

# Trade Law

An introduction

March 2022

## 1. What does trade law address?

Sales between businesses within a country, such as the United Kingdom, occur subject to the rules of commerce of the country, for example, rules concerning health and safety standards. These rules are the domestic rules.

As regards trade between businesses from different countries, there are two key topics; the first is applying domestic rules (typically those of the importing country) to such international trade, the second is applying international trade laws that have been created by countries, either bilateral, plurilateral or multilateral. As examples, the UK has a bilateral trade agreement with Australia, the UK has a trade agreement with the EU and its 27 Member States, and the UK is a member of the World Trade Organisation (WTO) and so party to the several WTO agreements that address trade law topics for all the current 163 member countries<sup>1</sup>.

Trade laws traditionally cover trade in goods and, in more recent times, services. There is a significant overlap between trade laws and intellectual property, tax, and other legal subjects such as labour rights, some of which have their own trade laws.

A natural complement to the above traditional definition of trade laws is private international law, such as the laws concerning international commercial contracts. There are many rules on commercial transactions, created by international bodies such as the United Nations. These include conventions, model laws and rules that are accepted by many countries. An example is the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG). These private international laws seek to address the recurring issues that arise in contracts between businesses from different countries, in relation to the trade in goods.

## 2. What are the main trade issues that might arise?

Below is a list of some of the main issues that might arise and, by example, some of the many reasons why the issue has arisen.

### 2.1

**My product has been blocked by customs before being exported.**

- You may need a licence to export the product, for example, to export medicines.
- The product may be deemed to be a dual-use product, namely, for civil use but also capable of having a military use.
- As a UK business you need to have an exporter number from the UK authorities.
- There may be an issue with whether you or the importer must bear any customs duties.

### 2.2

**My product has been blocked by the importing country.**

- You need to check if there are rules restricting the importation of the product, for example, because it does not meet import country labelling requirements.
- You may need proof of origin if exporting to a country where your goods benefit from a reduced or zero rate of duty.

---

<sup>1</sup> As of 15 September 2021. As well as each of the EU member states being members of the WTO, the EU is a member in its own right.

### 2.3

**Damage has occurred to a customer's business by a product you had imported. The claim is the product did not meet UK standards.**

- As an importer you are likely responsible for ensuring the correct conformity assessment procedures have been carried out. You may have not correctly done so, there may be an error on the part of the assessment body, or the claim may be incorrect.

### 2.4

**Your domestic sales have slumped due to low-priced imports.**

- You may find competitors from a country are able profitably to export to your country at prices much lower than they sell in their own domestic market.
- You may find exporters to your country have favourable conditions and are able to sell into your country and other countries at below market prices.

### 2.5

**Your exports have materially reduced following aggressive action by competitors in the export market.**

- You may believe that one or more foreign competitors are receiving government subsidies, allowing them to sell at below market prices.

### 2.6

**A producer in a foreign market is copying your product that benefits from a design right in the export country.**

- You have been unsuccessful in using the usual procedures to prevent the breach of your IP rights, even though those IP rights are protected in the country and there is no doubt that your IP right is valid.

### 2.7

**The counterparty to an international distribution agreement raises issues based on provisions of the Convention on International Sales of Goods (CISG), but the agreement makes no mention of the CISG.**

- The CISG might apply if the conditions in Article 1, CISG are satisfied. Depending upon the issue in dispute, its application can affect the interpretation of your distribution agreement.

### 2.8

**A question has arisen as to whether a regular foreign customer of yours is subject to new sanctions.**

- Countries such as the United Kingdom impose prohibitions on their domestic businesses to engage in commerce with businesses from certain countries. Additionally, bodies to which the United Kingdom is a member, such as the United Nations, also issue such sanctions.
- The customer may have been acquired by another company that is subject to sanctions.
- An individual person with whom you are doing business may have become a sanctioned person or that person has become a politically exposed person (PEP).

