

Post-Cassis Case-Law

◆ Confusion?

CJEU Rulings

- ◆ *Oebel* Case 155/80 [1981]
- ◆ *Blesgen* Case 75/81 [1982]
- ◆ *Oesthoek* Case 286/81 [1982]
- ◆ *Quietlynn* C-23/89 [1990]
- ◆ *Cf Buët* Case 382/87 [1989]

The Sunday trading saga

- ◆ *Torfaen v B&Q* Case 145/88 [1989]
- ◆ *Stoke on Trent & Norwich City v B&Q* C-169/91

Phase III

- ◆ ECJ retreats from lawfully marketed approach
- ◆ *Keck & Mithouard* Cases 367-68/91 [1993]

Cont'd (para 16 of *Keck's* ruling

"...the application to products from other member States of national provisions restricting or prohibiting certain selling arrangements is not such as to hinder, directly or indirectly, actually or potentially, trade between member States within the meaning of the *Dassonville* judgment provided that those provisions apply to all affected traders operating within the national territory and provided that they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States.

The key elements

- ◆ Indistinctly applicable measures - distinction:
 - Rules which relates to the goods themselves (product requirements)
 - Rules relating to selling arrangements

- ◆ National rules relating to selling arrangements will be regarded to fall outside Article 34 TFEU **provided** the conditions in paragraph 16 are met:
 - They apply to all relevant traders within the MS and,
 - They affect in the same manner, in law and in fact, the marketing of domestic and foreign (EU) products

Criticism of *Keck*

- ◆ AG Jacobs in *Leclerc-Siplec*: Too much emphasis on factual and legal equality at the expense of market access
- ◆ Overly formalistic? Ambiguity regarding definition of selling arrangement
- ◆ Subsequent cases try to clarify approach laid down in *Keck*

Examples

- ◆ Packaging & labelling (*Clinique, Mars*)
- ◆ Advertising (*Hunermund, Keckerc-Siplec*)
- ◆ Licensing (*Commission v Greece*)
- ◆ Sales methods (*Familiapress*)
- ◆ Working hours (*Punta casa*)

Is discrimination relevant?

- ◆ *De Agostini & TV-shop* Joined cases C-34-36/95 [1997]
- ◆ *Heimdienst* C-254/98 [2000]
- ◆ *Gourmet* C-405/98 [2001]
- ◆ *Karner* C-71/02 [2004]
- ◆ *Alfa Vita Vassilopoulos* C-158/04 & C-159/04 [2006]

Recent cases concerning *product use*

Commission v Italy ('trailers')

Mickelsson & Roos

Article 35 TFEU

- ◆ Prohibition, as between MS, of QRs and MEQRs on EXPORTS

Case law on export barriers

◆ *A different approach to Article 34 TFEU?*

Bouhelier (53/76) [1977]

Groenveld (15/79) [1979]

BUT

Lodewijk Gysbrechts (C-205/07) [2008]

A shift towards a similar approach to Art 34 FEU?

Next seminar

Expressed Treaty Derogations to the free Movement of Goods Rules ie Article 36 TFEU , particularly in the context of intellectual property rights