

Free movement of goods

◆ Barriers to trade

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EU's approach to eliminating barriers to trade

- ◆ Negative integration: prohibiting unjustified national rules acting as a hindrance to free trade
- ◆ Mutual recognition principle: products sold legally in one MS can circulate freely throughout the EU (*Cassis de Dijon* case)
- ◆ Positive harmonisation: harmonising divergent national standards through legislation

The Treaty Provisions

- ◆ Articles 34 and 35 TFEU (ex 28 & 29 EC): Tool for policing the border between legitimate and illegitimate national regulation

Negative integration

- ◆ Article 36 TFEU (ex 30 EC): Exemptions

Quantitative Restrictions Art 28 EC Treaty (Art 34 FEU)

“Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States.”

Scope

- ◆ Quantitative restriction
- ◆ Measures having equivalent effect
- ◆ Measures taken by Member States

What is a QR?

- ◆ *Geddo Case* 2/73 [1973]
- ◆ *Risi* [1973] any measures which amount to the total or partial restraint on imports, exports or goods in transit.
- ◆ *Henn & Derby Case* 34/79 [1979]
- ◆ Egs: bans; quota systems; import/export licences

What is a measure having equivalent effect?

◆ Directive 70/50

◆ 3 groups

- Distinctly applicable (discriminatory and applies solely to imported goods)
- Indistinctly applicable (dual burden)
- Indistinctly applicable (equal burden)

First Phase

◆ *Dassonville* Case 8/74

“ 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 equivalent effect to quantitative restrictions. ”

Types of Measures

- ◆ Import bans
- ◆ Buy national campaigns
- ◆ Inspections
- ◆ Price regulation
- ◆ Standards
- ◆ Origin markings

State Measures

- ◆ *Commission v Ireland* Case 249/81 [1982]
- ◆ *Rau* Case 261/81 [1982]
- ◆ *Apple & Pear development Council v Lewis* case 222/82 [1983]
- ◆ *R v Royal Pharmaceutical Society* Case 266/87 [1989]
- ◆ *Commission v France* C-265/95 [1997]

Phase II Cassis de Dijon 120/78 [1979]



The essence of *Cassis*

- ◆ Principle of mutual recognition
- ◆ Rule of reason (justified if they are necessary to satisfy “mandatory requirements”)

Mandatory requirements

- ◆ Protection of public health
- ◆ Effectiveness of fiscal supervision
- ◆ Fairness of commercial transactions
- ◆ Defence of the consumer

Post *Cassis* examples of “mandatory requirements”

- ◆ Protection of the environment
- ◆ Cultural protection
- ◆ Fundamental rights
- ◆ Working conditions

Next topic

Post-Cassis developments & the *Keck*
& *Mithouard* ECJ ruling