

Cassis de Dijon



 EU
LAW

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1) BACKGROUND OF THE CASE

- INTERNAL MARKET
- FREE MOVEMENT OF GOODS
- NON-TARIFF BARRIERS

2) CASSIS DE DIJON

- DYSFUNCTION OF DASSONVILLE
- PROCESS OF THE CASE
- IMPLICATIONS:
 - DANISH BOTTLES (1988)
 - KECKS (1993)
 - ITALIAN TRAILERS (2009)

3) CASE: SWITZERLAND



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Internal Market



- Based on the classical free-trade theory:
 - Adam Smith “absolute advantage”
 - David Ricardo “comparative advantage”
- Efficient allocation of production, labour and capital, cheaper and better products
- Enhancement of social welfare

**ART.
114 TFEU**

- Competence to harmonize laws

1951
TREATY OF PARIS

1957
TREATY OF ROME

1968
CUSTOMS UNION

1979
CASSIS DE DIJON

Free Movement of Goods

- **EU goods should move between member states as if within a single country**
(Internal Market principle – Art. 26 TFEU):
- **Once imported into one state, they can circulate freely to all others, while the EU applies a unified set of external border rules to the non-EU goods**
(Art. 28 & 29 TFEU)
- **To achieve this, EU law prohibits:**
 1. **Tariffs / customs duties** (Art. 30 TFEU)
 2. **Quantitative restrictions such as bans/quotas** (Art. 34 TFEU)
 3. **Measures having equivalent effect** (Art. 34 TFEU)

However,

Different national product rules created hidden non-tariff barriers and a dual regulatory burden (recognized through broad interpretation of Art. 34 TFEU, notably Dassonville).



Non-Tariff BARRIERS

- Trade restrictions other than standard customs tariffs
 - Quantitative Restrictions and all Measures Having Equivalent Effect

**Art.
34 & 36 TFEU**

Art. 34:

"Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States."



DSYFUNCTION OF THE *Dassonville*

Case 8/74 Procureur du Roi v Dassonville [1974]

- Established that any Member State measure capable of hindering intra-Community trade, actually or potentially, directly or indirectly is subject to scrutiny (Purnhagen, 2014).

- Example:
- French pesticide limits preventing the sale of apples from Member States with laxer standards.



DSYFUNCTION OF THE *Dassonville*

**Art.
114 TFEU**

- **Re-regulation**
 - Shifted regulation from the Member State to the Union level
- **Top-down**
 - **Command and Control Mechanism**

The Dassonville formula brought too many cases for small Court to handle.

- Taken to extremes, Art.34 could challenge remote rules like Sunday trading, alcohol age limits etc.
- **Top-down**
 - **Command and Control Mechanism**

