

FREE MOVEMENT OF GOODS

ARTICLES 28 – 30 EC and mutual recognition

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Treaty Establishing the European Community

Part Three: Community Policies

Title I: Free movement of goods

CHAPTER 2

PROHIBITION OF QUANTITATIVE RESTRICTIONS BETWEEN MEMBER STATES

- **Article 28 (ex Article 30)**

“Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.”

- **Article 29 (ex Article 34)**

“Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.”

The Subject Matter

- The Meaning Of “Goods” :
 - No definition of “goods” in the EC Treaty
 - ECJ has clarified the meaning
- a. Goods “originating in Member States”
- b. Goods from “third countries” in “Free circulation”
in the Community
- The Nationality of the Owner

Persons Bound

- Member States
- The Community Institutions
- Private Parties:
 - a. Are private parties bound to observe Articles 28 to 30 EC?
 - b. If not, can those provisions nevertheless be relied on against private parties in legal proceedings?

Measure having an effect equivalent to quantitative restriction - definition

European Court of Justice, « **Dassonville formula** » (Case 8/74):

« 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 restriction ».

Barriers to trade -examples

- German purity law for beer: rules banning additives in beer
- Cheese must have a prescribed minimum fat content
- Margarine must be sold in cubic packaging so as to distinguish it from butter

Principle of mutual recognition

➤ European Court of Justice, « **Cassis de Dijon** »
(Case 120/78):

no MS may prohibit the sale of a product lawfully manufactured or placed on the market in another MS, even if this product is manufactured according to technical or qualitative rules which are different from the rules which it imposes for its own products

➤ In other words: products lawfully manufactured or placed on the market in one Member State must be recognised in another Member States

Principle of mutual recognition

- However,
restrictions imposed by the Member State of import are possible, provided that they are justified by the reasons given in Article 30 EC or by the mandatory requirements recognised by the European Court of Justice
- Member States remain competent to decide on the level of protection to afford to their populations

Derogations of article 30 EC - an exhaustive list of grounds for derogations

- public morality,
- public policy
- public security
- protection of the health and life of humans, animals and plants
- protection of national treasures possessing artistic, historic or archaeological value,
- protection of industrial and commercial property

Mandatory requirements - non-exhaustive list of protected interests

- fairness of commercial transactions and consumer protection,
- improvement of working conditions
- protection of the environment

The principles of necessity and proportionality

The importation and marketing of products lawfully produced and marketed in another Member State may only be restricted, in the absence of harmonisation by such national measures where they:

- are necessary in order to satisfy mandatory requirements or derogations provided for by article 30 EC,
- are proportionate to the desired objective - are the means of achieving that objective which least hinders trade.

The prohibition of discrimination

Prohibitions or restrictions to intra-community trade **shall not constitute a means of arbitrary discrimination** or a disguised restriction on trade between Member States.

For more information

http://europa.eu.int/comm/enterprise/regulation/goods/index_en.htm