Bilkent University, Fall 2025

The Cassis de Dijon Principle: Mutual Recognition and Market Access in EU-Swiss Trade Relations

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Submitted for Law 413 European Union Law Course
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23.12.2025

1. Introduction

Economic integration constitutes the backbone of the European Union. This paper will therefore begin by introducing the internal market and the customs union of the European Union to lay the foundations for breaking down the principle of free movement of goods with relation to Article 34 of the Treaty on the Functioning of the European Union (TFEU), previously referred as the Article 30 of the European Economic Community (EEC). Within the scope of free movement of goods principle, the paper will delve deeper into prohibitions on tariff and especially non-tariff barriers within the European Union's economic system. This paper will examine one of the trademark cases for the freedom of goods which is the *Cassis de Dijon* case. Moving on from these principles, the paper will propose the *Dassoville* case as the structural foundation of the *Cassis de Dijon* case.

Beyond the initial regulation of fruit liqueurs, the paper explores the broader implications of the *Cassis* legacy through an analysis of subsequent jurisprudence. This includes the *Danish Bottles* case, the *Keck and Mithouard* case, and the *Commission v. Italy (Trailers)*. Finally, the paper provides a contemporary perspective using a case study of Switzerland. It examines the unilateral adoption of the *Cassis de Dijon* principle, analyzing the domestic political resistance and economic tensions this move sparked within the Swiss landscape. Through this comprehensive overview, the paper illustrates how a single judicial decision in 1979 continues to define the boundaries of the European single market and influence regulatory policy far beyond the Union's formal borders.

2. Internal Market and the Customs Union

At its core, the European Union's internal market is grounded in classical free-trade theory, notably Adam Smith's concept of absolute advantage and David Ricardo's subsequent theory of comparative advantage; both of which highlight how the removal of trade barriers promotes the efficient allocation of production, labour, and capital. By enabling member states to specialize according to their relative efficiencies, market integration leads to the availability of cheaper and higher-quality goods and contributes to the enhancement of overall social welfare.[1] These

[1] Kai Purnhagen, "The Virtue of Cassis de Dijon 25 Years Later—It Is Not Dead, It Just Smells Funny," in *Varieties of European Economic Law and Regulation*, ed. Peter Rott (Cham: Springer, 2014), 317.

economic ideas helped in shaping the early stages of European integration, which began with the Treaty of Paris in 1951 and subsequently the Treaty of Rome in 1957. Both of these treaties established the foundations of a common market. First concrete attempt at economic integration came in 1968 with the completion of the customs union, which abolished customs duties and charges having equivalent effect between Member States and introduced a common external tariff for goods coming into the EU from third countries.[2] Building upon this fiscal integration, the internal market, now defined in Article 26(2) TFEU, aimed to create an area without internal economic barriers in which goods circulate under conditions comparable to those of a single national market.[3] To achieve this objective, the Union is empowered under Article 114 TFEU to harmonize national laws that create obstacles to trade.[4]

3. Principle of Free Movement of Goods

The free movement of goods principle is a central pillar of the European Union's internal market and is fundamental to the Union's objective of economic integration. The aforementioned definition of the internal market signals the aspiration that goods should circulate across Member States under conditions parallel to those of a single national market.[5] This objective is implemented through the Treaty provisions governing the free movement of goods, most notably Articles 28 to 37 TFEU.

At its core, the free movement of goods is secured through the establishment of a customs union. Articles 28 and 30 TFEU prohibit customs duties, quantitative restrictions such as bans and quotes, and charges having equivalent effect on imports and exports between member states; while Articles 28 and 29 TFEU provide for a common external tariff in respect of goods originating from

[2] Ibid.
[3] Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) [2012] Article 26, para 2.
[4] P Craig and G Búrca, EU LAW: Text, Cases, and Materials, (7th edn, Oxford University Press, 2020). pp.1476 - 1480.
[5] Craig and de Búrca, 1479.

third countries.[6] Building on the foundation laid by these articles of TFEU, the customs union removes fiscal barriers at internal borders and ensures that once goods are lawfully imported into a member state and placed in free circulation; they may move freely throughout the Union as EU goods without being subjected to further customs charges.[7] Hence, this framework effectively eliminates traditional protectionist instruments based on border taxation.