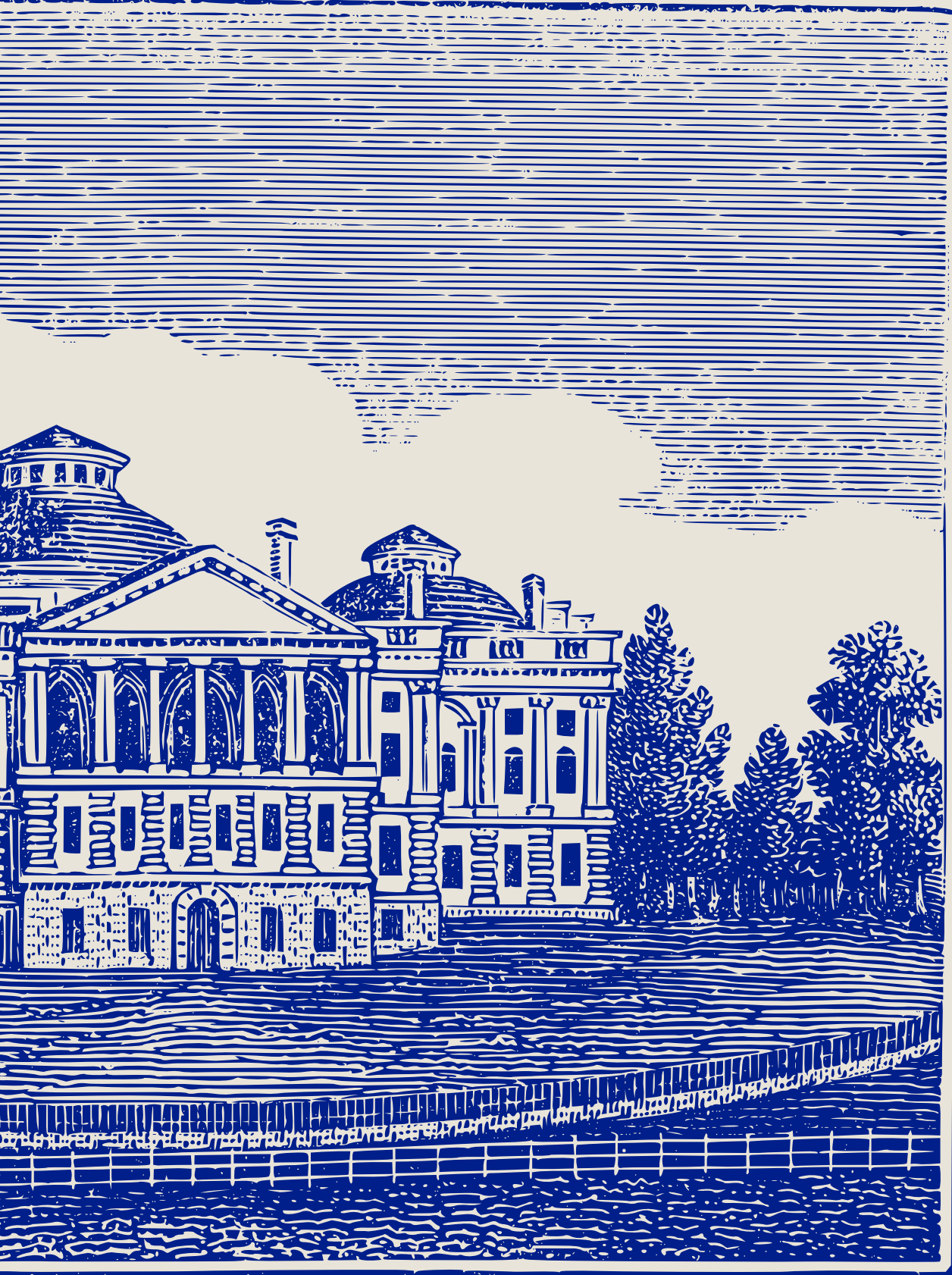


Cassis de Dijon

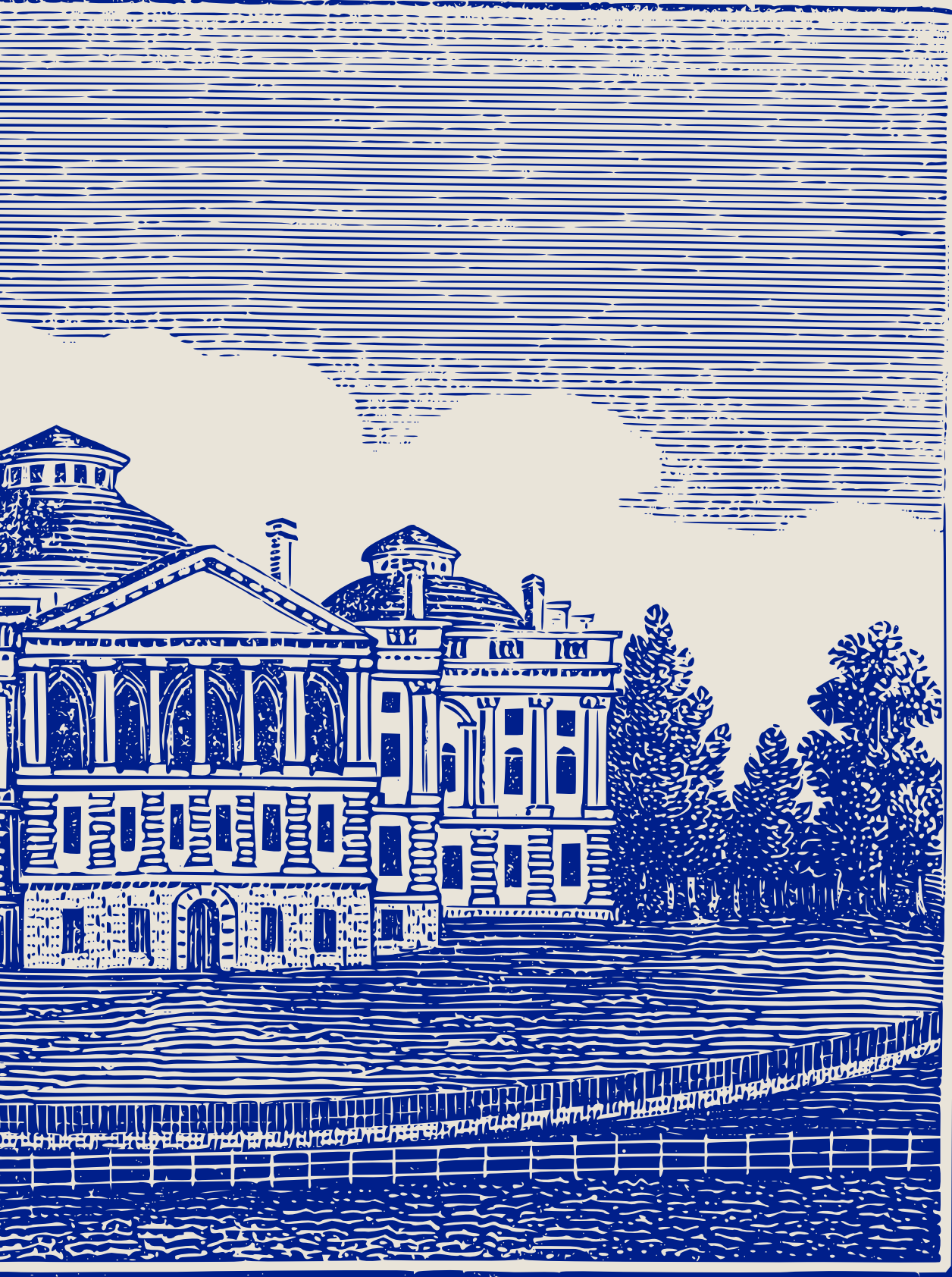
Case 120/78 REWE v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon) [1979] ECR 649.

