



Reports of Cases

Case C-456/10

**Asociación Nacional de Expendedores de Tabaco y Timbre (ANETT)
v
Administración del Estado**

(Reference for a preliminary ruling from the Tribunal Supremo)

((Free movement of goods — Articles 34 TFEU and 37 TFEU — National legislation prohibiting tobacco retailers from importing tobacco products — Rule concerning the existence and operation of a monopoly on the marketing of tobacco products — Measures having equivalent effect to quantitative restrictions — Justification — Consumer protection))

Summary of the Judgment

1. *State monopolies of a commercial character — Provisions of the Treaty — Scope — Rule concerning the existence and operation of a monopoly — National monopoly on the retail sale of tobacco products*

(Arts 34 TFEU and 37 TFEU)

2. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — National legislation prohibiting tobacco retailers from importing tobacco products from other Member States — Whether lawful — Justification — None*

(Art. 34 TFEU)

1. The compatibility with European Union law of national legislation prohibiting tobacco retailers from importing tobacco products must be assessed in the light of Article 34 TFEU, and not Article 37 TFEU, since, on the one hand, it affects the free movement of goods within the European Union, without, however, governing the exercise of the exclusive right relating to a monopoly of a commercial character, and, on the other hand, it is separable from the operation of the monopoly as it relates not to the selling arrangements for retail sale of tobacco products on the territory of the Member State concerned but to the upstream market in those products. Such a measure is not intended to organise the monopoly's system of product selection, nor does it target the sale network of the monopoly in question or the marketing or advertising of the products distributed by the monopoly.

(see paras 22, 26, 29-31)

2. Article 34 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which prohibits tobacco retailers from importing tobacco products from other Member States.

Such legislation constitutes a measure having equivalent effect to a quantitative restriction within the meaning of Article 34 TFEU, since it forces the tobacco retailers to procure their supplies from authorised wholesalers. Those retailers can sell a tobacco product coming from another Member State only if such a product is included in the range of products offered by the authorised wholesalers in the Member State concerned and if those wholesalers have the product in stock.

Moreover, that restriction cannot be justified by the necessity of ensuring fiscal, customs, and health control of tobacco products, the necessity of protecting consumers, or on grounds of a purely economic nature.

(see paras 38, 39, 50, 52, 53, 56, operative part)