¹ The goal is to diversify the sources of supply, as in the management of a financial portfolio, so that the diversification of assets decreases the risk associated with the overall portfolio while expected global yield remains constant. This option has another advantage: it is less costly.

⁸² The Lure of Attaining Food Security for Europe through Self Sufficiency... FAO launched its Special Programme for Food Security (SPFS) in 1994. Focusing on low-income, food-deficit countries, SPFS was endorsed during the World Food Summit in 1996. The main objective is to help countries to improve their national food security - through rapid increases in productivity and food production, and by reducing year-to-year variability in production - on an economically and environmentally sustainable basis. – FAO, Production and food security, <http://www.fao.org/DOCREP/005/Y3918E/y3918e04.htm>

6.3. Food security as a derogation from free movement of goods principle

It is hardly possible to refute that food security is an important part of public security in general, which is recognised as a legitimate reason to hinder trade in goods by the Article 36 TFEU, which means that even discriminatory or protectionist measures might be justified on its basis. This was demonstrated in the case *Campus Oil*,⁸³ where Ireland managed to justify its requirement that importers of petroleum products buy a certain proportion of their needs (35 per cent) from a State-owned oil refinery (INPC) at prices fixed by the Irish government. The measure was evidently discriminatory and protectionist. Irish government nonetheless justified it on the basis of public security, since without this requirement the only Irish oil refinery could not survive on the market, which could be dangerous for Ireland, which in emergency circumstances would have had no oil. The Court supported the argumentation recognising that because of the exceptional importance of petroleum products as an energy source in the modern economy, an interruption in supplies, with the resultant dangers for the country's existence, could seriously affect public security.⁸⁴ Given that Irish law served the purpose of public security, the fact that it also served objectives of an economic nature was not important. The Court held that “*the aim of ensuring a minimum supply of petroleum products at all times was to be regarded as transcending purely economic considerations*”.⁸⁵

Mutatis mutandis, Member States could also rely on food security when averting dependence on food import as sufficient national food resources raise national security in the event of war or “just” high food prices. Nevertheless, it must be pointed out that *Campus Oil* is a specific case that has not been reaffirmed in relation to other Member States. This is proven by another case,⁸⁶ which related to the Greek intention to have minimum holdings of petroleum products on its territory. Rather than storing petrol itself, it required petrol companies to hold minimum stocks of petrol at their own installations. This extremely onerous obligation was eased by the fact that these companies could transfer the storage obligation to refineries established in Greece, but only on condition that the companies had bought a large quantity of petroleum products from those refineries in the previous calendar year. Consequently, marketing of

⁸³ Case 72/83, *Campus Oil Limited*, ECR 1984, p. 2727.

⁸⁴ *Ibidem*, para. 34.

⁸⁵ *Ibidem*, para. 35.

⁸⁶ Case C-398/98, *Commission v Greece*, ECR 2001, p. I-7915.

petroleum products from other Member States was more difficult, since in such cases the companies would not be able to benefit from transferring the storage obligation. For this reason the Court of Justice found that the national rule breached Article 34 TFEU. The Greek government's defence was based on public security, but the Court rejected it, observing that the argument was "*purely economic*",⁸⁷ despite it is not disputable that also in the *Campus Oil* case economic interests were closely behind the security ones.

Although they are non-binding, national promotional campaigns, too, include national food security goals as well as economic interests. The main question when justifying such campaigns therefore is, whether they are predominantly trying to assure food for the national population or whether they primarily want to assure business for their food industry. The answer might be dependent upon the concrete level of food self-sufficiency in individual states – there is namely considerable difference between EU Member States as to the self-sufficiency rate. Considering that e.g. Slovenia has one of the lowest self-sufficiency rates in the EU,⁸⁸ does this justify Slovenian authorities to conduct activities to raise these rates even if protectionist measures would be needed that are normally prohibited by EU law? Principle of proportionality should be applied in dealing with this issue.

Although we may agree that food security is at least as *important* as free trade, the food self-sufficiency policy as a means to guarantee food security is less convincing in this regard as it has some advantages, but also many drawbacks. Food self-sufficiency has the advantage of saving foreign exchange for the purchase of other commodities that could not be locally produced and of insulating countries from the impulses of international trade and uncontrollable fluctuations in agricultural commodity prices. It also ensures that sufficient food is always available to feed domestic population. A number of political factors, notably a sense of national insecurity, also militate against extensive dependence on food imports, especially in some water-short countries. In practice, there are, however, many drawbacks: where food self-

⁸⁷ Ibidem, para. 30. See Barnard C., 2014, p. 72.