- Germany had prohibited the sale of a French brand of liquor Crème de Cassis.
- Condition of fruit liqueurs marketing:
 - Public Health
 - Technical Barrier to Trade
- ECJ interpreted Art. 34 TFEU
 - Indistinctly applicable measures

min. 25% of
alcohol



Cassis de Dijon



- **Indistinctly Applicable Measure having Equivalent Effect to a Quantitative Restriction**
- **Protection of Health justification (Art. 36 TFEU) found disproportionate to the response**
- **Existing justification, Art. 36 of TFEU was found insufficient leading to the creation of "Mandatory Requirements"**

The Core Holding

- Obstacles to trade resulting from disparities in national laws must be accepted if they satisfy “mandatory requirements.”

Accepted Justifications for Restrictions:

- Effectiveness of fiscal supervision
- Protection of public health
- Fairness of commercial transactions
- Defense of the consumer

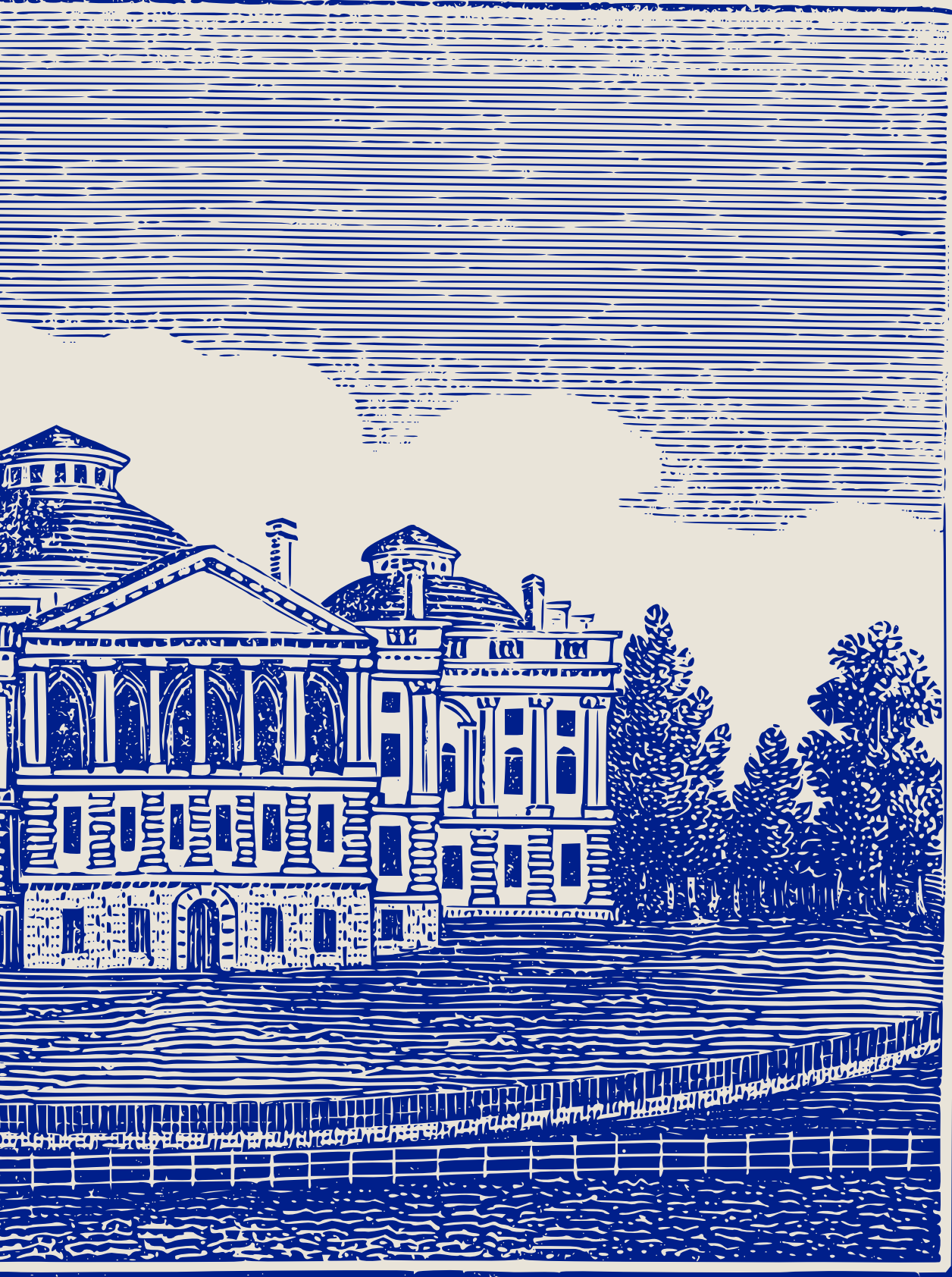


Mutual Recognition Principle

- If a product is a lawfully produced and marketed in one Member State, it must be accepted in all other Member States

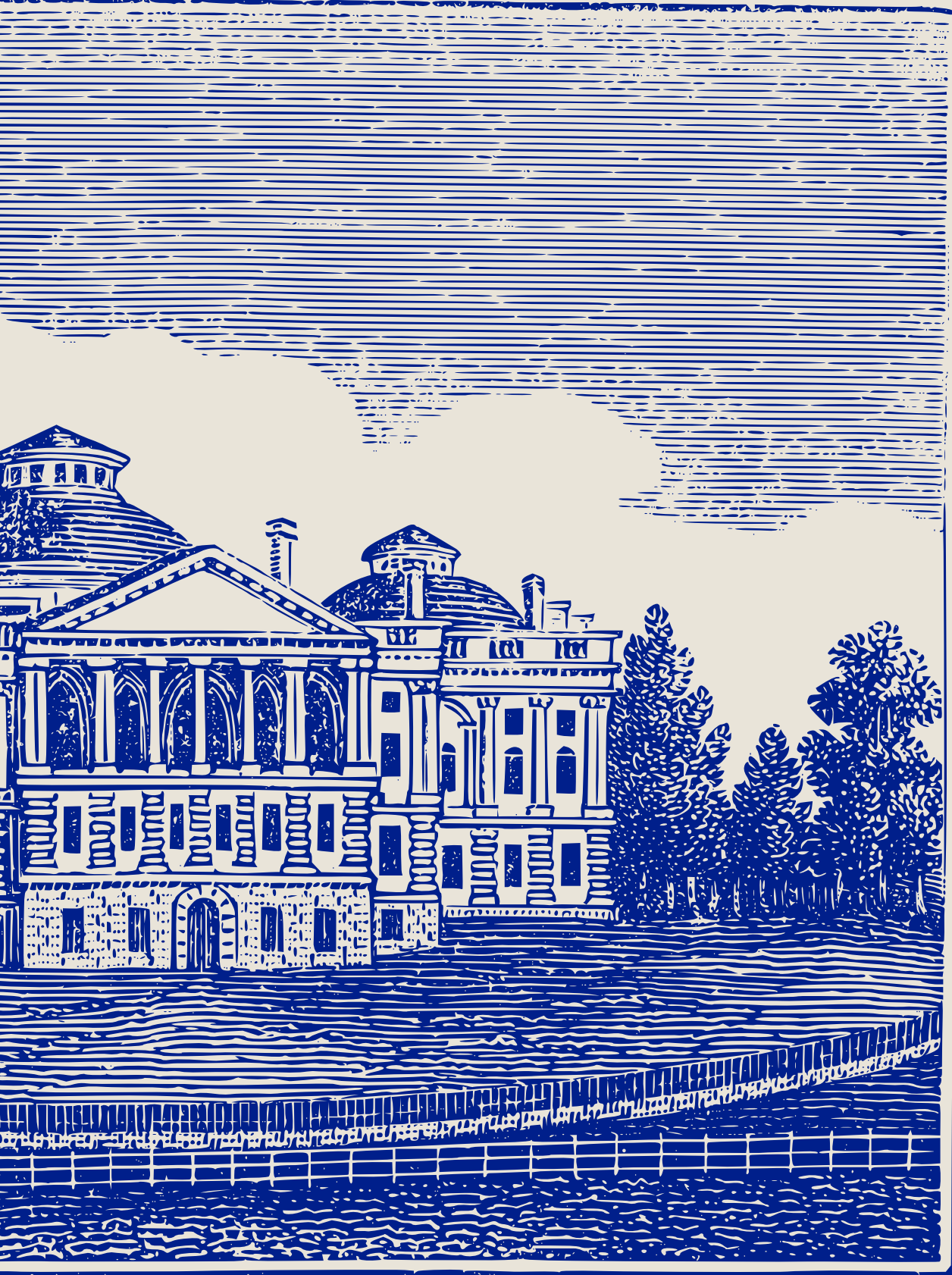
Refusal is only permitted if the state can prove a “mandatory requirement” (public health) makes the restriction necessary.

