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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 European Community. Key legal measures are customs union and the removal of vast majority of administrative obstacles.

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

Customs, charges having equivalent effect and tax discrimination)

The EC law clearly prohibits (Art. 25) 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 the Member States (including their territorial self-government) are absolutely prohibited. No exception is allowed. Only original version of E(E)CT and treaties of accession provided for temporary exceptions.

Banned customs duties are rare, charges having equivalent effect were identified in many fiscal practices of the Member States.

Export customs duties and charges having equivalent effect are disallowed too, they cannot be justified similarly as administrative restrictions.

EC Treaty prohibits separately (Art. 90) 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 as tax discrimination the distribution of similar types of goods (which can be both for similar or same purpose and can compete each other) to different tax rates, if domestically produced goods were taxed with lower rate and imported ones with the higher one. There were several cases of discriminatory taxation of imported alcoholic beverages or vehicles.

Indirect tax harmonisation

The EC law provides for detailed harmonisation of indirect taxes. The most important piece of legislation is the 6th VAT Directive.

Value added tax (VAT) shall be imposed uniformly. There is 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 (consumption taxes): fuel, alcoholic beverage and tobacco products excises. It sets minimum rates of these excises.

The EC law sets competences of the Member States for indirect taxation of goods which are objects of interstate trade. Generally, the Member State of purchase to consumer is competent to impose VAT and excises. Exceptions include vehicles or distance sales.

Administrative (non-fiscal) barriers

The EC Treaty 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.

Therefore, EC Treaty provides for general rule and exceptions. It entitles the EC for far-reaching harmonisation or unification of standards for production and distribution of goods. This harmonisation or unification enables significant reduction of restriction justified by exceptions.

General principle is the prohibition of quantitative restrictions (quotas) and measures having equivalent effect applied on both importations and exportations (Art. 28 and Art. 29). Nevertheless, the prohibition is not absolute, the EC Treaty includes exhaustive list of exceptions (Art 30).

The Court of Justice has repeatedly interpreted the notion of „measure having equivalent effect“ broadly. It started with almost-all-reaching approach (Dassonville judgement: „Any measure of the Member State affecting actually or potentially interstate trade in goods is measure having equivalent effect). Nevertheless, it later accepted that some generally applied reasonable measures for the protection of general interests are not covered (judgement Cassis de Dijon: „judicial quasi-exceptions“, „rule of reason“). It also allowed various sale arrangements (Keck judgement).

EC Treaty (art. 30) includes list of exceptions. These exceptions confirm principal tasks of the Member States. These states retain majority of their functions: protection of health, order, security, morality, culture and individual property rights. Nevertheless, administrative restrictions 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 or discriminatory. The number of legitimate use of the exception has been gradually reduced thanks to 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.

In general, the protection of intellectual property rights (patents, trademarks, copyright etc.) is limited to Member States. Nevertheless, both universal and European international treaties and the EC law provide for harmonisation of intellectual property rights and administrative cooperation in the matter. The Court of Justice has repeatedly refused misuse of intellectual property for the separation of markets.

Harmonised standards for manufacturing and distribution of goods

EC Treaty grants to the European Community wide power to harmonise or unify standards for production and distribution of goods. Harmonised or unified standards reduce legitimate use of above mentioned exceptions, especially as regard the protection of health and life of humans, animals and plants. Real free movement of many goods cannot be achieved without that standardisation.

The instrument for harmonisation or unification are numerous directives for almost all branches of industry. Therefore, the European nature of the standards remains hidden. They are set directly by national law and usually enforced and enforced by national authorities.

No controls of goods at internal borders

Since 1992, there are no controls of goods on borders between the Member States. Various measures for effective imposition of VAT and excises and for controlled goods were introduced.

Results of liberalization

Free movement of goods contributed to pan-European integration of markets of vast majority of goods.

Only goods for immediate consumption, goods which price increase sharply due to transportation costs or language-related goods are traded in separated national markets.

This integration, however, causes significant environmental damages, because vast majority of goods is moved on European roads.