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Restrictions and their justifications in the free movement of goods

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Abstract

This dissertation was written as part of the LLM in Transnational and European Commercial Law, Banking Law, Arbitration/Mediation at the International Hellenic University.

The aim of this dissertation is to present the fiscal and non fiscal restrictions that may hinder trade within Member States of the European Union and the possible justifications of these restrictions. The first chapter analyses custom duties and charges of equivalent effect to them that are prohibited under article 30 TFEU and the conditions under which Member States may justify the imposition of such fiscal burdens on goods. The second chapter concerns the internal discriminatory taxation of imported goods that is prohibited under article 110 TFEU and the possibility of Member States to justify the imposition of an internal tax.

The third chapter analyses quantitative restrictions on trade between Member States and measures of equivalent effect prohibited under article 34 TFEU. These concepts are analyzed according to the case law of the European Court of Justice that has been very decisive for the establishment of the free movement of goods. In addition, this chapter examines possible justifications of restrictions that fall under article 34 TFEU.

At this point I would like to express my gratitude to my supervisor, Professor Thomas Papadopoulos, whose guidance has been crucial for the completion of this dissertation. I would also like to thank all the Library and Administrative Staff of the International Hellenic University who were willing to help me in my research. Finally, I want to thank my family and my friends who have supported me throughout my studies.

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Preface

Free movement of goods is one of the four fundamental freedoms in the European Union alongside with the free movement of workers, services and capital. It has largely contributed to the creation of an internal market appoting benefits for people and entreprises. This dissertation aims to provide insight into the application of certain provisions of european law whose objective is to ensure the free movement of goods.

Contents

Introduction

One of the main objectives of the European Union (EU) has always been the establishment of an internal market. The idea that all Member States could benefit from goods and services provided in the other Member States has been fundamental for this notion. However, the concept of an internal market goes beyond the benefits deriving from transactions between Member States. It aims to establish a single large market between Member States which operates as a market of a single state[1]. The legal basis for the creation of an internal market is found in article 26 of the Treaty on the Functioning of the European Union (TFEU) which provides that the internal market consists of an area in which "the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties". Thus, any restriction that could hinder free movement should be prohibited.

The successful function of the internal market depends both on negative and positive integration. Negative integration is achieved in the EU through the provisions of the TFEU that prohibit restrictions on trade between Member States. These provisions are directly applicable which means that any citizen of a Member State may claim their infringement before a national court[2]. The European Court of Justice (ECJ or the Court) has contributed to a large extent in the development of the internal market through negative integration by providing a large definition of restrictions on trade and a strict interpretation of the circumstances under which these restrictions may be justified. On the other hand, positive integration is achieved through the harmonization of the legislation of different Member States. Harmonized rules regulate the relevant fields without imposing restrictions on trade[3].

Restrictions on trade within Member States of the EU may be of fiscal or non fiscal nature. The aim of this dissertation is to analyze fiscal restrictions that fall within the

[1]Damian Chalmers, Gareth Davies & Giorgio Monti, European Union Law (2nd edn, Cambridge University Press 2010) 676

[2]Armin Cuyvers, East African Community Law: Institutional, Substantive and Comparative EU Aspects (Brill 2017) 297

[3] Ibid.

scope of article 30 or article 110 TFEU and non fiscal restrictions that fall within the scope of article 34 TFEU. Moreover, it aims to present the justifications according to which such restrictions have been considered to be lawful. Particular emphasis will be given to the jurisprudence of the ECJ that has played a crucial role in the interpretation of these articles.

1. Restrictions on trade between Member States of the EU that fall within the scope of article 30 TFEU

A first step towards the establishment of an internal market was the creation of a customs union. According to article 28 TFEU the custom union has an internal aspect that prohibits custom duties and charges having equivalent effect on trade within the EU. It also has an external aspect according to which all goods from third countries are subject to customs duties according to a common customs tariff policy. Article 30 TFEU expressly states that *"customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature".* The imposition of both of these forms of fiscal charges intends to raise revenues for the States. At the same time, it results in the increase in price of imported products and thus favors domestic products that will be sold in a lower price attracting consumers[4].

1.1 The concept of custom duties and charges of equivalent effect to them

Custom duties are financial burdens imposed on goods due to the fact that they have a crossed a border. Custom duties do not apply any longer in transactions between Member States within the EU and are only imposed on goods entering the EU from third states [5]. The necessary supplement of the prohibition of custom duties is the prohibition of charges having equivalent effect to them (CEEs) that create similar restrictions on trade. The meaning of the latter has been defined by the jurisprudence of the ECJ and has emerged as an autonomous legal concept. Specifically, in case 24/68 Commission v Italy, the ECJ defined a CEE as *"any pecuniary charge, however small and whatever its designation and mode of application, which is unilaterally imposed on*

[4] Augustin Fuerea, 'The Legal Regime for Customs Duties and Taxes Having Equivalent Effect in the European Union' (2018) 25 Lex ET Scientia Int'l J 65, 70

[5] Armin Cuyvers, East African Community Law: Institutional, Substantive and Comparative EU Aspects (Brill 2017) 328

goods by reason of the fact that they cross a frontier and which is not a custom duty in the strict sense ….. 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"[6]. With this definition the ECJ made clear that the crucial element for a measure to constitute a CEE is the effect that it has on trade and not its purpose.

This approach was adopted as well in joined cases 2/69 and 3/69 Diamantarbeiders in which the ECJ accessed the legality of a Belgian provision requiring that traders should pay an amount of the value of imported diamonds into a fund for workers in that industry. In these cases, the ECJ repeated the broad definition given in case Commission v Italy and expressly stated that the prohibition of pecuniary charges applies irrespective of the nationality of the traders affected by the measure at issue and of whether that measure concerned nationals of all or of certain Member States[7]. The fact that Belgium did not produce at the time diamonds and that the purpose of the fund raising the money was not to protect the public industry was not crucial. The emphasis was given again in the effect of the charge that was due to the fact that goods crossed a border.

1.2 The possibility of justification of restrictions under article 30 TFEU

The broad and strict approach that the ECJ adopted at these cases was expected given that the abolition of custom duties and CEEs was the first necessary step for the establishment of the single market[8]. Duties or CEEs that are unlawful under article 30 TFEU cannot be justified under article 36 TFEU which provides possible justification only for physical and technical restrictions falling within the scope of article 34 and 35 TFEU and not for fiscal restrictions. Nevertheless, the ECJ has accepted in its case law

[6] Case 24/68 Commission v Italy [1969] ECR 193, para 9

[7] Joined Cases 2/69 and 3/69 Social Fonds voor de Diamantarbeiders v SA Ch Brachfeld and Sons [1969] ECR 211, paras 18, 25-26

[8] Paul Craig and Grainne de Burca, 'EU Law Text, cases and Materials' (5th edn, Oxford University Press 2011) 615

that under certain circumstances the imposition of financial burdens in goods crossing a border within the EU is justified.

A possible justification on which Member States may rely on is that the fiscal burden imposed on traders constitutes a payment for a service that is provided to them. Although the ECJ accepts this justification in principle, it examines relevant claims very thoroughly as it is possible that Member States rely improperly on such a defense in order to restrict transactions within the EU[9]. In this context, in the above mentioned case 24/68 Commission v Italy the Italian government argued that the charge imposed on exports intended to the raise of money for the collection of statistical data concerning trade patterns. The ECJ rejected this argument on the ground that gathering this data could be beneficial in general for the economy but did not provide a specific benefit to these traders[10]. Therefore, the charge was not a payment for a service rendered to the trader but constituted a CEE. In addition, according to the case law of the ECJ the service provided to the traders must be of genuine benefit for them. This is shown especially in case 132/82 Commission v Belgium in which the ECJ examined the legality of a charge imposed by the Belgian authorities on goods that went under custom clearance in public warehouses. The charge was imposed irrespective of whether importers would use the public warehouses to store the goods or whether the goods were only to be presented in the warehouses for custom clearance. In the latter case, there was no actual genuine benefit provided to the importers. Hence, the financial burden imposed was regarded as a CEE[11].

In addition to the justification mentioned above, the ECJ has accepted that Member States can lawfully impose charges on goods that cross a frontier within the EU for the provision of services which are mandatory under the EU law. Even if the trader does not gain a specific and genuine benefit from the service provided, the charge is legal insofar Member States are obliged under EU law to provide this service. Nevertheless, the fee at issue shall not exceed the actual cost of the service provided, a service that

[9] Stephen Weatherill, 'Cases & Materials on EU Law' (10th edn, Oxford University Press, 2012) 268

[10] Case 24/68, Commission v Italy [1969] ECR 193, para 16

[11] Case 132/82 Commission v Belgium [1983] ECR 1649, para 14

should serve the general interest of the EU. Respectively, the imposition of fees aiming to cover the cost for veterinary inspections prescribed under a directive was regarded not to constitute a CEE[12].

The approach applied by the ECJ as explained above serves the abolishment of fiscal barriers to trade within the EU and guarantees the free movement of goods between Member States. At the same time, goods coming from third states should be subject to a thorough custom control that benefits Member States in various perspectives. Apart from the revenues gathered from the imposition of tariffs on these goods (which constitute a significant percentage of the general income of the EU), custom services assist in that case in the combat against fraud and organized crime. Therefore, they ensure the protection of safety and security of European citizens. The Union Custom Code that has been entered into force on 1 may 2016 aims to achieve those goals that are crucial this period for the European Union[13].

