

The cassis de dijon principle law european essay

Law



This paper critically examines the decision of abolishing the cassis de Dijon principle from the Article 34 TFEU. In order to provide coherent and concrete analysis of the decision, various court cases and academic opinion from varied sources are used.

Liquor Restrictions and the cassis de Dijon Principle

The cassis de Dijon principle stipulates 25% to be the minimum alcohol level to be contained in spirits. This requirement applies to both imported and domestic liqueurs in all European Union (EU) member countries. There are two primary presumptions regarding this cassis requirement. First, there is the presumption of mutual recognition commonly referred to as the presumption of marketability or the dual burden rule. The dual burden rule needs to be balanced against the rule of reason. With respect to this assumption, goods lawfully produced in an EU member state can be sold to other member countries without imposition of any restrictions. Therefore, in any case ruling that involves commercial transactions of liquor, the court must state that:[4]"[t]here is therefore 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."[5]Therefore, rules which inflict a dual burden on an importer in the sense that he or she has to satisfy product requirements of his or her domestic country, and varied requirements that exist in other countries he or she wishes to export, are said to violate or breach Article 34.[6]

Gewerbe Koln vs. Mars GmbH C470/93 [1995] ECR 1-1923

Court cases that involve the dual burden rule have resulted in more complicated problems, rather than providing a solution to a situation at

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hand. For instance, in the case between Verein gegen Unwesen in Handel und Gewerbe Koln v Mars GmbH C470/93 [1995] ECR I-1923, the court's ruling resulted in more legal problems, failing to solve the problem. The German consumer authorities challenged a sales promotion used by Mars in which he sold ice cream bars that were 10% bigger than the normal size. Besides, Mars used wrappers that were 10% bigger than the normal length. [7]The German consumer authorities perceived Mars' motive to create an impression that the bars sold were bigger than others in the market. Mars moved the notion to court, seeking to challenge the German consumer authorities. However, based on the dual burden rule, the court stated that since Mars bars were sold in all EU countries, they also need to be sold in German. The court concluded that the wrappers used were part of the product and Mars would either have a second production line precisely for his German distributors or change the wrappers at the border point. This created more problems to Mars, solutions.[8]

Environment Protection and the cassis de Dijon Principle

The cassis de Dijon principle holds that manufacturers should only use bottles that are marked 'returnable containers,' which can be collected and refilled for re-use. Besides, the principle requires that the returnable containers to use must meet the formal approval outlined by the National Agency for purposes of protecting the environment. The Agency has the right to refute a manufacturer's application for the formal approval if he or she does not re-use a larger percentage of the containers used. These rules were to be applied to all EU member states. However, courts have altered such decisions in their case ruling.[9]

Commission vs. Kingdom of Denmark [1992]

The notion of non-discrimination has been violated in many court cases. For example, the Danish bottle case, which involves Commission vs. Kingdom of Denmark, represents controversies in the application of cassis de Dijon principle on environmental court cases.^[10] In this case, the court's decision represents two distinct ambiguous and uncertain differences regarding environmental aspect as it applies to manufacturers. The court's decision distinguishes measures that ensure effective realization of higher degree of environmental protection from measures that result in a "very" effective level of environmental protection. The court identified return and deposit system to be measures that can result in a greater degree of environmental protection. On the other hand, licensing system was identified as the best measure to realize a "very" effective level of environmental protection. These measures are treated as the highest environmental standard cords. However, in some circumstances, these measures are treated as masked forms of protectionism. In the Danish bottle case, the degree to which these measures are used faces limitation. From the court's ruling, the principle of proportionality, which is the basis for environmental standard measures, is violated to a certain degree. The court fails to address the basis of the environmental problems at hand. Besides, it is clear that the court does not set common standards at the community level, rather passes laws that must be applied to all manufacturers. It can be argued that measures proposed by the court can be the basis for competitive advantage. Manufacturers can use such measures to set competitive grounds and barriers against their rivals.

[11]

Non-Discrimination Rule and the cassis de Dijon Principle

The cassis de Dijon contains a non-discrimination rule, which demands that all EU nations must have limited degrees of discrimination for the rule of reason to apply in their context.[12] Non-discrimination rule aims at protecting foreign goods and products from difficulties or disadvantages in international markets. The non-discrimination rule operates under the principles of domestic law. This rule necessitates member states to recognize that goods and products that are lawfully introduced or placed in the market with respect to the regulations of exporting countries, can also be lawfully marketed irrespective of whether there exist differences in the rules of importing countries or not.[13]

C-2/90, Wallonian Case-Commission v Belgium

The notion of non-discrimination has been violated in many court cases. For instance, in the Wallonian waste case, which involved the Wallonian Case-Commission v Belgium, the judge had an opportunity to outline a new definition of non-discrimination.[14] The case involved the Walloon Regional Executive, who barred the importation of any form of waste into Wallonia. However, some exemptions were provided to other Belgium regions like Brussels and Flanders. The European Commission argued that the Wallonian measures were discriminatory, violating the objective of the cassis de Dijon principle. Belgium sought court's support on environmental basis, arguing that the cassis de Dijon discriminatory element was indeed important in protecting Wallonia from being a target of waste from other EU member countries. Besides, Belgium held that waste could not be considered as goods because they did not have any commercial value,

hence not meeting the requirements of the cassis de Dijon principle.