4. Non-Tariff Barriers

The removal of standard customs tariffs did not, in itself, guarantee the effective integration of national markets. Following the abolition of fiscal barriers, regulatory obstacles increasingly became the principal impediments to intra-EU trade.[8] These obstacles, commonly referred to as non-tariff barriers, arose from differences in national laws governing matters such as product composition, labeling, packaging, marketing, and technical standards. Although such rules typically apply without distinction to domestic and imported goods, they may nonetheless hinder market access by requiring traders to comply with multiple regulatory regimes.

4.1. Quantitative Restrictions

It is precisely these non-tariff barriers that give Article 34 TFEU its particular importance. Article 34 provides that:

> *"Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States."* [9]

In the Geddo case, the concept of a quantitative restriction was interpreted expansively by the Court to include any measures that, depending on the context, wholly or partly limit imports, exports, or goods in transit; which are all prohibited.[10] Following this definition, it is crucial to

[6] TFEU Articles 28, 29, 30.
[7] Craig and de Búrca, 1529.
[8] Craig and de Búrca, 1652.
[9] TFEU Article 34
[10] Case 2/73 Geddo [1973] ECR 865, 879

note that the TFEU does not impose an absolute prohibition on all trade-restrictive measures and prohibitions that are imposed must satisfy the justifications of Article 36 TFEU. Article 36 TFEU provides that restrictions on imports may be justified on specific grounds, including public morality, public policy, public security, and the protection of health and life of humans, animals, or plants.[11] Therefore, article 36 essentially reflects a recognition that member states retain legitimate regulatory interests which may, in certain circumstances, justify limitations on free movement.[12]

However, such justifications are interpreted strictly, and national measures must not constitute a means of arbitrary discrimination or a disguised restriction on trade.[13] The interaction between Articles 34 and 36 TFEU thus establishes the basic legal framework for assessing non-tariff barriers in EU law.

4.2. Measures Having Equivalent Effect

While quantitative restrictions, such as import quotas or outright bans, are relatively straightforward, the prohibition of measures having equivalent effect represents the core mechanism through which EU law addresses regulatory barriers to trade. This formulation reflects an acknowledgment that state regulation, even when not protectionist in intent, can produce effects equivalent to those of tariffs or quotas by fragmenting the internal market.[14] The term "measures having equivalent effect", therefore, covers a broad category of national rules capable of hindering intra-EU trade, whether directly or indirectly, actually or potentially as defined in the Dassonville case by the Court of Justice of the European Union as:

[11] TFEU Article 36
[12] Craig and de Búrca, 1564.
[13] Craig and de Búrca, 1566.
[14] Craig and de Búrca, 1560

> *"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 having an effect equivalent to quantitative restrictions."*[15]

This expansive understanding is necessary to prevent member states from circumventing the prohibition of tariffs through regulatory techniques that restrict market access in more subtle ways.[16] As a result, Article 34 TFEU functions as a general constraint on national regulatory autonomy where domestic rules impede the free circulation of goods. Furthermore, it is necessary to understand the qualitative aspect of these measures to observe the bigger picture that is aimed by Article 34. These measures may be either distinctly applicable, where they discriminate against imported goods, or indistinctly applicable, where they apply equally to domestic and imported products but nevertheless impede intra-EU trade.

5. Dysfunction of Dassonville

Within this framework of Article 34 TFEU, the Court of Justice in *Procureur du Roi v Dassonvill*e adopted a notably wide definition of measures having equivalent effect. As mentioned above, it held that all national trading rules capable of hindering intra-Community trade, directly or indirectly, actually or potentially, fall within the scope of Article 34 TFEU.[17] This effects-based approach illustrated a crucial shift away from a narrow focus on discriminatory intent and significantly broadened the reach of EU free movement law.

The immediate consequence of this formulation was the transformation of Article 34 TFEU into a powerful instrument of negative integration. By allowing virtually any national "trading rule" to be scrutinised, the *Dassonville* formula maximised the right of individuals and economic operators

[15] Case 8/74 Dassonville [1974] ECR 837 (n 47) 852.
[16] Craig and de Búrca, 1461
[17] Case 8/74 Dassonville [1974] ECR 837

to participate in the internal market on the terms of their choosing (Purnhagen 319).[18] This, as a result, reinforced an understanding of the EU legal order as an economic constitution.[19] In the context of an internal market still in its development stage, characterised by deep-rooted national protectionist traditions and limited familiarity with EU law among national courts. This coverage was both necessary and effective as it enabled the Court to dismantle long-standing regulatory obstacles and to remove what amounted to the accumulated "dead wood" of protectionist legislation.[20]

