EU´S TRADE AGREEMENTS[1]

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Abstract: Conclusion of the Trade agreements between the European Union and the third countries is one of the displays of the EU´s sovereignty. At the same time, it is an effective tool for enhancement of the EU´s position within a globalised world of trade. The aim of the trade agreements is to create an easier business environment for (European) entrepreneurs, in particular by removing the customs, opening the public procurement, establishing the common technical standards, setting the rules of solving the disputes. At the same time, the trade agreements guarantee the achieved level of rights and interests protected by law of the European subjects. This leads to exterritorial application of the European law. This article is focused on brief analysis of concluded EU´s trade agreements and their application.

Key words: European Union, trade agreements, external relations, Europeanisation of non-European legal area

1 INTRODUCTION

Trade for all. This is a new strategy of the European Union in the area of the trade policy, which was adopted and presented in 2014[2]. According to this strategy, trade policy is focused on big companies, small companies, consumers, workers and therefore is supposed to become more responsible, more effective, and more transparent and will not only project our interests, but also our values[3]. These goals are in compliance with the general clause contained in the Article 3(5) of the Treaty on European Union (hereinafter known as "TEU")[4].

The common trade policy belongs among the exclusive competence of the EU, as stipulates the Article 3(1.e) of the Treaty on Functioning of the European Union (hereinafter referred as "TFEU")[5]. The European Union shall provide common trade policy on the basis of uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the trade aspects of intellectual property, foreign direct investment,

1 Príspevok bol spracovaný v rámci projektu APVV-0158-12 "Efektívnosť právnej úpravy ochrany hospodárskej súťaže v kontexte jej aplikácie a praxi".

2 Available at: http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf.

3 EUROPEAN COMMISSION: Trade for All. Towards a more responsible trade and investment policy, p. 5.

4 Article 3 (5) TEU: In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principle of the United Nations Charter.

5 This is the legal regime after the Lisbon Treaty. Common trade policy under the Treaty Establishing the European Communities belonged to mixed competences of the EC and the Member States.

the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.

The common trade policy shall be conducted in the context of the **principles and objectives of the Union's external action**[6]. Article 205 of the TFEU[7] then referred to the use of Article 21 of the TEU, which guarantees implementation of principles as democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law and promotion of objectives as encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade and other.

The realisation of common trade policy by the EU is at the same time the most effective tool for spreading the European law to the third countries, as trade policy reinforces the functioning of the EU Internal Market linking its rules with the global trade system.

2 COMMON TRADE POLICY

Common trade policy can be defined as a complex of measures, which are capable to impact a trade between the EU and the third countries. Trade policy creates a legal framework for trading between the EU and its contractors[8].

EU trade policy aims to open new markets for European exporters, workers and investors through lifting barriers (tariff and non-tariff) to the markets of its trading partners. According to new Strategy, trade policy will effectively address issues that affect today's value chain-based economy, like services, digital trade and the movement of experts, senior managers and service providers. The new approach also involves using trade agreements and trade preference programmes as tools to promote values like sustainable development human rights, fair and ethical trade and the fight against corruption.

The EU realises its common trade policy through the unilateral acts of the EU[9], by membership in international organisations[10] and by concluding the international trade agreements.

Negotiations on trade agreement treaty belong exclusively to the EU, without participation of the Member States. The negotiation process starts at Commission´s initiative, which shall make recommendations to the Council. The Council than authorises the Commission to open the necessary negotiations. During the negotiations, the Commission consults with a special committee appointed by the Council and reports regularly to this committee and to the European Parliament

6 Article 207 (1) of the TFEU.

7 The Union's action on the international scene, pursuant to this Part, shall be guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter 1 of Title V of the Treaty on European Union.

8 BLAŽO, O.: Základy práva spoločnej obchodnej politiky Európskej Únie. Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta, 2014, p. 7.

9 E.g. Council regulation (EC) No. 3285/94 on the common rules for imports and repealing Regulation (EC) Nov. 518/94/EC, Council regulation (EC) No 3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods.