⁸⁸ Slovenia namely has one of the lowest self-sufficiency rates in the EU, ranging from 38% for vegetables to 90% for meat (in average 53% rate) and is on the 23rd place among the EU Member States according to the share of utilised agricultural land. Statistical Office of the Republic of Slovenia, *Bilance proizvodnje in potrošnje kmetijskih proizvodov, Slovenija, 2000-2009 – končni podatki*.

http://www.stat.si/novica_prikazi.aspx?id=3822 and Eurostat, *Land use*, 2007.

sufficiency is difficult to achieve, climatic variations such as storms, floods and droughts can quickly make nations dependent on either food aid or food imports. Self-sufficiency and market isolation are therefore not the most rational solutions, especially not for small states that are economically dependent upon their trading partners in many other economic sectors. Free trade, especially within the EU internal market, is therefore an alternative that suggests that self-sufficiency lacks the *necessity* aspect of proportionality – that is to say, the existence of the internal market indicates that EU Member States are not in danger as regards their food security. In this regard it should be pointed out that the European Commission drafted four pillars of food security:⁸⁹

- the physical *availability* of food for everyone: offering enough foodstuffs to meet everyone's needs (through national farm production, distribution and imports);
- economic and physical *access* to food: this involves stable markets, affordable prices for local populations, decent incomes and adequate purchasing power, thus enabling households to cover their food needs;
- the *utilisation* of food and of related resources: this involves appropriate use of food in form of a nutritional balance and an adequate supply of micronutrients (vitamins, minerals, etc.); and
- the *stability* of food supply over time (short/medium/long term): this should guarantee that access to food is safe from either the emergence of sudden shocks (economic or climate crisis) or cyclical events (seasonal food insecurity).

Enhancing national food self-sufficiency at the expense of free trade flows on the internal market would therefore require that an individual Member State shows with sufficient degree of probability that any aspect of food security of its population is in danger and that the EU internal market is not a sufficient guarantee in this respect. Considering that the 2008 food price peaks were not lasting long and especially the Common Agricultural Policy of the EU it is hard to see, how a Member State would manage to justify its need to enhance national self-sufficiency through imposing barriers to free movement of goods from other Member States – be it through non-binding market campaigns or otherwise. Anything else than an increase of

⁸⁹ http://ec.europa.eu/europeaid/infopoint/publications/europeaid/documents/163a_en.pdf

self-sufficiency in line with the internal market rules, that is by increasing competitiveness of the national food sectors, does not seem a win-win solution.

7. PROMOTIONAL CAMPAIGNS AT THE EU LEVEL

Not all campaigns and quality labels that promote certain groups of products are undesirable. Increasingly high number of products on the market can easily confuse consumers as to their quality. Furthermore, considering public health and environmental aspects, some groups of products (such as fruits and vegetables) should in general be preferred by the consumers over the other groups (such as sweets and alcohol); naturally grown food should be preferred over more processed products etc. Public authorities at all levels of government, should therefore make efforts into informing consumers of quality of goods and make them aware of health, environmental and other aspects of the goods on the market. Product promotion is primarily the role of producers, distributors and Member States, but also the EU plays a role as facilitator and support.⁹⁰

For these reasons, information provision and promotion measures for agricultural products on the EU internal market and in third countries are regulated by a special EU regulation.⁹¹ On the basis of this regulation the EU co-finances promotional campaigns that highlight the quality, the nutritional value and the safety of EU farm products and food based on these products as well as campaigns that draw attention to other intrinsic features and advantages of EU products, such as specific production methods, labelling, animal welfare and respect for the environment. The campaigns can run inside the EU, or beyond its borders with the objective of opening up new markets for EU farmers. The assistance is normally given to professional producer organisations, for example associations representing specific agricultural products, or associations promoting particular approaches to agriculture, such as organic farming.⁹² However, in the light of the *Buy Irish* judgment the Regulation prohibits promotion of products

⁹⁰ See e.g. Green Paper on promotion measures and information provision for agricultural products: a reinforced value-added European strategy for promoting the tastes of Europe, COM (2011) 436 final, at p. 8 (para. 4.1.).

⁹¹ Council Regulation (EC) No 3/2008 on information provision and promotion measures for agricultural products on the internal market and in third countries, OJ 2008 L3/1.

⁹² European Commission, Promoting European Union farm products: a helping hand, http://ec.europa.eu/agriculture/promotion/documents/brochure_en.pdf (16.8.2011).

based on their (national or regional) origin⁹³ – except in cases of specific regions recognised by the EU law, e.g. protected designations of origin (PDOs), protected geographical indications (PGIs) and traditional speciality guaranteed (TSGs).

