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Course: Introduction to the European Union Law

[5] Free movement of goods in the EC/EU

Free movement of goods is certainly the most important basic economic freedom of the EC/EU. Key legal measures are customs union and the reduction of administrative barriers.

The EC/EU customs union includes uniform external trade policy towards imports and exports from and to non-member states (in our course it will be taught later as special topic) and suppression of all fiscal barriers relating interstate trade in goods. ECT provisions enjoy direct effect, incompatible national law shall not be applied by state administrative authorities and courts.

Fiscal barriers (customs, charges having equivalent effect and tax discrimination)

The EC law clearly prohibits all custom duties and charges having equivalent effect. Custom duties are charges imposed on goods due to their importation or exportation clearly labelled as customs. Charges having equivalent effect are all other taxes, contributions, fees and other charges based on same construction. There is no need for clear border between customs and charges having equivalent effect, both practices of member states (including self-government) are absolutely prohibited, no exception is allowed. Original version of E(E)CT and treaties of accession provided for temporary exceptions. Banned custom duties are rare, charges having equivalent effect were identified in many fiscal practices of member states. Export duties are disallowed too, they cannot be justified similarly as administrative restrictions.

ECT prohibits separately indirect tax discrimination. Internal taxes are generally allowed (and key indirect taxes even expected by EC law). However, discriminatory practices are prohibited. The Court of Justice had from time to time condemned or identified these practices: distribution of similar types of goods (which can be both for similar or same purpose and can compete) to different tax rates, if domestic production subjected to lower rate and imported to the higher one. There were several cases of discriminatory differentiated taxation of alcoholic beverages or cars.

Indirect tax harmonisation

The EC law provides (several directives) for detailed harmonisation of indirect taxes. Value added tax (VAT) shall be imposed according to unified model, basic tax rate (15%) and list of goods allowed for lower rates or exemption are fixed by EC law too. Other general indirect taxes are not allowed. The EC law requires three excises (taxes on consumption): fuel, alcoholic beverage and tobacco products taxes and sets minimum rates.

The EC law coordinates competences of member states for indirect taxation of goods, crossing borders of member states: generally the state of purchase to consumer is competent to impose the tax, exceptions include vehicles or distance sales.

Administrative (non-fiscal) barriers

The ECT pays appropriate attention to administrative measures affecting adversely interstate commerce. Free movement of goods cannot be achieved with sole abolition or suppression of fiscal obstacles. ECT provides for general rule and exceptions and entitles the EC for far-reaching harmonisation of production and distribution standards of goods. The harmonisation enables significant reduction of restriction justified by exceptions.

General rule is the prohibition of quantitative restrictions (quotas) and measures having equivalent effect on both imports and exports. This prohibition is not absolute, the ECT includes list of exceptions.

The Court of Justice has repeatedly interpreted the notion of „measure having equivalent effect“. It started with wide-reaching approach (any measure of member state actually and potentially adversely affecting interstate trade in goods: Dassonville judgement), later it accepted that some generally applied reasonable measures for protection of general interests are not covered („judicial quasi-exceptions“, Cassis de Dijon) and approved various sale arrangements (Keck judgement).

ECT listed exceptions confirm tasks of member states, they retain majority of their functions: protection of health, order, security, morality, culture and individual property rights. They shall not be used for discrimination of imported goods.

The Court of Justice uses objective test of measures justified by protection of human, animal and plant life and health. Many member state practices have been disapproved as unnecessary and discriminatory. The number of legitimate use of the exception has been gradually reduced by detailed harmonisation or unification of production and distribution standards.

On the other hand, the EC case-law has repeatedly recognized different approaches of particular member states to protection of national security, public order and morality and protection of national treasures.

The protection of intellectual property rights (patents, trademarks, copyright etc.) are limited to member states, although harmonised by both universal and European international treaties and the EC/EU law. However, the Court of Justice has repeatedly refused misuse of intellectual property for the separation of markets.

Harmonised standards for manufacture and distribution of goods

ECT grants to the EC general power to harmonise or unify standards for production and distribution of various types of goods. Harmonised or unified standards reduce legitimate use of above mentioned exceptions, especially the protection of health and life of humans, animals and plants. Real free movement of many goods cannot be achieved without standardisation. The instrument for harmonisation or unification are numerous directives for almost all branches of industry. The Europeisation of the standards remains hidden, because it is prescribed directly by national law and usually enforced and controlled by national authorities.

Results of liberalization

Free movement of goods contributed to Europe-wide integration of markets of vast majority of goods. Only goods for immediate consumption, goods difficult to transport or language-related goods are traded in separated national markets. This integration causes environmental damages, because vast majority is delivered by trucks.

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Homework

Read judgement: nr. 124/81 Kommission v. United Kingdom (UHT Milk) celex nr. 61981J0124