Australian Food Exporters and the European Legal Environment

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ABSTRACT. The European Union (EU) is Australia's largest trading partner, and largest outside investor. With around 370 million consumers, trading rules that have been harmonised and greatly simplified, and mostly low tariff rates, the market is very attractive to exporters from all over the world.

Given the rapid and on-going changes in the EU as integration proceeds, a knowledge of its governing and internal law, and the international trade law which relates to it appears to be a prerequisite for successful exporting by Australian firms. Most textbooks suggest that export strategies (e.g., pricing, distribution) should be based on a well-planned legal strategy, and the primary instrument of legal strategy is the contract (e.g., Fox, 1992). As food exporters are especially vulnerable to risk, given the perishable nature of their products, one would expect that Australian food exporters would be particularly sensitive to the legal environment of the EU.

The aim of this paper is to examine the place of the legal environment in Australia-EU business relationships, focussing particularly on an empirical study of food exporters.

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The author acknowledges the research funding support of the Australian Research Committee.

Journal of Euromarketing, Vol. 11(4) 2002
http://www.haworthpressinc.com/store/product.asp?sku=J037

KEYWORDS. Law, strategy, Australia, EU, exports

INTRODUCTION

The European Union is Australia's largest trading partner in terms of goods and services, and is Australia's largest outside investor. With a market of some 370 million consumers, potentially rising to a market of more than 500 million consumers with the possible future addition of central and eastern European countries, there are great opportunities for exporters world-wide (Brittan, 1998). EU prices are generally higher than the USA or Asia, and tariffs are generally low, with most decreasing by the year 2000. In addition, the tariffs are uniform across all members, regardless of point of entry. The product only has to clear customs once, and then can circulate freely. The EU's Agenda 2000 is aimed at bringing changes to the Union's Common Agricultural Policy (CAP) that will progressively eliminate subsidies, making it even more attractive to food exporters.

Australian food exporters send a wide range of products to Europe, with an emphasis on fruits, vegetables, meats, seafood, and flowers. The main competitors for Australia are South American countries such as Chile, Argentina, Brazil, Mexico and Peru. There are increasing opportunities for export of frozen and processed products, which are not as politically sensitive as fresh produce. While many would-be exporters to the EU may have once viewed the EU as an "impregnable fortress," especially for foods, (Moens and Flint, 1993), this is no longer so. The progress made so far towards liberalisation of the market and increased market access to outsiders has been dramatic, and the introduction of the Eurodollar (Euro) will accelerate this trend (Brittan, 1998).

One proviso to exporter success in the EU, however, is that the exporter must understand the European legal environment. Moens and Flint (1993, p. 60) state:

> Development of a successful trading relationship with the EU requires knowledge and understanding of the EU legal systems . . .

The legal environment of the EU is changing rapidly. There are new rules for product conformity, assessment and permits. Companies will need new accounting software to cope with the Euro, and the requirement that accounts be taken to three places after the decimal. There are literally hundreds of new cases, directives and regulations affecting trade that are of interest and importance to exporters to the EU.

The objectives of this paper are to briefly review recommended "best practice" with respect to legal strategies in exporting, to review recent developments in the EU legal environment of importance to Australian exporters, and to assess the extent to which Australian food exporters are maintaining recommended "best practice" in their trading relationships with the EU in terms of legal strategy and appreciation of the legal environment.

INTERNATIONAL "BEST PRACTICE" WITH RESPECT TO LEGAL ENVIRONMENTS

There are three "layers" of law affecting an international business relationship.

These are:

1. Public international law (the law of nations), comprised of various international agreements, customary law, and principles;
2. Private international law (the legal relationships between individuals, e.g., as set out in the contract); and
3. Foreign and comparative law, comprising the laws of the home country and host country that apply to the transaction.

Goods and services moving across borders are subject to domestic (home) laws and regulations, international laws, and target country laws and regulations. Similarly, contracts and ancillary agreements that accompany the transaction can be subject to all three sources of law. Agreements within the target country (e.g., distribution) are subject mainly to the target country's law. Some laws, however, (e.g., antitrust) can reach out from the home country and can affect a firm wherever it is operating.