Instead of promoting purchasing of specific national products, EU thus wants to enhance purchasing of EU products. In its 2011 Green Paper on promotion measures for agricultural products⁹⁴ the Commission stressed that the quality of Europe's agricultural and agri-food products is widely acknowledged, emphasising that as the result of tradition, know-how and the innovative ability of producers, the European model is also the legacy of a strong Common Agricultural Policy and of standards of production unmatched anywhere in the world, adding that the EU has a culinary heritage of great diversity that should be exploited to the full.⁹⁵ As these advantages of EU products have not yet been sufficiently promoted and considering new competitors in traditional EU markets and in emerging markets, the Commission is planning a new promotion and information strategy, with effect from 2013, which would promote Europe's agriculture sector "*which delivers food security, a sustainable use of natural resources and more dynamic rural areas*".⁹⁶ What the reform is trying to achieve is therefore to replace national consumer ethnocentrism with a European one. In this respect it remains to be found, to what extent euro-centrism is present among the European consumers and to what extent national promotional campaigns, as well as the economic and various other (most notably food and disease) crises, have rooted negative stereotypes in the consumers' purchasing sentiments towards the goods from other EU Member States.

⁹³ Article 1(2) of the Regulation 3/2008 provides: *»The (promotional) measures (...) shall not be brand-oriented or encourage the consumption of any product on grounds of its specific origins.«* See also the preamble and Article 4(2) of the Commission Regulation (EC) No 501/2008 laying down detailed rules for the application of Council Regulation (EC) No 3/2008 on information provision and promotion measures for agricultural products on the internal market and in third countries (OJ 2008 L147/3), which similarly provides, that: *»Any reference to the origin of products shall be secondary to the central message of a campaign (...)«*.

⁹⁴ Green Paper, COM (2011) 436 final.

⁹⁵ Ibidem, p. 2.

⁹⁶ Ibidem. The reform is accompanied by a proposal for new quality schemes - Proposal for a Regulation on agricultural product quality schemes, COM (2010) 733 final. For a comment see *Dévényi, P.*, The New Proposal on Agricultural Product Quality Schemes – Quality Legislation on Quality Questions?, *European Food and Feed Law Review*, 3/2011, pp. 159-166.

At the same time, however, the Commission is crossing into a dangerous zone, giving impression that “*buy domestic*” and “*buy local*” initiatives of the Member States might be legitimate – predominantly for the before-discussed reasons of tradition, food security and their environmental impact. In the 2011 Green paper the Commission namely states that regional and local markets are an essential meeting place for producers and consumers – as they enable the former to receive the rewards for their labours more efficiently and the latter to contribute to the development of their local areas, reduce the environmental impact of their consumption habits and access a wide variety of products rooted in their traditions and ways of life.⁹⁷ Considering the Court’s reasoning in the *Buy Irish* and in the *German Quality Label* this is certainly a “*new approach*” towards the national production and purchasing triggered by the three crises. In this respect, the Commission is citing arguments that sponsors of “*buy domestic*” and “*buy local*” campaigns normally use:

“Short distribution channels increase the income of producers and ensure the survival of a large number of farms, particularly thanks to higher margins, a reduction in transport costs and greater autonomy with respect to the agro-industrial sector. They can help improve environmental performance in terms, for example, of limiting CO2 emissions or packaging. From a cultural and social point of view, they encourage collaborative decision-making and local governance that is more sensitive to the specific needs of the areas concerned and preserve and support local traditions, while at the same time linking the product to a geographical area shared by producers and consumers.

In a territorial approach, the involvement of producers in quality systems and the promotion of these products plays a key role in meeting growing expectations in relation to local produce, tradition and authenticity, reaffirming the social link between consumers and producers and capitalising on the freshness, innovation and nutritional qualities of produce and product awareness.”⁹⁸

⁹⁷ Ibidem, p. 4-5.

⁹⁸ Ibidem, ch. 3.1.1.