Cassis de Dijon



- **Paragraph 14 of Cassis (food law) was elevated to a general principle of EU Law: The Principle of Equivalence/Mutual Recognition**
 - There is therefore no valid reason why, provided that they have been lawfully produced and marketed in one of the Member States, alcoholic beverages should not be introduced into any Member State; the sale of such products may not be subject to a legal prohibition on the marketing of beverages with an alcohol content lower than the limit set by the national rules.

Cassis de Dijon



- **Positive integration vs. negative integration:**
 - Cassis introduced a new paradigm: internal market harmonization via judicial enforcement rather than legislative action.
- **“Competition of legal orders” exerts deregulatory pressure on inefficient national regimes.**
- **Provided the legal basis for challenging regulatory Non-Tariff Barriers to trade.**



*Implications
of
Cassis de
Dijon*



DANISH BOTTLES (1988)

- Beer and soft drinks to be sold only in re-usable containers approved by a National Agency.
- The Commission argued this restricted trade under Article 30 EEC (now Art 34 TFEU), making it hard for foreign producers to import goods without incurring high costs.
- It added Environmental Protection to the list of "mandatory requirements" (justifications for non-fiscal barriers to trade).
- Proportionality Test



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KECKS (1993)

- Bernard Keck & Daniel Mithouard
- It halted the "drift" of Article 30.
- It created a clear line between:
 - Product Requirements (e.g., size, composition, packaging) => Subject to Cassis de Dijon (presumed illegal unless justified).
 - Selling Arrangements (e.g., when, where, and how goods are sold) => Presumed legal if non-discriminatory.
- Restored the power of Member States to regulate their own markets.



