

Handout N° 8

Common Market

Elimination of quantitative restrictions

1. together with customs union central to the development of the single market
2. covers non-pecuniary barriers to trade: administrative rules and practices
3. applies not only to measures that are applied at the border
4. scope of [Art. 28 & 29 EC](#) may limit the powers of each MS
5. Art. 28 & 29 EC prohibit MS measures, Art. 30 EC provides for a derogation
6. Articles are addressed to MS but have been interpreted in the widest sense → all forms of government, activities of any public body, and even semi-public body ([Apple & Pear \(case 222/82\)](#))¹ or professional chambers ([Pharmaceutical Society \(case 266/87\)](#)) status defined by
 - body's functions
 - statutory basis
 - management and funding
 - legal form is *not* determinative: [Quality labels \(case 325/00\)](#)
7. indirectly Art. 28 & 29 EC also cover actions by individuals: [Angry Farmers \(case 265/95\)](#) → [Art. 10 EC](#) requires MS to ensure that the fundamental freedoms are respected; subsequent legislation ([Reg 2679/98, OJ 1998 L 337/8](#))² defines three requirements for taking action
 - a) the serious disruption of the free movement of goods
 - b) serious loss to individuals affected
 - c) the necessity of immediate State action
8. measures caught are legislative acts but also administrative practice and non binding acts: ['Buy Irish' \(case 249/81\)](#)
9. Prohibition on quantitative restrictions: any measures which amount to a total or partial restraint on imports, exports or goods in transit → ban, quota system, licence system
10. measures having equivalent effect
 - a) not only overtly protective measures but also 'indistinctly' applicable measures (see cases 222/82 and 248/81)
 - b) ECJ definition:

all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions. ([Dassonville \(case 8/74\)](#))

¹Note: if the link does not take you to the fulltext of the judgement it may not be available on that server. In such an event you should copy the relevant details for the judgement into a search engine and look elsewhere there is usually a good chance that it is available through other servers.

²Note: this link takes you to the EUR-LEX site, there you can search the Official Journal of the European Union. Documents are usually available in pdf and htm format.

- c) measures only affecting trade *within* a MS is not in breach of Art. 28 EC: *Oebel* (case 155/80)
 - d) measures operating solely to the disadvantage of domestic production are not in breach of Art. 28 EC: case 155/80 and *Leclerc* (case 229/83)
 - e) distinction between 'distinctly' and 'indistinctly' applicable measures:
 - First *Cassis de Dijon* (case 120/78) principle (*rule of reason*):

Obstacles to movement within the Community resulting from disparities between the national laws relating to the marketing of the products in question must be accepted insofar as those provisions may be recognised as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer.

justification additional to and wider than Art. 30 EC: mandatory requirements may include:

 - protection of the environment
 - protection of of national or regional socio-cultural characteristics
 - protection of the diversity of the press

'necessary' is interpreted as to refer to the proportionality principle
 - Second *Cassis* principle (*mutual recognition*):

There is no valid reason why provided that goods have been lawfully produced and marketed in one of the Member States, they should not be introduced into any other Member State

(rebuttable) presumption that lawfully produced goods comply with mandatory requirements of the importing State (see, for example, *German Beer* (case 178/84))
- prohibition of national rules tending to compartmentalise the market, particularly along national lines, products must compete on their merits, not on the basis of national origin: *Com v UK* (case 207/83)