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The importance of trade

Trade in goods and services represents an important part of the gross domestic product (GDP) of the four members of the European Free Trade Association (EFTA): Iceland, Liechtenstein, Norway and Switzerland. In spite of its modest size, EFTA is the world's twelfth largest trader in goods, sixth largest trader in commercial services and among the world's largest markets for outward and inward investment flows. It is also the third largest trading partner of the European Union (EU) after the United States (US) and China. 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 (FTAs) between the European Community (EC) and the EFTA States entered into force in 1972-1973. These agreements marked the first step towards 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 Agreement on the European Economic Area (EEA Agreement) in 1992. In a referendum, Swiss voters rejected Switzerland's participation in the EEA. The other three EFTA States and the EU Member States accepted the EEA Agreement, which entered into force on 1 January 1994.

The EEA Agreement governs trade relations between the EU Member States, Iceland, Liechtenstein and Norway. Switzerland and the EU conduct their economic relations through a bilateral FTA signed in 1972. The two parties have also established ten comprehensive sectoral agreements, which make a large share of EU law applicable to Switzerland (Bilateral I and Bilateral II). Trade relations between Switzerland on the one hand and Iceland, Liechtenstein and Norway on the other are governed by the EFTA Convention (Vaduz Convention).

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 31 members (28 EU Member States and three EEA EFTA States). 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 three EEA EFTA 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 cooperation in flanking areas such as research, social policy, tourism, public health and environment. 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 EEA Agreement is continuously amended to reflect changes in the EU. More than 8 700 legal acts (directives, regulations and decisions) have so far been incorporated into the EEA Agreement (as at the end of 2013).

Product requirements

General Considerations

Free movement of goods implies that products that conform to the applicable EU/EEA rule can circulate freely in the Internal Market.

Differing national product requirements can constitute a barrier to cross-border trade. If different technical requirements exist for all the national markets, a producer will need to adapt his product to all markets in which he wishes to sell his product. These technical obstacles to cross-border trade are called technical barriers to trade (TBT).

Harmonisation of technical requirements removes barriers to cross-border trade. In order to significantly reduce TBT, the EU has adopted harmonised product requirements for a wide range of product sectors. EEA States are obliged to accept that products conforming to these common harmonised requirements are sold on their national markets and can circulate without additional approval or testing.

In non-harmonised areas, the principle of mutual recognition applies. Product requirements may vary from state to state, and unless very specific conditions are met, one EEA State must accept products lawfully marketed in another EEA State. Non-harmonised 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 a product, while the environmental aspects of the same product may be non-harmonised.

Harmonised Areas

In sectors where the EU has adopted harmonised product requirements, rules adopted at European level that apply throughout the EEA have 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.

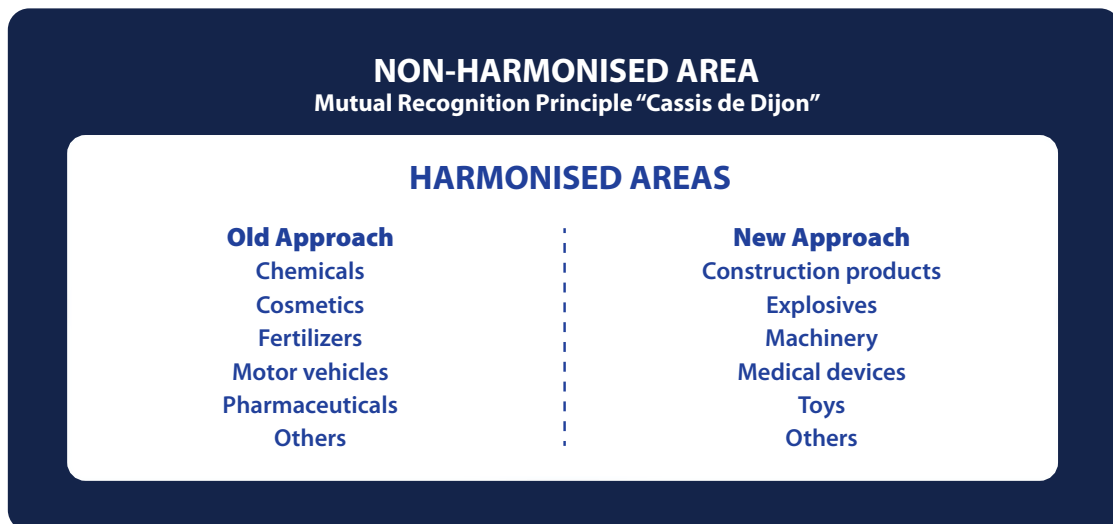
For products considered as high risk, European harmonising legislation states that a Conformity Assessment Body (CAB) is required to assess whether a product conforms to the applicable requirements. Product certification conducted by a CAB designated by one EEA State is recognised throughout the entire EEA.