Most legal textbooks on international commercial transactions provide checklists exporters should follow in their assessment of the legal environments applying to their business. For example, Ashegian and Ebrahami (1990) list eleven areas considered vital for firms wishing to trade internationally. These are:

1. Type of legal system (e.g., common law, code law, Islamic law
2. Judicial system load (potential delay in legal proceedings)
3. Appeals procedure (extent, fairness)
4. History of discrimination against foreign firms (if any)
5. Contract enforcement procedures (strict or lax)
6. Compensation award procedure
7. Stability of legal system
8. Arbitration practices
9. Stability of implementation of laws, regulations, and rules
10. Current revisions in administrative procedure
11. Existence of specialised structure for rule-making and adjudication

According to Fox (1988), export transactions are subject to high levels of risk, and so exporters must pay close attention to the legal environments they are dealing with. He states (1998, p. 38):

> . . . There are special risks in international trade, including war, the danger of carriage on the high seas, expropriation, currency fluctuations, boycotts, changes in government regulations, taxes, antitrust, dumping, public health and safety, and consumer and employee protection . . .

Much more care is needed in the contracting process, because international contracts can be very different than domestic ones. For example, the contract may be governed by an international agreement, such as the Vienna Convention. If so, it must be constituted according to those rules. In addition, language differences between the contracting parties mean that more care is needed in communicating the terms of the contract. Dispute resolution also becomes much more complex (Fox, 1992).

The rise of trading via the Internet has greatly complicated the international legal environment, especially with respect to conflicts of jurisdiction. There has been a rapid increase in legislation enacted by governments in attempts to control electronic trading and to retain taxation revenues.

In an ideal situation, an exporter will have a detailed knowledge of the legal environments affecting a particular transaction and will draft a legal strategy, centering on the contract, that will support broader corporate objectives (Yalpaala, 1994). The contract will be carefully planned, negotiated and drafted in a way that will deliver to the exporter

specific competitive advantages. Such a carefully drafted contract will anticipate and prevent disturbances for the life of the agreement and will reduce risk to an acceptable level (Fox, 1992).[1] The contract will be comprehensive, covering all areas relevant to the transaction, and will be "customised" to suit the particular needs of the parties involved. It will provide an agreed mode of dispute resolution, should a conflict arise that cannot be resolved by negotiation between the parties (Yalpaala, 1988). Once again, most legal texts set out the ideal requirements for international commercial contracts. For example, Fox (1992) declares that a contract for an international sale of goods should contain (at a minimum):

1. A quantity term
2. A price term
3. A payment term
4. A statement of how risk of loss is to be allocated
5. Performance clauses
6. Express/Implied warranties
7. Government approval clauses (if required)
8. Penalty clauses (protection against non-performance)
9. Dispute resolution clause
10. Choice of forum (where disputes are to be heard)
11. Choice of law (whose law governs the contract)

He particularly stresses the importance of written agreements (p. 38) and of clauses relating to choice of law (p. 101), an official language for the contract, dispute resolution, conditions precedent and subsequent (p. 119) and contract adaptation or renegotiation clauses (p. 69), where the contract is drafted in a fashion flexible enough to accommodate unexpected events.

Most textbooks on the subject (e.g., Mo, 1997) also highlight particular problem areas, such as the choice between use of "standard" or "custom-made" clauses, various rules of interpretation of contract terms, and the "*force majeure*" clause accounting for catastrophic events. The dispute resolution clause is of particular importance because a well-drafted agreement will mean that disputes can be handled quickly and inexpensively, with minimum ill-feeling on both sides. It will preserve the relationship as well as maintain positive company images in the marketplace.

"BEST PRACTICE" WITH RESPECT TO EUROPEAN UNION LAW

The European Union has three categories of legislation that affect exporters: These are:

1. Directives–These require that a particular legal outcome must be achieved, but allows each member country to introduce its own legislation for the purpose.
2. Regulations–These are EU laws that override all other country laws and apply equally in all member states.
3. Decisions of the EU Court of Justice–These have the same effect as regulations.

It is the directives that affect most aspects of European business, and cover such areas as advertising, distribution, product safety and so on. Exporters to the EU should have a good working knowledge of the directives that directly affect their transactions.

