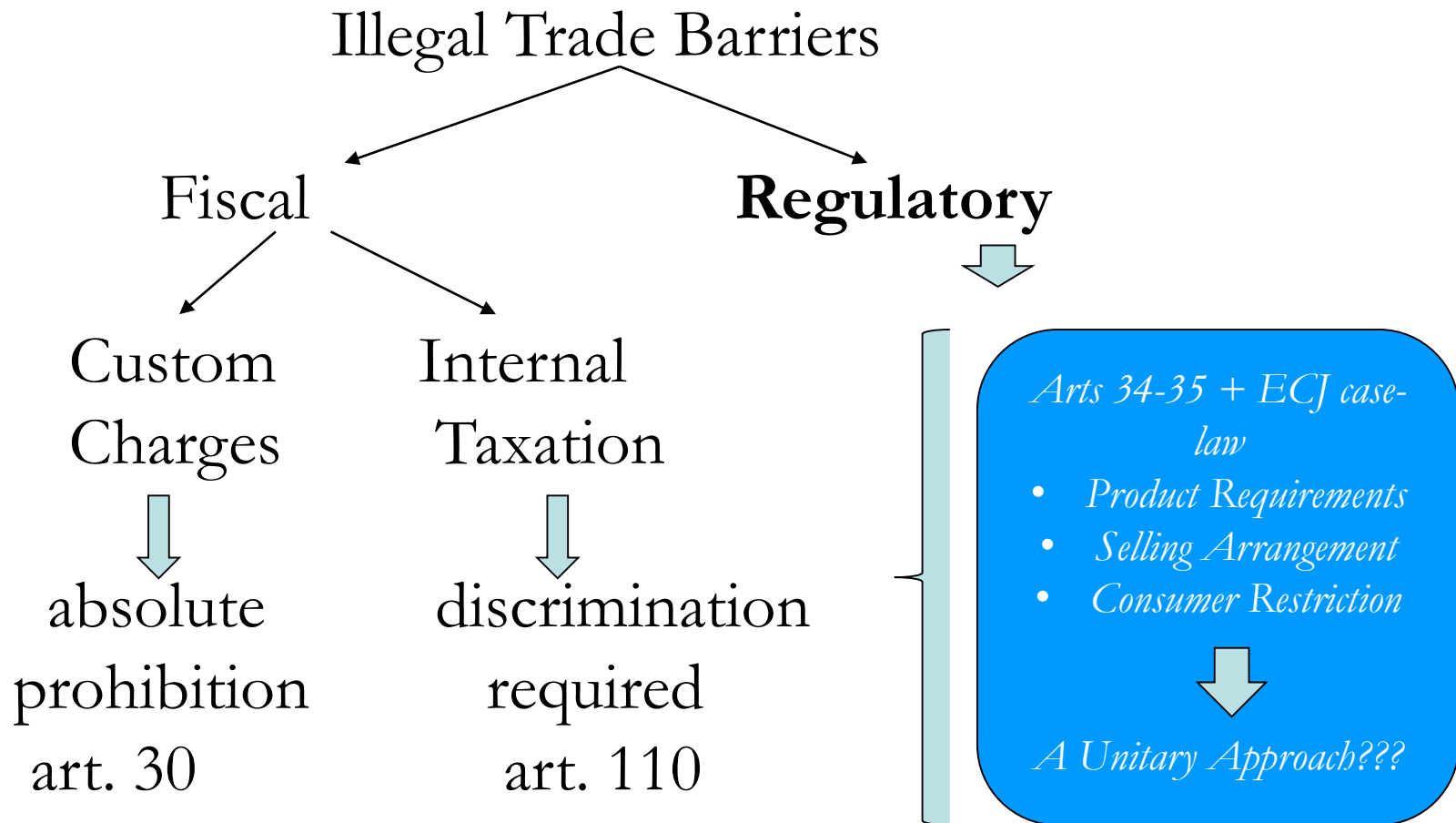


EUROPEAN UNION LAW

THE FREE MOVEMENT OF GOODS

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Overview of Main Issues



Regulatory Barriers

Notion: legal obstacles to trade that cannot be overcome by the payment of money



E.g. Complete ban on a foreign product

...but what about a partial restriction of a product's use only?