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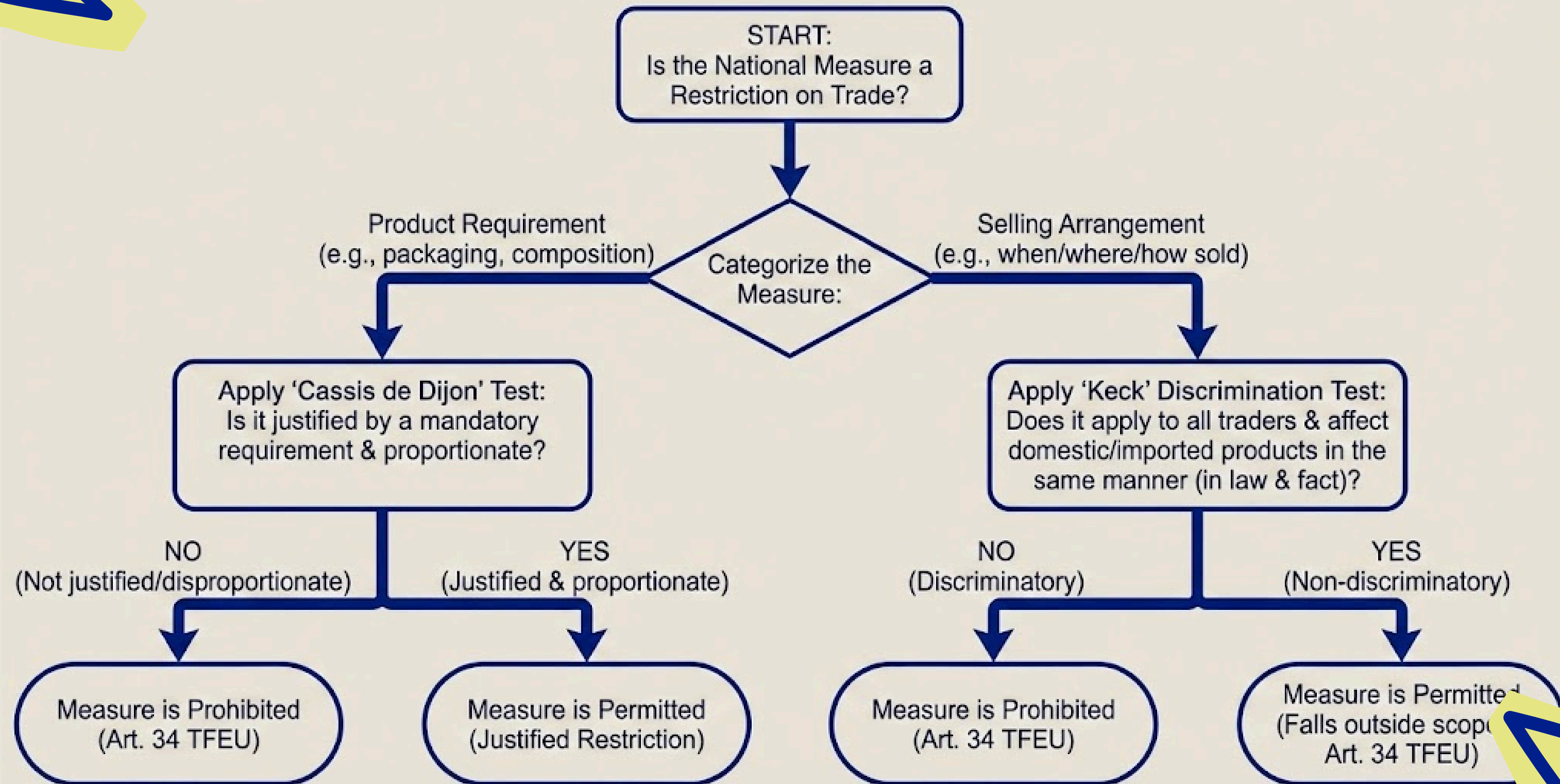
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ITALIAN TRAILERS (2009)

- Article 56 of the Italian Highway Code prohibited mopeds and motorcycles from towing trailers.
- The Commission argued this ban hindered the free movement of goods under Article 28 EC (now Art. 34 TFEU).
- Market Access "Any other measure which hinders access of products... to the market.
- The Court accepted road safety as an overriding reason in the public interest.
- The Commission's action was dismissed.



The 'Keck Test' Flowchart (EU Free Movement of Goods)



CASE STUDY.

Switzerland



"Europeanisation without institutionalisation," where Switzerland adopts EU rules (acquis communautaire) to access the single market without having a seat at the decision-making table

The Swiss government had signed the European Economic Area (EEA) agreement and intended to apply for EU membership. However, this was halted by a "no vote" in the 1992 referendum.

