COMMERCIAL LOGISTICS LEGISLATION IN THE EUROPEAN UNION – BASIC ISSUES

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Summary: The article primarily deals with the issue of the European law in the field of free movement of goods, which may include to the legislation of commercial logistics. It also defines of the basic principles supporting this freedom, including relations among individual member states when applying this freedom. In the article the attention is also paid to mutual acknowledgement of products and the rule of reason as the method of prevention against abuse of various protective measures of individual member states that would disable effective operation of a company's commercial logistics

Key words: legislation, commercial logistics, customs union, European Union, goods.

INTRODUCTION

In case a company trades with a foreign company, it is important to know whether the cross-border element is located in the European Union (EU), or in a third country. Since 1 May 2004, the Slovak Republic and the Czech Republic are full members of the EU and they joined the European Communities. From the logistics point of view, it has brought certain simplification for business companies and entrepreneurs in many fields. The European Union is built on four fundamental freedoms, for the logistics purposes the most important one is the freedom of movement of goods and services. Moreover, opening the Schengen Area has simplified bureaucracy for business in say road transport (1), and similarly in passage of goods.

1. FREE MOVEMENT OF GOODS

Characteristics of free movement of goods referred to publications (3), (4). Free movement of goods means elimination of the obstacles restraining free movement. The basis for that could be the unification (directives), or harmonization (guideline) of national regulations, leading to unified legislation within the EU, as well as application of the principle of mutual acknowledgement of documentation accompanying the goods by each country, where the goods would be offered for sale, even if produced in a different country. Directive

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– „European Act“, represents a tool of unification of member states legal regulations. It is a legal act:

a) with general applicability,
b) binding in full extent, c.
c) applicable directly at the moment of acquisition in all member states.

A guideline is binding only for the member state for which it is determined, and selection of methods and forms is left in charge of national authorities (2). Free movement of goods in the EC internal market is based on the following principles:

1) customs union,
2) common trade policy,
3) obligation of adjusting national trade monopolies, and
4) ban on tax discrimination.

The goods are defined as products with the monetary value; therefore, they can represent the subject of business relation. (They include also objects without any value or with a negative market value). Customs union is defined as a special form of macro integration under which 2 or more until now independent customs territories are joined into single one, so that at least 2 states cancel their mutual custom charges and externally they form a united customs territory with common customs tariffs that will relate to goods imported from third countries. Customs union formed within the Community among member states influences 2 areas of relations. Relations among member states with mutually cancelled customs, and relations between member states and third countries, toward which members states apply the unified approach. The customs union relates to the whole trade with the goods, therefore, it is a complete customs union. Complete customs union (relating to the whole trade with goods) among member states was established on 1 August 1968. Customs union territory is not identical to the territory of member states. Customs territory includes territorial sea of a member state 200 sea miles and internal marine waters) and air space of a member state.

2. CUSTOMS UNION FROM THE EUROPEAN UNION POINT OF VIEW

According to the European Union Convention, the whole European Union represents the customs union relating to the whole trade with the goods. This convention includes ban on customs for importing and exporting the goods among member states, the ban on all charges with the same effect as the customs, as well as adoption of common custom tariff in relation to third countries. For the purposes of achieving the customs union and free movement of goods, the EC Establishment Convention prohibited:

1) Customs for import and export of the goods among member states and other charges with the same effect as customs, and customs of fiscal nature. Member states were committed not to introduce new customs or increase the existing ones; on the contrary, to gradually eliminate the customs.

2) All quantitative limitations for import and export, as well as other measures with similar effect to that of quantitative limitations
3) Tax discrimination of imported goods.

Customs and fees with the same effect as customs and customs of fiscal nature represented tariff barriers of free movement of the goods (removed by introduction of the customs union). Custom is economical and legal institute, representing a special type of compulsory payment collected within special proceeding from natural person or body corporate on the basis of certain act when the goods are crossing state borders. It includes all charges collected on the basis of customs tariff in relation to goods crossing a state border. Fee with the same effects as the customs (is defined by the Court of Justice) is any monetary fee which is not literally a customs fee and which does not unilaterally burden domestic or foreign goods due to crossing a state border.

However, fees with the same effect as customs do not include:

1) Rewards for actually provided service to importer or exporter, if appropriate for this service and provided the exporter or importer has a possibility to refuse such service,
2) Control fees collected by member states pursuant to community law, provided they do not exceed the costs on provided services.

Customs of fiscal nature are characterised as taxes that eventually have the same effect as customs and which would enable avoiding the ban on customs among member states. With regard to the ban on fiscal customs, member states committed not to assess upon products originating in other member states with any direct or indirect national tax exceeding taxes imposed directly or indirectly on similar domestic products. It means that they do not accept the form of so-called discrimination taxes. Discrimination taxes directly or indirectly burden from other member states in larger extent than taxes on similar domestic products (criterion for product similarity: products satisfying the same needs). States also committed not to assess upon product originating in other member states with any internal tax indirectly protecting other products. It means they will not accept the so-called protective taxes. When identifying whether it is the protective tax, unlike discrimination tax, they do not evaluate similarity of domestic and foreign products, but examine their competitive relation.