8. CONCLUSION

Although the agricultural ministers in the Council must have approved the “*new approach*” of the Commission, it is difficult to see, how distribution channels on the EU internal market will be shortened without compromising free movement of goods as we know it – at least in the Court’s case law if not in practice – and how Article 1(2) of the Regulation 3/2008, prohibiting encouragement of consumption of goods based on their specific origin will be restored in the future. Perhaps the Commission should be clearer on this point in the Green Paper and in the legislative proposals that might follow it. The Green Paper is also blurring the traditionally different approaches in trade policy on the internal (EU) and external (global) market. As trade liberalisation process was faster on the EU internal market than internationally, many practices are legitimate on the international market, but not also on the internal market.⁹⁹ For this reason, e.g. “*Buy American*” campaigns that date as far back as the Boston Tea Party¹⁰⁰ are still widespread. Buy domestic campaigns are also present in other EU trading partners and it is understandable that also the EU does not want to fall behind. It is thus the Commission’s purpose (as declared in the recent Green Paper) to strengthen the EU agricultural production on the global market:

⁹⁹ One important difference between EU free movement rules and GATT provisions is that actual success of the promotion is not a relevant factor when considering, whether a national legislation or business practice is in line with EU law, considering that prohibition of measures having equivalent effect to quantitative restrictions includes all barriers to free movement of goods, direct and indirect, actual and potential – case 8/74 – Procureur de Roi v Dassonville, [1974] ECR I-837. See also para. 25 in the case *Buy Irish*. In contrast to this, under the GATT rules actual hindrance to the free trade must be proved. The panel in the Argentina – Hides and Leather (paras. 11.20 and 11.21) stated: “*Even if it emerges from trade statistics that the level of exports is unusually low, this does not prove, in and of itself that that level is attributable, in whole or in part, to the measure alleged to constitute an export restriction. Particularly in the context of an alleged de facto restriction and where, as here, there are possibly multiple restrictions, it is necessary for a complaining party to establish a causal link between the contested measure and the low level of exports. In our view, whatever else it may involve, a demonstration of causation must consist of a persuasive explanation of precisely how the measure at issue causes or contributes to the low level of exports.*” For this reason “*buy domestic*” campaigns are much more difficult to challenge under the WTO rules than under the EU rules.

¹⁰⁰ I.e. in the 18th century - Frank, D., *Buy American: The Untold Story of Economic Nationalism*, Beacon Press, Boston, 2000.

“Consumption of European products needs to be encouraged, on the one hand, by promoting the image of the products and, on the other, by raising awareness of Europe’s quality systems among consumers and among producers (...) Europe must use all of its energy to promote its specialities and its production methods in the same way as its main trade partners (United States, Australia, Canada, etc.) are doing.”¹⁰¹

In contrast to the developments at the global level, the EU internal market was established through the EU Court's case law on agricultural and food products and prohibition of national »buy domestic« and “buy local” campaigns within the internal market present the very core principle guaranteeing free movement of goods. As is evident from the Court’s decision in the *Buy Irish* case, promoting domestic goods solely because of their origin equals promoting opposition to buying imported goods. Purchasing power and consumption needs of the consumers are namely limited and (successful) promotion of domestic milk is leading to a lesser sale of imported milk. This is (explicitly or implicitly) the key aim of the promotion. In the light of the EU Court's jurisprudence and the EU legislation such prohibitions are not legitimate for their protectionist nature, since they directly hinder single EU market; the only campaigns that are in line with the EU law are therefore those that promote specific characteristics of products, which must enable verification. Origin itself, however, may not be the specific feature of the promoted goods. It is to doubt that the Commission really proposes to change this thirty years old law, but if it does, it should do it with enormous consideration of the consequences this would mean, not just for promotion of food, but also for promotion of other types of goods and free movement in general.

Nevertheless, this does not mean that consumers should buy only from big supermarket chains, but that they should have a choice – a choice to buy from a local supplier, when the positive attributes of local supply (e.g. freshness of the product) are more important to them; but to other consumers price and variety might be more important. Local food is generally more expensive than non-local food – if that was not so, there would be no need to press people to “buy domestic”. In this respect an (obviously non-patriotic) Greek financial economist said for the campaign in 1985: “(t)his effort to brainwash Greeks into buying local goods simply won't work because, on the whole, goods imported from the West are cheaper and of superior quality to

¹⁰¹ Ibidem, paras. 3.2.1. and 4.1.

locally manufactured products."¹⁰² Consumers should therefore be able to choose, what is best for them – without a moral guilt or always thinking that their “*money is a vote, which (they) can use every time (they) go shopping*”¹⁰³. When buying goods they should be free to make shopping decisions, not moral ones. It is understandable that trade is not just about economics; it also affects national tradition, food security and the environment. These interests should be appropriately protected, however, ethnocentric campaigns do not seem to consistently follow these aims, but predominantly protect domestic economies thus encroaching upon the benefits of free trade. Environmental, health, food security and other considerations should be resolved by the competent authorities before the goods come on the shopping shelves.

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¹⁰² See ft. no. XXX above.

¹⁰³ Why buy ethically, <http://www.ethicalconsumer.org/ShoppingEthically/Topethicaltips/WhyBuyEthically.aspx> (30.8.2011).

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