### 3. Which public bodies deal in trade law?

Enforcement of the practical aspects of UK trade laws will typically involve one or more of the following: trade standards officers, HM Revenue & Customs officers, and if there is suspicion of fraud or other criminal activity, the police.

Enforcement of international trade laws occurs within international trade bodies (see below) and is pursued by governments, usually following complaints made by businesses.

Of the following bodies, businesses have rights in relation to the relevant UK bodies and, potentially, the relevant EU bodies. The World Trade Organisation only deals with issues raised by member countries.

In the United Kingdom there is the:

- **Department for International Trade (DIT)**, which is the key government body. It is led by a government minister. There are regional DIT offices, for example, there is one in Durham representing the North East.
- **Trade Remedies Authority (TRA)**, which is an executive non-departmental public body supporting the role of the DIT. Specifically, it investigates whether remedies are needed to prevent injury to UK industries caused by unfair trade and unforeseen surges in imports. Ultimately a decision is taken by the relevant government minister based on the recommendation by the TRA.

UK trade laws are agreed and adopted by Parliament, although many regulations addressing detailed topics are adopted by the relevant government minister.

Given the amount of business that UK companies have with EU businesses (the EU is the UK's largest export market), the UK/EU interface is important.

The EU decision-making body is the:

- **European Commission**, which is composed of civil servants headed by Commissioners appointed by agreement of the heads of state or governments of the Member States. The Directorate-General -Trade is responsible for trade matters. This department undertakes investigations and takes decisions pursuant to EU trade laws.

EU trade laws are agreed and adopted by the:

- **European Commission;**
- **European Parliament** (composed of directly elected members pursuant to universal suffrage and proportionate in number to the population size of each Member State. Specifically, the Committee on International Trade, which is composed of elected members that seek to be on the committee, addresses trade, including adoption of laws), and;
- **Council of the EU** (composed of the ministers and their delegates of each of the Member States, who meet to adopt laws and coordinate policies regarding trade).

At the international level there is the **World Trade Organisation (WTO)**, which is an international institution ultimately run by member countries for member countries. Disputes are sought to be settled through consultation and mediation. However, if a dispute results in a formal complaint by one country about another, the matter is investigated, and a report issued by the:

- **Panel** – composed of a group of experts. Unless appealed the report is then adopted by the
- **Disputes Settlement Board** – composed of representatives of each of the members. Assuming a determination is made of infringement of one of the WTO agreements, the complainant country can take action to remedy the situation, for example, the imposition of a duty.

## Some key terms defined

### Anti-dumping remedies

An action, taken under the laws of a country, typically the imposition of an import duty, on a product that has been determined is subject to dumping into the import market. (See Dumping). In the UK anti-dumping remedies may be instigated following an investigation by the Trade Remedies Authority (TRA).

### Anti-dumping agreement

The WTO agreement that clarifies and expands on Article 6 of the WTO's GATT as regards permissible anti-dumping actions.

### Countervailing remedies

An action, taken under the laws of a country, typically the imposition of an import duty, on a product that has been determined benefits from a government subsidy in the exporting country.

### Customs authority

For the United Kingdom this is HM Revenue & Customs, established by the XXXX Act, 2005. It is a non-ministerial department.

### Dumping

The export to a country of product at a price below the normal price of the product in the exporting market, such that injury is caused to the relevant industry sector in the importing country.

### Excise duty

A tax imposed on a product or class of products, typically an imported product. Usually excise duty is fixed (an amount per unit of product), but it can also be an amount that varies according to the price of the product.

### Non-tariff barriers

Bureaucratic or legal issues that involve hindrance to trade, for example, the obligation to obtain an import licence, rules of origin, rules for valuation of imported goods for customs purposes, and procurement which require levels of local procurement by a non-domestic supplier.

### Plurilaterals

Under the WTO agreements are adopted by each of the member countries. However, there are two extant agreements to which only some WTO members are a party. In each case the United Kingdom is a party. The agreements cover: trade in civil aircraft and government procurement.

