

Section 4 Law

Introduction

As a small business, you do not need to have an in-depth understanding of business law, but there are certain aspects of the law that will affect your business on a day-to-day basis if you plan to trade abroad. In this section we look at the following key topics:

Topic 1: Protectionism

When you have worked through this topic you should be able to:

- explain what the term 'protectionism' means
- describe the difference between embargoes and quotas
- describe the difference between tariffs and non-tariff barriers to trade
- explain the role of the World Trade Organisation.

Topic 2: Tariffs

When you have worked through this topic you should be able to:

- explain how imported goods are affected by *The Tariff* published by HM Customs & Excise
- recognise which items are classified as prohibited imports
- identify the import duties which will be attached to goods you intend to import into the UK.

Topic 3: Exporting

When you have worked through this topic you should be able to:

- explain the different kinds of export licences currently available
- list the export controls currently in force
- describe what is meant by a contract
- identify whether or not you will need an export licence and, if so, which kind.

Topic 4: Law and the Single European Market

When you have worked through this topic you should be able to:

- list the Members of the European Union/Single Market
- describe the plans for future enlargement of the European Union
- explain what is meant by the terms 'free movement of goods and services'; 'free movement of people'; 'free movement of capital'
- explain the way in which European law and European directives will affect your business
- identify those aspects of your business likely to be affected by European law and directives.

Topic 5: Getting the Right Legal Advice

When you have worked through this topic you should be able to:

- identify those aspects of international law which are likely to affect your business
- identify those areas within your business where you might need specific legal advice
- identify an appropriate solicitor to assist you.

Topic 6: INCOTERMS

When you have worked through this topic you should be able to:

- explain what an INCOTERM is
- identify the ways in which selecting the appropriate INCOTERM can give you a competitive advantage
- prepare an action plan and checklist which will help you to make the best use of INCOTERMS

Topic 7: Employment Law

When you have worked through this topic you should be able to:

- explain the purpose of the 1996 Employment Rights Act
- explain the purpose of the 1998 Working Time Regulations legislation
- access additional information relating to UK and European employment law.

Glossary of commonly used business legal terms

Comparative advantage	The notion that the global economy benefits most when individual countries specialise in producing the goods which they are best at growing or making; and those countries then trade with other countries.
Contract – verbal	A verbal contract is the same as a written contract (see below) and as such, is legally enforceable.
Contract	A contract is an agreement between two or more competent parties in which an offer is made and accepted, and each party benefits. The agreement can be formal, informal, written or verbal.
Directives	Guidelines or objectives which member states of the European Union must adopt as national law.
Embargo	An order which creates a complete ban on trade with a specific country.
Law Society	The professional body which regulates lawyers in the UK.
Non-tariff barrier to trade	Rules and regulations which are intended to limit the import of certain goods into a country.
Prohibited import	Goods which cannot under any circumstances be imported.
Protectionism	The process of creating barriers to trade between different countries.
Quota	A specific limit which is set in relation to the quantity of goods that can be imported into a specific country.
Sale of Goods Act 1979	UK legislation relating to contracts of sale.
Tariff	A tax which is levied on an imported good.
World Trade Organisation	The body which regulates and oversees international trade around the world.

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Topic 1 Protectionism

Protectionism is the term used to describe the process of creating barriers to trade between different countries. These barriers can be:

- embargoes
- quotas
- tariffs
- non-tariff barriers.

Embargoes

An embargo is an order which forbids trade with a specified country. An embargo can, for example:

- be imposed by the United Nations against a country which has broken international laws
- be in force against a country with which another country
 - a) has broken off diplomatic relations, or
 - b) is at war.

When an embargo is in force, under no circumstances will HM Customs & Excise allow the importing of goods from that country. One example of this is the embargo in force against Zimbabwe during 2002.

Quotas

Import quotas are limits on the quantities of certain goods that can be imported into a country during the time that the quotas are in effect. There are two kinds of quotas that can be set.

