

# FREE MOVEMENT OF GOODS

## THE IMPORTANCE OF TRADE

Trade in goods and services represents an important part of the GDP of the four members of the European Free Trade Association (EFTA), i.e., Iceland, Liechtenstein, Norway and Switzerland. In spite of its modest size, EFTA is the world's tenth largest trader in goods. It is the fifth largest in commercial services and among the world's largest markets for outward and inward investment flows. EFTA is the second largest trading partner of the European Union (EU) after the United States. More than two thirds of the EFTA States' overall trade is with the EU, making it their most important trading partner.

## THE EUROPEAN ECONOMIC AREA

A set of bilateral free trade agreements between the European Community (EC) and the EFTA States entered into force in 1972-73. These agreements marked the first step to what later became the European Economic Area (EEA). Following the EC's proposal to complete an internal market, the EFTA States and the EC concluded negotiations on the EEA Agreement in December 1992. In a referendum, Swiss voters rejected Switzerland's participation in the EEA. The other EFTA and EU Member States accepted the Agreement on the European Economic Area (EEA Agreement), which entered into force in January 1994.

The EEA Agreement governs the trade relations between the EU on one side, and Iceland, Liechtenstein and Norway on the other. Switzerland and the EU conduct their economic relations through a bilateral free trade agreement signed in 1972. The two parties also signed two sets of comprehensive sectoral agreements in 1994 and 2004. The first set entered into force in 2002 while the second is still to be ratified.<sup>(1)</sup>

The EEA is essentially a free trade area where goods, services, capital and persons can move freely, in an open and competitive environment, across the borders of all its 30 members (27 EU Member States and three EEA EFTA Member States, i.e. Iceland, Liechtenstein and Norway). This concept is generally referred to as the *four freedoms*.

The objective of the EEA Agreement – which basically extends the EU Internal Market to the EEA

<sup>(1)</sup> Trade relations between Switzerland on one hand and Iceland, Liechtenstein and Norway on the other hand are governed by the EFTA Vaduz Convention.

EFTA Member States – is to promote continuous and balanced trade and economic relations between the contracting parties.

Besides containing provisions relating to the four freedoms, the EEA Agreement focuses on co-operation in flanking areas such as research, social policy, tourism, public health and environment matters. In order to guarantee equal conditions for economic operators across the entire Internal Market, the EEA Agreement further covers competition, state aid and public procurement rules. The Agreement is continuously amended to reflect changes in the EU. So far, more than 5 300 legal acts (directives, regulations and decisions) have been incorporated into the EEA Agreement.

## PRODUCT REQUIREMENTS

### General Considerations

The free movement of goods applies throughout the Internal Market. However, this does not imply that all products can circulate freely. They have to be produced in conformity with requirements that protect legitimate interests, such as health, safety and the environment.

When EEA States individually adopt product requirements, producers who want to market their products in several countries have to ensure that their goods fully conform to the regulations in those countries. This is an extra burden for producers, which in turn leads to increased consumer prices. These obstacles are called technical barriers to trade (TBT).

In order to significantly reduce TBT, the EU has adopted harmonised product requirements for a wide range of product sectors. Member States have to accept that products that conform to these harmonised requirements circulate freely. This approach promotes the free movement of goods throughout the Internal Market, while safeguarding legitimate interests.

In non-harmonised areas, there is no harmonised product legislation, and requirements may therefore vary from state to state. These areas cannot be defined by product sector, since some aspects of a single product may be harmonised while others may not. Harmonised requirements for a given product sector may only deal with the safety of these products, while the environmental aspects of the same product may be non-harmonised.

### Harmonised Areas

In sectors where the EU has adopted harmonised product requirements, one set of rules that applies throughout the EEA has replaced national product regulations. This is the case especially in sectors where products such as motor vehicles, pharmaceuticals, toys, etc., may be harmful to people or to the environment.

For products considered high risk, a conformity assessment body (CAB) is required to assess whether they conform to the relevant requirements. A product certification conducted by a CAB designated by an EEA Member State is recognised throughout the EEA.

#### Mutual Recognition Agreements

The EU has concluded a number of mutual recognition agreements (MRAs) with non-EU countries in which it grants CABs from these countries the right to certify products for the European market. In return, European CABs may certify products for the markets of the EU's MRA partners. According to the EEA Agreement, EEA EFTA Member States shall conclude equivalent agreements with these countries so that the Internal Market remains homogeneous and goods move freely. The EEA EFTA Member States have concluded MRAs with Australia, New Zealand, Canada, the United States and Switzerland. The MRA with Switzerland is included in the updated EFTA Convention, which entered into force on 1 June 2002.

