

# **EXTERNAL TRADE RELATIONS OF THE EC AND ITS MEMBER STATES: ADMISSIBLE GENERAL EXCEPTIONS**

**DAVID SEHNÁLEK**

**Faculty of Law, Masaryk University**

## **Key words**

External trade, exclusive competences, restrictive measures, international trade, GATT

## **Resume**

The European Community has replaced Member states to a great extent within the field of regulation of international trade. The legal basis of this competence in external relations can be found in several provisions of the EC Treaty. The most important are those contained in Chapter 2 labeled as Prohibition of quantitative restrictions between Member states.

The character of competence of the European Community in the sphere of international trade must be exclusive. Otherwise the system wouldn't work. This implies that it is the European Community and not Member states that is in charge in case of negotiation and conclusion of international trade agreements. The European Community has the power to act, speak and vote in international trade organizations.

The question of the division of powers between the European Community and Member states was of a high importance. As the EC Treaty was rather vague in this respect, it was the European Court of Justice that contributed to the solution of this problem. In its several opinions<sup>1</sup> the European Court of Justice helped to clarify this issue. However, the significance of these opinions is nowadays lessened as the Treaties of Amsterdam and Nice the provisions of the EC Treaty amended respective provisions on common commercial policy.

At this moment the European Community has the exclusive power to regulate import and export of goods and services (however some services are explicitly excluded and fall within the shared competence of the European Community and its Member States – namely agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services). The

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<sup>1</sup> According to the Art. 300 Sec. 6 6. the European Parliament, the Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 48 of the Treaty on European Union.

exclusive competence of the European Community covers also issues of the commercial aspects of intellectual property.

The above mentioned text implies that a vast amount of international trade agreements is negotiated and concluded by the European Community instead of Member states (where the competence is exclusive). Such international trade agreements are one of the sources of the Community law and their effects in the sphere of Member states is also given by the Community law. Member states, however, still have the right to maintain and conclude international trade agreements with third countries or international organisations in so far as such agreements comply with Community law and other relevant international agreements.

The question is whether Member states may independently on the European Community adopt any restrictive measures in order to protect some important values (eg. protection of human, animal or plant life or health, protection of public moral etc.).

The international trade law (for example Art. XX of GATT) generally allows such restrictions on import and/or exports of goods subject to condition that they are proportional to the aim which they shall pursue. However, the question still remains, because as the party to the GATT is the European Community and not Member states. The division of powers between the European Community and Member states may imply that since most of these issues fall within the area of exclusive competence of the European Community, any action of Member states is precluded. This is not, however, the truth. Notwithstanding the exclusive character of the European Community competence in the sphere of international trade with goods, most of services and also in issues related to commercial aspects of intellectual property, Member states still may protect their interests. They are allowed to adopt restrictive measures which are justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.

According to my opinion such restrictive measures may only be adopted by Member states in the form of prohibitions on imports or other quantitative restrictions or surveillance measures. On the other hand, customs duties on imports and charges having equivalent effect which would be adopted solely by Member states are prohibited absolutely and cannot be justified under any condition.<sup>2</sup>

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<sup>2</sup> For same opinion see Říhová, Kateřina. *Nástroje obchodní politiky ES týkající se ochranných opatření - 2. část* [online]. E-polis.cz, 22. duben 2006. [cit. 1. June 2008]. Available at: <<http://www.e-polis.cz/mezinarodni-pravo/141-nastroje-obchodni-politiky-es-tykajici-se-ochrannych-opatreni-2-cast.html>>. ISSN 1801-1438.

A different approach would be illogical and against the interests of Member states since even the more integrated internal trade within the European Community may be hindered under same conditions.

**Contact - email:**

*david@sehnalek.cz*