

International Law Week 2015

Business in the EU Free Movement of Goods

European Union



Free Movement of Goods



EU



EEA

Free Movement of Goods

Sources

- The Treaty on the Functioning of the European Union ([TFEU](#))
- Establishment of the Internal Market, Art. 26 TFEU

Article 26
(ex Article 14 TEC)

1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.
2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.

The Basic Freedoms

The four basic freedoms:

1. The free movement of goods, Art. 34 TFEU
2. The free movement of persons (workers, Art. 45 TFEU and establishment, Art. 49 TFEU)
3. The free movement of services, Art. 56 TFEU
4. The free movement of capital, Art. 63 TFEU

Free Movement of Goods

The Free Movement of Goods

- structure developed by the courts since the 1970's and subsequently applied to the other basic freedoms
- leading cases: *Dassonville*, *Cassis de Dijon*, *Keck*, *Commission v Italy*, *Ker Optika*.

Free Movement of Goods

Trade obstacles

Customs



Article 30

(ex Article 25 TEC)

Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.

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Trade obstacles

Quantitative Restrictions



Article 34
(ex Article 28 TEC)

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

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Trade obstacles

Measure having equivalent effect

Article 34

(ex Article 28 TEC)

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

Do you know what **MEQR** means?

Measure Equivalent to a
Quantitative Restriction


By AcronymsAndSlang.com

Free Movement of Goods

Measures having equivalent effect (4-Criteria-Test):

1. Three-Level-Test ([Commission v Italy, case C-110/05](#))

a) Measures which treat products coming from other Member States less favourably (*discrimination*)

b) Hindering, directly or indirectly, actually or potentially, trade within the EU (*indistinct hinderance*, [Dassonville, case 8/74](#))

c) Any other measure which hinders the access of products to the market (examples: discriminating sales modalities, [Keck, case C-267/91](#); user prohibitions, [Mickelsson, case C-142/05](#))

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Measures having equivalent effect (4-Criteria-Test):

2. Justifiable with *mandatory requirements of the public interest* ([Cassis de Dijon, case 120/78](#))
3. Is the restriction *adequate / appropriate* to achieve the public interest
4. Is the restriction *necessary* to achieve the public interest

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1. *Tree-Level-Test*

Is the Purity Law of Germany a discrimination (level 1), an indistinct hindrance (level 2) or another measure which hinders the access of Belgian beer to the German market (level 3)?

2. Justifiable with *mandatory requirements of the public interest* (Cassis de Dijon)

What reasons of public policy (but economic reasons) can be used to justify the Purity Law?

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3. Is the restriction *adequate/appropriate* to achieve the public interest?

Can the Purify Law achieve the public interest?

4. Is the restriction *necessary* to achieve the public interest?

Is the Purify law really necessary to achieve that public interest or are there less strict measures the state could apply to achieve this public interest just as effectively?

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Now, what about the following cases?

1. Motorcycles

Italian law allows the import of trailers which are specially designed to be towed by motorcycles but prohibits trailers to be towed by motorcycles.

2. Confectionery

Austrian law prohibits the sale of non-packaged confectionery from vending machines.

3. Optic lenses

Hungarian law prohibits the sale of optic lenses over the internet due to the lack of qualified advice.

4. Tobacco

Spanish law prohibits retailers from importing tobacco products but forces them to procure their supplies from authorised wholesalers.