

ANNEX C

1. Relevant food case law on quantitative restrictions Cassis de Dijon 1979 (as it was applied at that time). The relevant Treaty on the Functioning of The European Union (TFEU) articles have been modified slightly over time.

2. Article 34 TFEU provided that: “Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.”

- The Court of Justice found that under the principle of mutual recognition, a product lawfully marketable in one Member State (France) should be freely marketable in another Member State (Germany)
- Having enacted a measure within the scope of Article 34 TFEU, the Court of Justice found that such a measure could no longer be justified only under Article 36 TFEU (an exhaustive list of grounds)
- However, the Court of Justice introduced the concept of ‘overriding reasons of public interest’ (ORPIs) – grounds of justification to act in addition to the Art 36 grounds. The court introduced several in this case: “necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer.” ORPIs may only be used where Art 34 measures have a non-discriminatory effect, equally applying to both domestic and foreign products.

3. Since this case the list of ORPIs has grown, but clearly the protection of public health and the defence of the consumer are the main principles of our food law policy area. This therefore underpins the principle of potential divergence from the single market rules, where necessary, but maintains the concept of a level playing field by ensuring that any measures introduced have a non-discriminatory effect applying both to domestic and foreign products equally.