[12] Case 18/87 Commission v Germany [1988] ECR 5427

[13] https://ec.europa.eu/taxation_customs/general-information-customs/eu-customs-strategy_en

2. Measures that amount to discriminatory internal taxation under article 110 TFEU

Fiscal restrictions on trade within the EU may be caused not only by the unlawful imposition of charges that fall within the scope of article 30 TFEU but also by the discriminatory internal taxation of imported products. It should be noted that Member States have the sovereignty to regulate their own taxation policy according to the Treaties. However, taxation policies applied by the different Member States must comply with the requirements established by European law. Therefore, internal taxation of all products within a Member State shall comply with the principle of non-discrimination[14]. In order to prevent discrimination against imported products through internal taxation article 110 TFEU provides that Member States shall not impose on imported products, directly or indirectly, "any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products". The second paragraph of article 110 forbids internal taxation that provides indirect protection to domestic products that are in competition with imported products. This article is crucial for the function of the internal market insofar it prohibits internal taxation that could results in the reduction of imports and hence in the enhancement of domestic goods in the market.

2.1 The concept of "similar products"

The prohibition of article 110, paragraph 1, TFEU applies where the products in question are similar and the internal tax has a discriminatory effect against imported products that cannot be justified. A first question that arises concerns the criteria on which the similarity of products is established. The ECJ has consistently held that similarity of products should be tested based on the objective characteristics of the products at issue and their substitutability from the consumers' point of view. Regarding the first criterion, the ECJ held in case 243/84 John Walker which concerned the different taxation of whiskey and fruit liqueur in Denmark that the objective

[14] Manfred A Dauses, 'The System of the Free Movement of Goods in the European Community' (1985) 33 Am J Comp L 209, 216

characteristics of the products include their origin, their method of production and their organoleptic properties[15]. If products have the same characteristics, then their similarity is tested based on the needs of the consumers. As the ECJ stated in case 45/75 Rewe-Zentrale, if consumers believe that products satisfy the same needs, those products are considered to be similar[16]. In this context, similarity of products seems to be linked with the substitutability of products. The ECJ in order to access if products serve the same needs of consumers uses a price test: if a small increase in price of a domestic product leads consumers in choosing an imported product, these products are similar insofar consumers think they are substitute[17].

2.2 Direct or indirect discrimination

The discrimination against imported goods through internal taxation may be direct or indirect. Direct discrimination is found in cases where the taxation policy of Member States provides expressly that products will be subject to different tax treatment due to their origin. Cases of direct discrimination are relatively rare given the strict wording of article 110 and the fact that this form of discrimination is easily identifiable. However, direct discrimination is established not only in cases where the tax rate is higher for imported products but also in cases where the rules regulating the procedure for the tax payment are less favorable when they refer to imported products. For example, this occurs when national rules afford reductions from tax only to domestic products or when they include stricter provisions for imported products with regard to the time limit of tax payment or the procedure for challenging the tax[18].

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[15] Case 243/84 John Walker & Sons v Hauptzollamt [1996] ECR 875, para 11

[16] Case45/75 Rewe-Zentrale des Lebensmittel-Großhandels GmbH v Hauptzollamt Landau/Pfalz [1976] ECR 181, para 12

[17] Alina Kaczorowska, 'European Union Law' (3rd edn, Routledge 2013) 502

[18] Γεώργιος Αργυρός, 'Δίκαιο της ευρωπαϊκής εσωτερικής αγοράς: οι θεμελιώδεις οικονομικές ελευθερίες', [ηλεκτρ. βιβλ.] (Αθήνα: Σύνδεσμος Ελληνικών Ακαδημαϊκών Βιβλιοθηκών 2015. Διαθέσιμο στο: http://hdl.handle.net/11419/4169) 56

Given that direct discrimination based on origin is manifest, Member States may try to afford protection to domestic products indirectly through other provisions that do not refer to the origin of the product. The intention of the ECJ to include indirect discrimination in article 110 TFEU is demonstrated in case 112/84 Humblot. The ECJ examined in this case the legality of a French taxation provision according to which an increased amount of annual tax was imposed on cars above 16 horsepower. As France did not produce in fact cars above 16 horsepower, the ECJ found that the relevant provision afforded indirectly protection to domestic cars which were subject to a lower tax rate and was therefore contrary to (what is now) article 110 TFEU[19].

A decisive difference between direct and indirect discrimination through internal taxation is that the latter may be justified on objective grounds whereas direct discrimination based on origin cannot be justified objectively but only on the grounds provided in the Treaties. This means that there might be an objective factor that does not relate to the origin of products which justifies the imposition of the internal tax on imported goods. The ECJ has recognized the possibility of justification of indirect discrimination if the following conditions are met. The objective pursued must be lawful and achievable by the Member State and at the same time the national provision imposing the internal tax must comply with the principle of proportionality[20].

A characteristic case on the matter of the justification of indirect discrimination based on objective criteria is case 196/85 Commission v France. According to a French taxation provision sweet wine produced in certain areas of France in a traditional method was subject to a lower tax rate than imported sweet wine. There was no direct discrimination in this case insofar all wines could be subject to this lower taxation provided that there were produced in the same traditional way even if they came from other countries. However, the European Commission claimed that the conditions under which foreign sweet wine could benefit from the lower tax rate restricted in fact trade and deprived those products from this lower taxation. France proved that sweet wine was produced in infertile areas of France whose economy was based on the

[19] Case 112/84 Humblot v Directeur dês Services Fiscaux [1985] ECR 1367

[20] Siegert Alber, 'European Community Tax Law and Its Development in Light of the Recent Case Law of the European Court of Justice' (1999) 22 Fordham Int'l LJ 768, 780

sweet wine production. Therefore, the lower taxation imposed on it aimed to the reinforcement of its production and the development of the concerned areas in France. Under those conditions the ECJ held that the lower taxation of French sweet wine was objectively justified[21].

2.3 Products in competition

Article 110, paragraph 2, TFEU applies in cases where the internal tax imposed on imported products protects indirectly domestic products in competition with imported products. The concept of "products in competition" was clarified by the ECJ in case 170/78 Commission v UK in which the ECJ stated that article 110, paragraph 2, TFEU applies to products that are "partially or potentially in competition" although they are not similar[22]. In that case, Commission brought proceedings against UK for the infringement of article 110 paragraph 2 insofar UK applied lower tax on beer that was mainly a domestic product than wine that was to a large extent imported. The ECJ stated that in order to access whether products are in competition it is necessary to consider beyond the current state of the market and take into consideration the possibility of substitution of products that may emerge from the transactions within the EU. In this context, it was found that beer and wine could respond to the same needs of the consumers. However, given the qualities of those spirits and their alcoholic strength, beer could only be in competition with the light and least expensive ranges of wine. Then the ECJ found that even the most inexpensive wine was subject to a higher tax rate than domestic beer. As a result, the tax imposed on wine was deemed to afford protection to domestic beer and thus constituted an infringement of article 110, paragraph 2[23].

By contrast, the ECJ took a different decision in case C-167/05 Commission v Sweden in terms of which it accessed the legality of a Swedish tax provision that imposed a lower tax on beer that was mainly domestic than wine (mainly imported from other Member States). The ECJ reaffirmed its assessment that beer could only be in competition with

[21] Case 196/85 Commission v France [1987] ECR 1597

[22] Case 170/78 Commission v UK [1983] ECR 2265, para 7

[23] Ibid., para 7-12

light and least expensive wine. However, it found that the difference in the tax rate imposed on these products was so small that could not affect in fact the choice of consumers between them. As a result, the internal tax imposed did not present a protectionist effect and could not fall within the scope of (what is now) article 110, paragraph 2 TFEU[24].

The determination of whether the products in question are similar or in competition is not always easy. For this reason the ECJ has in certain cases adopted a general approach of article 110 TFEU. This is shown in the French Spirits case in which the ECJ examined a French regulation that opted for a lower tax on alcoholic spirits made from wine (mainly French) and a higher tax on spirits made from cereals (mainly imported). The ECJ found that all products at issue shared some characteristics but also had features of their own. Hence all products were at least considered to be in competition whereas some of them could be regarded as similar. Accordingly, the ECJ found that the French taxation regulation was a breach of article 110 TFEU as a whole[25].

Nevertheless, the distinction between paragraph 1 and 2 of article 110 TFEU is important insofar the ramifications of the infringement of those paragraphs are different. Specifically, in case an internal discriminatory tax is found to be imposed on imported products despite the prohibition of paragraph 1 of article 110, the relevant Member State is obliged to ensure that the similar products will be subject to the same tax rate. On the other hand, if an infringement of paragraph 2 of article 110 is demonstrated, Member States are not obliged to equalize the tax imposed on imported and domestic goods but must raise the protectionist effect caused by the imposition of the tax[26] .

It is evident that the purpose of the case law of the ECJ is to catch any national measure that could afford protection to domestic goods through the unequal imposition of internal taxes. Respectively, Member States could try to claim that the products at issue are not similar or in competition in order to avoid the prohibition

[24] Case 167/05 Commission v Sweden [2008] ECR I-2127, para 61

[25] Case 168/78 Commission v France [1980] ECR 347

[26] Peter Oliver and Martin Martinez Navarro, “Free movement of goods” in Catherine Barnard and Steeve Peers (eds), ‘European Union Law’ (Oxford University Press 2014)

stated in article 110 TFEU. For this reason, the ECJ aims to ensure that a relevant claim will not be easily accepted. For example, in case C-302/00 Commission v France the ECJ ruled that France could not lawfully support that light and dark tobacco were not similar products because of the different color of the tobacco and the different groups of consumers that were using them[27].

It shall be underlined that the ECJ may establish an infringement of article 110 TFEU even if the tax provisions of the Member State seem to be neutral. Case 193/79 Co-frutta is a characteristic example of an attempt of a Member State to protect domestic production through a legislation that seems prima facie non protectionist. While Italy imposed a high tax on bananas and claimed that this tax was legal as there were no similar or competitive products produced in Italy, the ECJ found that bananas met the same needs of consumers with other table fruits produced in Italy and thus found that there was a competitive relationship between them. Since the domestic table fruits benefited from the high tax on bananas, it was ruled that Italy had breached article 110, paragraph 2, TFEU[28].