- Absolute quotas restrict the quantity of imports to a specific level. They are usually dispensed on a first-come, first-served basis, which means that many quotas are filled quite soon after the opening date. For example, an absolute quota of five hundred tons of cotton during the period 1 June 1999 to 1 June 2000 could be met by, say, 1 August 1999. No further cotton imports would be allowed until after 1 June 2000.
- Tariff rate quotas allow a specific quantity of goods to be imported at a reduced rate tariff during the specified quota period.

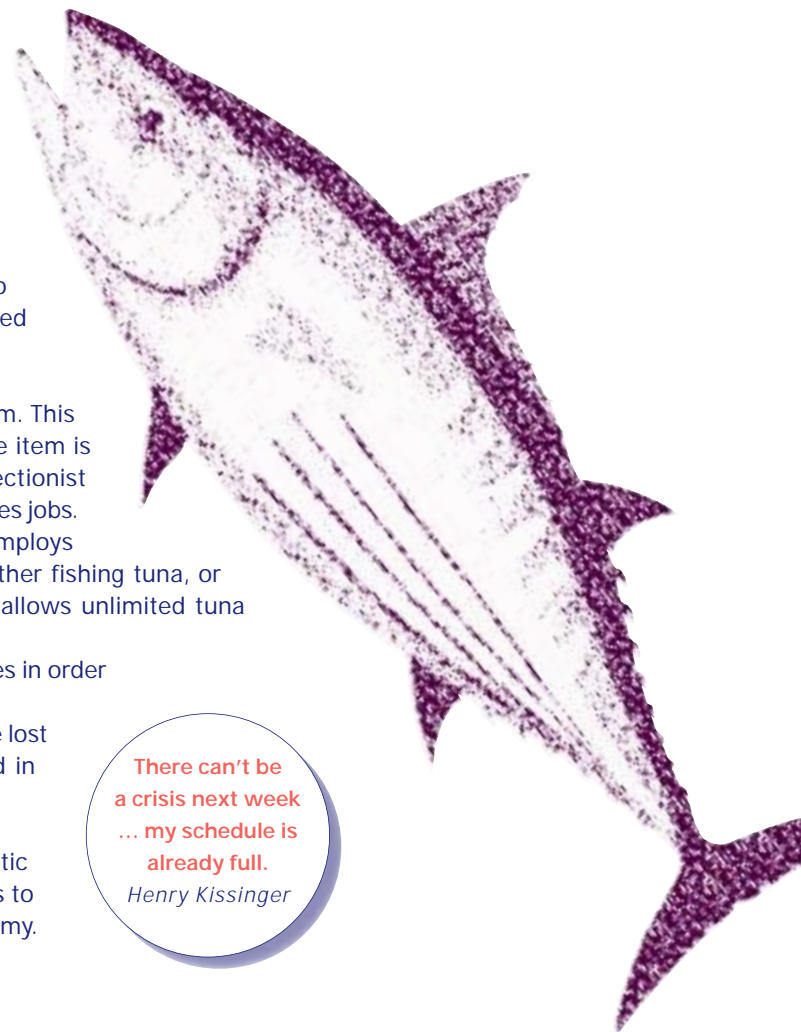
The purpose of quotas is to reduce the supply of an item. This means that, if demand remains constant, the price of the item is likely to rise. The main reason given in support of protectionist policies such as the use of quotas is that protectionism saves jobs. For example, say a country has a fishing industry which employs large numbers of people, all of whom are involved in either fishing tuna, or preparing and packaging tuna products. If that country allows unlimited tuna imports, the country runs the risk that:

- home caught tuna may have to be sold at cheaper prices in order to compete with cheap tuna imports
- its own tuna fishing industry will decline and jobs will be lost
- tuna canning factories and other businesses involved in tuna processing will decline and jobs will be lost.

Some countries take the view that, when their domestic products or industries are threatened, their best option is to set import quotas in order to safeguard jobs and the economy.

There can't be
a crisis next week
... my schedule is
already full.

Henry Kissinger



Protectionism – A classic example

In March 2002, in an attempt to protect and safeguard the US steel industry, President George W Bush set new import tariffs on steel. This meant that anyone wanting to import steel into the US had to pay a high additional cost. As a result, US-produced steel became a much more attractive purchase.