However, the coverage of the *Dassonville* formula soon revealed its structural limitations. By failing to take into account any internal limiting principles, Article 34 TFEU risked evolving into a general review mechanism for domestic regulation. Measures only loosely connected to trade, including rules concerning retail opening hours, age limits, or public morality, could theoretically fall within its scope; all of which exerted only a remote or marginal effect on trade.[21] Therefore, it can be stated that the *Dassonville* formula lacked the doctrinal tools to distinguish between genuinely protectionist barriers and benign domestic regulation. This over-inclusiveness generated legal uncertainty, strained the Court's institutional capacity, risked overwhelming the limits of what national governments could politically sustain, and raised concerns regarding excessive interference with member state regulatory autonomy.[22]

Crucially, *Dassonville* also lacked a structured framework for assessing when trade-restrictive measures might nevertheless be justified. While Article 36 TFEU provided limited grounds for derogation, it proved unsuitable for addressing the growing number of indistinctly applicable regulatory measures pursued for legitimate public interest objectives. This overreach also carried

[18] Purnhagen, Kai, 319.
[19] Ibid.
[20] Ibid.
[21] Catherine Barnard, *The Substantive Law of the EU: The Four Freedoms*, 5th ed. (Oxford: Oxford University Press, 2016), 75.
[22] Gormley, Laurence W. "Free Movement of Goods and EU Legislation in the Court of Justice." Chapter. In *The Judiciary, the Legislature and the EU Internal Market*, edited by Philip Syrpis, 49–61. Cambridge: Cambridge University Press, 2012. pp. 12-15

systemic implications. Had the Court continued to rely exclusively on the *Dassonville* approach, the legitimacy of the internal market project itself would have been placed at risk, as Member State support depended upon a more balanced accommodation of economic integration and social regulation.[23] The absence of a structured justification framework thus created ascending pressure for doctrinal recalibration.

It was in response to these tensions that the Court in the *Cassis de Dijon* case introduced a reformulated approach to Article 34 TFEU. While building directly upon the broad reach established in *Dassonville*, with *Cassis*, CJEU sought to discipline that reach by introducing principles capable of distinguishing unjustified trade barriers from legitimate national regulation.[24]

6. Cassis de Dijon

The *Cassis de Dijon* principle is the result of the European Court of Justice decision in 1979.[25] The *Cassis de Dijon* case carries the importance of a landmark case for the free movement of goods which is the fundamental part of the single market integration of the European Union. This decision's status as one of the most relevant cases ties to the introduction of two terms that are the Mutual Recognition Principle and the Mandatory Requirements respectively.

Cassis de Dijon was related to the German national law for Fruit Liquor alcohol contents. The German authorities blocked the German retail cooperative group Rewe-Zentral AG wanting to import the Blackcurrent Liquor produced in France (Cassis de Dijon) containing 15-20% alcohol as opposed to the German qualification of 25% alcohol for fruit liquors.[26] The blocking was justified by German authorities with two arguments. The first one was related to public health protection, where it argued alcoholic beverages containing a lower percentage of alcohol would increase the tolerance of the general public compared to high-alcohol-content beverages. The

[23] Ibid.
[24] Craig and de Búrca, 1569.
[25] Eva-Maria Strobel, "Cassis de Dijon and other Foodstuffs - The Revised Swiss Federal Law on Technical Barriers to Trade" [2010] EFFL pp.288-291.
[26] Case 120/78 *REWE-Zentral ('Cassis de Dijon')* [1979] ECR 649, para 3.

second argument was related to the protection of the consumer against unfair commercial practices. Where it argued the lower-alcohol-content beverages had advantage compared to higher ones since it would cost lower to produce.[27]

The court rejected both arguments stating that higher-alcohol-content beverages are diluted before consumption and the public has access to a variety of lower alcohol beverages already.[28] The dismissal for the second argument relied on the proportionality stating that a proper labeling practice would be sufficient to ensure consumer protection/fair trade instead of banning the product itself altogether.[29] Therefore the courts rejection of the German arguments of Article 36 of the TFEU meant this practice signified a breach of Article 34 of TFEU (previously Article 30 of the EEC): "Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.".[30]