With the aim to eliminate tax barriers of free goods circulation, taxes were partially harmonized. VAT is collected in the country classified as the country of end consumption of goods. Quantitative limitations are defined as various quotas or other measures with the same effect. In terms of the Court of Justice jurisdiction they represent all business regulations adopted by member states that could directly or indirectly, actually or potentially represent a barrier to trade inside the EC. They include also regulations requiring origin demarcation on products, various licences for import and export, special sanitary inspections of imported goods, promotion campaigns in favour of domestic goods. Quantitative limitations of import and export and all measures with the same effect are prohibited among member states. Technical barrier for trade represent national regulations and technical standards related to individual types of goods that are supposed to ensure that the goods meet especially safety

and health protection requirements. These requirements for various types of goods varied in different member states so producers had to adjust their goods to the technical standard of the state, if they wanted to import the given goods there, which made the trade among member states more complicated. This problem was first solved by harmonization of technical regulations for individual products from the Community level.

3. PRINCIPLE OF MUTUAL ACKNOWLEDGEMENT OF PRODUCTS

A turning point appeared in 1979, when the Court of Justice in their jurisdiction Cassis de Dijon established several important principles, especially the principle of mutual acknowledgment of products among member states. In terms of this principle a product legally manufactured or launched on the market in one member state must have a possibility of free movement also in all remaining member states, regardless of whether it corresponds to the regulations stipulated in other member states. Pursuing the "new principle", technical requirements of fundamental importance are unified for individual groups of products. Only basic safety requirements are specified and products must meet them. So-called product compliance verified whether these requirements are met. Acceptable limitations of free movement of the goods pursuant to primary law allowed exceptions from articles 28 and 29 taxatively. Provisions of articles 28 and 29 do not exclude prohibitions or limitation of import, export, or transit of goods reasoned by the principles of public moral, public order, public safety, protection of human and animal health and life, protection of plants, protection of national cultural heritage with artistic, historical, or archaeological value, or protection of industrial and trade property. These prohibitions and limitations must not represent tools of arbitrary discrimination or hidden restraint of trade among member states. These reasons are classified as "important reasons".

Member states themselves are entitled to specify the measures they would use and reasons for them; however, when adopting them, they must respect the principle of adequacy and the principle of the smallest possible intervention in free circulation of the goods. The Court of Justice demarcates the reasons for limitation as „unconditional requirements." The Court of Justice specifies unconditional requirements representing the reasons for limitation of free movement of goods as, among others, customer protection, business transactions integrity, health protection, inflation control, freedom of speech. It is only possible to refer to unconditioned requirements in areas that are fully harmonised.

4. RULE OF REASON

The rule of reason means that a product manufactured in any member state in compliance with its technical standards and put into free circulation there is freely tradable over the whole EC. The rule of reason says that if any method of trade or technical standard for product manufacture is not harmonized on the EC level, it is not possible for the purpose of absolutely free movement of goods to disable any member state to adopt discrimination measures that specify for their territory any respective method of trading or products, if such measures are necessary to achieve the objective in public interest – the so-called unconditioned requirement, while meeting other application requirements, like for example

effectiveness of fiscal supervision, customer protection, trade transactions integrity, protection of health, culture, the environment, employees, etc.

Use of unconditioned requirements must not serve to member states for:

1) Hidden avoidance of prohibitions of measures limiting the trade among member states.
2) Serve for arbitrary discrimination of goods originating in other member states.

Above all, it is the case of unequal treatment not reasoned by any objective requirements worth acknowledging. Member states have their own space for assessment of what would be the necessary level of health protection. Most frequent cases of measures limiting the freedom of movement of goods represent the border search. They most frequently concentrate on food and veterinary goods. They must respect the results of conducted inspections on the territory of the state where the goods originate, or additionally new inspections, for example of perishable goods. Some other most frequent measures limiting free movement of goods relate to acceptable marginal values of content and composition of some ingredients in foods. The measures are supposed to be functional on the basis of the principle of allowing in form of legal act with general effect.

CONCLUSION

For effective function of a logistics company in the European Union (as the customs union) it is important to ensure that certain products are not assed upon with the protective measures, hidden fees, etc, in comparison with other products. This is the only way how to fully apply one of the four fundamental freedoms in the EU, i.e. free movement of goods. The article deals mainly with the issue of how the European Union works as the customs union and what is prohibited or allowed in terms of free movement of goods. It concentrates on basic issues of the given area.

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