Whilst this may have been good for the US steel industry, there was a considerable knock-on effect for US trading

partners such as the UK and other Western European countries. This was because, although the UK, for example, did not export significant amounts of steel to the United States, the UK sold steel to other parts of the world.

The problematic knock-on effect was caused by the displacement of steel. In practical terms, this meant that the steel produced in Russia and other East European countries could no longer be exported to the US, because the new tariff

made it too expensive. Therefore, those countries turned their attention to the countries (and customers) which traditionally bought steel produced in the UK and other Western European countries.

The consequence of President Bush's protectionism was that, although the steel industry in the US was to some extent protected by the new tariff, jobs and the economies of other steel producing countries were affected.

Tariffs

A tariff, which is a tax imposed on an imported good, can be:

- a percentage of the value of the good – defined by the importing country
- a specific duty such as, for example, a flat-rate duty of, say, £1 or \$10 or 100 rupees per item imported, regardless of the value of the item

UK import tariffs are dealt with in Topic 2 of this section.

Non-tariff barriers to trade

When a country wants to limit imports of either specific goods, or goods from specific countries, it may decide to introduce non-tariff barriers. Non-tariff barriers are not taxes but are, instead, difficulties, problems and hold-ups caused by red tape, standards and regulations which are difficult to fulfil and import licences which are hard to get hold of. There can be a whole raft of rules and requirements that are designed to encourage importers to change their minds and do something else – either import other goods, or purchase domestic products and raw materials.

Comparative advantage

Comparative advantage is the notion that the global economy benefits most when individual countries specialise in producing the goods that they can best grow or make, and then trade those goods with another country. So, for example, farmers in Israel grow fruit and vegetables, whilst manufacturers in Japan make electronic goods; the oil producing countries produce oil; diamonds are mined in South Africa but they are cut and polished in Holland.

World Trade Organisation

The World Trade Organisation (WTO) regulates and oversees international trading around the world. The WTO is very keen to reduce trade barriers and to promote international free trade. To find out more about the World Trade Organisation visit www.wto.org



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Topic 2 Tariffs

A Tariff is a tax which is imposed on imported goods (see also Topic 1: Protectionism). The purpose of imposing a tariff is to:

- reduce the demand for foreign goods (because they are likely to be more expensive)
- encourage customers to buy home-produced (non-imported) goods which are likely to be less expensive.

UK Customs & Excise

Everything which is imported into the UK must be declared to HM Customs & Excise so that the goods can be assessed for the amount of duty which you – as the importer – must pay.

This means that all goods coming into the UK must be classified according to *The Tariff*. The Tariff (also referred to as *Her Majesty's Customs & Excise Integrated Tariff of the United Kingdom*) is a 3-volume annual publication, updated monthly by HM Customs & Excise, which consists of:

- Volume 1 – general information about import and export matters
- Volume 2 – information relating to the Schedule of duty
- Volume 3 – information about customs freight procedures.

Correctly classifying the goods you import will ensure that you:

- pay the appropriate amount of duty and VAT on the goods
- find out whether or not you need an import licence
- provide import and export trade statistics.

If you do not correctly classify the goods you are importing, HM Customs & Excise can:

- delay your goods
- seize your goods
- require you to pay arrears of duty and VAT (and can backdate the amount payable for the previous 3 years, or more).

There are two key points to be aware of, with regard to classification.

- You, as the importer, are legally responsible for correctly classifying the goods you import.
- If you employ an agent to complete the documentation on your behalf, *you* will still be held responsible if the goods are incorrectly classified.

The importer is liable for the VAT, duty and surcharges which must be paid before imported goods are released by HM Customs & Excise.