### Safeguard remedies

An action, taken under the laws of a country, typically the imposition of an import duty, on a product that has been determined to have had a material increase in import volume and which is causing material injury to the relevant domestic industry.

### Standards and safety

Governments want to protect human, animal or plant life or health, in their society and accordingly set health and safety standards. Such standards can be set for imported products provided they do not discriminate or act as disguised protectionism.

### Tariff

A tax imposed on imports or exports. A tariff can be fixed (a fixed amount per unit of imported product) or variable (the amount varies according to the price of the product).

Taxing imports raises the price of imported products relative to the same domestically produced products. This would normally mean demand is lowered for imported products and so higher for the domestic product.

### UK- [Name of country] Association Agreement

There are many association agreements concluded by the UK with non-EU countries, for example, Egypt. The typical association agreement includes provisions on:

- trade in goods - including provisions on preferential tariffs, tariff rate quotas and rules of origin;
- trade in services;
- sanitary and phytosanitary measures ;
- intellectual property; and
- government procurement.

The agreement strengthens UK cooperation in political, security and foreign matters and replicates wider elements of the EU-Egypt Association Agreement such as provisions on political dialogue and other forms of cooperation, including human rights.

### UK-EU Trade and Cooperation Agreement

The EU-UK Trade and Cooperation Agreement frames the post-Brexit relationship and consists of:

- a trade agreement, addressing cooperation on economic, social, environmental, and other issues (see below),
- a partnership on citizens' security, and
- an overarching governance framework.

### UK-EU Free Trade Agreement

The agreement covers trade in goods and services and a broad range of other areas, such as investment, competition, intellectual property rights, State aid, tax transparency, air and road transport, energy and sustainability, fisheries, data protection, and social security coordination.

# We keep it simple

## Key facts

- 213 partners and 1600+ lawyers and business support employees
- Turnover of £154.2 million as at end of April 2020
- National Firm of the Year in The Lawyer Awards 2019
- Ranked in The Lawyer's Real Estate Global 50 2019
- Shortlisted in Legal Week's Innovation Awards 2020
- Winner of corporate/commercial specialism in the Legal 500 Awards 2019
- Featured in The Lawyer's UK Litigation 50 and UK Corporate 50
- A signatory to the Social Mobility Pledge and 38th in the Social Mobility Foundation's Employability Index
- Gold standard status in Investors in People
- Signatory to the United Nations Global Compact

## Clients

We hire great people who create fantastic relationships with our clients to help them get the results that they deserve.

As a client of Shoosmiths we will do all we can to help you achieve your goals. We take the time to understand your needs so we can be proactive in looking for solutions and will deliver the highest quality legal advice.

Our focus is on providing an exceptional client experience which incorporates open communication, cost transparency and a consistent service as well as ensuring the people you are working with make everything that little bit easier for you.

## International

Shoosmiths works with individuals and companies investing in the UK, in addition to UK-based clients operating in global markets (the latter, where appropriate, via our membership of the World Services Group, an international network of professional services firms).

## Locations

Belfast  
Birmingham  
Edinburgh  
Glasgow  
Leeds  
London  
Manchester  
Milton Keynes  
Northampton  
Nottingham  
Sheffield  
Solent  
Thames Valley



Outstanding – quick, resourceful and engaging throughout.”

Client in Chambers UK

✉ Legal e-briefings: [www.shoosmiths.co.uk/register](http://www.shoosmiths.co.uk/register)

🐦 @Shoosmiths

🌐 [linkedin.com/company/shoosmiths](https://www.linkedin.com/company/shoosmiths)

**WINNER**

National firm of the Year

THE LAWYER  
Awards 2019

The  
**LEGAL  
500**  
UNITED KINGDOM

TOP TIER  
2021

TOP RANKED  
Chambers  
UK  
2021  
Shoosmiths LLP

LegalWeek  
**Innovation**  
Awards 2020

**INVESTORS IN PEOPLE**  
We invest in people Platinum