

Removal of Customs Duties

- ◆ Arts 28-33 TFEU
- ◆ Creation of Customs Union

Structure of today's Lecture



- What is a customs union? Art 28 TFEU
- The external aspects of the internal market
- Elimination of customs duties and CJEU case law
- Internal taxation: Arts 110 & 111 TFEU

Article 28(1) TFEU

“The EU shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties in imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.”

Art 28(1) cont'd

2 distinct parts

- ◆ Elimination of customs duties and charges having equivalent effect
- ◆ Adoption of a common customs tariff (CCT)

The External Aspects of the Internal Market

- ◆ The CCT
- ◆ The Common Commercial Policy (CCP)

The CCT

- ◆ Nomenclature for the classification of goods
- ◆ Rules for the valuation of goods
- ◆ Rules for determining origin

Elimination of Customs Duties

◆ Article 30 TFEU

“ Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to custom duties of a fiscal nature.”

The case-law

- ◆ *Van Gend en Loos*, Case 26/62 [1963]
- ◆ *Carbonati Apuani* C-72/03 [2004]
- ◆ *Commission v Italy* Case 7/68 [1968]
- ◆ *Jorgenskiold v Gustafsson* C-97/98 [1999]

Goods in “free circulation”

◆ Article 28(2) TFEU

“The.... Shall also apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.”

Meaning cont'd

Article 29 EC TFEU

“ products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any custom duties or charges having equivalent effect which are payable have been levied in that Member State and if they have not benefited from total or partial drawback of such duties or charges.”

Charges Having Equivalent Effect

- ◆ No definition in TFEU
- ◆ *Commission v Luxembourg & Belgium* (gingerbread) Joined Cases 2 & 3/62 [1962]
- ◆ *Sociaal Fonds voor de Doamantarbeiders v Brachfield* (diamond workers) Joined Cases 7 & 3/69 [1969]

Cont'd

◆ *Commission v Italy* Case 24/68 [1969]

“ any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact they cross a frontier.....even if it is not imposed for the benefit of the State, is not discriminatory or protective in effect and if the product on which the charge is imposed is not in competition with any domestic product.” (para. 9)

Further case-law

- ◆ *Carbonati* C-72/03 [2004]
- ◆ *Legros* C-63/90 [1992]

Charge imposed for service

- ◆ *Commission v Italy* Case 24/68
- ◆ *Commission v Belgium* Case 132/82 [1983]
- ◆ *Commission v Italy* Case 340/87 [1989]
- ◆ *Cadsky* Case 63/74 [1975]
- ◆ *Bresciani* Case 87/75 [1976]

Inspections charges

◆ *Commission v Germany* Case 18/87 [1988]

- Not exceed cost of inspection
- Inspection obligatory
- Prescribed by Community law
- Promote free movement

Internal taxation

- ◆ Arts 110 & 111 TFEU
- ◆ VAT Directives
- ◆ Excise duties

Article 110 TFEU

No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

Article 111 TFEU

Where products are exported to the territory of any Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

Relationship between Arts 28-30 and Articles 110-113

- ◆ Mutually exclusive
- ◆ Art 28 – goods crossing a border; but Art 110 prevents discrimination against goods once they have entered a Member State
- ◆ Violation of Art 28 makes the tax unlawful BUT violation of Art 110 only requires the national tax to be adjusted

Next Seminar

Quantitative restrictions and measures
having equivalent effect