The *Cassis de Dijon* case is an example of a judicial dialogue since the national court of Germany consulted the European Court of Justice for the interpretation via preliminary rulings procedure. The preliminary rulings procedure carries importance since it ensures uniform application of European Union Law through national courts. Hessisches Finanzgericht, a German Court, referred two questions to the European Court of Justice after German retail group Rewe-Zentral AG's challenge to the German spirits monopoly. The first question was about the interpretation of the Article 34 of TFEU (previously Article 30 of EEC Treaty) about the Measures Having Equivalent Effect to Quantitative Restrictions (MEQRs) since in the case of Cassis, the measure restricting the product was an indistinctly applicable measure which refers to the rules Member States have for nationally produced or imported goods. The German Court asked for interpretation for the rule of 25% alcohol content, even though it is an indistinctly applicable measure, if it can be counted as a MEQR.[31] The ECJ in the interpretation found the ban breaching the Article 34 of TFEU and counted the action as a MEQR.[32] The second interpretation request brought upon the ECJ was Article 37 since the plaintiff argued a breach with the idea of discrimination against foreign

[27] *REWE-Zentral ('Cassis de Dijon')*, para 12(2).
[28] *REWE-Zentral ('Cassis de Dijon')*, para 11.
[29] *REWE-Zentral ('Cassis de Dijon')*, para 13.
[30] TFEU Article 34.
[31] *REWE-Zentral ('Cassis de Dijon')*, para 5.
[32] *REWE-Zentral ('Cassis de Dijon')*, para 15.

products.[33] The ECJ dismissed the relation of Article 37 for this case since this case is related to a general manner irrelevant to them being under monopolies.[34]

In the decision of *Cassis de Dijon*, the Court not only interpreted the related articles but also utilized the procedure of preliminary rulings to introduce a new opus which is the Principle of Mutual Recognition. This new doctrine proposed a more integrated internal market.

6.1. Principle of Mutual Recognition

In the *Dassonville* case, the concept of indistinctly applicable measures were said to be considered under the Article 34 of TFEU context.[35] The *Cassis* judgement developed that argument by introducing the Principle of Mutual Recognition. The principle argues that if the goods are lawfully produced in one Member State, they should be allowed to the market in any other Member State.[36] Therefore the ECJ affirmed the *Dassonville* paragraph further in *Cassis de Dijon* paragraph 14(4) and created the principle.[37] This principle signifies an important moment of deepening for the European Union, fundamentally changing the free movement of goods within the internal market.

For Cassis de Dijon, the blackcurrent liquor, produced lawfully in a Member State, France, should face no restrictions while entering the German market. The German 25% alcohol threshold for fruit liquors, even though it is not towards imported goods only, cannot lead to the blocking of the Cassis from being imported. The Member State, Germany for this case, has to accept the home state's regulation and cannot refer to its own standards as a reliable measure. This situation, Germany argued, would lead to a "race to the bottom".[38] This race refers to the situation of, with this principle producers from countries with higher standards can allocate the production to different Member States and enter into markets with lower prices. Alternatively the public may prefer cheaper options compared to nationally produced more expensive options. Both of these

[33] *REWE-Zentral ('Cassis de Dijon')*, para 4.
[34] *REWE-Zentral ('Cassis de Dijon')*, para 7.
[35] Craig and de Búrca, 1583.
[36] Ibid.
[37] Ibid.
[38] C Barnard, The Substantive Law of the EU: The Four Freedoms (7th edn, Oxford University Press 2016), 94.

situations would be costly for the home state's jobs.[39] Additionally this might lead to home states lowering standards originally placed by the democratically elected government putting European Integration before peoples' will.[40]

The *Cassis de Dijon* case also is a prime example of the concept of negative integration. Even though it is not the first case of it, the effect of deepening with Cassis makes it the prime example. The concept of negative integration refers to the removal of barriers stemming from national laws of Member States towards economic integration as opposed to positive integration creation towards the same goal.[41] The *Cassis de Dijon* case also created a balancing force in the Mutual Recognition Principle which gives the state authority to reject the imported goods on four limited and clearly defined grounds, remaining outside of the Article 36, which are the Mandatory Requirements.

