

Free Movements of Goods

Customs Union

One of the earliest successes of the EU was the completion of a Customs Union between the EU countries. This means that goods originating in one EU member State may be freely be exported to other member States. Member States may not impose customs, duties, taxes or quotas. The EU has been rigorous in ensuring States uphold these rights.

A single Common Customs Tariff applies to the whole of the EU. This means that goods imported into the EU are subject to a single customs law and customs tariff. Goods exported out of the EU are subject to similar common rules. Goods in so called "free circulation" within the EU are free of all customs duties. It is possible to impose restrictions and requirements on the importation of goods on very limited grounds related to public security, health and public policy.

See our separate guides on trade and on the practical aspects of importing and exporting goods, import and export licences, transportation and like issues.

EU law requires that member States do not discriminate against goods and services from other member States. They may not impose procedures and "invisible barriers" which might in effect impede free trade. The European Union Treaty outlaws laws, measures or practices in one member state which has the effect of restricting trade. Any such indirect discrimination is unlawful.

Hidden Barriers to Trade Prohibited

The free movement of goods and services between EU member States could be impeded if national standards and regulations have effect of creating barriers to free

trade, even though they did not seem to be discriminatory on the face of it. National rules on shape, content, package labelling which might not appear to be discriminatory but could in practice affect and inhibit trade.

The EU Courts have struck down as unlawful national laws, trading rules and measures which might directly or indirectly, potentially or actually restrict or hinder trade unless there is a very good reason that such rules should apply. For example, EU successfully challenged the Buy Irish campaign by the Irish Government as this amounted in practice to the promotion of Irish goods over foreign goods.

Examples of national laws or rules which EU law prohibits include the imposition of higher standards on imports, procedures that delay importation, additional transport cost, additional licensing requirements, requirements for certificates and approvals that do not apply to home goods. Rules requiring production of certificates of authenticity or any rules which require that imports being channelled in such a way that only certain people can import are invalid.

National rules giving preference or an advantage to home products are also unlawful. In the Dundalk Water case, a clause in a tender to supply pipes for drinking water specified that the pipes had to be made by a firm approved by the Irish Standards Body. Only one Irish firm had been approved. The authorities rejected a tender by an Irish/Spanish consortium. The European Court found that the tender discouraged foreign tenders and was therefore invalid.

In another case involving Ireland, Irish law required that all imported goods (but not domestic goods) depicting motifs suggesting they were souvenirs of Ireland e.g. a wolfhound or shamrock had to bear an indication of the country of origin or the word "foreign". The Court rejected this rule as invalid as it gave advantage to domestic Irish manufacturers.

De Facto Burdens Prohibited

In addition to overtly discriminatory rules, EU law makes unlawful rules which do not appear to be discriminatory but place a particular burden on imported goods. For example, rules in the importing state relating to presentation of goods and packaging which compel the importer to adjust the presentation of their products are invalid.

Requirements regarding the composition of a product or its designation can also be invalid as an obstacle to importation. For example, a French rule restricting the words "Edam" to cheese with a minimum fat content 40% was held invalid because it had the effect of excluding German cheese with a fat content of 34%. Another example, was an Italian rule limiting the name "chocolate" to products containing certain vegetable fats which was found invalid as it discriminate against British and Irish chocolate.

Marketing rules as to how a product is sold, when it is sold and to whom it is sold can cause indirect restriction on free movement on goods and services. Rules of this nature often have the effect of protecting the domestic producer. Such rules will only be permissible if they protect all businesses and have the same burden at law and in practice on home and other EU state businesses.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances. This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.