Despite the prohibition of article 110 TFEU, Member States will always attempt to discriminate in favor of their domestic products. It is incumbent on the ECJ to interpret properly the Treaties in a way that deters such measures and guarantees the well functioning of the internal market. The case law of the ECJ so far seems to be successful at this point. The almost absolute prohibition of tax discrimination is beneficial not only for the internal market but for European consumers as well. As long as domestic products are not protected through a favorable method of taxation, companies are trying to improve the quality of goods offered to consumers in order to remain competitive in comparison with other firms in other Member States. As a result, consumers may choose between goods of higher quality. On the contrary, discrimination practices tend to distort competition in the detriment of consumers[29].

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[27] Case C-302/00 Commission v France [2002] ECR I-2005, para 25-26

[28] Case 193/79 Co-operative Co-Frutta Srl v. Amministrazione delle Finanze dello Stato [1987] ECR 2085

[29] Jarrod Tudor, 'Discriminatory Internal Taxation in the European Union: The Power of the European Court of Justice to Limit the Tax Sovereignty of the Member-States under

Considering these factors the proper application of article 110 TFEU is of great importance.

Article 110 of the TFEU' (2015) 23 Willamette J Int'l L & Dis Res 141, 183

3. Restrictions on trade under article 34 TFEU

Non fiscal barriers to trade within the European Union are prohibited under article 34 TFEU which provides that "Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States". The ECJ has contributed widely to the definition of both quantitative restrictions (QRs) and measures having equivalent effect (MEQRs) since no relevant definition can be found in the treaties.

3.1 The concept of QRs and MEQRs

The definition of QRs was established by the ECJ in case 2/73 Geddo in which it defined QRs as measures which amount to a total or partial restraint of imports, exports or goods in transit.[30] These may include a total ban of imports or exports of certain goods[31] or partial restrictions that allow only a certain quantity of products to be imported or exported in other Member States[32]. Quantitative restrictions do not occur often as their prohibition is manifest.

The definition of MEQRs has raised more difficulties. A first explanation of the concept of MEQRs was given in directive 70/50/EEC[33] which was in force during the Community's transitional period and divided MEQRs in distinctly and indistinctly applicable measures. According to article 2 of the directive distinctly applicable measures are those that hinder imports by making them more difficult than the disposal of domestic goods whereas according to article 3 of the same directive

[30] Case 2/73 Risetia Luigi Geddo v Ente Nazionale Risi [1973] ECR 865, para 7

[31] Case 34/79 Regina v Maurice Donald Henn and John Frederick Ernest Darby [1979] ECR 3795, paras 12 and 13

[32] Case 170/04 Klas Rosengren and Others v Riksåklagaren [2007] ECR I-4701,para 36

[33] Commission Directive 70/50/EEC of 22 December 1969 based on the provisions of Article 33 (7), on the abolition of measures which have an effect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty [19.01.1970] OJ L 13

indistinctly applicable measures are those that apply to both imported and domestic products but in practice constitute an obstacle to imports only.

The ECJ provided its own definition of MEQRs in case 8/74 Dassonville which was referred to the ECJ by a Belgian court. In this case the ECJ held that the requirement established in Belgian legislation according to which imports of spirits bearing a designation of origin should be accompanied by a certificate of origin constituted a MEQR. This certificate could be obtained less easily by the importers of the product which had been put into circulation in another member state than by importers who would import the product directly from the country of production. In this context the ECJ defined MEQRs as "any trading rules enacted by Member States which are capable of hindering directly or indirectly, actually or potentially, trade between member states"[34].

According to this very broad definition, known as the Dassonville formula, it is not necessary that a measure has actual restrictive effects on trade in order to be characterized as a MEQR; it constitutes a MEQR even if it is capable of hindering trade potentially regardless of the motive for its introduction. The Court has held that there is no de minimis rule in applying article 34 TFEU which leads to the conclusion that even if a measure causes a slight hindrance to trade, it falls within the scope of this article[35]. Only in certain cases that the restrictive effect of the measure was "too uncertain and too indirect" the Court held that it does not fall within the scope of this article[36]. Although the Court did not distinguish between distinctly and indistinctly applicable measures in the definition of MEQRs provided in the Dassonville case, both kinds of measures are included in the Dassonville formula since it is not mentioned that a measure should be discriminatory in order to constitute a hindrance to trade[37]. Following the establishment of the formula in paragraph 5 of the judgment, the Court

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[34] Case 8/74 Procureur du Roi v Benoît and Gustave Dassonville [1974] ECR 837, para 5

[35] Joined Cases 177 and 178/82 Criminal Proceedings against Jan Van de Haar and Kaveka de Meern BV [1984] ECR 1797

[36] Case C-93/92 CMC Motorradcenter GmbH v Pelin Baskiciogullari [1993] ECR I-5009, para 12

[37] Alina Kaczorowska, 'European Union Law' (3rd edn, Routledge 2013) 529

accepted in paragraph 6 of its judgment that in the absence of harmonized legislation within the European Union, Member States are free to take measures to prevent unfair practices in the detriment of consumers. However, these measures should be reasonable and accessible to all EU citizens.

3.2 The Cassis de Dijon case

The reasoning established in paragraph 6 of the judgment in the Dassonville case was further developed in case 120/78 Rewe-Zentral AB Bundesmonopolverwaltung für Branntwein (the Cassis de Dijon case) which was referred to the ECJ for a preliminary ruling. The dispute in the main proceedings resulted from a German legislation that prohibited the marketing of liqueurs which had an alcoholic strength of less than 25 per cent per liter. This legislation made it impossible for importers to market in Germany a French liqueur (Cassis de Dijon) that contained alcohol strength between 15 and 20 per cent per liter as it did not correspond to the minimum alcohol limit prescribed. The ECJ held that the provision of the German legislation constituted a MEQR based on the following considerations.

In paragraph 8 of its judgment the Court stated that in the absence of harmonized rules concerning the production and marketing of alcohol, Member States may apply their own rules to regulate this field. However, measures that restrict trade are justified only insofar they are necessary to "*satisfy mandatory requirements in particular to the effectiveness of fiscal supervision, protection of public health, the fairness of commercial transactions and the defense of the consumer".* In this case, the provision requiring minimum alcohol content did not serve a general interest of the state and therefore it could not be justified. In this way the Court established the rule of reason under which Member States may apply measures that restrict trade in order to protect their vital public interests provided that there are no common rules in the relevant field. The list of mandatory requirements mentioned above is not exhaustive and the Court has enlarged it in subsequent cases to the effect that it now seems limitless. Mandatory requirements as a justification of measures that cause a hindrance to trade exist alongside with the derogations to the free movement of goods established in article 36 TFEU. However, contrary to article 36 TFEU, mandatory

requirements may apply only with regard to indistinctly applicable measures that do not discriminate between domestic and imported goods[38].

In addition, in its judgment in Cassis de Dijon the Court held that the requirement of minimum alcohol content constituted a MEQR based on the consideration that alcoholic beverages that had lawfully been produced and marketed in one Member State should be introduced in other Member States[39]. With this approach the Court established the principle of mutual recognition according to which goods that have been lawfully produced and marketed in compliance with the relevant legislation and standards of one Member State should be imported in other Member States without restrictions even if the standards of those Member States are different. An exception to that principle is accepted only if the measure that causes a hindrance to trade within Member States is necessary to satisfy a mandatory requirement as described above. Measures are deemed as necessary if they are proportionate to the objective they serve which means that this objective could not have been achieved by less stringent means[40].

This principle that has been described as a principle of tolerance of different provisions existing in Member States enhances the function of the internal market and allows at the same time Member States to maintain their own legislation in non-harmonized areas[41]. However, it has been criticized from various perspectives. It has been supported that quality and safety of products is guaranteed by different standards in various Member States and that the application of this principle undermines the higher standards provided in certain states by imports of goods that do not comply with

[38] Damian Chalmers, Gareth Davies & Giorgio Monti, 'European Union Law' (2nd edn, Cambridge University Press 2010) 766-767

[39] Case 120/78 Rewe-Zentral AB Bundesmonopolverwaltung für Branntwein [1979] ECR 649, para 14

[40] Case C-14/02 ATRAL SA v Belgian State [2003] ECR I-4431, para 64

[41] Damian Chalmers, Gareth Davies & Giorgio Monti, 'European Union Law' (2nd edn, Cambridge University Press 2010) 764

them[42]. It has also been argued that the principle is too wide and abstract to be effectively applied by national courts and authorities[43]; and even that Member States might be forced to change their regulations in order to compete with the lower standards and less expensive products of other countries[44]. Despite the criticism the idea of mutual recognition has become a general principle, the application of which is not restricted in the area of the free movement of goods but is extended to other areas of the internal market as well.

The application of the principle of mutual recognition has been enhanced by the introduction of regulation 764/2008[45]. At the time of introduction of this regulation there were still several problems concerning the application of the principle of mutual recognition as Member States used to lay down requirements that should be met by imported products. This forced small and medium traders even to abstain from marketing in other Member States[46]. Regulation 764/2008 enhanced free movement of goods within the Union by providing the rights and obligations of Member States and traders in cases where the Member States required the application of national rules to goods that have been lawfully produced and marketed in another Member State. In addition, it provided legal certainty by posing the burden of proof on Member States that deny market access to traders. Member states should according to this

[42] W.Kerber and R. van den Bergh, "Mutual recognition revisited: Misunderstandings, Inconsistencies and a Suggested Reinterpretation" (2008) 61 Kyklos 447.

[43] J.Pelkmans, "Mutual Recognition in Goods: On Promises and Dissolutions" (2007) 14 JEPP 699

[44] Damian Chalmers, Gareth Davies & Giorgio Monti, 'European Union Law' (2nd edn, Cambridge University Press 2010) 766

[45] Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC

[46] Evaluation of the application of the mutual recognition principle in the field of goods, ENTR/172/PP/2012/FC-Lot 4

regulation prove the existence of reasons that justify their intention to hinder access of goods to their market[47].

