

Handout N^o 7

Common Market

- central purpose of the European Community
- Art. 3 EC: specific activities
- Art. 14 EC: 'internal market' (the four freedoms)

Customs Union

1. Art. 23, 26, 27 EC connexed with Art. 131–134 EC
2. Common Customs Tariff (CCT): to enable free circulation
 - governed by Art. 26 & 27 EC and EC Regs.
 - common nomenclature for good classification
 - common rules as to value and origin
 - Commission acts subject to the Council's approval
 - implemented by MS authorities
 - duties form 'own resources'
3. scope of Art. 23 & 25 EC
 - customs
 - charges with equivalent effect: *Sociaal Fonds voor de Diamantarbeiders* (cases 2 & 3/69), any pecuniary charge, however slight, imposed on goods by reason of the fact that they cross frontiers
 - tax distinguished
 - relating to a general system of internal dues applied systematically to categories of products in accordance with objective criteria irrespective of the origin of the products (*Com v France* (case 90/79))
 - effects-based test: any pecuniary charge – regardless of its purpose – imposed by reason of the crossing of frontiers is an obstacle to the free movement of goods (domestic compensatory 'tax': *Com v Luxembourg* (case 2 & 3/62) and a too general service: *Com v Italy* (case 24/68))
 - Limitations:
 - a not too general and uncertain charge for a service rendered for the benefit of the importer
 - service required under Community law
 - non-discriminatory charges
 - identical in every respect and levied as part of a general system → Art. 90 EC
 - charge levied on particular product regardless of source may breach Art. 25 EC if not imposed in the same way on imported and exported products and not determined according to the same criteria (*Marimex No. 2* (case 29/72))
 - charge levied at same rate and according to same criteria may breach Art. 25 EC if proceeds of charge benefit domestic product *exclusively* (*Fratelli Cucchini* (case 77/76))
 - derogation from the prohibition:
 - not falling within the definition of customs duty
 - required by Community law

Taxation

1. meaning of taxation

- general system of internal dues applied systematically to categories of products in accordance with objective criteria irrespective of the origin of the products

2. scope of Art. 90 EC

- MS are free to decide on the rate of taxation and discriminate between different types of product but cannot discriminate, directly or indirectly, between similar domestic and imported products (note: assessment on the basis of rate of tax, assessment and rules for its collection)
- Similarity (*Spirits* (case 168/78)):
 - characteristics
 - same needs from a customer's point of view → similar or comparable use including the possibility of future substitution (*Wine and Beer* (case 170/78))
 - classification under the same heading in the CCT
- objective grounds justifying discrimination of similar products (*Com v France* (case 196/85))
 - designed to achieve economic policy objective compatible with EC law
 - applied in such a way as to avoid discrimination against imports
- affording indirect protection (*Co-Frutta* (case 193/85), *Wine and Beer* (case 170/78))
 - domestic and imported products, while not similar, must be in competition
 - effect of impugned tax must be shown to be protective

3. harmonisation Art. 93 & 94 EC

- functioning of internal market
- fiscal measures remain subject to unanimity, Art. 95 EC