

Introduction to the European Union Law

Free movement of goods

Free movement of goods

- The most important basic freedom for most member states
- Fundamental principles of the common market are contained in the TFEU
- The EU law strictly prohibits:
 - Customs and charges having equivalent effect (See Art. 30)
 - tax discrimination (taxes are generally allowed – unfortunately... ☹)
 - restrictions (quotas) and measures having equivalent effect (See Art. 34 - 36)

Definition of goods

- Objects which can and may be traded are goods.
- Together with services (other basic economic freedom in the EU), goods are products of human activity.
- There are border cases. Narcotics are not goods due to their illegality. Due to special channels of distribution and their legal status, organs, tissues, and blood for human use are not labelled as goods. Cash, postage stamps, mail, legal certificates and various documents are not regarded as goods if they serve their purpose. Trade in weapons is also limited.
- Waste and electricity are, on the other hand, regarded as goods.

Customs, charges having equivalent effect

- The ban is absolute, there is NO exemption!
- Customs duties on goods from member states can never be justified
- Export customs duties and charges having equivalent effect are disallowed as well
- Definition of CD: *all charges imposed on goods just because these goods cross a border between two member states which are labeled as customs*
- Example of CHEE?

tax discrimination

- See Art. 110 TFEU - its aim is to prevent the objectives of articles 28 to 30 TFEU being undermined by a discriminatory internal taxation.
- articles 28 to 30 are designed to prevent financial measures, whether in form of customs duties or charges having equivalent effect, from impeding the free flow of goods. These provisions outlaw such measures which are imposed as a result of a product crossing frontier. These provisions are however not able to protect goods originating in other member states while already being on a market of another state.

Quantitative restrictions of free movement of goods

- What can we understand under the term quantitative restrictions of free movement of goods?
 - Mostly quotas and licenses
- Unlike customs the prohibition of quotas is not absolute: exception clause?

set of exemptions – in Art. 36 TFEU

- ban on quotas and measures ... does not apply if the quota or a measure is justified by the necessary protection of:
 - national security,
 - public order,
 - morality,
 - protection of human, animal and plant life and health,
 - protection of national treasures and
 - protection of intellectual property rights

measures having equivalent effect

- The Court of Justice has repeatedly dealt the meaning of the term “measures having equivalent effect”. It started with a very wide approach => Case Dassonville:
- Belgium officials required Mr. Dassonville to present an official certificate of origin of this whiskey –
 - Can such Belgian regulation possibly affect the intercommunity trade or not?

Case Dassonville

- Therefore the ECJ held in its decision that – any measure of a member state actually or potentially adversely affecting interstate trade in goods is prohibited.
- Problem?

Case Cassis de Dijon

- there are same values which have to be protected even if the trade among states is restricted.
- under the German law the beverage could be marketed as liquor only if it contained at least 25 percent of alcohol
- Cassis – 19% only
- ECJ accepted that there are some generally applied reasonable measures necessary for protection of general interests which shall not be covered by the Dassonville formula and shall be exempt.
- A free movement of a product which is lawfully marketed in one member state shall not be restricted in other member state

Case Keck and Mithouard

- These two gentlemen imported some goods to France and were selling them for a price lower than their actual price or value – so called sale at a loss.
- ECJ: The main point in this decision was that the Court made a distinction between national rules which relate to goods themselves and which are relating to sale arrangements

Therefore...

- According to K&M Case:
- The national rules on selling arrangements are justified if they:
 - apply to all traders operating within the national territory and if they
 - affect in a same way marketing of both domestic and foreign products.

Solution?

- harmonization or even unification of standards for production and distribution of products.
- The instrument for standardization are numerous directives which regulates almost all branches of industry.
- However, due to the fact that harmonization is not possible in all relevant areas the development in ECJ case law is still important

C-405/98 - Gourmet International Products

- In Sweden – total ban on advertising of alcoholic beverages
- Gourmet company violated this general
- The main issue in the Gourmet case was whether the ban in question fell within the scope of the Keck-rule, thereby falling outside EU-law.
- Result:
 - the Gourmet-case is in fact a confirmation that the Keck-rule does not apply to services.
 - the Gourmet case only provides for a development of the Keck-rule by introducing a market access test

C-28/09 - Commission v Austria

- Austrian authorities adopted in 2003 a traffic prohibition for lorries of over 7.5 tonnes carrying certain goods (waste, stones, earth, motor vehicles, logs, cereals) on a 46 km section of the A12 motorway
- ECJ - by adopting a sectoral traffic prohibition without sufficiently examining the possibility of having recourse to other less restrictive measures, Austria has disproportionately restricted the free movement of goods
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C-108/01 - Prosciutto di Parma

- British store was selling “PARMA HAM” in its stores in GB
- Ham was produced but not sliced and packed in region of Parma
- Parma ham is protected designation of origin (PDO)
- the condition that the slicing and packaging of the product must be done in the region of Parma is a part of the regulation concerning the PDO



C-385/96 - Goerres

- Mr Goerres offered for sale in his shop in Germany various foodstuffs that were not labeled in German but only in French, Italien or English
- EU directive - labelling should be in a language easily understood by consumers of the State or region in which it is sold to the customer
- ECJ - the EU law does not preclude national legislation which, as regards language requirements, prescribes the use of a specific language for the labelling of foodstuffs as long as it also permits, as an alternative, the use of another language easily understood by purchasers



C-192/01 - Danish vitamins

- In 1998, when Denmark's Food and Veterinary Office (Office) refused the marketing of Ocean Spray Cranberry Juice with added vitamin C, a complaint was made to the Commission alleging unjust obstacles to trade