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Free Movement of Goods: Quantitative Restrictions



Article 34 TFEU

1. Quantitative restrictions (QR) on imports and all measures having equivalent effect (MEQR) shall be prohibited between Member States.

- **QR**
 - **ECJ C-2/73 GEDDO V ENTE NAZIONALE RISI**
 - **“MEASURES WHICH AMOUNT TO A TOTAL OR PARTIAL RESTRAINT OF, ACCORDING TO THE CIRCUMSTANCES, IMPORTS, EXPORTS OR GOODS IN TRANSIT”**
- **MEQR**
 - **MORE DIFFICULT TO DEFINE**
 - **EU COMMISSION DIR. 70/50: ART. 2**
 - **ECJ C-8/74 PROCUREUR DU ROI V. DASSONVILLE**



- **DISCRIMINATORY BARRIERS TO TRADE**
 - **IMPORT AND EXPORT RESTRICTIONS**
 - **ECJ C-154/85 COMMISSION V ITALY**
 - **ECJ C-53/76 PROCUREUR DE L REPUBLIQUE BESANCON V BOUHELIER**
 - **PROMOTION OR FAVOURING OF DOMESTIC PRODUCTS**
 - **ECJ C-249/81 COMMISSION V IRELAND**
 - **ECJ C-207/83 COMMISSION V UK**
 - **ECJ C-45/87 COMMISSION V IRELAND**
 - **PRICE-FIXING**
 - **NATIONAL MEASURES VERSUS PRIVATE ACTION**



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Free Movement of Goods: Duties, Charges and Taxes



PURPOSE OF ART. 110 TFEU

Article 110 TFEU (Art. 90 EC)

- *No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.*
- *Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.*

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• **DISCRIMINATORY TAXES**

- **PURPOSE: PREVENTING THAT OBJECTIVES OF ARTS. 28-30 TFEU (ARTS. 23-25 EC) WOULD BE UNDERMINED BY LEVYING TAXES IN ORDER TO DISADVANTAGE IMPORTED GOODS WHICH ARE IN COMPETITION WITH DOMESTIC GOODS**
- **ECJ: COMPLETE NEUTRALITY OF INTERNAL TAXATION AS REGARDS DOMESTIC AND IMPORTED PRODUCTS**



DIRECT AND INDIRECT DISCRIMINATION

- **DIRECT DISCRIMINATION**

- **WHATEVER TAX SYSTEM IS CHOSEN SHOULD BE APPLIED WITHOUT DISCRIMINATION TO SIMILAR IMPORTED PRODUCTS**

- ECJ C-21/79 COMMISSION V. ITALY
- ECJ C-148/77 HANSEN V. HAUPTZOLLAMT FLENSBURG
- ECJ C-55/79 COMMISSION V. IRELAND

- **INDIRECT DISCRIMINATION**

- **TAX RULES THAT DO NOT EXPLICITLY DIFFERENTIATE BETWEEN THE TAX LIABILITY OF GOODS BASED ON COUNTRY OF ORIGIN, BUT WHICH STILL PLACE A GREATER BURDEN ON COMMODITIES COMING FROM ANOTHER MEMBER STATE**

- ECJ C-112/84 HUMBLLOT V DIRECTEUR DES SERVICES FISCAUX



NATIONAL AUTONOMY AND FISCAL CHOICES

- **INDIRECT DISCRIMINATIONARY TAX CAN BE JUSTIFIED ON THE BASIS OF OBJECTIVE POLICY REASONS**
 - ECJ C-140/79 CHEMIAL FARMACEUTICI V DAF SPA
- **ECJ CAN ACCEPT OBJECTIVE JUSTIFICATIONS WHERE THE NATIONAL POLICY IS ACCEPTABLE FROM THE EU'S PERSPECTIVE EVEN IF THIS BENEFITS DOMESTIC TRADERS MORE THAN IMPORTERS**
 - ECJ C-196/85 COMMISSION V FRANCE
 - ECJ C-213/96 OUTOKUMPU OY
 - ECJ C-132/88 COMMISSION V GREECE



THE RELATIONSHIP BETWEEN ART. 110 (1) AND (2)

- **ART. 110 (1) TFEU PROHIBITS THE IMPOSITION OF INTERNAL TAXES ON PRODUCTS FROM OTHER MEMBER STATES IN EXCESS OF THOSE LEVIED ON SIMILAR DOMESTIC PRODUCTS**
- **THE DIVIDING LINE BETWEEN ART. 110 (1) AND (2) MAY BE PROBLEMATIC SINCE IT CAN BE CONTESTABLE WHETHER GOODS ARE DEEMED TO BE SIMILAR OR NOT**
- **ART. 110 (2) TFEU IS DESIGNED TO CATCH NATIONAL TAX PROVISIONS THAT APPLY UNEQUAL TAX RATINGS TO GOODS THAT MAY BE NOT STRICTLY SIMILAR BUT WHICH MAY BE NONETHELESS BE IN COMPETITION WITH EACH OTHER**



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THE DETERMINATION OF PROTECTIVE EFFECT

- **C-170-78 COMMISSION V UNITED KINGDOM**
- **FIRST STAGE: ECJ IS CONCERNED TO ESTABLISH THAT THERE IS SOME COMPETITIVE RELATIONSHIP BETWEEN THE TWO PRODUCTS SO AS TO RENDER ART. 110 (2) APPLICABLE AT ALL**
 - **MEANINGFUL COMPARISON WAS BETWEEN BEER AND THE CHEAPER END OF THE WINE MARKET**
 - **PRODUCT SUBSTITUTABILITY IS CENTRAL BUT CONSUMER PREFERENCES ARE NOT REGARDED AS IMMUTABLE AND ARE AFFECTED BY THE RELATIVE TAX RATES OF THE TWO PRODUCTS**
- **SECOND STAGE: THE COURT CONSIDERED WHETHER THE TAX SYSTEM WAS PROTECTIVE OF BEER**



THE BROADER LEGAL PERSPECTIVE

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