The annual subscription for *The Tariff* is around £200 and can be purchased from:
 TSO Limited Publications Centre
 PO Box 276
 London SW8 5DT
 Telephone 0870 6005522
 Fax 0870 6005533
 E-mail book.enquiries@theso.co.uk

In addition, *The Tariff* can be looked at in the Excise & Inland Customs Advice Centres (EICs) located around the country. You will find the telephone number and address of your nearest EIC in your local telephone directory. Alternatively, you can view it at www.hmce.gov.uk/bus/customs/index.htm

Check Point

1. List below the types of goods (including raw materials) you are considering importing into the UK.

2. Check to ensure that none of the goods and raw materials are illegal imports. The information is available from the Department of Trade and Industry at www.dti.gov.uk/

3. Check out which import duties these goods and raw materials will attract. This information is provided in *The Tariff*.

Examples of charges payable on imported goods

These are the main charges which are levied on goods imported into the UK:

- VAT (Value Added Tax)
- Import duty
- Additional duty – on flour and sugar
- Countervailing charges – on fruit and vegetables
- Variable charges – on processed goods
- Compensatory charges – on oils and fats
- Extra charges – on eggs, poultry or pig meat
- Excise duty – on alcohol.

Prohibited Imports

There are some prohibited goods which cannot, under any circumstances, be imported into the UK. These include:

- switchblade knives
- devices that project toxic, noxious or harmful substances, e.g. tear-gas or CS gas guns or canisters; stun-guns etc.
- counterfeit coins and currency
- certain types of pornography.

Full details of the legislation which governs importing goods into the United Kingdom are available from the HM Customs & Excise website at www.hmce.gov.uk/business/importing

The state is never so efficient as when it wants money.
Anthony Burgess

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Topic 3 Exporting

Export Licences

Depending on *where* you intend to export and, of course, *what* you intend to export, you may need to obtain an Export Licence. This is a document that confirms that the government has granted you the right to export specified goods to specified countries.

As an exporter, you need to be aware that certain items are subject to export controls, and it is illegal to attempt to export these controlled items without an Export Licence. Export controls may be in place because:

- the government regards the items as potentially dangerous
- trade sanctions or embargoes exist in relation to specific countries, or regions of the world.

Types of Licences

In the UK, the following types of Export Licences are available:

Standard Individual Export Licence (SIEL)

A Standard Individual Export Licence generally allows the shipment of specified goods to a specified consignee (the individual or company receiving the goods) in accordance with the quantity specified in the licence. These licences are valid for either one or two years.

Open Individual Export Licence (OIEL)

An Open Individual Export Licence is specific to an individual exporter and allows multiple shipments of specified goods to specified destinations (in some cases to specified consignees). OIELs are valid for two years if issued in respect of military goods or technology; or three years if issued in respect of other goods.

Open General Export Licence (OGEL)

An Open General Export Licence allows the export of specific controlled items by any exporter, which means that individual licences (OIELs) are not necessary.

Export controls exist in relation to the following:

- military equipment – including arms, ammunition, tanks, guns, bombs, imaging devices, aircraft and warships
- nuclear-related items – including nuclear materials, reactors and processing plants
- dual-use items (those which are designed for civil use but which can be used for military purposes) – including machine tools, computers, telecommunication equipment, navigation equipment and so on
- chemical weapons precursors – and related equipment and technology
- certain micro-organisms, biological equipment and technology
- goods used in connection with weapons of mass destruction
- goods being sent to countries where embargoes, EU or UN trade sanctions exist
- chemicals, drugs and prescription drugs
- fauna and flora (wildlife and flowers)
- live animals
- antiques.

Check Point

The DTI Export Control Organisation is the main internet resource for finding out about Export Licensing. Go to www.dti.gov.uk/export.control where you will find:

- detailed guidance on the most up-to-date legislation
- lists of embargoes and sanctions currently in force
- application forms which allow you to apply for Export Licences online
- information about DTI export control publications and guidance notes.

You may find it useful to use the chart below to record relevant information:

1. Will you need an Export Licence?

No Yes

2. If you do need an Export Licence, which kind do you need?

- Standard Individual Export Licence
 Open Individual Export Licence
 Open General Export Licence

3. Have you applied for an Export Licence?

- No – I don't need a Licence
 Yes Date of application:

4. Is there any other information you need to record here, as a reminder for the future?

Exporting and Contracts

A contract is a legally enforceable agreement between two or more parties. A key point to remember is that an oral contract is as binding as a written contract. So, if you verbally agree with a prospective customer that you will supply X, and they will pay you Y, and you shake hands on a 'done-deal', then this is a contract that can be enforced through the courts.

