

Abstract

The subject developed in my thesis relates to the “Exclusions from prohibition of quantitative restrictions”. The origin of these exclusions can be found in the internal market law and more precisely in the free movement of goods. The free movement of goods is one of the four fundamental freedoms on which is based the internal market of the European Union.

The free movement of goods is ensured by removing fiscal and non-fiscal barriers that hinder trade between Member States and which are prohibited between Member States. The fiscal barriers involve the prohibition between Member States of customs duties, all charges having equivalent effect and other fiscal barriers such as internal taxations. The non fiscal barriers involve direct quantitative restrictions which are quotas and bans, as well as measures having equivalent effect to quantitative restrictions (MEE). These non fiscal barriers are prohibited but they can be justified in some cases. Direct quantitative restrictions almost disappeared while measures having equivalent effect to quantitative restrictions may exist in various forms and variations. Measures having equivalent effect on imports are prohibited by the article 34 of the Treaty on the Functioning of the EU. Moreover, measures having equivalent effect on exports are prohibited by the following Article 35, however they are less frequent.

In general, MEE are divided in to two categories. Distinctly applicable measures which treat imported goods less favorably than the domestic products and indistinctly applicable measures which apply to both imported and domestic products but in fact have a particular burden on the imported goods. The concept of measures having equivalent effect was first defined by judgment *Dassonville*. So far in this case, the MEE has been interpreted very broadly and a clarification of the meaning has been necessary. In the later judgment *Keck and Mithouard* the Court defined that the term "certain selling arrangements" do not breach article 34 TFEU. Through time, the court made different interpretations of the measures; some of them breaching the article 34 and some other not.

Measures having equivalent effect can be justified under certain conditions. These justifications can be justified on the bases of article 36 TFEU and the case law of the Court of justice (CJEU). Article 36 allows Member states to apply exceptions that must be justified on

grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. Exceptions arising from the case law are defined by judgment Cassis de Dijon known as mandatory requirements. These exceptions are open-ended and supply the article 36 derogations such as consumer protection, protection of the environment and protection of fundamental rights.

Article 36 derogations and mandatory requirements are however available only in the absence of harmonization and Member State must also fulfill the test of proportionality and prove suitability and necessity of the measure. The burden of proof always lies on the Member States.