The principles established in the Cassis de Dijon case as analyzed above apply only in cases where there are not harmonized rules at EU level in the relevant field. If national rules have been harmonized, the legality of the requirements imposed by Member States is subject to the degree of harmonization pursued by the adoption of the relevant European legislative act[48]. This matter has been addressed by the ECJ in case 29/87 Denkavit. The Court held in that case that directive 70/524 intended to harmonize all of the conditions for marketing feedingstuffs concerning the existence of additives and criteria of quality. Therefore, Member States were not competent to determine such requirements or to rely to article 36 in order to justify them[49]. Accordingly, the Court held that the requirement of prior authorization for importation of feedingstuffs by the Danish authorities constituted a MEQR according to article 34 TFEU.

3.3 The concept of "measures"under article 34 TFEU

After the Cassis de Dijon judgment the scope of article 34 TFEU seemed to be limitless: it was clear that all measures that hinder trade between Member States constitute a MEQR even if they are not discriminatory only against imports. The concept of measures includes not only active measures but also passivity of states to take action against restrictions to the free movement of goods. In that regard, the ECJ has held in case Commission v France that France violated article 34 TFEU in conjunction with article 4(3) TFU by not taking any action to remove from its borders French farmers who were blocking imports of agricultural products[50].

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[47] Ibid.

[48] P VerLoren van Themaat and L W Gormley, 'Prohibiting Restriction of Free Trade within the Community: Articles 30-36 of the EEC Treaty' (1981) 3 Nw J Int'l L & Bus 577, 585

[49] Case 29/87 Dansk Denkavit v Ministry of Agriculture [1988] ECR 2965, para 16 and 19

[50] Case C-265/95 Commission v France [1997] ECR I 6959

The ECJ made a distinction between the above mentioned case and Schmidberger v Republic of Austria. The latter concerned an action brought by Schmidberger, an international transport undertaking, that claimed damages against the Republic of Austria for the closure of a major transit motorway due to a demonstration organized there by an environmental organization. The Court stated in this case the need to reconcile the exercise of the fundamental rights of freedom of expression and freedom of assembly of demonstrators guaranteed by articles 10 and 11 of the European Convention on Human Rights with the requirements established in article 34 TFEU[51]. The Court took into consideration that the demonstration took place after having been approved by the competent Austrian authorities, it concerned the protection of the environment and traffic was interrupted in only one route for a period of almost 30 hours. The aim of the demonstration was not to restrict trade between Member States. In the light of the above it held that the Austrian authorities had not violated article 34 TFEU. The Court's judgment in the Schmidberger case has been criticized for treating as equal the fundamental principle of the free movement of goods with the rights of expression and association[52]. However, given that, as the Court stated, neither these rights nor the freedom established in article 34 are absolute there could not have been a more appropriate solution. This case is contrasted with Commission v France in that the French authorities did not prevent French farmers from actions whose object was to restrict trade for an unlimited period whereas Austrian authorities did not prevent a demonstration for the protection of the environment for a prescribed time period. It derives from the above mentioned cases that inaction of Member States to deal with obstacles to trade must be manifest and persistent in order to constitute an infringement of article 34. The concept of "measures" in article 34 TFEU refers also to incentives of Member States to promote sales of domestic products[53] and to their administrative practices[54]. Finally, article 34 TFEU applies also

[51] Case C-112/00 Schmidberger v Republic of Austria [2003] ECR I-5659, para 77

[52] J.Morijn, "Balancing Fundamental Rights and Common Market Freedoms in Union Law" (2006) 12 ELJ 15

[53] Case 249/81 Commission v Ireland [1982] ECR 4005

[54] Case C-41/02 Commission v The Netherlands [2004] ECR I-11375

to measures adopted by European institutions which are capable of hindering trade within the Union as well[55].

Measures that fall within the scope of article 34 TFEU are only public measures and do not derive from the conduct of enterprises. Such measures that are prohibited under article 34 might be taken by public authorities of Member States and might be of legislative, executive or judicial nature. Declarations of the official representatives of Member States that result in the reduction of sales of a certain category of imported products constitute a MEQR insofar it is deemed that they present the State's official position with regard to these products[56]. In addition, measures that restrict imports may be taken by semi-public bodies such as professional bodies that exercise regulatory and disciplinary powers which are conferred upon them according to national legislation[57].

Despite the fact that the Court has held that article 34 TFEU concerns only measures taken by public authorities, it has adopted an enlarged interpretation of the notion of public. In certain cases it has held that violations of article 34 TFEU might also be constituted by measures taken by private companies that are controlled or supported financially or by other means by a Member State. In case 249/81 Commission v Ireland (Buy Irish) it held that the Irish Goods Council, a limited company whose purpose was to organize a campaign in order to promote sales of Irish products, should be deemed a public body as its members were appointed by the Irish government, its activity was financed by public revenues and the strategy of its campaign was defined by the Irish state as well[58]. Therefore, the campaign organized by the Irish Council in the detriment of imports constituted an infringement of article 34 TFEU attributed to the state. The Court held similarly in case C-325/00 Commission v Germany. The award of quality labels only to national products that fulfilled certain requirements by CMA -a private

[55] Case C-114/96 Rene Kieffer and Romain Thill [1997] ECR I-3629

[56] Case C-470/03 A.G.M COS.MET Srl v Suomen Valtio, Tarmo Lehtinen [2007] ECR I 27-49

[57] Case 266/87 R v Royal Pharmaceutical Society of Great Britain, ex parte association of Pharmaceutical Importers and Others [1989] ECR 1295

[58] Case 249/81 Commission v Ireland [1982] ECR 4005

company that was established on a basis of a law and financed by compulsory contributions of undertakings in the agriculture filed- was considered to be a public measure ascribable to the Federal Republic of Germany. Such a private company should not enjoy the same freedom with other producers and should comply with the requirements established on the Treaties concerning the free movement of goods[59]. The award of the label constituted a MEQR insofar it was encouraging consumers to buy national products which was deemed to be qualitative.

3.4 Types of measures that have been held to fall within the scope of article 34 TFEU

Non fiscal barriers to trade might take different forms. Certain categories of measures have emerged from the jurisprudence of the ECJ and the application of articles 34 and 36 TFEU as mentioned below.

3.4.1. Import licenses and authorisation procedure

The requirement to obtain an import license and other similar procedures are regularly deemed to be MEQRs. Even if the obligation to obtain such a license constitutes merely a formality and the Member State does not intend to withhold the license, it constitutes a MEQR as it may cause a delay to the importation of goods[60]. Accordingly, in case 40/82 Commission v UK the Court held that UK infringed article 34 by subjecting to a license imports of poultry from other Member States. It rejected the argument invoked by the UK according to which the licensing system aimed to protect the health of animals from a contagious disease of that time and that it was therefore justified under article 36 TFEU. The Court found that the real aim of the establishment of the license requirement was to hinder imports of poultry from other Member States and especially France before the Christmas period. In addition, it noticed that there were others less strict measures that could have been chosen to achieve the objective of the protection of health of poultry without blocking its import[61].

[59] Case C-235/00 Commission v Germany [2002] ECR I-9977, para 17, 18 and 21

[60] Case C-54/05 Commission v Finland [2007] ECR I 247, para 31

[61] Case 40/82 Commission v UK [1982] ECR 2793, para 37 and 41

National provisions that define that only persons or undertakings established within the territory of a particular Member State may apply for a license to sell a category of imported products are incompatible with article 34 TFEU. The ECJ has held to that regard that a Belgian provision stating that authorization for the marketing of pesticides for non agricultural use could only be given to a person established in Belgium constituted a breach of article 34 that could not be justified under article 36 TFEU[62].

The establishment of a prior authorization procedure is not in principle incompatible with article 34 as it may serve the objectives of article 36 TFEU. However, as the Court has held, this procedure should be easily accessible, it must be completed within a reasonable time and the restriction caused to trade should not exceed what is necessary to achieve the objective pursued[63].

3.4.2. Measures encouranging discrimination

A typical category of MEQRs are measures encouraging discrimination based on the nationality of goods. This form of MEQRs that constitute distinctly applicable measures includes attempts of Member States to promote sales of national products. As it has already been mentioned above, in cases 249/81 Commission v Ireland and C-235/00 Commission v Germany the ECJ held respectively that the promotion of national products by the Irish Goods Council and the award of quality labels in German agricultural products were incompatible with article 34. In case 207/83 Commission v UK it was stated that the obligation imposed on all traders of certain categories of goods, irrespectively of whether imported or not, to indicate the origins of goods is contrary to article 34 TFEU. The Court reached that conclusion as it found that consumers tend to associate the quality of goods with their origin and therefore manufactures should be free but not compelled by law to indicate this origin[64].

In addition, according to the jurisprudence of the ECJ as discriminatory are considered to be measures that accord advantages to domestic products. In that regard, in case

[62] Case 155/82 Commission v Belgium [1983] ECR 1111

[63] Case 213/03 Commission v France [2005] ECR I-4213, para 45 and 46

[64] Case 207/83 Commission v UK [1985] ECR 1201 para 21

192/84 Commission v Greece the ECJ considered as a MEQR the obligation imposed by the Greek Government to the Agricultural Bank of Greece to subsidize the purchase of imported agricultural machines from other states only on condition that there were not similar machines made in Greece[65].

3.4.3. National measures concerning price control

The ECJ has provided in its case law that infringements of article 34 TFEU might also concern national legislation that determines price control. This includes fixing of minimum and maximum prices, price freezes and minimum and maximum profit margins. The imposition of national price control rules does not constitute per se a MEQR insofar it applies indistinctly to national and imported products[66]. However, it constitutes a MEQR if it renders sales of imported products impossible or more difficult than sales of domestic products. For example, it has been held that price fixing that results in the restriction of imports constitutes a MEQR if imported products cannot be profitably marketed in the conditions prescribed[67].