The Bulk of the Discipline

*Prohibition on
Quantitative
Restrictions on
IMPORTS
Art. 34*

*Prohibition on
Quantitative
Restrictions on
EXPORTS
art. 35*

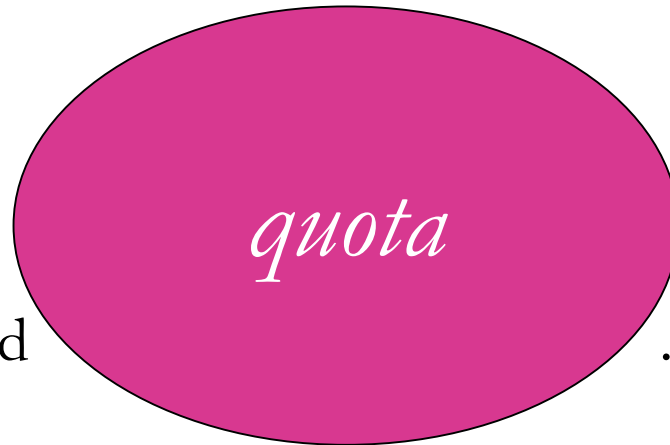
quota

*Public Policy
Exceptions
Art. 36*

*What is meant by measures having an
'equivalent effect'???*

Quantitative Restrictions

Restrictions that
Limit the quantity
of an imported good
to a fixed amount



....total ban

≧

The Slippery Notion of Measures Having an Equivalent Effect to Quantitative Restrictions

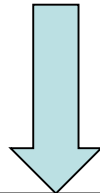
In order to further clarify the notion, the ECJ has resorted to 4 different approaches throughout the last decades:

1. Border Measures
2. Product Requirements
3. Selling Arrangements
4. Consumer Restrictions

Border Measures: the *Dassonville* Formula

Measures having an equivalent effect (dir.70/50)

Distinctly applicable
art. 2 dir. (imported
products only)



Indistinctly applicable

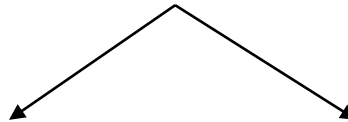
*Shape, size, weight, composition,
presentation, identification, putting up*
**PRODUCT REQ.: restrictions
inherent and physiological in an
international market**

‘All trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures of having an effect equivalent to quantitative restrictions.’

ECJ, Dassonville, 1974

Product Requirements in the *Cassis de Dijon* case: a Shift in Perspective

% alcohol content  **indistinctly** applicable measure



Domestic products

foreign products

Obstacle to movement resulting from disparities of legislations may be recognized as necessary in order to satisfy mandatory requirements, that serve a purpose in the general interest. Does the minimum alcohol content of liquors serve such a purpose?

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61978CJ0120&from=IT>

*Mutual
Recognition*

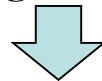
Selling Arrangements as Illegal Barriers to Trade: from the *Sunday Trading* cases to the *Kech* case

Sunday Trading ban as a restriction on imports through the sale restrictions effect on imported goods, if the effects of the view exceed what is necessary to achieve the aim in view

cfr. ECJ, *Torfaen*, 1989



Dangerous opening



U-turn with the *Kech* jurisprudence

The **discrimination element** is back with a bang (only with reference to selling arrangements, though)



Classificatory battle: product requirements vs. selling arrangements (*Familiapress*)



Physical integrity of the product

The *Keck* Test

- Is a measure indistinctly applicable?

Yes

No



- Does it affect in the same manner, in law and in fact, the marketing of domestic products and of those of other member States?

Yes

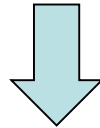
No



It is a non discriminatory selling arrangement!

Product Requirements and Selling Arrangements: Tertium non Datur? Consumer Restriction as the New Frontier of Trade Barriers

Was the prohibition to use trailers **on motorcycles** on the Italian highways a measure of effect equivalent to a quantitative restriction to the free movement of goods, even if there is no prohibition concerning vehicles, i.e. *other uses*?



Yes, because it has influence on the behaviour of consumers!

«Consumers, knowing that they are not permitted to use their motorcycle with a trailer specially designed for it, have practically no interest in buying such a trailer»

The Ultimate Evaluation: Hindrances to the Access to the Market

*Access to the Market
Trumps
Discrimination*

*Non
discrimina
tion*

*Mutual
recognitio
n*

*Free
market
access*

Can Regulatory Barriers Ever Be Justified?

Express Justifications under art. 36 TFEU

+

Imperative requirements (but only with reference to non-discriminatory restrictions)