European Union Law for International Business

An introduction

Written specifically for exporters and those without legal training, European Union Law for International Business is an introduction to the essential business laws of the European Union (EU). It is a practical guide to the regulatory and procedural issues of which exporters and businesses need to be aware.

While providing a general overview of how the EU operates as a governing body, the book specifically addresses the key matters that exporters will face during their business transactions. Topics covered include:

- direct export transactions to the EU
- exporting via an agent or distributor
- customs laws and procedures
- franchising
- resolving international business disputes
- how to establish a permanent business presence within the EU.

For each of these transaction types the book uses case studies to illustrate how they can be applied to real-world business dealings.

This book is an essential resource for anyone involved in international business with customers in the EU.

Bernard Bishop is Senior Lecturer in the Department of International Business and Asian Studies at Griffith Business School, Griffith University. He is co-author of Australian Export: A Guide to Law and Practice (CUP, 2006).
For
My parents
Leo and Donna Bishop
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A mediation institution
Preface

This book is written for small and medium exporters, their advisers, students and others with an interest in engaging in international business transactions with a firm in a member country of the European Union (EU). It seeks to provide an introduction to some of the more significant EU-wide laws and procedures of which business firms outside of the EU need to be aware before embarking upon their business venture. It is impossible to canvass all of the relevant laws and procedures because, not only is the volume of EU legislation extensive, but also much business activity still remains regulated at the individual EU member state level. Thus, the book is introductory and contains references to other sources, including internet sites that the reader can use to obtain more information on the particular legal issue being discussed.

In each chapter of the book an attempt has been made to place the legal issues in an international business context. The aim is to provide readers with information not only on relevant EU laws but also on how those laws might apply in an international business transaction. There are case studies in each chapter to provide examples of this. While every effort has been made to ensure that the information provided is up to date and accurate, readers should always obtain legal advice from locally qualified lawyers with regard to any particular transaction that they may be contemplating. This is stressed throughout the book along with the reasons for it.

The book commences in Chapter 1 with an introduction to the EU itself, its institutions, their role in law making and how those laws are made. To highlight the various methods by which EU laws are made, this introductory chapter concludes with a case study that shows the process that was involved in enacting the Mediation Directive.
Chapters 2–5 of the book deal with matters that need to be considered in an export of goods to an EU member country. Thus, the basics of the initial contract of sale, transport of the goods including within the EU, EU customs requirements, and payment mechanisms are discussed. The transport chapter contains a case study showing the steps taken by a freight forwarder in arranging a consignment to an EU destination. This chapter also provides information about internal transport alternatives within the EU and the relative significance of each. The customs chapter sets out the steps that are involved in dealing with customs formalities in the EU and contains two case studies that show the very detailed requirements that the EU has for goods that are exported to it. The payments chapter not only details the well-known mechanisms for payment in international business transactions and their frequency of use by importers but also seeks to point out ways in which the risk of non-payment can be minimised. There is a case study of a worldwide company that engages in credit risk insurance to show how this can be used by exporters to guard against credit risk.

Chapters 6 and 7 deal with exporting to the EU via an agent or distributor or via franchising. In the case of agents and distributors, all of the material introduced in Chapters 2–5 will also be relevant because exporters of goods via intermediaries will necessarily involve customs clearances, transport arrangements, payment mechanisms and contracts of sale. The chapter on agents and distributors includes a discussion of the EU commercial agent’s directive and its influence on contracts with agents as well as EU competition laws and how they affect distribution agreements. There is a case study that shows how an exporter has made use of an EU distribution company to get goods onto supermarket shelves. The franchising chapter not only canvases the various regulatory requirements that some countries within the EU have regarding franchising agreements but also sets out the basics of registering intellectual property rights within the EU. There is some information about the growth of franchising within the EU as well as a case study on a successful franchise operation there.

Chapter 8 canvasses the issues that an outside business person needs to consider if establishing a separate business presence within an EU country. Many exporters of goods and service providers find that to best service the burgeoning EU market, a permanent presence of some kind is eventually required. Five alternatives are canvassed. These are a private limited liability company, a branch, a public company, a European public company and acquisition of an existing company. The chapter describes law at the EU level that affects the establishment of each of these various forms. Case studies are used to show the procedures required to set up a private company
and a branch using individual countries’ procedures as examples. The chapter also contains information on licensing requirements for businesses and incentives that might be available to those establishing new businesses.

Chapter 9 concludes the book by examining the alternatives for resolving disputes should they arise in the course of doing business with an EU firm. The alternatives of litigation, arbitration and mediation are considered along with the main issues that arise in a European context. Two case studies are provided – one of an arbitral institution and one of an institution that is well known for its work in mediation.
Acknowledgements

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Abbreviations

AQIS Australian Quarantine Inspection Service
CHIEF Customs Handling of Import and Export Freight
CIM Rules Uniform Rules Concerning the Contract of International Carriage of Goods by Rail
CMNI Convention Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway
CMR Convention Convention on the Contract for the International Carriage of Goods by Road
COTIF Convention Convention on International Carriage of Goods by Rail
CPC Customs Procedure Code
EC European Community
ECB European Central Bank
ECC European Commercial Cases
ECJ European Court of Justice
EC Treaty Treaty establishing the European Community
EPC European Patent Convention
EPO European Patents Office
EU European Union
EU Treaty Treaty on European Union
FIATA Federation Internationale des Associations Transitaires et Assimiles (International Federation of Freight Forwarders)
GSP Generalized System of Preferences
ICC International Chamber of Commerce
IPR intellectual property rights
ISO International Organization for Standardization
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