3.4.4. Phytosanitary inspections

Another category of measures that may constitute a MEQR is the imposition of phytosanitary inspections which has been used by Member States as a way to deny access of imported products to national markets. The ECJ has held that phytosanitary inspections whether systematic or not constitute MEQRs which are prohibited under article 34 TFEU unless there is a justification for their imposition under article 36 TFEU[68]. In case 42/82 Commission v France the Court held that systematic analysis of Italian wine at the French frontiers by the French authorities constituted a MEQR since the inspections at issue aimed to delay importation of Italian wine in France and therefore to reduce the overall amount of imported wine from Italy and could not be justified under article 36 TFEU. Moreover, it found that domestic wine was not subject

[65] Case 192/84 Commission v Greece [1985] ECR 3967 para 21

[66] Case 82/77 Van Tiggele [1978] ECR 25, para 13

[67] Ibid., para 14

[68] Case 42/82 Commission v France [1983] ECR 841, para 50

to inspections in a similar way and frequency[69]. In another case, the Court held that Member States should not unnecessarily demand that imported products should be subject to inspections that have already been conducted in another Member State and the results of which are available to the Member State of importation[70].

3.4.5. Language requirements

Language requirements imposed on imported goods in the absence of full harmonization may also fall within the scope of article 34 TFEU. Member States are competent to impose those requirements only in case there are not harmonized rules concerning the language appearing on different categories of products. According to case law it is prohibited for Member States under article 34 TFEU to impose the exclusive use of a national language in the labeling of products without providing as well the opportunity of using another language that can be easily understood by the purchasers[71]. In that regard, it has been held that there are some relevant factors that determine if a language is easily understood by purchasers such as the use of similar words in different languages, the ability of the purchasers in the Member State of importation to understand more languages or even the previous existence of an advertising campaign that resulted in the wide recognition of the product[72]. In another case the Court held that the obligation of using a specific language during the stages prior to the sale to the final purchaser constituted a MEQR since all of the factors involved in those stages shall conduct their activities in the language that they are able to understand well or in which they are able to gain the information required[73].

[69] Case 42/82 Commission v France [1983] ECR 841, para 56 and 62

[70] Case C-293/94 Criminal Proceedings against Jacqueline Bradsma [1996] ECR 4907, para 13

[71] Case C-369/89 Piageme and Others [1991] ECR I-2971; Case C-366/98 Geffroy and Casino France SNC [2000] ECR I-6579, para 28

[72] Case C-85/94 Piageme and Others v Peeters NV [1995] ECR I-2955, para 30

[73] Case C-33/97 Colim NV v Bigg ‘s Continent Noord NV [1999] ECR I-3175

3.5. National measures constituting selling arrangements

The definition of MEQRs as established in the Dassonville and the Cassis de Dijon cases indicated the intention of the ECJ to include in the scope of article 34 TFEU any measure that could hinder trade within the EU[74]. However, due to the very broad definition of MEQRs provided, traders were increasingly invoking an infringement of article 34 TFEU in order to challenge national measures even if they did not present a significant impact on imports but just reduced the overall amount of sales. This resulted in national courts and the ECJ constantly dealing with relevant matters. It was clear that the scope of article 34 TFEU should be limited in a way that would not undermine its protective function but would reduce cases of its abuse[75]. In this context, the ECJ provided a new method of distinguishing whether a measure constituted a MEQR falling within the scope of article 34 TFEU in joined cases C-267 and 268/91 Keck and Mithouard. In these cases the ECJ redefined the scope of article 34 TFEU by distinguishing between national measures concerning the product itself that constitute MEQRs unless justified and national measures concerning selling arrangements which do not fall within this article.

3.5.1. The ruling in joined cases Keck and Mithouard

Joined cases Keck and Mithouard were referred to the ECJ by the Regional Court of Strasbourg. In the main proceedings, the French authorities brought criminal proceedings against Keck and Mithouard, two traders who were reselling goods at a loss. According to the French legislation selling at a loss was prohibited for resellers whereas it was allowed for manufacturers. Keck and Mithouard claimed that this French legislative provision constituted a MEQR and was therefore illegal. The ECJ held that reselling at a loss did not fall within the scope of article 34 based on the following considerations.

The Court expressed clearly in its decision the need to re-examine its case law with regard to article 34 TFEU given the increasing number of traders who were claiming an

[74] Laurence Gormley, Recent Case Law on the Free Movement of Goods: Some Hot Potatoes (1990) 27 Common Market Law Review 825

[75] 'Gourmet International Products' (2001) 7 Colum J Eur L 391, 396

infringement of this article in order to defend their interests[76]. Then the Court modified its case law by stating that the Dassonville formula does not apply to national measures that restrict or prohibit selling arrangements provided that those measures "apply to all traders that operate within a Member State and that they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States"[77]. The French provision was considered to fulfill these conditions and hence to constitute a selling arrangement that was not caught by article 34 TFEU.

3.5.2. The concept of selling arrangements

A first question that arises concerns the grounds on which a distinction was made between national provisions relating to products requirements and provisions relating to selling arrangements. The answer can be found to the fact that goods that have been produced according to the regulations of a Member State and correspond to that state's product requirements should move freely within the Union. National provisions that impose on these goods the obligation to satisfy different or additional product requirements do not comply with the principle of mutual recognition and are unlawful unless they can be justified[78]. On the other hand, as soon as goods are imported in a Member State, they should comply with the provisions of this state that regulate selling arrangements so that equality is assured between imported and domestic products[79].

Although the ECJ referred in *Keck* to "selling arrangements" that might be outside the scope of article 34 TFEU and made a distinction between them and national provisions relating to product requirements, it did not provide a clear definition of what constitutes neither a selling arrangement nor a product requirement. The ECJ only

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[76] Joined Cases C-267 and 268/91 Criminal Proceedings against Keck and Mithouard [1993] ECR I-6097, para 14

[77] Ibid., para 16

[78] Rene Joliet, 'The Free Circulation of Goods: The Keck and Mithouard Decision and the New Directions in the Case Law' (1995) 1 Colum J Eur L 436, 444

[79] Ibid.

provided in this judgment certain examples of product requirements such as the "designation, form, size, weight, composition, presentation, labeling, packaging" of products[80]. The post-Keck case law permitted a more clear distinction of these categories of national provisions. In case C-368/95 Familiapress it was established that a provision that concerns the way goods are sold or marketed constitutes a selling arrangement whereas a provision that relates to the physical aspect of the product is a product requirement[81]. In addition, the ECJ latter considered as product requirements measures that concern the procedure of importation of goods such as prior licensing requirements which depend on certain characteristics of imported products[82]. In any case, the fact that a national provision is characterized as a product requirement is not a legal presumption that it constitutes an unlawful MEQR insofar it may be justified under the "rule of law" as it was provided in Cassis de Dijon or under a derogation of article 36 TFEU".

On the other hand, the ECJ after Keck included in selling arrangements measures that establish business working hours and closure of shops on Sundays and holidays[83], measures that relate to the fixing of prices[84], measures that determine the place where goods may be sold[85]. As selling arrangements have also been regarded measures that concern advertising of goods; the ECJ has held to that regard that a national provision prohibiting advertising for the distribution sector by a television broadcaster does not fall within the scope of article 34 TFEU[86]. The same conclusion

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[80] Joined Cases C-267 and 268/91 Criminal Proceedings against Keck and Mithouard [1993] ECR I-6097, para 15

[81] Case C-368/95 Familiapress v Heinrich Bauer Verlag [1997] ECR I-3689

[82] Case C-389/96 Aher-Waggon GmbH v Germany [1998] ECR I-4473

[83] Joined Cases 69 and 258/93 Punto Case SpA v Sindaco del Commune di Capena [1994] ECR I-2355

[84] Case C-531/07 Fachverband der Buch- und Medienwirtschaft v LIBRO Handelsgesellschaft mbH [2009] ECR I-3717

[85] Case C-391/92 Commission v Greece [1995] ECR I-1621

[86] Case C-412/93 Société d'importation Edouard Leclerc-Siplec v TF1 Publicité SA and M6 Publicité SA [1995] ECR I-179

was reached regarding a national provision that prohibits pharmacists from advertising outside their pharmacies quasi-pharmaceutical products which they are allowed to sell[87].

3.5.3. The conditions under which a measure relating to a selling arrangement falls outside the scope of article 34 TFEU

According to the ruling of the ECJ in *Keck,* rules that concern selling arrangements do not fall within the scope of article 34 TFEU if they fulfill two conditions[88]. Firstly, they should apply equally to all operators within a Member State. This means that they should apply to all relevant traders regardless of whether they are domestic or foreign traders[89]. This condition is regularly deemed by the ECJ to be fulfilled[90]. Secondly, they should affect in the same way, "in law and in fact" the marketing of imported and domestic goods.

This second condition has raised more issues for interpretation by the ECJ by referring to discrimination in law and in fact. A measure affects the marketing of imported and domestic products in the same manner in law if it does not discriminate prima facie in the detriment of imported products[91]. The assessment that a measure affects both categories of products in the same manner in fact has turned to be more challenging. In his opinion in case C-63/94, Advocate General Cosmas supported when referring to discrimination that a national provision is discriminative in fact if it has the effect of

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[87] Case C-292/92 Hunermund v Landesapothekerkammer Baden-Wurttemberg [1993] ECR I-6787

[88] Joined Cases C-267 and 268/91 Criminal Proceedings against Keck and Mithouard [1993] ECR I-6097, para 16

[89] Case C-322/01 Deutscher Apothekerverband eV v 0800 DocMorris NV and Jacques Waterval [2003] ECR I-3717, para 59

[90] Alina Kaczorowska, 'European Union Law' (3rd edn, Routledge 2013) 543

[91] Maher M Dabbah, 'The Dilemma of Keck - The Nature of the Ruling and the Ramifications of the Judgement' (1999) 8 Irish J European L 84, 91

regulating the marketing in a way that provides benefits to domestic products[92]. However, as he observed in the same point the ECJ had not provided until that time relevant criteria for establishing discrimination in fact in the Keck ruling or in its subsequent case-law. As a result, Advocate General supported that factual discrimination should be assessed on the facts of each case[93].

