



Session 2

Free Movement of Goods in the European Customs Union.

Remember to look at the notes page for further details.

Customs Union and Taxation in the EU

The EU official webpages

[http://ec.europa.eu/taxation customs/index_en.htm](http://ec.europa.eu/taxation_customs/index_en.htm)

On this page see One Minute video on the right hand side

Topic outline

1. Forms of economic integration.
2. Between EU member states:
No customs duties and charges having equivalent effect/
3. Between EU and third countries:
Common Customs Tariff (CCT) also called
External Tariff (CET).
4. Internal taxation: possible BUT with conditions.

Forms of economic integration.

In order to increase trade and economic relations states may choose to establish among themselves one or more of the following.

1. Free Trade Area.
2. Customs Union.
3. Common Market.
3. Economic and Monetary Union.

Economic integration may or may not lead to political integration.

What economic integration for the EU?

The European Union is
a customs union since 1957.
a common market since 1957.
an intensified internal market since 1986.
an Economic and Monetary Union since 1992.

In this session we will examine the rules governing
the EU Customs Union

What is a customs union?

The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries (Article 28 TFEU).

Q. Can you identify the internal and external aspects of CU?
See notespage.

CU: law-makers and implementers

- the CU rules are decided collectively by the member states at the European level through the European institutions.
- and are implemented by the national customs authorities.

Q. What do these rules mean for national sovereignty?

See notespage

CU external aspects

- So , what does the CCP and the CCT /CET mean for an importer of....let's say, iphone6?
- What does the importer pay and to whom?
- Can you work it out ?
- if not, see notespage

CU internal aspects: trade between member states.

- The Treaty prohibits totally customs duties on imports and exports between Member States (see slide 5).
- No exceptions.
- Member states have a duty:
 - To abolish any existing duties.
 - Not to introduce any new ones.

CU internal aspects: trade between member states.

- If member states break the prohibition, the Commission may bring them before the Court of Justice.
- Individuals may also do so in their national court.
- **Importance of CU beyond European economic integration:**
- ECJ applies prohibition very strictly and thus promotes European legal and political integration.
- **ECJ proclaimed CU the basis of the new legal order created by the Treaty.**
- Case: Van Gend en Loos

See The ABC of EU Law: The Legal Nature of the EU

http://new.eur-lex.europa.eu/content/abc/abc_c03_r1.html#h1

Standing of member states

- The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.
- It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.
- (Article 4 TEU)

Let us now examine the CU in more detail

- Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States.
- Question arising: what is a customs duty? Treaty does not define it.
- Answer: The Court (ECJ) has the power to interpret the Treaty and has determined that Customs duty is a levy (money) charged on goods at the point of crossing a frontier on the sole ground that the goods cross it.

And what are charges having equivalent effect (CHEE)?

- Treaty gives no definition of CEE
- Court interprets as cases arise in practice.
- So, can Italy impose export duties on art works bound for another member state to prevent national treasures leaving the country?

What do you think? See notespage.

Here is another example.

- **Social Fund of Diamond Workers:** small levy imposed by Belgian law on imported diamonds.
- Commission took Belgium before the Court of Justice.
- Belgium argued in its defence that the levy did not intend to protect the domestic market because Belgium does not produce diamonds.
- Belgium intended to use the funds collected to provide social benefits to workers.
- Defence not accepted by ECJ.

When can customs authorities charge goods with CHEE?

- Treaty: No Exemptions
- Court: allowed some charges on rare occasions.
- Court: A member state is allowed to charge when charges are payment (consideration) for a service rendered by the member-state directly to the importer;
- Charge must be proportionate to the service.
- Let us see some examples in the next slide.

Can customs authorities charge

- for the storage of goods while they complete customs formalities?
- For the inspection of raw cowhides in the interest of public health?
- For health inspection of live animals, as required by a Union Directive?
- What do you think?

See notespage for answers!

What if customs authorities charge customs duties unlawfully? What remedies are available?

Importers or exporters can bring a case in their national courts and claim

- a) Refund of money unlawfully paid.
- b) Compensation: the Court of Justice established in 1990 that the state is liable for compensation, if found in breach of EU law (principle of state liability).

Q. What is the difference between a) and b)?
See notespage

Custom Union is not only about collecting CCT!

The European Parliament and the Council.....shall take measures in order to strengthen customs cooperation between Member States..... (Article 33 TFEU)

Q. In what situations do you think customs cooperation is needed?

- Next slide provides some examples.

Challenges to the Customs Union today

- Fighting fraud & organised crime and ensuring the protection of citizens;
 - money laundering,
 - piracy, counterfeiting,
 - trafficking...
- Effective revenue collection.
- Member states at times seek to use customs controls under pressure from domestic politics.

Example: see notes page.

Can a member state tax goods imported from other member states?

- Customs duties and taxes on imported goods are not the same thing.
- Customs duties are imposed at the point of crossing a national border. They are prohibited by EU law.
- Taxes may be imposed after the goods have crossed the border and are in the territory of the member state.
- So, internal taxation is in principle allowed by EU law.
- **BUT NOT** If internal taxation is discriminatory against imported goods or protective of domestic goods.
- Otherwise, a member state could impose internal taxation on goods from other member states at will and in effect cancel out the abolition of customs duties

To be more precise....

Article Art.110 TFEU states

- No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

This means:

- no direct discrimination between goods imported from other member states and similar domestic goods
- No protectionism.
- Equal treatment.

And furthermore...

- No Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.
- This means
no indirect discrimination between
goods imported from other member states and
other domestic goods

So, a member state

- May impose on goods imported from another member state internal taxation as on similar domestic goods.
- BUT, this internal taxation must not be such as to protect indirectly other domestic products.
- Sounds complicated!

Example of indirect discrimination

- France imposed two different types of annual car tax.
 - 1) Below 16CV the tax came to a maximum of 1100 francs.
 - 2) Above 16 CV the tax was a flat rate of 5000 francs.
- Court ruled:
- most cars above 16CV were imported from Germany; the 5000 francs flat rate was almost 5 times higher than the rate for cars under 16CV, mostly French.
- This constituted indirect discrimination in favour of French cars.

Conclusion

- The customs union is a cornerstone of European integration.
- In a nutshell: Absolute prohibition of customs duties and charges having equivalent effect to customs duties.
- Court has allowed extremely limited exceptions.
- CU has economic, legal and political aspects, as explained.
- Internal taxation is different to customs duties.
- States have power to impose internal taxation provided it is not discriminatory and protectionist.