You should be guided by UK law when preparing a contract of sale or purchase and, perhaps most important of all, you should give your lawyer the opportunity to check any contracts *before* you send them to potential customers, and *before* you sign them. And don't forget – no matter how rushed you are, or how much you like and trust your potential customer – check and double-check the small print before you sign anything.

The Sale of Goods Act 1979 is the legislation which covers Contracts of Sale within the UK. Under this legislation a contract of sale of goods is a contract by which the seller transfers the property in goods to the buyer for a money consideration, called the price.

A verbal contract isn't worth the paper it's printed on.
Samuel Goldwyn

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Topic 4 Law and the Single European Market

Although here in the UK we have not yet joined the Single Currency, we are part of the Single European Market. As a small business, it is important for you to understand what this means for your enterprise, and the way in which your business is affected by European legislation.

Members of the European Union/Single Market

As at the beginning of 2002, the member states which comprise the European Union were:

- Austria
- Belgium
- Denmark
- Finland
- France
- Germany
- Greece
- Ireland
- Italy
- Luxembourg
- The Netherlands
- Portugal
- Spain
- Sweden
- United Kingdom

In addition, the following are referred to as 'European Economic Area' (EEA) countries:

- Norway
- Iceland
- Liechtenstein

The key differences between EU countries and EEA countries are that:

1. the EEA Agreement does not extend to agriculture and fisheries
2. the EEA Agreement provides for improved free trade, but without a customs union – e.g. there is no common external tariff
3. the EEA Agreement does not include a common commercial policy.

Switzerland is neither a member state nor an EEA country, but maintains its relationship with the EU through bilateral agreements.

All of the above named countries share the right to free movement of goods, people, services and capital.

Free Movement of Goods, Services, People and Capital

Free movement of goods and services

This means that goods and services should be able to circulate freely, i.e. imported and exported; bought and sold, within the single market. It also means that member states cannot introduce new customs duties or increase existing duties; cannot tax another member state's goods in a different way to its own; cannot impose quotas on another member state's goods and cannot introduce trading regulations that discriminate against another member state. (Exceptions to these rules can only be made on the grounds of national security, protection of life, health of living things or public morality.)

Free movement of people

This means that people should be able to move easily from country to country within the single market – either to work or to live – and without too much red tape. For example, UK citizens retiring to a country within the European Union will receive the same level of benefits they would receive if they had remained in the UK.

Free movement of capital

This means that the citizens of a European Union country are entitled to move money from country to country, and can open a bank account in any other EU country.

EU enlargement

On 31 March 1998 the following countries applied for European Union Membership:

- Cyprus
- Czech Republic
- Estonia
- Hungary
- Poland
- Slovenia.

On 13 October 1999 the following countries applied for European Union Membership:

- Bulgaria
- Latvia
- Lithuania
- Malta
- Romania
- Slovak Republic.

It is anticipated that no final decisions will be made regarding the acceptance of any of these countries before the end of 2002.

Check Point

If you are planning to trade within the European Union then you must observe all the current European legislation that applies to business.

In the chart below you will find a list of business areas and activities, some of which will apply to your business. Tick each one which applies to you.

Aspects of your business which may be affected by European Law

Product safety	<input type="checkbox"/>	Medicines	<input type="checkbox"/>
General health and safety	<input type="checkbox"/>	The environment	<input type="checkbox"/>
Employment	<input type="checkbox"/>	Transport	<input type="checkbox"/>
Employee welfare	<input type="checkbox"/>	Copyright/intellectual property	<input type="checkbox"/>
Packaging	<input type="checkbox"/>	Contracts	<input type="checkbox"/>
Packaging waste	<input type="checkbox"/>	Patents	<input type="checkbox"/>
Labelling	<input type="checkbox"/>	Guarantees	<input type="checkbox"/>
Food safety	<input type="checkbox"/>	Weights and measures	<input type="checkbox"/>

Now that you have identified those areas of legislation that apply to your business, go to www.europa.eu.int/eur-lex/en/index/html. This site provides a comprehensive picture of current EU legislation, including EU legislation currently in force, proposed legislation and case-law which relates to your business activities.