A criterion that was applied in subsequent cases by the ECJ examines whether there are alternatives methods for the marketing of an imported product after the adoption of the measure at issue and the burden that these alternatives could cause to importers. Relatively, in case C-71/02 Karner the ECJ examined an Austrian legislation that prohibited the mention of the fact that goods come from an insolvent estate in the case of the sale of goods which originated from an insolvent estate but no longer constituted part of it. The ECJ found that the relevant provision did not prevent importers from choosing a different form of advertising in which this fact would not be mentioned. As a result, the legislation at issue was not discriminative in fact and constituted a selling arrangement not caught by article 34 TFEU[94].

3.5.4. The critism against the ruling in joined cases Keck and Mithouard

The distinction provided in the Keck ruling has been criticized for being formalistic taken into account that it is not always easy to distinguish if a provision relates to a selling arrangement or to the characteristics of the product[95]. This is especially shown in the cases C-158 and 159/04 Alfa Vita and C-416/00 Morellato. The first case concerned a Greek legislation that provided that supermarkets that were selling “bake-off” products were obliged to comply with requirements normally imposed on traditional bakeries such as the obligation to have a flour store and kneading

[92] Case C-63/94 Belgapom v ITM Belgium SA and Vocarex SA [1995] ECR I-2467, point 26 of the Opinion

[93] Ibid., point 27

[94] Case C-71/02, Herbert Karner Industrie-Auktionen GmbH v Troostwijk GmbH [2004] ECR I-3025, para 42

[95] Rene Joliet, 'The Free Circulation of Goods: The Keck and Mithouard Decision and the New Directions in the Case Law' (1995) 1 Colum J Eur L 436, 446

equipment. This provision was considered to relate to the process of baking of bread which affects its nature. Therefore, it was held that it may not qualify as a selling arrangement but it constitutes a MEQR instead[96]. The second case which deals with "bake-off" products as well concerned an Italian provision according to which traders were obliged to package bread that had previously been part-baked before selling it to consumers. The ECJ held that this provision constituted a selling arrangement as the packaging requirement referred to the marketing of the product and it should have been fulfilled after the process of baking had been completed[97]. These cases are some of the many showing the difficulties in the categorization of national provisions.

It is evident that the short judgment of the Court in Keck has triggered serious questions of interpretation concerning the application of article 34 TFEU. The fact that the Court did not provide in its ruling the criteria for the dichotomy established or the criteria for determining whether a measure affects marketing of imported and domestic products in the same way did not facilitate interpretation of the ruling. These issues were addressed to some extent by the post-Keck case law on the basis of each individual case as shown above. It has been supported that although the aim of the judgment in *Keck* was to limit abusive reliance of article 34 TFEU by traders and to provide certainty for its application, it has lead to the opposite result by creating controversies and doubts[98]. It has even been argued that this decision by excluding selling arrangements from the scope of article 34 TFEU offends the objective of article 34 TFEU which is to limit any restriction on trade within the European Union[99]. In addition, the test applied in *Keck* has been criticized for focusing exceedingly on legal and factual determination and disregarding the access to the market element[100]. Indeed, the fact that a measure did not impede access of imported goods to a national

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[96] Joined Cases C-158/04 and C-159/04 Alfa Vita Vassilopoulos AE, formerly Trofo Supermarkets AE and Carrefour Marinopoulos AE v Elliniko Dimosio, Nomarchiaki Aftodioikisi Ioanninon [2006] ECR I-8135

[97] Case C-416/00 Tommaso Morellato v Comune di Padova [2003] ECR I-9343

[98] Alina Kaczorowska, 'Gourmet Can Have His Keck and Eat It' (2004) 10 Eur LJ 479, 485

[99] Ibid

[100] 'Gourmet International Products' (2001) 7 Colum J Eur L 391, 397

market was concluded merely from the fact that it affected marketing of all goods in the same way in law and in fact. The emerging doubts in the application of the Keck jurisprudence lead to the judgment of the ECJ in the Gourmet case.

3.6.The market access test

The Gourmet case was referred to the ECJ by the Stockholm District Court. In the main proceedings the Swedish Consumer Ombudsman applied for an injunction against "Gourmet International Products AB", a publisher company of the magazine called "Gourmet", for infringing the Swedish legislation on marketing of alcoholic beverages. This legislation prohibited advertising of alcoholic beverages containing more than 2.5 per cent of alcohol through all media and allowed their advertising only through the press that was specifically addressed to experts on this field. The publisher company included in the edition of Gourmet that was addressed only to its subscribers some pages of advertising of alcohol beverages whereas these pages were not included in the edition offered in shops. In its defense against the proceedings brought by the Swedish Ombudsman the company claimed that the Swedish legislation constituted a breach of article 34 TFEU.

In its reasoning on the case, the Court introduced the market access test according to which selling arrangements fall outside the scope of article 34 TFEU if they are not of such a kind as "to prevent access to the market by products from another Member State or to impede access any more than they impede the access of domestic products"[101]. Then it noticed that the prohibition of all advertising of alcoholic beverages that was addressed to consumers could impede access to the market of imported products more than domestic products insofar the consumption of alcoholic beverages is associated with the local habits and consumers are already more familiar with domestic products[102]. However, this restriction that fell within article 34 TFEU could be justified under article 36 TFEU since the Court held that it aimed to the protection of public health. The restriction could be justified provided that it was

[101] Case 405/98 Konsumentombudsmannen (KO) v Gourmet International Products AB (GIP) [2001] ECR I-1795, para 18

[102] Ibid., para 21

proportionate to this objective and that it was not arbitrary. Nevertheless, the Court did not proceed in the proportionality test and held that this question would be better handled by the referring court[103].

It has been argued that the introduction of the market access test in the Gourmet case has redefined the test applied in Keck by establishing that a measure should not hinder access of products to national markets in order not to be considered as an infringement of article 34 TFEU[104]. Access to the market was regarded as a separate condition in the assessment of the legislation at issue and did not derive from the fact that there was no legal or factual discrimination[105]. This reformulation of the Keck test in the Gourmet case had the effect to include within the scope of article 34 a non discriminatory selling arrangement which until that point would be regarded as lawful. The Court still made in its ruling a comparison between imported and domestic products but it follows form its reasoning that even measures hindering access of both imported and domestic goods to a market do not comply with the test and are unlawful[106]. Nevertheless, in the cases to follow the ECJ did not apply a market access test and required a measure to be discriminative to be caught by article 34 TFEU[107].

The market access test was later used again in cases that concern measures that prohibit or restrict the use of certain goods. Although such rules do not regulate directly imports, they may affect sales of products and therefore hinder trade within the EU. This is demonstrated in case C-110/05 Commission v Italy in the context of which the ECJ had to determine whether an Italian provision prohibiting use of tailors designed to be towed by motorcycles constituted a MEQR. The ECJ underlined in that case that article 34 TFEU imposes the obligation to comply with the principles of non-discrimination, mutual recognition and access of foreign products to national markets of Member States[108]. In this way, the ECJ refers to the Cassis de Dijon and Keck

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[103] Ibid., para 33

[104]'Gourmet International Products' (2001) 7 Colum J Eur L 391, 398

[105] Ibid.

[106] Ibid., 399

[107] Alina Kaczorowska, "European Union Law" (3rd edn, Routledge 2013) 550

[108] Case C-110/05 Commission v Italian Republic [2009] ECR I-519, para 34

jurisprudence and at the same time seems to recognize the market access test as a general principle. The same approach was proposed by Advocate General Bot who supported in that case that the access to the market test should be used as a single criterion to determine the free movement of goods[109]. The ECJ further noticed that the prohibition on use of goods "has a considerable influence on the behavior of consumers" which affects their access to the national market insofar consumers are not willing to buy goods that they cannot use[110]. For the first time, the existence of a MEQR was associated with the impact that the measure at issue could have on consumers; any measure that could hinder access of products to the consumers was considered to be contrary to article 34 TFEU[111]. It follows from the reasoning of the case that an absolute prohibition of use of certain goods hinders their access to the national market and therefore constitutes a MEQR. Similarly, in the Mickelsson case the ECJ held that a Swedish legislation allowing the use of jet-ski only in waters characterized as navigable by the competent authorities should be regarded as a MEQR by the national court if it hindered the use of this product by consumers[112].

In the above mentioned cases the ECJ applied a new three-step definition of MEQRs[113]. The first step contains a test of discrimination according to which a national measure constitutes a MEQR if it results in a less favorable treatment of imported products. The second step implies the examination of whether the national measure at issue infringes the principle of mutual recognition by establishing product requirements. Finally, in the third step a measure is characterized as a MEQR even if it is not discriminatory or does not constitute a product requirement if it hinders access of

[109] Ibid., Opinion of AG Bot, point 118

[110]Ibid., para 56

[111] Ioannis Lianos, In Memoriam Keck: The reformation of the EU Law on free movement of goods, CLES Research Paper Series 5/2014, 11

[112] Case C-142/05 Åklagaren v Percy Mickelsson and Joakim Roos [2009] ECR I-4273

[113] Case C-110/05 Commission v Italian Republic [2009] ECR I-510 para 34-37; Case C-142/05 Åklagaren v Percy Mickelsson and Joakim Roos [2009] ECR I-4273 para 24-28

imported product to the national market[114]. In this context, the fulfillment of any criterion established in these steps leads to the conclusion of the existence of a MEQR. The placement of this definition in the preliminary observations of the decision of the Court in case 110/05 Commission v Italy could suggest that this definition does not concern only rules on use but any kind of national measure that hinders trade[115]. Under this new approach the dichotomy introduced in Keck seems to lose its importance. Insofar measures do not constitute product requirements, infringement of article 34 TFEU is based on the criterion of the access to the market. In addition, this definition could cover measures which until that point could be regarded neither as selling arrangements nor as product requirements[116].