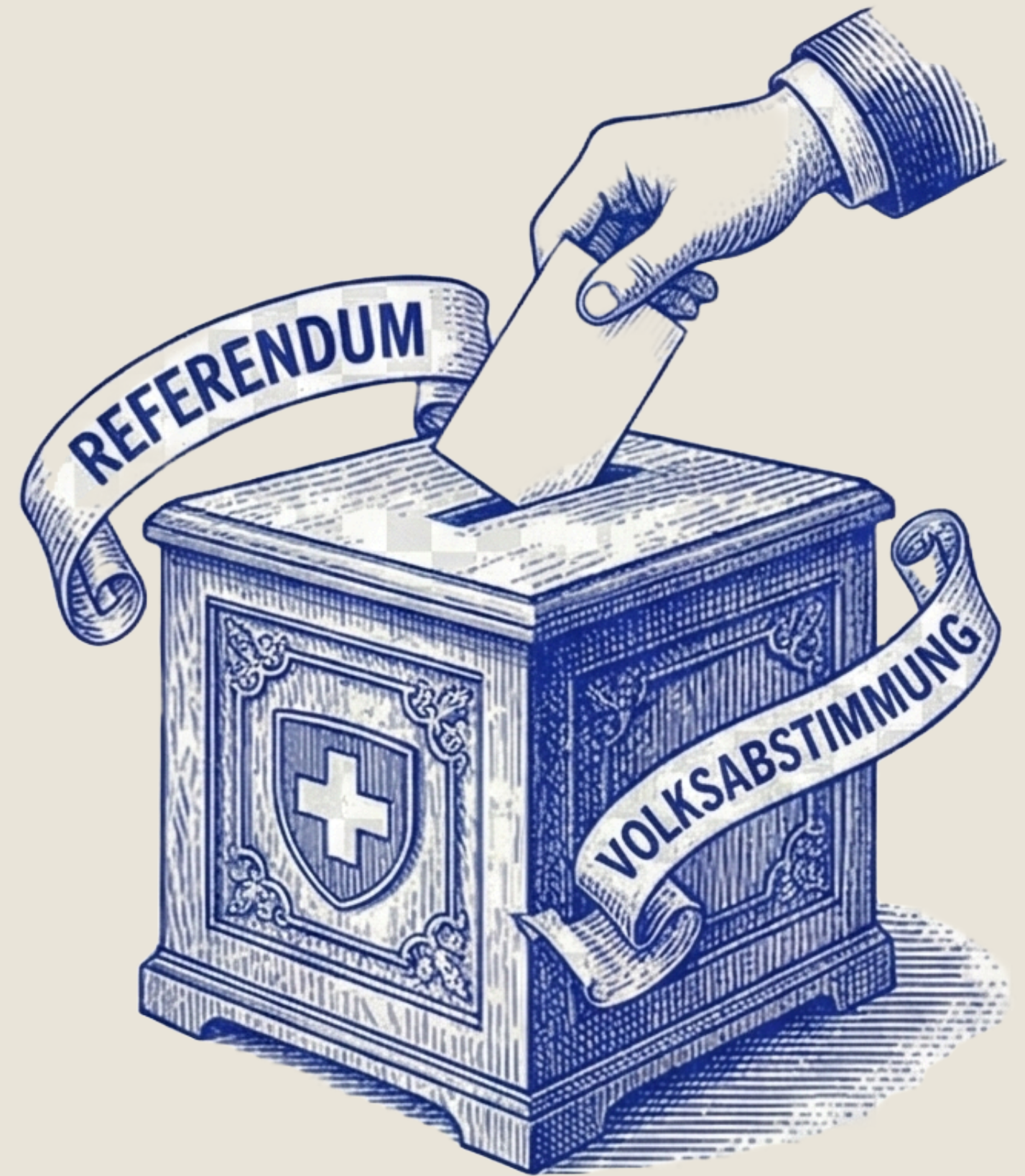
In 2009, the Swiss government (Federal Council) and Parliament decided to unilaterally adopt this principle to lower prices in Switzerland (which are generally much higher than in the EU) and remove technical barriers to trade. (Strobel & Eichhof, 2014)



THE PHANTOM REFERENDUM:

“Non au Cassis de Dijon”

- **Unilateral Concession:** They argue that Switzerland is voluntarily opening its market to EU goods that don't meet Swiss standards without getting anything in return from the EU. They view this as a loss of negotiating leverage (Linder, 2013)
- **Economic Impact:** While the government argued this would lower consumer prices, the committee argues this is "fundamentally false." => "general lowering of salaries" (Ibid)
- **EU Relations:** The text suggests this concession will only "stimulate the appetite of the EU" and mentions tensions regarding banking secrecy (Ibid).
- **Quality Standards:** Swiss standards are high and should be defended (Ibid).
- **Agriculture:** They claim this disadvantages Swiss farmers against European competitors (Ibid).