There are two ways of harmonising product legislation in the EU, by the *old* and *new approach*. Through the *old approach*, all technical product specifications are set out in the legal act. Through the *new approach*, only the essential health, safety and environmental requirements are adopted by law. Technical specifications are then set out in European harmonised standards which a producer or importer can choose to use in order to demonstrate that the product conforms. When a product is produced in accordance with harmonised standards, it is 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 indicates that all the relevant EU requirements have been fulfilled.

Some *old approach* sectors, such as pharmaceuticals, plant protection products and certain biocidal products (ref. Regulation 528/2012), require authorisation to place a specific product on the market. Motor vehicles need to be type-approved in one EEA State and may then be marketed in all EEA

countries. For most sectors, e.g. cosmetics and textiles, the products may be placed on the market without prior authorisation.

Market surveillance is necessary for achieving uniform application of European legislation and equal protection for all citizens, and maintaining a level playing field for economic operators. National market 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.



Non-Harmonised Areas

The principle of mutual recognition is a means of ensuring the free movement of products that are not subject to EU harmonised legislation. The principle ensures that products lawfully marketed in one EEA State can be marketed in all other EEA States, even if the product does not fully comply with the technical rules of the importing EEA State. However, an importing EEA State may exceptionally prevent a product from being placed on its market if justified. This principle is based on the EEA Agreement and the case law of the Court of Justice of the European Union, especially the *Cassis de Dijon* case.

This means that in non-harmonised areas, all EEA States may have national technical regulations and requirements. However, an EEA State may only refuse the marketing of a product lawfully placed on the market in another EEA State if it can demonstrate that it is strictly necessary for the protection of, for example, public safety, health or the environment. The importing EEA State must also demonstrate that the measure is proportionate and that it does not discriminate against foreign producers.

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

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 States may conclude equivalent agreements with these countries so that the Internal Market remains homogeneous and goods move freely. The EEA EFTA States have concluded MRAs with Australia, Canada, New Zealand, Canada, Switzerland and the US. The MRA with Switzerland is included in the EFTA Convention.

To an increasing degree, the EU's neighbouring countries are adopting the EU regulatory system and EU harmonised legislation. The EU-Turkey Customs Union ensures the free movement of products based on harmonised legislation. Similarly, Protocol E to the EFTA-Turkey FTA ensures the free movement of products between the EFTA States and Turkey. In addition, Agreements on Conformity Assessment and Acceptance of industrial products (ACAAs) are a specific type of MRA, based on the alignment of legislation and infrastructure of a country with those of the EU. ACAAs are currently being prepared by the EU for a number of countries in the Mediterranean area, and in order to ensure a homogeneous Internal Market, the EEA EFTA States may conclude parallel and equivalent agreements.

European Standardisation

On the basis of the Luxembourg Declaration of 9 April 1984, the EFTA States and the European Commission have cooperated closely to create and implement a European standardisation policy, including the parallel financing of standards-related work carried out by the European Standards Organisations (ESOs). These are:

- European Committee for Standardization (CEN)
- European Committee for Electrotechnical Standardization (CENELEC)
- European Telecommunications Standards Institute (ETSI)

CEN, CENELEC and ETSI, the European Commission and EFTA signed general guidelines for cooperation 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 financial support to help European stakeholder organisations take part in European standardisation work. Among these organisations are:

- European Association for the Co-ordination of Consumer Representation in Standardisation (ANEC)
- European Organisation for Technical Assessment (EOTA), which relates to the construction industry
- European Environmental Citizens Organisation for Standardisation (ECOS)

Food safety policies, veterinary and phytosanitary matters

Veterinary and phytosanitary matters are covered by Annex I to the EEA Agreement and food legislation is covered by Chapter XII of Annex II. Legislation on food and veterinary matters do not apply to Liechtenstein which, due to its customs union with Switzerland, applies the veterinary provisions laid down in the Swiss-EU Agreement on Agriculture.

The primary goal of the food and veterinary legislation is to ensure food safety. Given that the safety of the final product may be affected at any stage of the food production process, the legislation follows a food chain approach “from farm to fork”. All sectors of the food chain are covered, including feed production, primary production, processing, storage, transport and sale to the consumer.

