
EU SUBSTANTIVE LAW

SEMINAR 2 THE EU INTERNAL MARKET & REMOVAL OF CUSTOMS DUTIES BETWEEN MEMBER STATES

Reading

- Barnard's *The Substantive Law of the EU* (5th ed. OUP, 2016); ch3 pp44-67

I THE EU INTERNAL MARKET (common market/the single European market)

- **Article 3 TEU** – creation of a common market – factors of production (goods, people, services & capital)
Article 26 TFEU specifies the free movement of goods as an essential element of the internal market. Article 26(2) states that *the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.*
- MS no longer free to determine tariffs in respect of goods originating from outside
- Common policies & the principle of non-discrimination on nationality grounds
- Articles 34-36; 45; 49; 56 & 57; 63 TFEU; and 56 (capital)) – negative integration
Principle of non-discrimination – Articles 18 & 19 TFEU

Brief Historical Review

- end of 1960s Common Customs Tariff (CCT) in place
- 1985 White Paper enumerating all the measures necessary to complete the internal market – eurosclerosis!
- adoption of the Single European Act 1987; The Treaty on European Union (the EU Treaty) ; The Treaty of Amsterdam; The Treaty of Nice
- The EU Treaty (only the first few articles that outline the objectives and values of the EU are relevant to this course) and the Treaty on the Functioning of the European Union (The Treaty of Lisbon, 2007 and into force on 1st December 2009)

The European Economic Area (EEA)

- free movement of goods, persons, services and capital
- PLUS transport and competition
- PLUS relevant areas to the FOUR freedoms such as company law, research and development, consumer, environment, social policy and education

II FREE MOVEMENT OF GOODS: customs union & elimination of quantitative restrictions

Treaty Provisions

- **Articles 28-33** (creation of a customs union)
- **Articles 34-36** (elimination of quantitative restrictions)

Customs Union and Elimination of Customs Duties between Member States

- Treaty provides an absolute prohibition on customs duties and charges having equivalent effect
- The prohibition is a “fundamental principle of the common market”

Article 28(1)

“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”

2 distinct parts: (a) elimination of customs duties and charges between Member States and (b) the adoption of a CCT

The External Aspects of the SEM

- Common Customs Tariff (CCT)
- Common Commercial Policy (CCP)

Common Customs Tariff (CCT) - Articles 31 & 32

- What is it? Uniform system of tariffs
- In place since 1 July 1968 – administered by the Commission and national customs officers – duties become part of the Community’s own resources – comprises 3 elements:
 - a nomenclature for the classification of goods
 - rules for the valuation of goods
 - rules for determining origin of the goods

NB Once goods have paid their duties then treated for purposes of free movement as Community goods.

Common Commercial Policy (CCP) (to be dealt with later)

Article 207- exclusive competence on EU to conclude international agreements

The Elimination of Customs Duties (originally protectionist duties)

Article 30 – direct effect (standstill provision pre-Amsterdam Treaty) (**NB** monist/dualist)

‘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’

Van Gend en Loos, Case 26/62, [1963] ECR I

Facts: In 1960 Van Gend (VG) imported some chemical from West Germany into the Netherlands, and was charged an import duty of 8%, whereas they claimed that at the date of entry into force of the Treaty in 1958, the duty had been 3%. The question,

therefore, arose as to whether they could invoke the standstill provision, Article 25, against the Dutch authorities before the Dutch Courts.

Case C-72/03 *Carbonati Apuani* [2004] ECR I-8027

Article 28 explicitly covers ‘all trade in goods’

Commission v Italy (Re Arts Treasures), Case 7/68 [1968] ECR 423

Facts: Italian Government had imposed a charge on the export of works of artistic value and they argued that art treasures do not come within the meaning of goods for the purposes of Article 23. The ECJ disagreed and formulated a broad definition of “goods” to include: “products which can be valued in money and which are capable of forming the subject of commercial transaction.” As the works of art had a commercial value (the Italian Government had even valued them for the purposes of imposing the export duty) they came within the scope of Article 23.

Case C-97/98 *Jorgenskiold v Gustafsson* [1999] ECR I-7319

Article 28(2) applies to goods “**in Free Circulation**”

‘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.’

Article 29 provides that *‘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 customs 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.’*

Cases C-30/01 *Commission v UK* (re Gibraltar) [2003] ECR I-9481

The Elimination of Charges Having Equivalent Effect

- No definition in the Treaty – CJEU’s jurisprudence very important.

Commission v Luxembourg and Belgium (re Gingerbread), Joined Cases 2 & 3/62, [1962] ECR 425 (protective charge)

Facts: Since 1935 Luxembourg custom duties followed the policy of Belgium. In 1957 Belgium imposed a special import duty on gingerbread because of higher cost of imported rye (the raw material). National support price system for the rye resulted in a high domestic price for rye, an ingredient of gingerbread. The Member States argued the tax was imposed on imports of gingerbread in order to compensate for the high cost.

Sociaal Fonds voor de Diamantardeiders v Brachfeld (The Diamond Workers Case),
Joined Cases 2 & 3/69. [1969] ECR 211 (provision of a social benefit)

Facts: In 1960 Belgium established a Social Fund for diamond workers. In 1962 it was amended in order to provide “all persons importing uncut diamonds are required to pay a contribution to enable a fund to carry out its mission under ...” In 1962 proceedings were instituted in Antwerp against 200 diamond importers. Arrears claimed and defence of diamond importers was that the levy infringed EC Treaty because it amounted to a customs duty or charge having equivalent effect.

The Belgian government submitted in argument that the levy could not be regarded as infringing Articles 23 and 25 since it was devoid of protectionist purpose since:

- a Belgium did not produce diamonds
- b The purpose of the levy was to provide social security benefits for the workers.

Commission v Italy (Re Statistical Levy), Case 24/68; [1969] ECR 193

‘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 that they cross a frontier, and which is not a custom duty on the strict sense, constitutes a charge having equivalent effect ... 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’ (paragraph 9).

Case C-72/03 *Carbonati* [2004] ECR I-8027

Case C-63/90 *Legros* [1992] ECR I-4625 (Remedies: repayment of unlawful charges)

- Prohibition of **Article 30** is absolute (no Treaty derogations) but CJEU has held in certain narrowly-defined circumstances, the levy may not constitute a charge for the purposes of **Article 30**.

- (a) Where charge is imposed as consideration for a service rendered to the trader

Commission v Italy Case 24/68 (above) (Re Statistical Levy)

Commission v Belgium Case 132/82 [1983] ECR 1649 (warehousing)

Commission v Italy (Re Customs Hours), Case 340/87 [1989] ECR 1483

Bresciani Case 87/75 [1976] ECR 129 (compulsory vet health inspection on imported raw cowhides imposed on public interest therefore could NOT be regarded as a service rendered to importer (public as a whole benefited!))

- (b) Inspections carried out pursuant to EU Law

Commission v Germany, Case 18/87, [1988] ECR 5427 (protection of animals during transportation) 4 conditions listed

- not exceed actual cost of inspection
- inspection obligatory and uniform for all products concerned in the EU
- prescribed by EU law in the general interest of the EU

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- promote the free movement of goods, by neutralizing obstacles which arise from unilateral measures for inspections adopted in accordance with Article 34 TFEU.

Case 46/76 *Bauhuis v Netherlands* [1977] ECR 5

(c) Charge which falls within the scope of internal taxation. [But see **Article 110**]

NB Mutually exclusive – a tax not satisfying a genuine test, relating to a general system of internal dues applied systematically to categories of products in accordance with objective criteria irrespective of origin of products.

NB Relationship between customs duties/taxation/State aids