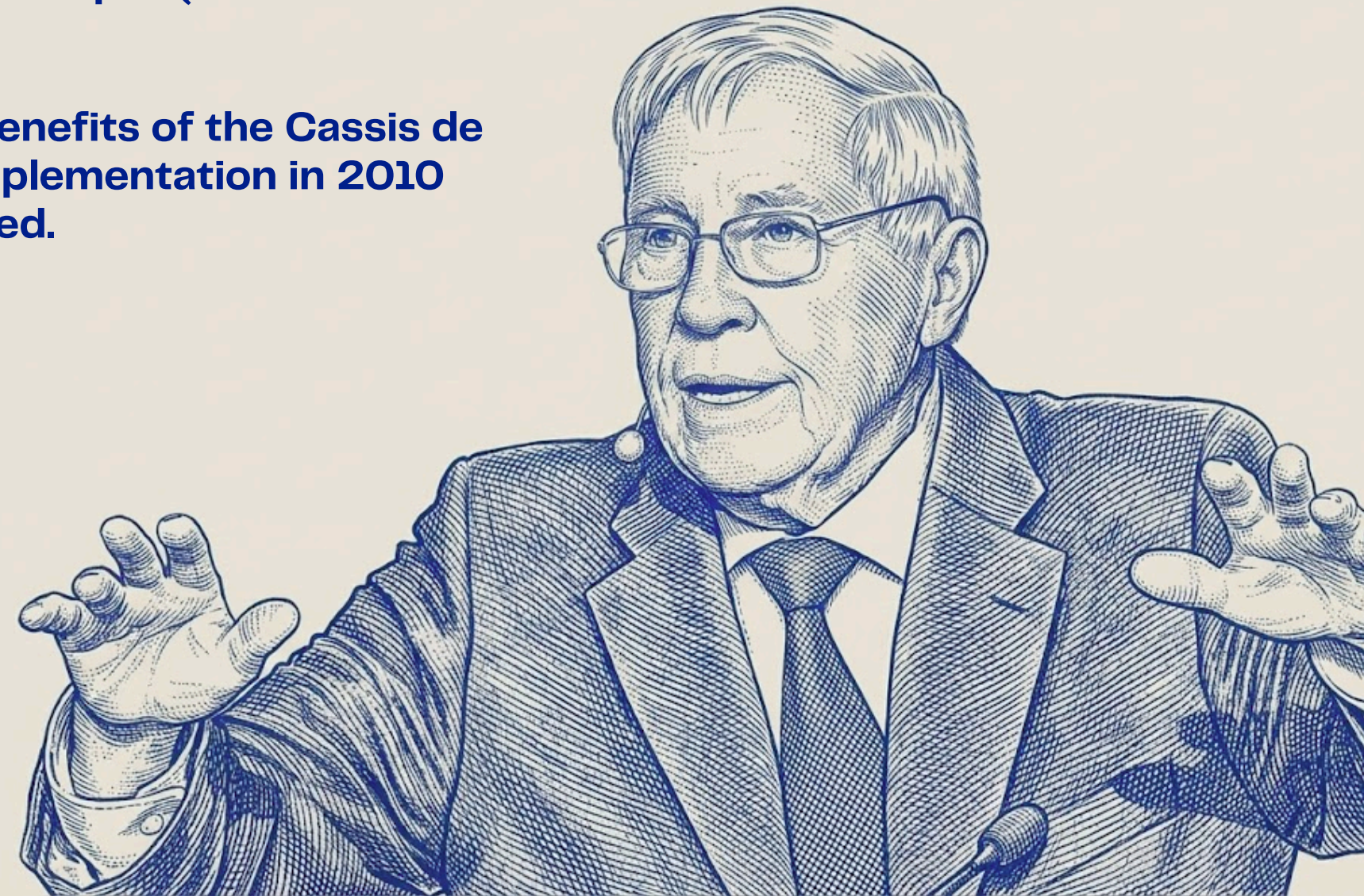
RISE OF RIGHT-WING: SWITZERLAND PEOPLE'S PARTY

EDA NAZ GEZER

- The decisive moment for the SVP was the 1992 referendum on the European Economic Area (EEA).
- By successfully leading the "No" campaign, the SVP established itself as the sole defender of Swiss sovereignty against the political establishment, initiating a period of rapid growth.

By 2014, a committee in the National Council (WAK-N) pushed to exclude foodstuffs entirely from the Cassis de Dijon principle. (Strobel & Eichhof, 2014)

The expected economic benefits of the Cassis de Dijon Principle since its implementation in 2010 could have not been verified.



Discussion Questions



QUESTION 1

The Swiss Dilemma:

Switzerland is not an EU Member State, yet it unilaterally adopted the Cassis de Dijon principle.

What does the concept of "Europeanisation without institutionalisation" mean in this context, and what potential downside did the critics of this move fear regarding Swiss regulatory autonomy?

QUESTION 2

Does the “Dual Quality” food debate initiated by the Visegrád Group signal the death of Cassis de Dijon in Eastern Europe?





**THANK YOU
FOR
LISTENING**