

European union- principles in cassis de jion



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On the issue of measures having equivalent effect (MEQR), the situation is unclear. In the case 8/74 Procureur du Roi v Dassonville(1974), the Court of Justice gave definition of a MEQR: “ All trading rules enacted by member states that are capable of hindering directly or indirectly, actually or potentially, intra- community trade are considered as measures having an effect equivalent to quantitative restrictions”. This clearly illustrates that court favour a broad view of measures which that hinder or impede the free movement of goods. Additionally, it is stated that a MEQR can be an effect in order; discrimination between domestic and imported goods does not have to be illustrated. bpp229113

MEQR's can be divided into categories; those that ' distinctly applicable measures' and ' indistinctly applicable measures' (IAMs). Although the case 8/74 Procureur du Roi v Dassonville(1974) did not distinguish between ' distinctly applicable measures' and ' indistinctly applicable measures'. Subsequent case law has illustrates that the two situations are different.

In short, distinctly applicable measures impose on imported goods a ' different burden in law as well as in fact', in comparison to domestic goods. Although distinctly applicable rules are explicitly discriminatory, the discrimination is obvious at first glance of issue.

Indistinctly applicable rules, apply to both imports and domestic products alike. Therefore, they appear to be fair and have no direct discriminatory effect, but in fact place a higher level of burden on imported goods. The case law on indistinctly applicable measures can be divided into four situations:

origin- marking requirements, packaging requirements, contents & ingredients restrictions and name restrictions.

Cassis De Dijon

The case of Cassis De Dijon, involved the importation of blackcurrant fruit liqueur, which has an alcohol level between 15-20%, from France into Germany. German law stated that minimum alcohol for spirits should be 25%. The Court of Justice accepted that the German law constituted to an MEQR, as it was applied equally to domestic and imported goods but had the effect of preventing the importation of French liqueur Cassis de Dijon.

SRN: 229113 In the judgment, the Court of Justice established two contradicting principles: the presumption of mutual recognition and the rule of reason, which apply to indistinctly applicable measures only. These principles were introduced to address the failure of Dassonville case to distinguish between 'distinctly applicable measures' and 'indistinctly applicable measures'.

Presumption of mutual recognition

The Cases of Cassis brought about a change of mindset in regards to the principal of free movement of goods. Although the principles in Dassonville have a wide application, it stands from a negative point of view, a prohibition. Cassis on the other hand, approaches free movement of goods from a positive approach, the principal of mutual recognition.

This was the first significant principle to emerge out of the case of Cassis applies to inter-state trade and extending the decision in Dassonville. The <https://assignbuster.com/european-union-principles-in-cassis-de-jion/>

Court of Justice stated that there is 'no valid reason why, provided they have been lawfully produced and marketed in one of the Member States, alcoholic beverages should not be introduced into any other Member State,

The presumption that arises from this principle is that goods that are lawfully produced and marketed in the one member state can be sold in another member state, without further restriction. Therefore, rules which impose a 'dual burden' on the importer, requiring both producing countries requirements to be met alongside the requirements of the country the products is to be imported into, infringe on Article 34 and are prohibited.

Prior to the case, Court of Justice did not explicitly state that Member State regulations would not be upheld, except in areas where it was required for harmonization. In Cassis, the Court of Justice have set aside Member states regulations, clearly illustrating where a state regulation posed an obstacle in any form to free trade, it would be for the member state to justify the measure or it would fall within Article 34. In one sense, the decision is directly imposing the rule of European Community over member states, infringing member states rights with regard to goods.

On the 3rd of October 1980, the mutual recognition principle was discussed in a commission interpretative communication. On the 20th of October 1999, there was a council resolution on the principle, resulting in the incorporation into the Agreement on the European Economic Area 2002.

France in the case C-184/96 issued a decree, specifying that the use of name Foie gras requirement a minimum level of base content. The French decree did not include a mutual recognition clause which would allow similar

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products that did not entirely fit the requirements to be marketed in France. The Court of Justice held that the absence of mutual recognition clause in this situation was not proportionate. The principle of equivalence was reiterated, although France was permitted to ensure that goods from other country are marketed differently and sold under name of foie gras. SRN: 229113

The principle of mutual recognition, should however apply to products which do not conform in their entirety but are very close to foie gras requirements.

This idea of equivalence was expressly declared in the case 27/80 Fietje. Here, the court of justice held that an obligation to use a certain label would impede trade, as it would be a barrier for goods imported from another member state. This rule was justified on the basis of consumer protection. The only way in which the requirement of using a certain label be justified, would be for the label to provide information on the nature of product that would not be available from the original label.

A major obstacle that member states face when attempting to rebut the principle of mutual recognition, is the test of proportionality. The measure in question must not go beyond what is required to achieve the desired objective. In the case of 261/81 Rau, the court held that the requirement of margarine to be packaged in squares packets to distinguish from butter was a disproportionate measure to achieve the objective of consumer protection. Likewise, in the case 178/84 German Beer Purity, the German national rules preventing beer with additives to be sold in Germany on the basis that the Germans drank more beer was rejected and held to be disproportionate.

Furthermore, in both the case 470/93 Mars and case 315/92 Clinique Laboratories, it was held that Germany national rules were in breach of article 34. The presumption of mutual recognition was not rebutted as the German government failed to illustrate why stricter laws were required by France in comparison to Germany.

Case law illustrates that the best manner in which to rebut mutual recognition presumption would be justify the national legislation on the identification of specific national characteristic.

The case 188/84 Commission V France dealt with the French legislation that prevented the wood working machines being imported from Germany on the basis that it did not offer the same level of protection to users as those machines manufactured under French law. The courts accepted this legislative difference in standard, as its purpose was to protect the consumers against their own errors.

