



# Session 3

## Free Movement of Goods in the EU internal market.

# Congratulations!

Your imports or exports from / to another member-state cleared customs.

No duties / tariffs to pay! (see session 2)

But is there anything else to worry about?

# Free Movement of Goods in the EU internal market

Can customs officials surprise you with any obstacles to your business or personal import / export of goods activity?

Can the state limit the amount of goods you are importing or exporting in the EU internal market?

# Topic outline

1. What is the internal market?
2. Treaty provisions prohibiting member-states to impose quantitative restrictions and charges having equivalent effect as barriers to trade.
2. Uses and abuses of the prohibition.
3. Examples of national trade measures not allowed.
4. Examples when member-states are allowed to restrict or prohibit the free movement of goods.

# What is the internal market?

- A Common Market was established in 1957 between member states.
- Internal market is a term adopted in 1986 to signal the deeper and more intensive nature of trade and economic integration between the member states.
- In other words: the national markets of the member states are integrated in ONE internal market for all of them.



# Internal market: treaty definition

The internal market shall comprise an area without internal frontiers in which the free movement of goods,  
persons,  
services and  
capital  
is ensured in accordance with the provisions of the Treaties.

In this session we will examine the free movement of goods.

# CU: law-makers and Free Movement of Goods in the EU internal market

## **PROHIBITION OF QUANTITATIVE RESTRICTIONS (QRs)**

### **and OF MEASURES HAVING EQUIVALENT EFFECT (MHEE to QR)**

## **ON TRADE BETWEEN MEMBER STATES**

**Art. 34, 35, 36 TFEU**  
(see notespage)

# QR & MHEE to QR on imports & exports are prohibited.

- Quantitative restrictions on imports and measures having equivalent effect shall be prohibited between member-states.
- Quantitative restrictions on exports and all measures having equivalent effect, shall be prohibited between member states. (Articles Art. 34 & Art. 35 TFEU)



# What is a quantitative restriction (QR) then?

- State measures which amount to a total or partial restraint of imports, exports or goods in transit: **Quotas**.
- State restricts **quantity**; easy to identify:
  - an outright ban, such as French ban on UK beef.
  - restriction of numbers of cars exported from Spain to Germany.
  - UK prohibition of imports of pornographic materials from Holland.

QR abolished between member states.

New member states are granted transition periods.

# What are Measures Having Equivalent Effect to QR (MHEEtoQRs)

- Mr. Dassonville imported Scotch whisky from France into Belgium.
- Belgian law requires a certificate of origin to prove the authenticity of the Scotch whisky.
- This certificate can only be obtained in Scotland.

## Questions

- Is Mr. Dassonville breaking the law? What do you think?

# Is Mr. Dassonville breaking the law?

- On the face of it, yes.
- But he bought the whisky in France and imported it into Belgium = legitimate free movement of goods between Britain – France – Belgium.
- France did not require a certificate.
- Should Mr. Dassonville go all the way to Scotland to try and get the certificate before moving the whisky to Belgium?
- And if the certificate is no longer available in Scotland?

# So, the European Court of Justice ruled

All trading rules enacted by member states which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are Measures having Equivalent Effect to Quantitative Restrictions.

**Criterion: effect of trading rule**  
**Discriminatory intent not required.**

Very broad definition by ECJ

# What constitutes a state measure prohibited under Art. 34 & 35 TFEU?

Are 'buy national products' campaigns a prohibited MHEE?

NO, if campaign conducted by private bodies.

YES, if campaign conducted by the state.

What exactly is the state?

- The Irish Goods Council?
- The Apple and Pear Development Council?
- The Pharmaceutical Society?

YES, because of statutory (by law) link to the state.

(see details in notespage).

# So, how do we know what constitutes QR and MHEE to QR?

- Directive 70/50/EEC  
Guidance as to what constitutes QR and MHEE to QRs of value in identifying prohibited acts or conduct;  
non-exhaustive list of MEQRs
- ECJ developed the concepts of
  - Distinctly applicable measures.
  - Indistinctly applicable measures



# Distinctly applicable measures (discriminatory) are NOT allowed

Easy to spot!

Measures which distinguish between domestic goods and imports /exports.

Apply only on non-national goods.

They discriminate on non-national goods.

- State's failure to act: French farmers targeting fruit & veg...Commission v France C-265/95
- Promotion of domestic goods
- Price fixing measures.

State may be liable to compensate affected traders.

# Indistinctly applicable measures

These are tricky to identify!  
They appear lawful because  
they do not distinguish / discriminate  
between  
national and imported goods.

They apply to both  
BUT  
have a harsher effect on imported goods.

# Examples of indistinctly applicable (non-discriminatory) measures

- Origin marking (UK).
- National quality standard (Irish water pipes case)
- Administrative practices  
(approval of postal franking machines)
- Price-fixing (selling below minimum price required by law)
- See notespage for details.

## And here is what happened...

- German company imports Cassis de Dijon, a liqueur, from France.
- Cassis de Dijon has a lower alcohol content than German liqueur.
- German customs concerned that public health is at risk because consumers may consume too much.
- They prohibit the import.
- The Court gave a landmark ruling.

# Landmark case: Cassis de Dijon

see notespage for Court extract.

The Court ruled that there was no valid reason that a product lawfully marketed in one member state should not be introduced in another member state.

Principle of mutual recognition.

Result: wide opening of the gates for intra-Community trade.

# Dual burden measures

Cassis is example of dual-burden rules:  
rules apply to both domestic and imported goods  
but affect imported goods  
because manufacturer would have to comply with  
rules of state of origin AND rules of import state  
Two sets of rules = dual burden.

Another example:

Belgian law that margarine be packed in cube shaped  
containers so consumers do not confuse it with butter.

(Walter Rau Lebensmittelwerke v De Smedt PVBA Case 261/81)



# Can states ever restrict import/export of goods from/ to other member-states?

Two possibilities

1. Treaty provides limited exceptions from the rule of prohibiting QR and MHEE to QR.
2. The Court provided additional exceptions in the case-law.

# 1. Treaty exceptions (derogations) from the prohibition)

The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit 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.

Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

## 2. Court exceptions to the prohibition

- ECJ has ruled that **four mandatory requirements might be accepted** as necessary for restricting trading in addition to the fixed derogations of Article 36 TFEU.
  1. “ ...the effectiveness of fiscal supervision,
  2. the protection of public health,
  3. the fairness of commercial transactions,
  4. the defence of the consumer. ”  
  5. Protection of the environment was added later.

## But note....

- State must provide evidence (burden of proof) that there is genuine justification to allow prohibitions or restrictions of the import or export of goods etc. (see Article 36 TFEU).
- Otherwise there may be hidden protectionism.
- Individuals may challenge state action in the national courts.

# Conclusion on QR & MHEE to QR

- Treaty prohibits member states from imposing QR and MHEE to QR on goods from other member-states.
- Prohibition is reinforced by Court judgments.
- States may prohibit free movement of goods on limited grounds.
- States can be challenged in court for breaking the rules on free movement of goods.
- Freedom of states to control imports and exports has virtually disappeared.
- And that's not all!

# Prohibiting QR & MHEE to QR is complemented by provisions on

- state monopolies (Art. 37 TFEU).
- competition rules addressed to companies. (Art. 101 – 106 TFEU)
- state aids Art. (107- 109 TFEU).
- secondary legislation on public procurement.



# What are all these provisions about?

- No obstacles to trade.
- non discrimination on grounds of nationality.
- effective functioning of the internal market.