10 E. g. World Trade Organisation.

on the achieved progress. At the end of negotiations, the Council upon the Commission´s recommendation authorises the signing of agreements and concludes them. As the common trade policy is governed by regular legislative procedure, the Council shall adopt a decision concluding the agreement after obtaining the consent of the European Parliament.[11]

The process of negotiations has been recently highly criticised because of the lack of transparency. There were a lot of protests in the Member States concerning the absence of information on CETA or TTIP agreements (later protests concerning their content followed). Therefore, the Commission introduced new methods of communication with the public, which shall reinforce the transparency (for example a commitment to publish key negotiating texts from all negotiations, public consultations, civil society dialogue, sustainability impact assessments, public debate, etc.)[12].

2.1 Trade agreements

Negotiations according to Articles 207 and 2018 of the TFEU can result in different types of the trade agreements: (i) **Partnership and Cooperation Agreements**, (ii) **Association Agreements**, (iii) **Stabilisation Agreements**, (iv) (*Deep and Comprehensive*) **Free Trade Agreements**, (v) (*Interim*) **Economic Partnership Agreements** and (vi) **Customs unions**. The type of the agreement often depends on the degree of economic development of the contractor or on the mutual political relations, too.

Partnership and Cooperation Agreements[13] *(PCAs)* provide a general framework for bilateral economic relation without eliminating or reducing custom tariffs. PCA establish the basic common objectives in the field of political dialogue, trade, energy, transport, environment, science and technology, justice and home affairs. In relation to business, they have non-preferential character.

Association Agreements[14] *(AAs), Stabilisation Agreements*[15] *(SAs), Free Trade Agreements*[16] *(FTAs) and Economic Partnership Agreements*[17] *(EPAs)* remove or reduce custom tariffs in bilateral case. The EU has concluded a number of important trade agreements with trading partners and is in the process of negotiating agreements with many more. FTA are designed to create opportunities by opening new markets for goods and services, increasing investment opportunities, making trade cheaper, by eliminating substantially all customs duties, making trade faster, by facilitating goods' transit through customs and setting common rules on technical and sanitary standards, making the policy environment more predictable, by taking joint commitments on areas that affect trade such as intellectual property rights, competition rules and the framework for public purchasing decisions.

Customs unions[18] *(CUs)* eliminate customs duties in bilateral trade and establish a joint customs tariff for foreign importers.

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11 The process of concluding the international trade agreements are specified in the Article 207 and Article 218 of the TFEU.

12 European Commission: Factsheet. Transparency in EU trade negotiations. Available at: http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc_151381.pdf.

13 The EU has concluded PCAs for example with Russia (1997) and the Armenia (1999), Azerbaijan (1999), Kazakhstan (1999), Kyrgyzstan (1999), Uzbekistan (1999) and Tajikistan (2009).

14 The EU has concluded AAs for example with Ukraine (2014), Georgia (2016), Moldova (2016).

15 The EU has concluded SAs for example with Albania (2006), Bosnia and Herzegovina (2015).

16 The EU has concluded FTAs for example with South Korea (2015), CETA with Canada (2016- not yet applied).

17 The EU has concluded EPAs for example with Southern African Development Community (2016 – not yet applied).

18 The EU has concluded CUs for example with Andorra (1991) and Turkey (1995).

The European Union concludes above mentioned trade agreements with regards to its basic goals – to safeguard its values, fundamental interests, security, independence and integrity, consolidate and support democracy, the rule of law, human rights and the principles of international law, foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty, encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade, help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development[19]. Therefore, trade agreements can be considered to be a tool, through which the EU law is imported into legal systems of the third countries. We would like to demonstrate and confirm this statement on the example of Slovak Republic in the time before Membership in the EU.

2.2 Europeanisation of the Slovak law before Membership in the EU

Slovak republic had begun to autonomously adapt its legal order to European law nine years before it became a full member of the EU. The precondition of such behaviour was the conclusion of the **European Association Agreement** (EAA) on October 4th 1993, which came into effect on 1st of February 1995. This Agreement in its Preamble defined the Slovakia´s accession to the European Community as the final objective of the Agreement. In Article 69, both contracting parties confirmed that the ***approximation of existing and future Slovak legislation with the European one is the main condition for economic integration of the Slovak Republic to the Community***. The Slovak Republic pledged to make efforts to ensure the progressive compatibility of its legislation with the legislation of the Community.