The Court provided this new definition of MEQRs in case 110/05 Commission v Italy after referring to its traditional case law. It follows from the wording of the decision in paragraph 37 (using the word "consequently") that this approach is handled as a clarification on the existing jurisprudence on free movement of goods. In the cases brought before the Court after Commission v Italy, the Court continued to use the Dassonville formula as a starting point to establish the existence of MEQRs[117]. In addition, it follows from the subsequent case law that the distinction between product requirements and selling arrangements continues to apply. The judgment of the Court in case 531/07 Libro made clear that the Keck jurisprudence on selling arrangements does not belong to the past insofar the German legislation at issue was considered to be a selling arrangement[118]. The intention of the Court to continue to apply this distinction was demonstrated again in case C-108/09 in which a Hungarian provision prohibiting sales of contact lenses through the internet was examined under the scope

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[114] Derlén Mattias and Lindholm Johan, Article 28 E.C. And Rules on Use: A Step Towards a Workable Doctrine on Measures Having Equivalent Effect to Quantitative Restrictions (2010) 16 Colum J Eur L. 191, 215

[115] Ibid.

[116] Ibid., 224

[117] Ibid., 226

[118] Case C-531/07 Fachverband der Buch- und Medienwirtschaft v LIBRO Handelsgesellschaft mbH [2009] ECR I-3717

of the dichotomy established in Keck[119]. Under these circumstances, it seems that the principles of the Dassonville and the Keck case law will continue to apply alongside with the principles established in Cassis de Dijon that do not seem to have been affected by the new approach. Hence, the definition introduced in the cases Commission v Italy and Mickelsoon will concern only rules on use[120].

3.7. Justification of measures that fall within article 34 TFEU

Considering the amount of national measures that might fall within the scope of article 34 TFEU, it is necessary for the Member States to be able to justify those measures. Otherwise, national provisions whose aim is to protect the public interests of Member States could be deemed to constitute an infringement of article 34 TFEU and therefore be set aside.

3.7.1. Justification under article 36 TFEU or the rule of reason

Article 36 TFEU enumerates certain justifications for the restrictions in the movement of goods. Specifically, it states that articles 34 and 35 TFEU shall not preclude prohibitions or restrictions in trade which are "*justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property".* This list of derogations permitted under article 36 TFEU is exhaustive and shall be narrowly interpreted strictly[121]. The ECJ recognized another category of possible justifications that Member States can invoke in the Cassis de Dijon judgment where it was stated that restrictions in the free movement of goods within the EU are justified provided

[119] C-108/09 Ker-Optika bt v ÀNTSZ Dél-dunántúli Regionális Intézete [2010] ECR I-12213.

[120] Derlén Mattias and Lindholm Johan, Article 28 E.C. And Rules on Use: A Step Towards a Workable Doctrine on Measures Having Equivalent Effect to Quantitative Restrictions (2010) 16 Colum J Eur L. 191, 227

[121] Case 288/83, Commission v Ireland, [1985] ECR 1761, Case C-265/95, Commission v France, [1997] ECR I 695

that they "*satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defense of the consumer*". Contrary to article 36 TFEU, the list of mandatory requirements which are referred to as "the rule of reason" is an open one. As a result, Member States can rely on more grounds in order to justify their measures that restrict trade which might be accepted by the ECJ.

According to an orthodox approach distinctly applicable measures can only be justified under article 36 TFEU whereas indistinctly applicable measures can be justified both under this article and the rule of reason. This distinction is mainly due to the fact that distinctly applicable measures always hinder trader within the EU and therefore they should not be justified on additional grounds to those provided in article 36 TFEU[122]. Nevertheless, the ECJ has not always applied this distinction as it has in certain cases justified distinctly applicable national measures under mandatory requirements such as the road safety[123] or the protection of the environment[124]. In any case, a justification under article 36 TFEU or the rule of reason may be accepted only if there are no harmonized rules in the relevant area. Indeed, insofar the interests of the Member States are taken into consideration in the harmonization procedure, Member States cannot legally claim in this case that a restrictive measure shall be justified because it protects this State's interests[125].

3.7.2. The proportionality test

A main challenge for the Member States when invoking a justification for a measure that restricts trade is to prove the proportionality of this measure. It follows form the case law of the ECJ that the principle of proportionality consists of three elements[126]. Firstly, the measure has to be suitable to achieve the objective pursued. This element

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[122] Alina Kaczorowska, 'European Union Law' (3rd edn, Routledge 2013) 567

[123] Case C-297/05 Commission v Netherlands [2007] ECR I-7467

[124] Case C-2/90 Commission v Belgium [1992] ECR I-4431

[125] Alina Kaczorowska, 'European Union Law' (3rd edn, Routledge 2013) 568

[126] Jan H Jans, 'Proportionality Revisited' (2000) 27 Legal Issues of Economic Integration 239, 240

has further been developed by the ECJ by the introduction of the criterion of consistency. According to this approach, the suitability of the measure is assured if this measure attains the objective pursued in a consistent and systematic manner[127]. The element of suitability is regularly deemed to be fulfilled. Secondly, the measure shall be necessary which implies that they are no other alternative means to achieve the objective pursued which are less restrictive. The third element concerns the principle of proportionality stricto sensu. According to this aspect a measure is not proportionate if the restriction that it causes on trade exceeds the objective pursued[128].

The test of the proportionality of the measure may be applied by the ECJ if the latter has in its disposal all the relevant facts to decide on this matter and no further analysis is required[129]. In that regard, the ECJ in the Van der Veldt case stated manifestly that a Belgian provision prescribing a maximum content of salt in bread did not comply with the proportionality principle[130]. On the contrary, when the ECJ does not dispose of all the crucial information to make an assessment or when the necessity of the measure is to be verified on a complex national legislative context, the ECJ leaves the proportionality test to be applied by national courts. In this case, it may provide the national court with the criteria to establish the compliance of the measure with the principle of proportionality[131] or it may even provide greater discretion to the national court by not providing any indication on the application of the principle of proportionality[132].

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[127] Armin Cuyvers, 'East African Community Law: Institutional, Substantive and Comparable EU aspects' (Brill 2007) 342

[128] Jan H Jans, 'Proportionality Revisited' (2000) 27 Legal Issues of Economic Integration 239, 245

[129] Ibid., 255

[130] Case C-17/93 Criminal Proceedings against Van der Veldt [1994] ECR I-3537

[131] Case C-368/95 Familiapress v Heinrich Bauer Verlag [1997] ECR I-3689

[132] This approach is encountered in Case C-83/94 Leifer and Others [1995] ECR I-3231 that concerned a German provision imposing the requirement of an export license for

The compliance of the national measure at issue with the principle of proportionality has to be proved by Member States[133]. However, as the ECJ stated in case C-110/05 Commission v Italy, Member States are not obliged to prove positively that the objective pursued could not have been reached by any other conceivable measure[134]. This assessment of the ECJ has to be combined with its judgment in case C-28/09 Commission v Austria from which it derives that in case the Commission has appointed that there are other less restrictive measures that could be taken, Member States should examine these alternatives. As a conclusion, Member States are not obliged to prove that no other measure could be taken to achieve the objective attained but if there has been a relevant note from the Commission they should examine the Commission's suggestion.

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the export of "dual use" goods. The justification of this provision on the grounds of public security was entirely left to the national court.

[133] Case 227/82 Criminal Proceedings against Leendert van Bennekom [1983] ECR 3883, para 40

[134] Case C-110/05 Commission v Italian Republic [2009] ECR I-510, para 66

Conclusions

It follows from the above mentioned that the restrictions on trade between Member States may take different forms. The ECJ has provided a large interpretation of the provisions of the TFEU establishing a prohibition of restrictions on trade within the Union in order to guarantee the free movement of goods which is crucial for the functioning of the internal market. The free movement of goods has turned to be a success in the European policy. It has given consumers the chance to choose from a variety of goods produced in different Member States while at the same time it has enhanced the function of businesses that have been able to extend their activities. Due to the free movement of goods and the internal market businesses have also been able to find the sources to compete with other markets worldwide[135].

Nevertheless, there are certain limitations on the free movement of goods insofar trade within the EU might lawfully be restricted if there are other legitimate aims of the Member States that should be protected. In this context, the ECJ has accepted restrictions on intra-EU trade to be justified under article 36 TFEU or under the rule of reason. Considering the need to reconcile different legitimate purposes in the legal order of the EU, the justification of restrictions on trade seems necessary in certain cases. The legal context of free movement of goods as it is established today guarantees at the same time the prohibition of barriers on trade and the protection of other legitimate objectives of Member States[136].

[135] Free movement of goods, Guide to the application of Treaty provisions governing the free movement of goods, Ref. Ares(2013)3759436 - 18/12/2013

[136] Ibid.