However, the European Commission held that the Wallon measure was discriminatory because it only barred the importation of foreign waste into Wallonon region and did not include the disposal or storage of domestically produced waste in the Wallonia. Basing on this notion, the Commission asserted that there was no solid cause to justify the measure basing on environmental grounds because it only applied to imported products.

Therefore, the measure was discriminatory against imported goods.[15]In its ruling, the court held that wastes could not be termed as goods without the presence of commercial value, thus refuting the Belgium's claim. The court argued that irrespective of whether recyclable or not, wastes form part of goods, hence are allowed to move freely among countries as outlined by the cassis de Dijon principle. However, the court concurred with the Belgium's argument regarding the environmental protection. The court asserted that waste, even before they accumulate to high levels, pose dangers to the immediate environment; therefore, refuting the argument of the European Commision of the discriminatory aspect of the Wallonia measure. The courts ruling resulted in a state of confusion regarding the applicability of the cassis de Dijon principle. It is apparent that the court's ruling does not strictly abide by the requirements of the principle. Alterations are made on the principle, making it difficult to precisely know the extent of its applicability. The court's ruling complicates situations rather than providing a concrete solution; thus, the reason for the argument for abolishing the cassis de Dijon principle.[16]

Selling Arrangement and the cassis de Dijon Principle

Cassis de Dijon principle ensures free movement of goods through eradication of quantitative restrictions and custom duties.[17]The cassis de Dijon principle ensures that goods and products move freely between EU member countries so long as they are produced in accordance with set regulations and requirements. All business organizations operating in member states are free to exchange their products as long as those products are affected in a similar manner, with regards to domestic law requirements in other member countries. However, " certain selling arrangements for products from other Member countries fall outside the scope of the prohibition laid down by Article 34 TFEU".[18]The elimination of technical and physical barriers, aim at sustaining international trade among member countries. The principle holds that both domestic goods and imports among member countries should bear no quantitative restrictions.[19]

Case C-405/98, Konsumentombudsmannen (KO) v Gourmet International Products AB (GIP)

" Since 1978, there have been various important court rulings in free movement cases which have significantly altered the legal landscape." [20]Court rulings have changed the definition of free movement of goods among EU countries. Both domestic and import products have been affected on a large scale, inhibiting effective selling arrangement of goods. A most noted case that involves alteration of selling arrangement as outlined by the cassis de Dijon principle is case C-405/98 Gourmet International. " This case concerned a ban on the advertising of alcoholic beverages to consumers." [21]Such an imposition was regarded as a measure that fell

outside the context of the cassis de Dijon principle. The ban imposed was only applicable to the sale of alcoholic beverages in Sweden and didn't in any sense apply to the product importation under consideration. In its ruling, the court held that the rule may have exerted an "equal burden" on all imported products because they were to profit from consumer advertising since it was projected that the recognition of imported products among Swedish consumers was likely to be recorded on low margins. Based on this notion, the court held that imported products and domestic products could not be treated with the same measure.[22] In analyzing the court's ruling, it is apparent that it violated the free movement rule of the cassis de Dijon principle, since it does not strictly abide by set requirements. The court's ruling fell outside the context of Article 34 TFEU. Based on the cassis de Dijon principle, the court's decision denied importation of alcoholic beverages to Sweden, inhibiting their chance of accessing international markets in the EU member states. Therefore, it would do no harm if the principle is abandoned because courts violate set rules and regulations.[23]

Trade Rules and the cassis de Dijon Principle

The cassis de Dijon principle permits free trade among member countries, and necessitates full conformity to set requirements and regulations.

Irrespective of these requirements, countries within the EU have adopted measures to inhibit free trade. For instance, recently the Scottish government passed the alcohol minimum pricing rule that inhibits free trade of alcoholic beverages in the country. The Scottish government noted that upon full implementation of the rule, "the cheapest bottle of wine would be £4.69 and a four-pack of lager would cost at least £3.52." [24] This implies

that trade activities within the context of alcohol products are likely to reduce in the near future because of the decreased demand. The European Commission claimed that " the plans were contrary to EU law on free trade,"[25]violating the cassis de Dijon principle. However, basing on the EU law, the plans are justifiable on the basis that they are applicable in the context of " public health, social problems and crime."[26]Literature has it that the height of alcohol use in the Scotland is high, a factor that enhances the emergence of social and health problems. Therefore, " increasing the price of cheap alcohol is likely to achieve a reduction in harmful consumption of alcohol."[27]But what is the inference of such a notion? The cassis de Dijon principle would be breached, violating free trade. Therefore, it is no better to have the principle in existence.[28]

Conclusion

The European Union Law contains various Articles. This paper has examined Article 34 TFEU, which necessitates free movement of goods in EU member states. Precisely, the discussion has centred on the cassis de Dijon, as one of the principles within the Article. The principle recognises the aspect of mutual recognition among member states. It demands that once a good or product is lawfully placed on the market in one of the EU member state, other states can also have access to it. This is what is termed as a mandatory requirement in any court ruling regarding the cassis principle. However, there exist deviations within the applicability of the cassis de Dejon principle. Many are the times that court rulings and decisions have complicated existing situations, rather than providing concrete solutions. The paper has explored on various court cases in which judgement passed

results in the creation of complicated issues. In such circumstances, the applicability of the cassis has been violated, breaching its set requirements. The presence of the cassis in such situations has proved ineffective and having less importance. Therefore, it is correct to argue that it would be wise if the cassis de Dejon principle would be abandoned because its importance is frequently violated.