

Free Movement of Goods Rules

What is the problem and what are the rules?

Structure of today's Lecture



- What type of measures obstruct trade between Member States in the EU?
- What are the relevant Treaty provisions?
- What is the meaning of 'measures having equivalent effect'?

Types of Measures

- ◆ Import bans
- ◆ Customs duties
- ◆ Trading and marketing rules
- ◆ Buy national campaigns
- ◆ Inspections
- ◆ Price regulation
- ◆ Standards
- ◆ Origin markings
- ◆ Consumer preferences
- ◆ Language
- ◆ Intellectual Property Rights
- ◆ Transport

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: Tool for policing the border between legitimate and illegitimate national regulation

Negative integration

- ◆ Article 36 TFEU: Derogations

Quantitative Restrictions Art 34 TFEU

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

Scope

- ◆ What are goods?
- ◆ Measures taken by Member States
- ◆ Quantitative restriction
- ◆ Measures having equivalent effect

What are goods?

- ◆ Any physical object that can be valued in money and which can be the subject of commercial transactions

'Measures taken by Member States'

◆ What is a State entity?

- ◆ May include any public or semi-public body
- ◆ *Apple and Pear Development (222/82)*
- ◆ *Buy Irish (249/81)*

State Measures

- ◆ *Commission v Ireland* Case 249/81 [1982] (need not be binding)
- ◆ *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]

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 (MEQR)

◆ *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."

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”)
- ◆ proportionality

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

Directive 98/34 and relevant case law

- ◆ I – Aim of Directive
- ◆ II - Articles 8 and 9 of Directive
- ◆ III – The case law

I – Aim of Directive

- ◆ On the provision of information in the field of technical standards and regulations
- ◆ Consolidated an earlier directive (Directive 83/189)
- ◆ To avoid creation of further barriers to trade
- ◆ Detailed procedure for a regulated dialogue

II – Articles 8 and 9 of Directive

◆ **Article 8**

- Requires MSs to notify to the Commission any draft technical regulation **BEFORE** they are adopted and create barriers to trade between MSs

◆ **Article 9**

- Standstill clause ie notifying MS to postpone the adoption of the draft technical regulation for 3 months

III - Relevant CJEU case law

- ◆ *CIA Security* C-194/94 [1996] ECR I-2201
- ◆ *Unilever* C- 443/98 [2000] ECR I-7535
- ◆ *Sapod-Audic* C-159/00 [2002] ECR I-5031

Directive 94/38 – technical standards

- ◆ *CIA* C-194/94 [1996] ECR I-2201
- ◆ *Unilever* C-443/98 [2000] ECR I-7535
- ◆ *Sapod-Audic* C-159/00 [2002] ECR I-5031
- ◆ Arts 8 and 9

Next topic

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