There are two ways of harmonising product legislation in the EU. In the *old approach*, all technical product specifications are set out in the legal act. In the *new approach*, only the essential health, safety and environment requirements are adopted by law. Technical specifications are then set out in European harmonised standards and subsequently adopted at national level.

Some *old approach* sectors, such as pharmaceuticals, plant protection products and biocides require authorisation to place a specific product on the market. Motor vehicles need to be type-approved in one EEA State, but may then be marketed in all these countries. For most of the sectors, e.g., cosmetics, textiles and chemicals, the products may be placed on the market without prior authorisation.<sup>(2)</sup>

Authorisation schemes have been abandoned in the *new approach* sectors. Goods produced in accordance with harmonised standards are presumed to fulfil the essential requirements and may be placed directly on the market. Certification by an independent body is necessary in some cases. The CE mark on the product

<sup>(2)</sup> A few dangerous substances will be subject to an authorisation scheme under the REACH Regulation.

indicates that all the relevant EU requirements have been fulfilled.

Market surveillance is necessary to achieve a uniform application of European legislation, equal protection for all citizens, and to maintain a level playing field for economic operators. National surveillance authorities monitor the market to ensure that the products placed on it comply with safety requirements. The authorities act to enforce compliance, where necessary.

#### European Standardisation

On the basis of the Luxembourg Declaration of 9 April 1984, the EFTA countries and the Commission of the European Communities have closely co-operated to create and implement a European standardisation policy. It includes parallel financing of standards-related work carried out by the European Standards Organisations (ESOs). These are: the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) and the European Telecommunications Standardisation Institute (ETSI). CEN, CENELEC and ETSI, and the European Commission and EFTA signed general guidelines for co-operation on 28 March 2003.

The framework partnership agreements that EFTA and CEN, CENELEC and ETSI signed in January 2004 form the legal basis for all the specific grant agreements signed between EFTA and the ESOs. EFTA also provides some financial support to assist European stakeholder organisations to take part in the European standardisation work. Among these organisations are the European Association for the Co-ordination of Consumer Representation in Standardisation (ANEC), the European Organisation for Technical Approvals (EOTA), which relates to the construction industry, and the European Environmental Citizens' Organisation for Standardisation (ECOS).

### Non-Harmonised Areas

In non-harmonised areas, all EEA Member States may continue to adopt national requirements. However, they have to follow certain rules and principles to avoid creating new TBTs. National product requirements must be proportionate to the risk posed by the product and must not discriminate against foreign producers.

When an EU Member State plans to regulate a given product sector, it has to notify the Commission in advance. An EEA EFTA Member State has to notify the EFTA Surveillance Authority (ESA). The Commission and ESA then assess the draft national regulation to determine whether it conforms to the basic principles of the Internal Market.

On the basis of the principle of mutual recognition, products lawfully marketed in one Member State can be marketed in all other Member States without further modification. However, an importing country may exceptionally prevent a product from being placed on its market if justified. This principle is based on the EC Treaty and the case law of the European Court of Justice, especially the Cassis de Dijon case.

### The Cassis de Dijon Case

This 1979 European Court of Justice ruling has been central to the achievement of the free movement of goods in the Community and, consequently, in the EEA. According to the ruling on trade in a particular blackcurrant liqueur (Cassis de Dijon), a product recognised and approved in one EU Member State should also be allowed to be imported and sold in other EU Member States without the need for any additional testing and approval. This is the principle of mutual recognition for products in the non harmonised areas. However, an authority may take measures to ban the marketing of products on the grounds that they endanger the environment, consumer interests, or the health and life of humans, animals or plants. Such measures must be proportionate to the risk posed by the product and applied in a non-discriminatory way.

### Veterinary & Phytosanitary Products

Annex I to the EEA Agreement contains provisions on veterinary issues, feedingstuffs and phytosanitary matters.

The veterinary provisions apply in full to Norway, while in Iceland they only apply to aquaculture animals and products, bivalve molluscs and fishery products. The rules do not apply to Liechtenstein because since January 2003, Liechtenstein has applied the veterinary provisions laid down in the EU-Swiss Agreement on Agriculture, due to its customs union with Switzerland.