6.2. Mandatory Requirements

Mandatory Requirements, also known as the Rule of Reason, was also introduced in the *Cassis de Dijon* case alongside with the Mutual Recognition Principle.[42] The seeds were sown again int the *Dassonville* case and developed into its later form in the Cassis.[43] They are also considered as the 'brakes' of the Mutual Recognition Principle as it provides four reasons to reject the admission of imported goods to the national markets additional to the Article 36 of the TFEU which provide grounds for rejection for import and exports. The established Mandatory Requirements are; effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions, and the defence of the consumer.[44]

For the case of *Cassis de Dijon*, the justification of German authorities included the reasons from the Mandatory Requirements, however, the ECJ found the justifications invalid.[45] The argued reasons including the public health and defence of the consumer were not accepted as fulfilling the

[39] Barnard, *The Substantive Law of the EU*, 10. 94.
[40] Ibid.
[41] Barnard, *The Substantive Law of the EU*, 10. 10.
[42] *REWE-Zentral ('Cassis de Dijon')*, para 8.
[43] Craig and de Búrca, page 1583.
[44] *REWE-Zentral ('Cassis de Dijon')*, para 8(2).
[45] *REWE-Zentral ('Cassis de Dijon')*, para 11 - 13(2).

Mandatory Requirements. This underlines the importance of application to these requirements. With this decision of not accepting the arguments as sufficient the ECJ also signifies the importance of proportionality. For the *Cassis* case the alternative of labelling given by the Court instead of banning the product altogether affirms this idea.[46]

Therefore the introduction of Mandatory Requirements and their applications under the principle of proportionality introduces a balancing system to the Principle of Mutual Recognition, both developed from the *Dassonville* case taking their current forms. These norms signify a deepening aspect for the free movement of goods a-making *Cassis de Dijon* into the landmark case it is.

7. Implications of the Cassis de Dijon

The *Cassis de Dijon* case has paved the way for further developments in the process of the internal market structure that the EU has polished throughout the years. The judgment over the case has initially shifted the interpretation of Article 34, and intercepted its weaponization for the implementations of protectionist policies. The European Court of Justice introduced the rule of reason as well as the principle of mutual recognition to achieve this agenda to protect the integration process of the internal market. However, the implications of this ruling far exceeded the simple regulation of fruit liqueurs. The cases that followed forced the Court to evolve its judicial interpretations beyond the initial doctrine. This paper exclusively depicts the cases of *Danish Bottles*, *Keck* and *Trailers* to unfold the evolution of the judgement over Article 34 TFEU.

7.1. The Danish Bottles Case

In September 1988, the European Court of Justice delivered their judgement regarding *Case No: 302/86:COMMISSION OF THE EUROPEAN COMMUNITIES v DENMARK*[47]. The case centered on the requirement imposed by the Danish legal system regarding the recycling of disposable drink bottles.This judgment has challenged the precedent set in *Cassis de Dijon*, which permitted the refusal of goods only if the restricting state could demonstrate a "mandatory requirement," such as

[46] *REWE-Zentral ('Cassis de Dijon')*, para 13(2).
[47] Case 302/86, *Commission of the European Communities v. Kingdom of Denmark* (Danish Bottles), [1988] ECR 4607

public health, made the restriction necessary[48]. The importance of the decision has been underlined due to the conflict that occurs between economic and environmental factors by enlarging the mandatory requirement definition with the inclusion of envirınmental protection. The decision, interpreted by the pro-environment lobby as a success while the corporatist lobby defined it as the undermining of certain principles of Community Law at the end of the day[49].

In June 1978, the Danish government passed the law on recycling of paper and disposable bottles. The law was followed by an order in 1981 that obliges beer and other drink producers to use reusable materials in their product packaging. Those used materials had to be approved by the national agency for the protection of the environment that is called "MiljOstrelsen."[50] The agency could reject containers depending on recycling standards and technical necessity. In this role, it supervised any drink company seeking to enter the Danish market. Consequently, companies in other Member States that produce drinks and drink containers were compelled to invest in more expensive, recyclable containers. This increased cost led them to file a complaint with the Commission. The Commission has interpreted that the provisions of the Order No. 397 (1981) infringe the principle of non-discrimination that is indicated in the Article 30 of the EEC (now Article 34 TFEU).[51] Based on this interpretation, the Commission initiated a procedure against Copenhagen in December 1981 under Article 169 (now Article 258 TFEU), which included issuing a reasoned opinion.

