

Chapter 9

Internal Market: Goods I

1. Fiscal Barriers I: Customs Duties

- (a) Article 30: An Absolute Prohibition
- (b) Objective “Justifications”

2. Fiscal Barriers II: Discriminatory Internal Taxation

- (a) Paragraph 1: Discrimination Against “Similar” Foreign Goods
- (b) Paragraph 2: Protection Against “Competing” Foreign Goods

3. Regulatory Barriers: Quantitative Restrictions

- (a) Quantitative Restrictions on Imports: Article 34
- (b) Quantitative Restrictions on Exports: Article 35

4. Justifying Regulatory Barriers: Article 36 and Mandatory Requirements

- (a) Implied Justifications: Mandatory Requirements
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Conclusion

Introduction *

How could the Union create a “single” market out of “diverse” national markets? To create an internal market, the EU Treaties pursue a dual strategy: negative and positive integration. The Union is first charged to “free” the internal market from national barriers to trade in goods. And in order to do so, the Treaties contain a number of constitutional prohibitions “negating” illegitimate obstacles to intra-Union trade. This strategy of *negative* integration is complemented by a – second – strategy of *positive* integration. The Union is here charged to adopt positive legislation to harmonize the diverse national laws. For that purpose, the Treaties confer a number of “harmonization” competences to the Union. The most famous provision here is Article 114, which entitles the Union to adopt harmonization measures that “have as their object the establishment and functioning of the internal market”. This Chapter explores the Union’s negative integration tools in the context of the free movement of goods, while the next Chapter investigates the Union harmonization competences.

What is the “negative integration” regime governing goods? In order to create an internal market in goods, the Union legal order insists that illegal barriers to intra-Union trade must be removed. Its constitutional regime is however split over two sites within Part III of the TFEU. It finds its principal place in

* All footnotes omitted.

Title II governing the free movement of goods, and is complemented by a chapter on “Tax Provisions” within Title VII. Within these two sites, we find three constitutional prohibitions. Section 1 examines the prohibition on customs duties. These are fiscal duties charged when goods cross national borders. Section 2 moves to the second type of fiscal charge: discriminatory taxes imposed on foreign goods. Section 3 then investigates the legality of regulatory restrictions to the free movement of goods. Regulatory restrictions are not, unlike fiscal duties, pecuniary charges. They simply “regulate” access to the national market by – for example – establishing product or labelling requirements. Finally, Section 4 will look at possible justifications for regulatory restrictions to trade in goods.