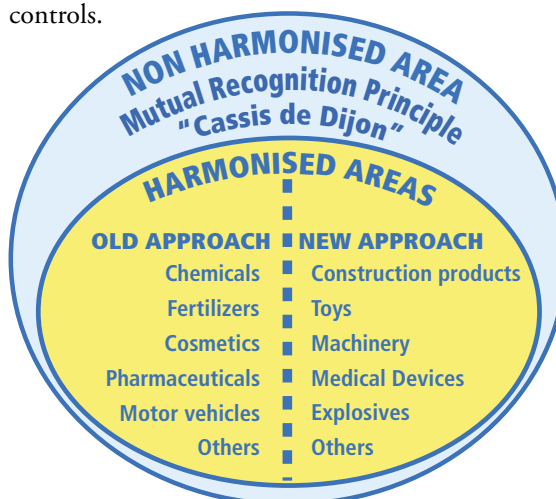
The veterinary provisions cover animal and public health requirements for the production of and trade in live animals and animal products, e.g. meat, milk and eggs, in the Internal Market. The Agreement also contains arrangements for animal welfare, the control and prevention of animal diseases, such as foot and mouth disease, avian influenza, and zoonoses, such as salmonella, transmissible spongiform encephalopathies (TSE) or the mad cow disease.

The EEA EFTA Member States have also harmonised their regulations on conditions for imports from third countries. Together with the EU Member States, they form the external border of the EEA. On entering the EEA, products are subjected to selected veterinary

border inspection posts in the EEA Member States before being placed on the market in the EEA.

The provisions on feedingstuffs are fully harmonised across the EEA. These include rules on the marketing and labelling of feedingstuffs, authorisation of feed additives, undesirable substances in feedingstuffs, as well as the inspection, approval and registration of establishments.

The EEA Agreement contains legislation on seeds, but not on plant health. It does not cover trade in these products with third countries and border controls.



### A FAIR AND EFFICIENT MARKET

For the Internal Market – including the free movement of goods – to unfold as smoothly as possible, a set of horizontal measures have been put in place. Strict competition rules have been introduced to prevent companies from erecting barriers that reduce the benefits gained from the four freedoms in the EEA. Moreover, the EEA Agreement contains provisions to limit the existence of state monopolies, to restrict the use of trade distorting state aid, and to open public procurement opportunities to all economic operators in the Internal Market. Measures have been taken in the energy field to ensure competition, energy supply and environment protection. Intellectual property rights (IPRs) have also been included to provide an incentive for innovation, employment and competition.

### Competition

In order to create a homogeneous EEA with equal conditions for competition, the same competition rules apply to all undertakings throughout the EEA. The rules on competition in the Internal Market cover four main areas and are identical in the three EEA EFTA Member States and the EU Member States. These rules are:

- elimination of agreements that restrict competition and the abuse of a dominant position (e.g., price-fixing agreements between competitors);

- control of mergers between firms (e.g., a merger between two large groups which results in their dominating the market);
- liberalisation of monopolistic economic sectors (e.g., telecommunications);
- prohibition – subject to certain exceptions – of state aid that would distort competition by selectively favouring certain firms or national industrial sectors.

As a result of the strict competition rules incorporated in the Agreement, anti-dumping measures, countervailing duties and other trade measures are, as a general rule, forbidden between the EEA States. A notable exception to this rule is the fisheries sector because the Agreement does not fully cover it.

ESA is responsible for ensuring that these rules are applied within the EEA EFTA Member States. However, when a case has appreciable implications for competition in the EU as well (a mixed case), it is handled primarily by the Commission. Both ESA and the Commission have extensive powers to ensure that the rules are followed, including the right to fine companies and to demand that illegal state aid be repaid.

### **State Aid**

In line with the EC Treaties, the EEA Agreement generally prohibits any measures that can be identified as state aid, including grants, soft loans and tax concessions, which may distort trade. However, certain political, economic and social considerations may lead to exceptions to this prohibition. ESA plays a crucial part in collecting information on existing and proposed aid schemes developed by the EEA EFTA Member States and may order them to be altered or abolished. ESA must approve any new aid schemes before they are implemented.

### **Public Procurement**

The EEA Agreement established a single market in public procurement worth more than €1 300 billion per year. This creates significant opportunities for companies within the EEA because they can compete for government contracts throughout the Internal Market. It also benefits taxpayers, as increased competition lowers the costs of public purchases of goods and services.

The public procurement legislation obliges public authorities and entities to apply certain procedures when processing contracts for supplies, services and works with a value exceeding certain thresholds. The rules aim to secure equal treatment and fair competition among all suppliers, service providers and contractors established within the EEA. The

legislation contains clauses to ensure that the rules are enforced throughout the EEA.

### **Energy**

The energy sector, along with transport, communications and other network industries, was not part of the original vision of the Community's single market. However, with time, it became clear that the domination of these sectors by national monopoly providers was increasingly out of step with the more integrated European economy.