In 1984, the Danish government decided to replace Order No.397 to facilitate the procedure by bypassing the MiljOstrelsen. This new regulation imposed a condition on the volume of containers: the simplified procedure was applicable only if the quantity of containers involved did not exceed 3,000 hectolitres annually, or if the "foreign" containers were undergoing testing in the Danish market[52]. In addition to that, the composition of the containers could not be metal where the collection and recycling procedures of the containers had to be established beforehand. However, these new provisions did not cease the criticism raised by the other member states. Hence, the

[48] *Danish Bottles*, [1988] ECR 4607.
[49] Kromarek and Randolph, 1990, 92.
[50] Danish Lov nr. 297 af 8. juni 1978 om genanvendelse af papir og drikkevareemballage.
[51] TFEU Article 34.
[52] Kroma rek and Randolph, 96.

Commission renewed its decision by declaring the limitations of volume sold is still a violation of Article 30[53]. The establishment of a recycling system is accepted adequate to satisfy the environmental requirements. It resulted in the establishment of a new procedure in June 1984 and brought before the European Court of Justice on 1 December 1986.

The decision of the Court of Justice aims to respond whether national environmental measures could justify restrictions on the free movement of goods under Article 30. It proved that environmental protection should be considered as an "essential objective" and a "mandatory requirement" that can limit free movement, drawing on the *Cassis de Dijon* doctrine and the Single European Act[54]. The ruling did not directly refer to the issue of non-discrimination as the national rules were applied uniformly to both domestic and imported products consequently, they did not give rise to the concerns of discrimination often associated with such regulations.

The novelty that the Court decision made regarding the decision was their examination of the question of proportionality for the first time.[55] The Court ruled that the imposed measures were an "indispensable element" for a functional reuse system and essential to achieve Denmark's ecological goals. Nevertheless, the decision created an environment of heated debate concerning whether a lower level of protection could yield the same outcomes while continuing to allow freer trade. Advocate-General Slynn argued for a balancing of interest, and posed a choice between "perfect protection" and a "reasonable level of protection," with the UK supporting the latter[56]. However, the Court ultimately sided with Denmark. Before doing so, it challenged the Commission to prove that alternative, less restrictive systems (like those in Directive 85/339) could achieve the same level of environmental efficacy. The Commission failed to provide a convincing alternative, leading the Court to uphold the Danish position.

[53] *Cassis de Dijon*, [1979] ECR 649.
[54] *Danish Bottles*, [1988] ECR 4607, *Cassis de Dijon*, [1979] ECR 649.
[55] Kromarekt and Randolph, 104.
[56] Ibid.

7.2. Keck and Mithouard Case

Another case that enlarged the legacy of the *Cassis de Dijon* case in the development of free movement of goods as well as the EU internal market law was the *Keck and Mithouard* case. Catherine Barnard even defined the impact of the cases as "received brickbats and bouquets in almost equal measure"[57]. The legal interpretation of the case then succeeded with the judgement of *Commission v Italy(Trailers)*. With the similar logic that applied to the *Danish Bottles* case, the prelude of the *Keck and Mithouard* also involved the series of judgements applying the definition of "measure having equivalent effect" from *Dassonville* and *Cassis de Dijon* to various indistinctly applicable national laws. These laws were found to impede trade under the *Dassonville* ruling. Consequently, these measures necessitated justification based on either Article 30 (Article 36 TFEU now) or "mandatory requirements" related to the public interest[58].

The background story of the case was revolving around Mr. Keck and Mr. Mithouard, two "hypermarché" managers that resold Sai Rouge coffee and Picon beer at a loss[59]. Due to their selling of products in an unaltered state at prices lower than their actual price they were breaching the French Competitive Law[60] , thus they go before the Court of Justice regarding the respective law by defending it as incompatible with Articles 7 and 30 of the EEC Treaty, the free movement of persons, services and capital, and free competition[61].

For the first time, the Court's decision in this case introduced a new approach to Article 30[62]. The Court's typical interpretation of the Article has been marked by a gradual expansion of its scope, fully implementing the principle established in the *Dassonville* judgment, where the Court ruled that:

[57] C Barnard, The Substantive Law of the EU: The Four Freedoms (7th edn, Oxford University Press 2022), 120.
[58] Lindeboom, 2023, 357.
[59] Products in an unaltered state at lower than their actual purchase price, contrary to Law No. 63-628 of July 2, 1963, art. 1 (as amended by Order 86-1243 of December 1, 1986, art. 32).
[60] Article 1 of French Law No 63-628.
[61] Maduro, 1994, 41.
[62] Lindeboom, 359.

