

Course: Law of the European Union
[5] Free movement of goods

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Importance of the freedom

- Free movement of goods is the most important economic freedom in the EU.
- Principal legal measures are customs union and removal of many administrative obstacles.
- The customs union includes uniform external trade policy on importation and exportation from and to non-member states and suppression of fiscal barriers related to interstate trade of goods.
- Provisions of the TFEU on free movement of goods enjoy direct effect. Incompatible national law shall not be applied by administration, and courts of member states.

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 and charges having equivalent effect

- The European Union prohibits (Art. 28 and art. 28 TFEU) all custom duties and charges having equivalent effect in trade in goods among member states.
- Custom duties are charges traditionally imposed on goods due to their importation or exportation by customs authorities.
- Charges having equivalent effect are all other taxes, contributions, fees and other charges based on similar construction, including charges for controls.
- Both are absolutely prohibited.

Reality of customs duties etc.

- Customs duties are nonexistent because they are obvious and because they need special administration.
- Charges having equivalent effect are identified from time to time in fiscal law and practice of member states.
- Customs duties and charges having equivalent effect on exports, albeit rare, are also absolutely prohibited. They cannot be justified similarly by administrative restrictions.

Tax discrimination

- TFEU prohibits separately (art. 90) tax discrimination.
- Domestic taxes are generally allowed. Indirect taxes are even required: value added tax and excises.
- The Court of Justice had from time to time identified and condemned tax discrimination in taxation of similar goods (which can be both for similar or same purpose and can compete each other) with different tax rates, if domestically produced goods were taxed with lower rate and imported ones with the higher one.
- Examples: taxation of alcoholic beverages (Commission v. France – Whisky and Cognac) or vehicles.

Value added tax – construction and rates

- The European Union requires harmonization.
- Legal framework is now Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. It is based on previous legislation applicable for almost three decades.
- Value added tax (VAT) shall be imposed uniformly. Unified construction is required.
- There is basic tax rate (at least 15%) and list of goods allowed for lower rates (one or two rates, at least 5%) are also fixed by EU law: food, drugs, books and newspaper, medicinal products and other goods perceived as necessary can be thus taxed.

Value added tax – competence of member states and administration

- Commercial exchange of goods results in exemption from taxation in member state of exportation.
- Member states impose VAT on goods sold to consumers.
- Individual importation is exempted from tax return and subsequent taxation in member state of importation.
- There are special regimes for some types of goods (means of transportation) and for ways of delivery (mail).
- Due to removal of customs controls, administration of VAT is based on notifications of imports and exports.

Excises

- The EU requires member states to impose excises (taxes on consumption of goods).
- There shall be a tax on (1) fuel made from oil and on similar products, (2) tax on alcoholic beverages, and a (3) tax on tobacco products.
- Minimum rates are prescribed.
- Similarly to the VAT, excises are imposed in state of sale to consumer.
- Individual importation is not taxed. Due to differences, there are limits on such importation.

General principle – prohibition of obstacles

- Quantitative restrictions (quotas) and measures having equivalent effect applied on both importations and exportations (Art. 34-35 TFEU)
- The Court of Justice has repeatedly interpreted „a measure having equivalent effect“ broadly. It started with all-reaching approach (judgement *Dassonville*: „any measure of the Member State affection 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“ are allowed if „rule of reason“ is respected). It also allowed various standards of sales (judgement *Keck*).

Exceptions from ban of obstacles

- Art. 36 TFEU allows exceptions.
- These exceptions confirm tasks of the member states: protection of public health, public order, national security, morality, national culture and individual property rights.
- Administrative restrictions shall not be, however, misused for discrimination of imported goods.

Protection of life and health

- The Court of Justice tests measures justified by protection of human, animal and plant life and health objectively.
- Many requirements of member states have been disapproved as unnecessary, or discriminatory.
- The number of legitimate use of this exception has been gradually reduced thanks to detailed harmonisation or unification of production and distribution standards by numerous directives and some regulations.

Public morality and security, protection of culture, intellectual property

- The case-law of the Court of Justice has recognized different approaches of particular member states to protection of national security, public order and morality and protection of national treasures of historic and artistic value.
- Protection of intellectual property rights – i. e. patents, trademarks, copyright etc. - is provided by member states. It can result in obstacles to trade. The Court of Justice has refused misuse of intellectual property for separation of markets and use of price differences by producers.

Harmonised and unified standards for production and distribution of goods

- TFEU gives to the European Union broad powers to harmonize and/or unify standards for production and distribution of goods.
- Some standards are harmonized (limits are set for standardization of member states), other ones are unified.
- Both substantial standards and standards for certification are harmonized or unified.
- Trade in goods is simplified foremost thanks wide harmonization of standards.

Use of directives and regulations for standards for goods.

- Instrument for harmonization or unification are numerous directives for almost all branches of industry. Thus, the European nature of the standards remains hidden. They are set directly by national law and usually enforced and enforced by national authorities.
- Regulations have started to be used for this purpose in last years.

Removal of controls of goods at borders among member states

- Since 1992, there are no custom controls of goods on internal borders of the EU.
- New member states removed them instantly.
- Special controls (veterinary inspections, phytosanitary inspections, inspections aimed at controlled substances) can be carried out according to special legislation of both the EU and member states.
- Various measures for effective imposition of value and excises and for controlled goods were introduced. Continuous reporting of exchange of goods among member states is expected.

Results of liberalization I

- Most goods are traded in huge amount among member states. Member states are dependent mutually as regards production of most goods.
- Greater supply for better prices is available for consumers.
- Producers enjoy bigger demand. They, however, also face harsher competition.

Results of liberalization II

- Only goods for immediate consumption, goods whose prices increase sharply due to transportation costs or language-related and culture-related goods continue to be exchanged in separated national markets.
- Natural borders cannot be removed with law.
- Trade in goods causes environmental damage, because majority of goods is transported on European roads.

External Trade in Goods

- The European Community was customs union since 1968.
- There is single customs tariff, established for every year. Information about customs tariffs are distributed in special information system TARIC.
- There is single Customs Code, i.e. regulation setting procedures and standards for administration of customs. Customs are imposed by authorities of member states. The Commission supervises administration of customs. Customs are revenue of the European Community.
- The EU forms single customs area. There are no internal customs controls.
- Exportation is free in general. Exceptions are due to public interests (weapons etc.).

Participation on worldwide liberalization of trade in goods

- There is far-reaching liberalization of trade in goods among 153 member states of the World Trade Organization (WTO).
- Tariffs (rates) are limited according to General Agreement on Trade in Goods (GATT) since 1947.
- European Union participates on WTO and GATT together with all member states.
- The European Union forms numerous free trade areas with other countries.
- Therefore, markets are usually larger than European. They are often worldwide.