The main thrust of the liberalisation process in the energy sector has been to allow consumers to choose between different providers of electricity and natural gas. In 2003, the EU agreed that this choice should be available to all consumers, including households, by July 2007 at the latest.

During recent years, security of supply has come to the forefront due to natural disasters, political crises and scarcity of resources of traditional fossil fuels. Moreover, the energy sector has a significant impact on the climate. Energy and environment policies have therefore been increasingly interconnected.

### **Intellectual Property Rights**

Intellectual property rights provide an incentive for innovation, employment and competition and protect the right-holders against others using their property without authorisation. The EEA Agreement contains provisions on intellectual property rights to provide the EEA with harmonised rules on intellectual property, and at the same time ensure a high level of protection.

In order to take into account the free movement of goods, these rules contain the principle of regional exhaustion of intellectual property rights, applicable in the entire EEA. In practice, once a product has been placed on the market within the EEA by a right-holder (or with their consent), they can no longer rely on their exclusive right to prevent the importation of such products from another EEA Member State.

## **CUSTOMS**

### **Free Trade Area**

The EEA Agreement provides for a free trade area covering all the EEA Member States. However, the Agreement does not extend the EU Customs Union to the EEA EFTA Member States. The free trade area and Customs Union aim at abolishing tariffs on trade between the parties. The main differences between the area and the union are in terms of customs borders and tariffs on imports from non-member countries. Whereas the EU Member States have abolished all customs borders and customs procedures between

each other, these are still in place between the EEA EFTA Member States and the EU. Furthermore, the common customs tariffs on imports to the EU are not harmonised with the customs tariffs of the EEA EFTA Member States.

### **Tariff Barriers**

The EEA Agreement prohibits tariffs on trade between the contracting parties. Therefore, all products, except certain fish and agricultural products, may be traded free of tariffs within the EEA. In order for a product to obtain preferential treatment under the EEA Agreement, it has to originate in the EEA. The EEA Agreement therefore contains rules of origin that determine to what extent a product must be produced or processed within the EEA in order to be of EEA origin.

### **Pan-Euro-Med Free Trade System**

The pan-Euro-Med free trade system is a network of free trade agreements between 42 European and Mediterranean countries. All the agreements are based on identical rules of origin. Significant advantages for the economic operators are generated through this system of free trade, since producers are allowed to use raw materials and components originating from anywhere in the zone for the production of originating products.

### **Trade Facilitation**

EFTA has for a long time been contributing to the establishment of simpler trade procedures. This work, which takes place within the framework of the United Nations, endeavours to develop standards, directories and guidelines for the electronic exchange of trade data. More than 200 standardised electronic messages have been established for public and private purposes. The ultimate aim is to do away with the requirement for paper documents, e.g., invoices and customs declarations. Co-operation under the EEA Agreement seeks to simplify procedures for trade in goods. The EEA EFTA Member States participate, on an equal footing with the other EEA members, in Community programmes and projects that aim to facilitate trade procedures.

## **AGRICULTURAL PRODUCTS**

The Common Agricultural Policy of the EU is not part of the EEA Agreement. Due to differences in agricultural policies, the EEA EFTA Member States and the EU conduct their trade in basic agricultural products through bilateral agreements. The EEA Agreement provides for regular reviews of trade in basic agricultural products, aimed at achieving progressive liberalisation of trade in these products within the framework of their respective agricultural policies.

The EEA Agreement has set out a price compensation system for processed agricultural products. This system aims to compensate for the differences in price of basic agricultural products within the EEA. It attains this end by granting subsidies on exports and levying customs duties on imports. The subsidies and customs duties are calculated on the basis of reference prices agreed by the contracting parties. The price compensation system does not apply to Liechtenstein.

## **FISH**

The EEA EFTA Member States do not take part in the Common Fisheries Policy of the EU. Iceland and Norway issue their own fishing quotas and retain certain restrictions on ownership and establishment in the fisheries sector.

On the basis of the EEA Agreement and additional bilateral agreements, customs duties on most types of white fish products have been abolished. There are substantial reductions in customs duties for other fish and processed fish products. However, the Agreement does not cater for reductions in the customs duties for some of the most important species in Iceland and Norway. Hence, the EEA Agreement does not prevent the EU from applying safeguard measures, such as anti-dumping duties and countervailing measures, on fish products.

PUBLISHED BY:

---

EFTA Secretariat, Brussels, Rue Joseph II, 12-16, B-1000 Brussels, Tel.: +32 2 286 17 11, Fax: +32 2 286 17 50  
mail.bxl@efta.int, <http://secretariat.efta.int/>

---