> *"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 having an effect equivalent to quantitative restrictions."*[63]

Initially, the Court consistently found such national measures to be justified under the "mandatory requirements" that are defined in Article 30 tests. However, in more recent jurisprudence, this trend has shifted, and these national measures have increasingly been struck down.[64] In *Keck and Mithouard,* the Court re-established its approach to Article 30. The Court's primary aim is to counter the growing tendency among corporates to cite Article 30 of the Treaty to challenge any regulation that hinders their commercial liberty, even when such rules do not specifically target goods from other Member States. Consequently, the Court initiates this effort by reinterpreting the *Cassis de Dijon* principle to limit its applicability strictly to requirements concerning the products themselves.[65] For this purpose the Court referred to its judgment in Cassis de Dijon:

> *"In "Cassis de Dijon" it was held that, in the absence of harmonisation of legislation, measures of equivalent effect prohibited by Article 30 include obstacles to the free movement of goods where they are the consequence of applying rules that lay down requirements to be met by such goods (such as requirements as to designation, form, size, weight, composition, presentation, labelling, packaging) to goods from other Member States where they are lawfully manufactured and marketed, even if those rules apply without distinction to all products, unless their application can be justified by a public-interest objective taking precedence over the free movement of goods."*[66]

The Court determined that national rules imposing a general prohibition on resale at a loss did not fall within the scope of Article 30 of the Treaty. This was because, provided certain conditions were met, applying such rules to products imported from another Member State (which satisfied that State's requirements) would not inherently impede market access. In this context, the Court's judgment in Keck purported to provide clarity as to the limits of Article 28 (Article 34 TFEU now),

[63] *Dassonville* [1974] ECR 837. 8. Para. 5.
[64] Maduro, 48.
[65] Ibid
[66] Keck, [1993] E.C.R. at 1-6131.

while disincentivising traders to challenge all sorts of national laws which may be captured by literal reading of the Dassonville rule, but had no plausible relationship to interstate trade.

7.3. Commission v. Italy(Trailers)

In the light of the judicial decision accumulation that gathered after the *Cassis de Dijon*, the last case that this paper focuses on is the *Commission v. Italy(trailers)*. The Court decision that was given in February 2009, addresses a further dimension of the interaction between national and EC law, especially the extent to which the Treaty's free movement provisions limit a Member State's sovereignty to regulate its own affairs.[67]

The *Trailers* case has differentiated from the usual free movements of goods model. It neither concerned a challenge to national product requirements which we explained in the *Cassis de Dijon*[68], nor did it concern "certain selling arrangements" procedures that was clarified above in the *Kecks*[69] example. The case presented a significant challenge, as it required addressing a product that was subject to a nationwide prohibition. Advocate-General Bot's opinion on the *Trailers* case, desired for a narrow interpretation of the *Keck* ruling. He was critical of the *Keck* case judgement and the artificial distinction it had created felt constraining. He argued for the Court to adopt a market access test, motivated by an integrationist perspective and a desire for uniformity across the four freedoms.[70]

The Court was dependent on the "use restrictions" category of the Article 34 while responding the *Trailers*:

> *"a prohibition on the use of a product in the territory of a Member State has a considerable influence on the behaviour of consumers, which, in its turn, affects the access of that product to the market of that Member State."*[71]

[67] Case C-110/05, *Commission of the European Communities v. Italian Republic* (Trailers), [2009] ECR I-519.
[68] *Cassis de Dijon*, [1979] ECR 649.
[69] Cases C-267/91 and C-268/91 *Keck* [1993] ECR I-6097, para. [16]
[70] Barnard, 2009, 288
[71] TFEU Article 34.

The unprecedented feature of the *Trailers* decision was the inclusion of this third category. As it has common grounds with the other two categories [discriminatory measures(1) and product requirements(2)], it has been defined as a "catch-all" for measures that are neither fit under category (1) nor (2).[72] As a result of this improvement, the market access test that had first entered the judicial literature by *Dassonville* and then diminished by *Keck*, revived after 35 years[73]. The *Keck* ruling, before the revival, was providing Member States with a "safe zone." The EU Court was not interfering to the national law as long as the "selling arrangement" applied to everyone equally. The decision on the *Trailers* minimizes this procedure by adopting a broader Market Access test to ensure the national law does not discourage consumers from using or buying a product. The aftermath of the case, expanded the influence area of the European Union while states lost a partial power to exercise their autonomy[74].

