

BALTISCH-DEUTSCHES HOCHSCHULKONTOR  
Prof. Dr. Thomas Schmitz

Autumn Semester 2009

EC INTERNAL MARKET LAW

concerning § 5 The free movement of goods (art. 23 et seq., 90 et seq. EC Treaty / 28 et seq., 110 et seq. FEU Treaty)

**Case 1**  
(facts of the case)

A is a Latvian manufacturer of innovative high tech bicycles with especially good road holding. In order to commercialise his bikes more efficiently, he offers them for favourable prices but takes high prices for spare parts - in particular for the wheels (tyres and rims). Furthermore, he designed the wheels in a special size which makes it impossible to use spare parts of other bicycle manufacturers.

One day, the EU member state X issues a regulation, according to which in this state only bicycles with wheels in standard sizes (24, 25, 26, 27, 28 inches etc) may be sold. The regulation is justified with requirements of consumer protection. In addition, it is said to be necessary because there had been accidents after owners of bikes with special wheel sizes had inserted spare parts in standard sizes and the bikes had not been secure any more. In part there had been confusion, in part the bike owners would have accepted the minimal size differences for financial reasons.

A consults his daughter B who is studying law for some years. He would like to know whether this regulation is compatible with EU law. What will be the (correct) answer of B?

Notice: Assume the secondary Union law not containing any rules concerning the question of the size of the wheels of bicycles up to now.

# Incompatibility of the regulation with the EU law because of a violation of the fundamental freedom of free movement of goods (art. 28 et seq. 110 et seq. FEU Treaty)

- introduction sentences

## A. Sphere of protection

- I. Situation of cross-border mobility
- II. Goods
- III. Goods in circulation in the internal market

## B. Encroachment

- here: by a possible *measure having equivalent effect to quantitative restrictions on imports* (→ non-tariff barrier, see art. 34 FEU Treaty)

- I. Open discrimination
- II. Hidden discrimination
- III. (Non-discriminative) restriction

- problem: Are the fundamental freedoms prohibitions of discriminations only or prohibitions of restrictions too? (See ECJ, Dassonville, and, concerning *rules on necessary properties of goods*, ECJ, Cassis de Dijon)

## C. Illegality of the encroachment (no justification by the fundamental freedom's limits)

### I. Justification by the limit in art. 36 FEU Treaty

- 1) Fulfilment of the preconditions formulated in art. 36 FEU Treaty
- 2) Compliance with the limits of limits ["Schranken-Schranken"]
  - problem: proportionality (here: necessity)?

### II. Justification by the inherent limits of the free movement of goods ["immanente Schranken"]

- 1) Applicability of the inherent limits
- 2) Fulfilment of the preconditions of the inherent limits (pursuit of *imperative reasons of public interest*)
  - problem: "mandatory requirements" of consumer protection?
- 3) Compliance with the limits of limits
  - problem: proportionality (here: necessity, proportionality in its strict sense)?

- closing sentences ("resurfacing" from the depth of the construction of the solution of the case)