European Law

Because the United Kingdom is a member state of the European Union, this means that all European Union business legislation and directives must be complied with, whether you trade solely within the UK, or with foreign countries.

European Directives

European Directives set out a series of guidelines or objectives. All member states must adopt the guidelines as national law.

Directives are a source of European law and must be observed as rigorously as United Kingdom law (usually referred to as UK legislation).

European Directives relate to a wide range of business issues including health and safety, the environment, employment, weights and measures, copyright, patent, guarantees, packaging and packaging waste, labelling, product safety, and much more.

Focus on remedies,
not faults.

Jack Nicklaus

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Topic 5 Getting the Right Legal Advice

If you are planning to trade with countries outside the European Union then you will need to:

- comply with EU business law – because the United Kingdom is part of the EU
- comply with the business law of the country with which you are trading – for example, US business law.

Throughout the world the law is constantly changing and evolving. New legislation comes into force all the time and so, for the average business person, it is almost impossible to keep up-to-date with what is happening globally.

Finding a solicitor

Making sure you have a competent lawyer is the best way to ensure that you stay on the right side of international law. You can do this in one of two ways:

- ask other small businesses who they would personally recommend to help you with your international legal affairs
- find out, from the appropriate Law Society, which solicitors in your area specialise in either EU Law or International (Non-EU) Law.

The Law Society

The Law Society is the professional body for solicitors in the United Kingdom.

www.lawsociety.org.uk/home.asp is the website address for the Law Society of England & Wales.

www.lawscot.org.uk/ is the website address for the Law Society of Scotland.

The Law Society provides an online search facility which will help you to track down lawyers experienced in international law within your own geographic area.

Go to www.solicitors-online.com/main.asp

Complete the online search form by providing:

- your postcode/location
- details of the legal specialism you want – for example, International Law or EU Law
- click on the search button.

The website will then provide a list of lawyers (all of whom are registered with and recognised by the Law Society) operating within your area.



Solicitors' charges

Although your solicitor's charges will, of course, be categorised as an allowable business expense, it is important to recognise that you will need to be able to pay these charges as they arise. Legal advice is never cheap, and you need to be aware that solicitors usually charge an hourly rate, which means legal costs can soon mount up. It is often a good idea to agree a fixed spending limit with your solicitor right at the start – before you begin asking for advice – so that both of you know, in advance, how much you have budgeted for legal work.



Check Point

Use this checklist to help you prepare for your first meeting with a solicitor:

Which countries do you intend trading with?

Which aspects of international law are you most interested in (e.g. contracts, environmental law, copyright etc.)?

What is your budget (maximum amount you can afford to pay for legal advice)?

How do you want to be billed (weekly, monthly)?

What, specifically, do you want your solicitor to do for you (e.g. find out something, prepare documents, etc.)?

Selecting the right solicitor for you

Choosing the right solicitor to assist you with your business is rather like choosing the right accountant.

You need to be sure your solicitor is:

- qualified and competent
- up-to-date with current legislation
- perhaps most important of all, someone you feel you can get along with.

Checklist for dealing with your solicitor

- Don't be intimidated by your solicitor. Remember, they are advising you about your business.
- Don't be frightened to ask questions and say if you do not understand something – if they use legal jargon ask them to explain what they mean.
- Agree costs up front and pay their bills on time – if your solicitor has done the work you asked, they are entitled to be paid on time.
- If you find that you don't get along with your solicitor, or you are unhappy with any aspect of the service they provide, find someone else to help you.

The most important thing in communication is to hear what isn't being said.

Peter Drucker

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Topic 6 INCOTERMS

If you are planning to trade (i.e. carry out import or export activities) with any country outside the UK, you will need to have an understanding of INCOTERMS.