8. Case Study: Switzerland

In 2009, Switzerland unilaterally adopted the Cassis de Dijon principle through a revision of its Federal Law on Technical Barriers to Trade. With this action, Switzerland aimed to reduce its persistently high price levels compared to many member states of the EU, and therefore dismantle technical barriers to trade with the EU.[75] This move, however, should be observed in light of Switzerland's rejection of the European Economic Area (EEA) agreement in the 1992 referendum despite it being signed by the government, which halted EU membership ambitions and ruled out institutional integration with the EU.[76] This outcome eliminated the possibility of Switzerland's formal participation in the EU internal market and its decision-making structures. Hence the process of "Europeanisation without institutionalisation" began in Switzerland, and consequently in Swiss politics. Under this model, Switzerland increasingly started incorporating the EU rules (*acquis communautaire*) to secure access to the single market despite having no formal role in shaping said market.

[72] Barnard, 289.
[73] Ibid.
[74] Ibid.
[75] Strobel & Eichhof, 2010, 288.
[76] Linder, 2013, 190.

The 2009 unilateral adoption of the Cassis de Dijon principle was a direct response to this constraint. Because institutional solutions like the EEA or EU membership were politically blocked by the 1992 "no vote", the Federal Council turned to unilateral and technical regulatory adaptation as a viable alternative. However, that was not the case as this action of the Federal Council sparked significant domestic opposition, crystallized in the referendum attempt "*Non au Cassis de Dijon*". The referendum attempt was actualized by the Swiss People's Party (SVP) which is a national conservative and right-wing populist party. The political roots of the party depended on the centrist farmers yet during the 1990s where the European Economic Area (EEA) agreement debates were at their peak, they underwent a radical transformation with the presidency of Chrsitoph Blocher[77]. He drew the agenda for his party under the umbrella of "populist nationalism." Thus, the political focus of the party is rooted in a "Switzerland first" ideology, which promotes nationalism, traditional values, and economic liberalism. Concurrently, they maintain a strong opposition to international immigration and multiculturalism[78]. As a result of this, the decision to unilaterally adopt the Cassis de Dijon principle has faced an utmost resistance from the SVP members of the parliament. They argued that Switzerland was opening its market to EU products that fail to meet Swiss standards without receiving reciprocal concessions; which altogether were weakening its negotiating positions vis a vis the EU.[79]

In addition to this, while the Federal Council framed the reform as a mechanism to enhance competition and lower consumer prices for the Swiss people; the opposition side contested this claim and claimed that it would instead put a downward pressure on wages and broader social costs.[80] Further concerns were raised that the concession would pave the way for further EU demands, particularly in sensitive areas such as banking secrecy.[81] The opposition wing finally advocated for the need to protect Switzerland's traditionally high quality standards and emphasised the negative impact on domestic agriculture because it would be placed at a competitive disadvantage relative to the European producers[82].

[77] Stockemer, 2012, p.3; Raposo, 2023, 21.
[78] Favero, 2021, 9.
[79] Linder, 192.
[80] Linder, 193.
[81] Linder, 192.
[82] Linder, 193.

9. Conclusion

The *Cassis de Dijon* judgment remains as one of the defining moments in the history of the EU internal market, representing the transition with a negative integration model, which it remains a prime example of, from a discrimination-based model to the Principle of Mutual Recognition. Building from the *Dassonville* case, the *Cassis* created a more balanced model of integration with the added breaks, namely the Mandatory Requirements.

The evolution of the balancing act of the Court between the member state and the European Union has progressed over the years with the cases of *Danish Bottles*, *Keck*, and *Trailers*. The court managed to find an equilibrium of market access and national sovereignty. To delve more into the nuanced understanding that the interpretation that Cassis de Dijon has brought, the paper also explains the Swiss case. This case illustrates that the *Cassis* principle is no longer just a judicial tool but a powerful geopolitical asset that can foster "Europeanisation" even outside of formal Union membership but can also interfere with the internal dynamics of third party states, which fosters the anti-EU sentiments of radical right parties. Ultimately, *Cassis de Dijon* paved the way for ensuring that the free movement of goods remains the most advanced pillar of European integration.

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