The veterinary legislation covers animal and public health requirements for the production, trade and imports of live animals and animal products, as well as issues related to the control of these products. Arrangements for animal welfare and the control and prevention of animal diseases are also included. As regards animal feed, the legislation concerns marketing and labelling, undesirable substances in feed, the authorisation of feed additives and the control of feed-producing establishments.

The food legislation includes general principles for food law and deals with a wide range of matters related to food safety, food quality and information to consumers. Some of the areas covered are biotechnology (genetically modified food), labelling and information, contaminants and residues, as well as food additives and food flavourings. Legislation concerning organic production is also covered by the food legislation in the EEA Agreement.

The EU and the EEA EFTA States do not have fully harmonised legislation regarding plants. The EEA Agreement contains legislation regarding plant seeds, covered by Chapter III of Annex I (phytosanitary matters), with the exception of provisions relating to imports and border control.

A fair and efficient market

For the Internal Market to function as smoothly as possible, a set of horizontal measures has 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 environmental protection. Intellectual Property Rights (IPR) have also been included to provide an incentive for innovation, employment and competition.

Competition

In order to ensure 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 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 into the EEA Agreement, anti-dumping measures, countervailing duties and other trade measures are, as a general rule, forbidden between the EEA States.

The EFTA Surveillance Authority is responsible for ensuring that these rules are applied within the EEA EFTA States. However, when a case also has appreciable implications for competition in the EU (a mixed case), it is handled primarily by the European Commission. Both ESA and the European 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 EU 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 state aid schemes developed by the EEA EFTA States and may order them to be altered or abolished. ESA must approve any new state aid schemes before they are implemented.

Public Procurement

The EEA Agreement established a single market in public procurement worth approximately 18% of EEA GDP. This has created 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 allows public authorities to choose the most economically advantageous 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. 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 Internal Market. However, over 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 recent years, security of supply has come to the forefront due to natural disasters, political crises and a 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 right-holders against the use of their property without authorisation. The EEA Agreement contains harmonised provisions on IPR and ensures a high level of protection of industrial rights (inventions, designs, trade marks, etc) and copyright (music, films, print media, software, etc) in all EEA States. In order to support the free movement of goods, these rules also contain the principle of regional exhaustion of IPR, applicable in the entire EEA. In practice, once a product has been placed on the market in the EEA by a right-holder (or with his consent), the latter can no longer rely on his exclusive right to prevent the importation of such products from another EEA State.

Based on Article 65(2) of the EEA Agreement, intellectual property legislation is incorporated into Annex XVII. Nevertheless, not all EU initiatives in this field have been incorporated, primarily due to two-pillar issues related to the granting and enforcement of rights.

Customs

The EEA Agreement provides for a free trade area covering all the EEA States. However, the EEA Agreement does not extend the EU Customs Union to the EEA EFTA States. The aim of both the free trade area and the EU Customs Union is to abolish tariffs on trade between the parties. However, whereas in the EU Customs Union, the EU Member States have abolished customs borders and procedures between each other, these are still in place in trade between the EEA EFTA States and the EU, as well as in trade between the three EEA EFTA States. Furthermore, the common customs tariff on imports to the EU from third countries is not harmonised with the customs tariffs of the EEA EFTA States.

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 obtain status as a product of EEA preferential origin.

The pan-Euro-Mediterranean (pan-Euro-Med) free trade system is a network of FTAs between a significant number of European and Mediterranean countries. All these agreements are based on identical rules of origin. Significant advantages for economic operators are generated through this system of free trade, since a product may be traded between the free trade zones without losing its preferential status, and since producers are allowed to freely use raw materials and components originating in any of the participating countries in 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. Cooperation under the EEA Agreement seeks to simplify procedures for trade in goods. The three

EEA EFTA States participate on an equal footing with the other EEA States in EU 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 States and the EU conduct their trade in basic agricultural products through bilateral agreements. Article 19 of the EEA Agreement provides for regular reviews of trade in basic agricultural products, aimed at achieving the progressive liberalisation of trade in these products within the framework of their respective agricultural policies.

Protocol 3 to the EEA Agreement sets out a price compensation system for processed agricultural products. This system aims to compensate for the differences in prices of basic agricultural products within the EEA. It achieves this 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. Protocol 3 does not apply to Liechtenstein.

Fish

The EEA EFTA 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, in addition, substantial reductions in customs duties for other fish and processed fish products. However, the EEA 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.

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