An INCOTERM (which is short for International Commercial Term) is a standard trade definition, devised and published by the International Chamber of Commerce and used in international sales contracts throughout the world. It clearly spells out the buyer's and seller's rights and obligations relating to the delivery of the goods.

INCOTERMS were first introduced in 1936. The latest, most up-to-date set of INCOTERMS came into force on 1 January 2000, and is usually referred to as 'INCOTERMS 2000'. Contracts made after 1 January 2000 will, unless the parties to the contract agree to use older versions, use INCOTERMS 2000.

The purpose of INCOTERMS is to prevent misunderstandings and disputes between buyers and sellers located in different countries – especially where the countries involved have different trading practices.

There are thirteen INCOTERMS, which have been divided into four different categories. If you or a member of your staff are going to be responsible for agreeing prices and arranging the shipment of goods abroad, then you will need to:

1. know what INCOTERMS are
2. be able to select the appropriate INCOTERM when sending goods abroad.

The four categories of INCOTERMS:

- **Group E: departure** – used where the goods are to be made available to the buyer at the seller's premises.
- **Group F: main carriage unpaid** – where the seller must deliver the goods to a carrier appointed by the buyer
- **Group C: main carriage paid** – where the seller must contract for the carriage of the goods without assuming risk of loss of, or damage to the goods, or additional costs due to events occurring after shipment.
- **Group D: arrival** – where the seller has to bear all costs and risks involved to bring the goods to their destination.

Who selects which INCOTERM to use?

Sometimes your customer will specify that they want you to give them a price for, say, **500 bottles aromatherapy oil, CIF, Mumbai**. This means a price for 500 bottles aromatherapy oil, including Cost, Insurance and Freight, delivered to Mumbai.

Sometimes you, as the supplier, will choose the INCOTERM, and will specify to your customer, for example, that your price for 500 bottles aromatherapy oil will be **£320 CPT, Berlin**. This means £320 is the price for 500 bottles aromatherapy oil, Cost and Carriage paid, delivered to Berlin, buyer pays Insurance and bears all additional costs and risks incurred.



Check Point

Talk to other small businesses that import and export goods. Find out how they use INCOTERMS and what, if any, snags or issues they have encountered. For instance, customers in the US may have a different understanding of the terms. Contact the International Chamber of Commerce (see below) and obtain a copy of INCOTERMS 2000 so that you and your staff can familiarise yourselves with them.

Quick Guide to INCOTERMS

CFR	Cost and Freight (named port of destination)
CIF	Cost, Insurance and Freight (named port of destination)
CIP	Carriage and Insurance paid to (named port of destination)
CPT	Carriage paid to (named place of destination)
DAF	Delivered at Frontier (named place)
DDP	Delivered Duty Paid (named place of destination)
DDU	Delivered Duty Unpaid (named place of destination)
DEQ	Delivered Ex Quay (duty paid) (named port of destination)
DES	Delivered Ex Ship (named port of destination)
EXW	Delivered Ex Works (named place)
FAS	Free Alongside Ship (named port of shipment)
FCA	Free Carrier (named place)
FOB	Free On Board (named port of shipment)

Negotiating INCOTERMS

Negotiating with your customer which INCOTERMS to use, can give you a competitive advantage. If you are planning to sell a product at the same price as a competitor, then being prepared to pay the cost of shipping *and* insurance may persuade your customer to buy from you, rather than the competitor. If you are importing goods into the UK, you may want to specify the INCOTERMS to *your* supplier, in order to get the best possible deal.

The full set of INCOTERMS 2000 is available from the:

International Chamber of Commerce

14/15 Belgrave Square

London SW1X 8PS

Telephone 0207 823 2811

Fax 0207 235 5447

SITPRO is the UK's Trade Facilitation Agency, supported by the DTI.

Go to their website at www.sitpro.org.uk/sitpronew/content/incoterms2.html

where you will find a useful list of INCOTERMS, plus an action plan and checklist designed to help you choose the most appropriate INCOTERMS for your deal.