Let´s see how it worked in the specific area of the public procurement (PP). At the time, the relevant PP rules were set in **Act No 263/1993 Coll. on public procurement of goods, services and public works (Public Procurement Act**). It was a minimalistic model of act, which contained only 27 paragraphs. The purpose of this act was to provide the forms and rules of the PP of goods, services and public works, which are paid from the public funds, with the aim to achieve their effective use, transparency of the process and increase the competition. When it came to procurement procedures, the act defined as a basic form of procurement the "public tender" and in the case, when this cannot be used, it presupposed restricted procedure, negotiated procedure and a direct award as an extraordinary tool. The offers were examined and evaluated by three-member commission. The independence of the members of the commission was to be guaranteed by their moral integrity, non-existence of employment or family relations to the tenderer or by the exclusion of the member from evaluation when he is a tenderer at the same time and in same tender. The only reason to exclude the tenderer from the PP was his corruptive behaviour towards the members of the commission. However, the essential condition for such exclusion was the admission of the corrupted commissioner. From brief assessment of this Act and taking into account the then legal situation in Slovakia, we can say that it was a rule that was not difficult to circumvent. To get an unfair advantage, the tenderer needed only to have in the evaluation commission a related person, who wasn´t his family or employee and who didn´t admit that he was corrupted. Also revisions of the PP processes were weak, ineffective and long-lasting.

[19] Article 21 (2) of the TEU.

According the Article 68 of the EAA, both parties had opened the access to their markets of public procurement[20]. Therefore, the reform of the PP rules in Slovakia was inevitable. Slovak Republic had met the harmonisation goal gradually in two main steps.

The first step was realised by adopting the (new) **Act No. 263/1999 Coll. on public procurement and on amendment of other acts** and its amendments[21].This new reglementation was inspired by the Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts, Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts and **Council Directive 89/665/EEC** of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

The Slovak Act No. 263/1999 Coll. harmonised with above mentioned directives the personal scope of the PP, financial limits relevant for individual procedures, conditions for participation in PP, the criteria for the award. The most important asset was the creation of Public Procurement Office, carrying out the comprehensive competences in the field of PP, including the surveillance.

However, despite the aim of Slovak legislation to reach the European standards – transparency of the PP process, non-discrimination and efficiency in public spending, it succeeded only partially. There was still possible to bypass the transparency, for example during the process of opening the envelopes with offers, which was until 2001 undisclosed to public. The PP system was often abused the by the method of negotiated procedure without publication, where the award came directly to the selected company without any market research. The best tendered price was often dramatically increased by later amendments of the concluded contract, etc.

With the impending accession of the Slovakia to the European Union approximation efforts intensified. The Copenhagen criteria obliged the acceding states to fully implement the *acquis communautaire.* For Slovakia, that meant the obligation to complete ongoing harmonisation of PP law (and of course, the other areas of law, too) before 1st of May 2004. This goal was achieved by adopting the **Act No 530/2003 Coll. on public procurement and on the amendment of Act. No 575/2001 Coll. on the organisation of government activities and the state administration, as amended**, which came into force on 1st of January 2004. Explanatory Memorandum to this Act declared, that by adopting this Act, Slovakia achieved in PP law a full compliance with the European law.

By this example, we proved that the third countries, through the trade and its aspects, adopt the EU law even before they become its members.

3 CONCLUSION

Besides goods, services, intellectual property and other commodities European Union exports also the law. This is realised by the trade agreements, which always contain (more or less) parts of the ex-

[20] This regime was the asymmetric one, where the Slovak companies were allowed to participate on PP in the European market from the day of the validity of the Agreement. On the other side, the Slovak republic guaranteed to allow full access to its national PP for the companies from the Community within the 10-year transitional period.

[21] Act No. 557/2001 Coll. and Act No. 530/2002 Coll.

isting rules of the EU law. Therefore, we can confirm that Europeanisation of the non-European area is an existing process, with the effect on the Europeans (and the citizens of the third countries) too.

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