Further, illustration can be seen in the case C-42/90 Bellon, the presumption of mutual recognition was rebutted by French law that banned Italian patisserie containing sorbic acid on ground of different national dietary habits. Similarly the case C-289/96 Aher-Waggon, German laws which restricted aircraft emissions far more than other member states was held to rebut the mutual recognition principle as it served to protect the densely populated state from excessive noise.

Disadvantages of mutual recognition

There are various problems associated with the mutual recognition principle. Firstly, there is a lack of awareness of the principle. Businesses pay attention to national rules, often neglecting European law. Secondly, the scope of coverage is unclear. Specialised legal knowledge is required as there is huge uncertainty in regard to the burden of proof. Thirdly, is the issue of lack of communication between competent authorities, as it is difficult for competent authorities to find and communicate with their colleagues in member states.

Advantages of mutual recognition

The main advantages of the principal are as follows: enables free movement of goods without harmonization, allows products to be marketed across Europe, increasing the product selection available for consumers, gives citizens and business a right to recourse under domestic courts.

The Rule of Reason The second principle that emerged from the case of Cassis de Dijon was the rule of reason: justification. Here it was held that indistinctly applicable measures can be accepted if they are necessary in order to satisfy mandatory requirements in relation to “ effectiveness of fiscal supervision; the protection of public health; the fairness of commercial transactions; and the defense of the consumer.” The rule of reason rebuts the principle of mutual recognition. It provides another way in which member states can justify IAMS, apart from the derogations of Article 36, which are available to both IAMS and distinctly applicable measures.

The Court of Justice further expressed that that rule of reason “ cannot be a means of arbitrary discrimination or a disguised restriction on trade between

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Member States" (Article 36 derogation, the principle of proportionality).

Although the case of Cassis only listed four mandatory requirements, the language of the judgment clearly expresses that this list is non- exhaustive.

There are currently eleven categories of recognised mandatory requirement which made use for justification by a member state in regards to indistinctly applicable MEQRs. These are: protection of public health, fairness of commercial transactions, defence of the consumer, improvements of working conditions, protection of the environment, protection of culture, diversity of press, the effectiveness of fiscal supervision, social security system maintenance and the protection of fundamental rights.

Although the issue of public health protective is covered by the mandatory requirements in Article 36 TFEU, the case of Cassis de Dijon recognised the issue to be a mandatory requirement for purpose of the rule of reason. The case 823/79 Carciatti and Cassis de Dijon created the mandatory requirement of fiscal supervision effectiveness

SRN: 229113 The mandatory requirement of commercial transactions fairness was utilised successfully in the case 286/81 Oosthoek's Uitgeversmaatschappij BV. Here the use of national rules to prevent the offering of free gift to consumers who purchased encyclopaedias fell within article 34. The court accepted that these national rules although indistinctly applicable, can amount to mandatory requirement on the basis that the practice would lead to confusion among consumers as to the price of certain products, preventing fair trading.

The mandatory requirement of consumer defence has failed to be argued successfully by member states (Case C-315/92 Clinique Laboratories, Case C-470/93 Mars, Case C- 220/98 Estee Lauder V Lancaster). The explanation for the above is simply that member states go beyond what is reasonably required to achieve the objective in question: not in line with test of proportionality. The assumption placed upon an average consumer by the court of justice is that of a ' reasonably, well-informed, observant and circumspect.' An illustration of the above can be seen in the Case 178/84 Commission V Germany (1987), where the court held that national laws in Germany, which prevented the importation of beer with additives, did not amount to mandatory requirement of consumer protection.

The mandatory requirement of working conditions was utilised in the case 155/80 Oebel, where it was held that the restriction of opening time was justified on the basis that it was a ' legitimate element of economic and social policy.'

Court of Justice stated in the case 302/86 Commission V Denmark, that one of the European Union essential objective is to protect the environment, therefore certain limitation of the principal of free movement of goods can be justified on the grounds of protection of environment. This mandatory requirement was further utilised for justification in the Case C-2/90 Commission V Belgium; Case C- 379/98 PreussenElektra and Case C-389/96 Aher Waggon.

The mandatory requirement of cultural protection was added by the case 61/84 Clinetheque. In this case, in order to encourage public to go to cinema,

French nation laws prevented the sale of rental of films on video until after the 12 month period has passed after the film's debut in cinema. This rule was applied equally to foreign and domestic goods. The rule satisfied the test of proportionality, as it did not go beyond what is reasonably required to protect profitability of production of cinemas.

The mandatory requirement of diversity of the press was created in the case C-368/95 Familiapress v Baer Verlag. In the case, the Austrian national rules preventing the sale promotion of publishers including prize crossword puzzles in their papers to fall with article 34. The Court of justice held that need for diversity of press is essential. Therefore, rules that aim to achieve diversity in the media can amount to mandatory requirements as long as they are proportionate.

SRN: 229113 The case C-120/95 Decker, established the mandatory requirement of social security system. In this case it was held that rules which potentially attempt to prevent serious undermining of social security system financial balance can amount to mandatory requirement. All mandatory requirements are required to satisfy the test of proportionality like derogations of Article 36 (Case C-24/00 Commission V France).

Conclusion:

The case of Cassis established a framework within which the legitimacy of indistinctly applicable MEQRS can be assessed. The practical reality of the principles from the case was that huge number of measures taken by Member states breached mutual recognition principle, and could not be justified on the ground of rule of reason. For traders who wish to import

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goods from another member state, the rule of mutual recognition is a powerful tool. The member states were concerned that their ability to implement the reasonable measures, not justified by way of mandatory requirements was at risk. The decision by courts in Keck, was to address this concern. Keck distinguished between IDAMs that impede trade between member states that IDAMs that affect trade as a whole but did not result in imports being affected more than exports (selling arrangements).