You can also contact SITPRO at:

Oxford House,

8th floor

76 Oxford Street

London W1D 1BS

Telephone 0207 467 7280

Local Chambers of Commerce run training courses on INCOTERMS 2000

If you want to be successful in business, find someone who has achieved the results you want and copy what they do ... and you'll achieve the same results.

Anthony Robbins

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Topic 7 Employment Law

The people you currently employ, here in the UK, are protected by both UK employment law and by European Union legislation and directives (see Topic 4) because the UK is part of the European Union. If, though, you are planning to employ staff who are resident in other parts of the world, then they will be protected by the employment law which is in force in the country where they live and work.

UK Employment Law

1996 Employment Rights Act

A key item of employment legislation, The 1996 Employment Rights Act, was passed to ensure that UK employment law falls into line with European Union employment law, and workers receive fair treatment. These are the key rights contained in the 1996 Act:

- All employees are entitled to a written statement of their employment details which must include details of pay, terms and conditions of employment, pension rights, disciplinary procedures and so on.
- All employees are entitled to a written, itemised pay statement.
- Both employees and employers are entitled to a minimum period of notice. The length of notice depends on the length of service with the employer – 13 weeks to 2 years = 1 week's notice; 2 years to 5 years = 2 weeks' notice; 5 years to 10 years = 4 weeks' notice; 10 years to 15 years = 6 weeks' notice; more than 15 years = 8 weeks' notice).
- All employees, if dismissed, are entitled to a written statement which gives the reason(s) for the dismissal.
- All employees are entitled not to be unfairly dismissed. Examples of unfair dismissal include: dismissing an employee without following proper procedures and not giving the employee appropriate verbal and written warnings prior to dismissal; dismissing an employee because he or she has taken part in union activities or industrial action.
- All employees are entitled to appeal to an industrial tribunal if they feel they have been unfairly dismissed.
- All employees are entitled to receive redundancy payments providing they are: aged between 16 and 65 years; have worked for the employer for a continuous period of 104 weeks; are insurable for all benefits under the Social Welfare Acts and normally work 18 hours or more per week; or are part-time (working 8 hours or more per week) and not fully insurable but satisfy all other conditions listed above.

You can find out full details of all matters relating to UK employment law at www.emplaw.co.uk

1998 Working Time Regulations

The Working Time Regulations (often referred to as the WTR) came into force on 1 October 1998 in order to implement the European Working Time Directive. The key rights which are contained in the 1998 Regulations are:

- Employees need work no more than an average of 48 hours per week – but can work more hours if they choose to.
- Night workers need work no more than 8 hours in every 24 hours.
- Night workers have the right to free health assessments.
- All workers have the right to 11 hours rest every day.
- All workers have the right to one day off every week.
- All workers have the right to take an in-work rest break if the working day is longer than 6 hours.
- All workers have the right to 4 weeks paid leave every year.

Additional legislation

In addition to these two key items of legislation, there are also laws, regulations and directives relating to issues such as:

- temporary agency work
- maternity and parental leave
- disability discrimination
- health and safety.

The law, including that which deals with employment, can be complex and detailed and you will almost certainly benefit from professional help and advice to enable you to comply with all of its requirements.

Recruiting staff abroad

If you are planning to employ, for example, a French national to work in France then, in addition to European Union Law, you will also need to make sure that you comply with French employment law – often referred to as *labor law*. For example, French employees are entitled to a minimum of five weeks paid leave every year.

The key point here is that before you recruit any staff abroad, make sure you find a good lawyer (preferably one who specialises in employment law) to advise you on both your rights, as an employer, and the rights of the people you intend to employ.

Useful Web Sites

To find out more about the Working Time Regulations go to the Department of Trade & Industry web site which you will find at www.dti.gov.uk/er/work_time_regs/index.htm

To find out more about UK and European employment law and directives go to www.incomesdata.co.uk/brief/law.htm

To download a range of legal documents, including:

- employment contracts – price from £28
- guidelines on internet and e-mail usage – price from £40
- maternity and parental leave policy – price £35

go to www.compactlaw.co.uk/index.html

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