Bibliography

Books

- Barnard C. and Peers S., “European Union Law” (Oxford University Press 2014)

- Chalmers D., Davies G. & Monti G., “European Union Law” (2nd edn, Cambridge University Press 2010)

- Craig P. and Grainne de Burca, “EU Law Text, cases and Materials” (5th edn, Oxford University Press 2011)

- Cuyvers A., “East African Community Law: Institutional, Substantive and Comparative EU Aspects” (Brill 2017)

- Kaczorowska A., “European Union Law” (3rd edn, Routledge 2013)

- Weatherill S., “Cases & Materials on EU Law” (10th edn, Oxford University Press 2012)

-Αργυρός Γ, Δίκαιο της ευρωπαϊκής εσωτερικής αγοράς: οι θεμελιώδεις οικονομικές ελευθερίες, [ηλεκτρ. βιβλ.] (Αθήνα: Σύνδεσμος Ελληνικών Ακαδημαϊκών Βιβλιοθηκών 2015). Διαθέσιμο στο: http://hdl.handle.net/11419/4169

Journal Articles

- Alber S., 'European Community Tax Law and Its Development in Light of the Recent Case Law of the European Court of Justice' (1999) 22 Fordham Int'l LJ 768

- Dabbah M., 'The Dilemma of Keck - The Nature of the Ruling and the Ramifications of the Judgement' (1999) 8 Irish J European L 84

- Dauses M., ‘The System of the Free Movement of Goods in the European Community' (1985) 33 Am J Comp L 209

- Derlén M. and Lindholm J., Article 28 E.C. And Rules on Use: A Step Towards a Workable Doctrine on Measures Having Equivalent Effect to Quantitative Restrictions (2010) 16 Colum J Eur L. 191

- Fuerea A., 'The Legal Regime for Customs Duties and Taxes Having Equivalent Effect in the European Union' (2018) 25 Lex ET Scientia Int'l J 65

- Gormley L., Recent Case Law on the Free Movement of Goods: Some Hot Potatoes (1990) 27 Common Market Law Review 825

-'Gourmet International Products' (2001) 7 Colum J Eur L 391

- Jans J. H., Proportionality Revisited (2000) 27 Legal Issues of Economic Integration 239
- Joliet R., 'The Free Circulation of Goods: The Keck and Mithouard Decision and the New Directions in the Case Law' (1995) 1 Colum J Eur L 436
- Kaczorowska A., 'Gourmet Can Have His Keck and Eat It' (2004) 10 Eur LJ 479
- Kerber W. and R. van den Bergh, "Mutual recognition revisited: Misunderstandings, Inconsistencies and a Suggested Reinterpretation" (2008) 61 Kyklos 447.
-Lianos I., In Memoriam Keck: The reformation of the EU Law on free movement of goods, CLES Research Paper Series 5/2014, 11
- Morijn J., "Balancing Fundamental Rights and Common Market Freedoms in Union Law" (2006) 12 ELJ 15
- Pelkmans J., "Mutual Recognition in Goods: On Promises and Dissolutions" (2007) 14 JEPP 699
-Tudor J., 'Discriminatory Internal Taxation in the European Union: The Power of the European Court of Justice to Limit the Tax Sovereignty of the Member-States under Article 110 of the TFEU' (2015) 23 Willamette J Int'l L & Dis Res 141
-VerLoren van Themaat P. and Gormley L., 'Prohibiting Restriction of Free Trade within the Community: Articles 30-36 of the EEC Treaty' (1981) 3 Nw J Int'l L & Bus 577

Table of Cases (numerical order)

- Case 24/68 Commission v Italy [1969] ECR 193
- Joined Cases 2/69 and 3/69 Social Fonds voor de Diamantarbeiders v SA Ch Brachfeld and Sons [1969] ECR 211
-- Case 2/73 Risetia Luigi Geddo v Ente Nazionale Risi [1973] ECR 865
- Case 8/74 Procureur du Roi v Benoît and Gustave Dassonville [1974] ECR 837
- Case 45/75 Rewe-Zentrale des Lebensmittel-Großhandels GmbH v Hauptzollamt Landau/Pfalz [1976] ECR 181
- Case 82/77 Van Tiggele [1978] ECR 25
-Case 120/78 Rewe-Zentral AB Bundesmonopolverwaltung für Branntwein [1979] ECR 649 (the Cassis de Dijon case)
- Case 168/78 Commission v France [1980] ECR 347
- Case 170/78 Commission v UK [1983] ECR 2265

- Case 34/79 Regina v Maurice Donald Henn and John Frederick Ernest Darby [1979] ECR 3795

-Case 249/81 Commission v Ireland [1982] ECR 4005

- Case 40/82 Commission v UK [1982] ECR 2793

- Case 42/82 Commission v France [1983] ECR 841

- Case 132/82 Commission v Belgium [1983] ECR 1649

- Case 155/82 Commission v Belgium [1983] ECR 1111

- Joined Cases 177 and 178/82 Criminal Proceedings against Jan Van de Haar and Kaveka de Meern BV [1984] ECR 1797

- Case 227/82 Criminal Proceedings against Leendert van Bennekom [1983] ECR 3883

- Case 207/83 Commission v UK [1985] ECR 1201

- Case 288/83 Commission v Ireland, [1985] ECR 1761

- Case 112/84 Humblot v Directeur dês Services Fiscaux [1985] ECR 1367

- Case 192/84 Commission v Greece [1985] ECR 3967

- Case 243/84 John Walker & Sons v Hauptzollamt [1996] ECR 875

- Case 196/85 Commission v France [1987] ECR 1597

- Case 18/87 Commission v Germany [1988] ECR 5427

- Case 29/87 Dansk Denkavit v Ministry of Agriculture [1988] ECR 2965

- Case 266/87 R v Royal Pharmaceutical Society of Great Britain, ex parte association of Pharmaceutical Importers and Others [1989] ECR 1295

- Case C-369/89 Piageme and Others [1991] ECR I-2971

- Case C-2/90 Commission v Belgium [1992] ECR I-4431

- Joined Cases C-267 and 268/91 Criminal Proceedings against Keck and Mithouard [1993] ECR I-6097

- Case C-93/92 CMC Motorradcenter GmbH v Pelin Baskiciogullari [1993] ECR I-5009

- Case C-292/92 Hunermund v Landesapothekerkammer Baden-Wurttemberg [1993] ECR I-6787

- Case C-391/92 Commission v Greece [1995] ECR I-1621

- Case C-17/93 Criminal Proceedings against Van der Veldt [1994] ECR I-3537

- Joined Cases 69 and 258/93 Punto Case SpA v Sindaco del Commune di Capena [1994] ECR I-2355

- Case C-412/93 Société d'importation Edouard Leclerc-Siplec κατά TF1 Publicité SA και M6 Publicité SA [1995] ECR I-179

- Case C-63/94 Belgapom v ITM Belgium SA and Vocarex SA [1995] ECR I-2467

- Case C-83/94 Leifer and others [1995] ECR I-3231

- Case C-85/94 Piageme and Others v Peeters NV [1995] ECR I-2955

- Case C-293/94 Criminal Proceedings against Jacqueline Bradsma [1996] ECR 4907

- Case C-265/95 Commission v France [1997] ECR I 6959

- Case C-368/95 Familiapress v Heinrich Bauer Verlag [1997] ECR I-3689

- Case C-114/96 Rene Kieffer and Romain Thill [1997] ECR I-3629

- Case C-389/96 Aher-Waggon GmbH v Germany [1998] ECR I-4473

- Case C-33/97 Colim NV v Bigg's Continent Noord NV [1999] ECR I-3175

- Case C-366/98 Geffroy and Casino France SNC [2000] ECR I-6579

- Case 405/98 Konsumentombudsmannen (KO) v Gourmet International Products AB (GIP) [2001] ECR I-1795

- Case C-112/00 Schmidberger v Republic of Austria [2003] ECR I-5659

- Case C-235/00 Commission v Germany [2002] ECR I-9977

- Case C-302/00 Commission v France [2002] ECR I-2005

- Case C-416/00 Tommaso Morellato v Comune di Padova [2003] ECR I-9343

- Case C-322/01 Deutscher Apothekerverband eV v 0800 DocMorris NV and Jacques Waterval [2003] ECR I-3717

- Case C-14/02 ATRAL SA v Belgian State [2003] ECR I-4431

-Case C-41/02 Commission v The Netherlands [2004] ECR I-11375

- Case C-213/03 Commission v France [2005] ECR I-4213

- Case C-470/03 A.G.M COS.MET Srl v Suomen Valtio, Tarmo Lehtinen [2007] ECR I 2749

- Joined Cases C-158/04 and C-159/04 Alfa Vita Vassilopoulos AE, formerly Trofo Supermarkets AE and Carrefour Marinopoulos AE v Elliniko Dimosio, Nomarchiaki Aftodioikisi Ioanninon [2006] ECR I-8135

- Case 170/04 Klas Rosengren and Others v Riksåklagaren [2007] ECR I-4701

- Case C-441/04 A-Punkt Schmuckhandels GmbH v Claudia Schmidt [2006] ECR I-2093

- Case C-54/05 Commission v Finland [2007] ECR I 247

- Case C-110/05 Commission v Italian Republic [2009] ECR I-519,

- Case C-142/05 Åklagaren v Percy Mickelsson and Joakim Roos [2009] ECR I-4273
- Case 167/05 Commission v Sweden [2008] ECR I-2127
- Case C-297/05 Commission v Netherlands [2007] ECR I-7467
- Case C-531/07 Fachverband der Buch- und Medienwirtschaft v LIBRO Handelsgesellschaft mbH [2009] ECR I-3717
- C-108/09 Ker-Optika bt v ÀNTSZ Dél-dunántúli Regionális Intézete [2010] ECR I-12213

Websites

-https://ec.europa.eu/taxation_customs/general-information-customs/eu-customs-strategy_en

Commission Reports

- Evaluation of the application of the mutual recognition principle in the field of goods, ENTR/172/PP/2012/FC-Lot 4
- Free movement of goods, Guide to the application of Treaty provisions governing the free movement of goods, Ref. Ares (2013)3759436 - 18/12/2013

Legislative instruments

-Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC [13.08.2008] OJ L 218
- Commission Directive 70/50/EEC of 22 December 1969 based on the provisions of Article 33 (7), on the abolition of measures which have an effect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty [19.01.1970] OJ L 13

- Consolidated version of the Treaty on the Functioning of the European Union, [7.6.2016], OJ C 202