In addition, exporters should note that many EU laws have extra-territorial effect. The European Commission can impose penalties on an Australian company, even if it is *not* registered in the EU, or even if it does not have a place of operations in the EU. Similarly, they should note that jurisdictional issues in the EU are covered by the Brussels Convention of 1982 and the Rome Convention of 1990. These conventions establish which cases will be heard in which EU country. This may impose significant additional costs on an exporter involved in a dispute.

Australian exporters must realise that contract law in the EU is interpreted differently to the law in Australia. Most EU states have legal systems based on code law, as opposed to the Australian legal system, which is based largely on English common law. In code law countries, all the laws are written down, and there is a good deal of leeway for judicial interpretation of the law with respect to its application. Some key differences of particular interest to Australian exporters are:

1. The procedure in court is also quite different, with the judge taking a much more active role in obtaining evidence and establishing the facts and the truth of the particular case.
2. EU states often distinguish between "commercial" contracts, and may hear disputes over commercial contracts in courts especially established for the purpose.

3. Consideration (a reciprocal promise) is *not* necessary for existence of a contract (as it is in Australian and UK law).
4. An offer may be accepted at the time of receipt, not at the moment the acceptance was transmitted, as in Australia (e.g., the famous "postal" rule).
5. The offer often must be addressed to a specific person or organisation, otherwise it is not an offer.
6. Much legislation is based on the principle of subsidiarity–which means that legislation should not be enacted at the EU level if individual states can better achieve the same objective through their own policies and laws. This means that while the separate states have similar laws, they are not exactly the same. Some penalties may be less in some states than in others. The legality of exemption clauses and penalty clauses in contracts may vary from state to state. Knowledge of these differences is useful for strategy.

In general, Australian exporters should be familiar with the Common Commercial Policy of the EU, which sets out, especially in Articles 110 to 116 of the EEC treaty, the laws and practices relating to the import of goods and also the issues of subsidies and dumping. Regulation 2423/88 provides for imposition of dumping duties or countervailing duties when subsidised or dumped goods are found to cause harm to EC business (Moens and Flint, 1990).

Exporters also need to be aware of the Union's competition law (Articles 85-90 of the EEC Treaty) that are aimed at preventing distortions of trade. These rules have extraterritorial application, and are rigidly applied. Exporters should also be familiar with laws relating to customs duties, excise duties, and taxation, and, if dealing with governments, that government purchasing is controlled by a number of specific directives (88/295; 92/50).

Article 86 (and others) particularly seeks to prevent abuses by parties in dominant positions, such as limiting production, markets or technological developments to the prejudice of consumers, and refusal to sell to a customer unless certain conditions are met (Folsom et al., 1996). Once a dominant position is found, the EEC investigates.

In 1995, the EC directive on unfair contract terms came into effect (Hondius, 1994). The general test of unfairness set out in the Directive is:

> A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and ob-

ligations arising under the contract, to the detriment of the other party. (Article 3)

Examples are:

a. enabling the seller to alter the characteristics of the product or service being provided unilaterally; and
b. giving the seller the possibility of transferring his rights/obligations under the contract, where this may serve to reduce the guarantees to the consumer, without the latter's agreement (Hondius, 1994).

A more recent development is the CE mark (Conformité Européanne) that is awarded to products that meet the safety standards applying to all states of the EU. A number of products can only be sold with this mark, and penalties for sale without the mark are severe. Products covered (so far) by directives include construction and building products, machinery, toys and medical devices. To obtain the mark, exporters must manufacture the product in accordance with the European standard and arrange certification.

It can be seen from the above discussion that exporters to the EU need to be particularly aware of the changing legal environment at a number of different levels. They need to be aware of Directives, Regulations, Decisions of the EU as well as the variations to be found in legislation enacted at national level aimed at achieving particular trading objectives.

AUSTRALIA'S "SPECIAL RELATIONSHIP" WITH EU LAW

Of the 15 countries that currently make up the European Union, twelve (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Spain and Sweden) have signed the United Nations Convention on the International Sale of Goods (CISG), also known as the Vienna Convention. Australia is also a signatory to this convention, as well as the UNIDROIT (The International Institute for the Unification of Private Law) Principles for International Commercial Contracts, along with many other European countries. The UNIDROIT principles set out a uniform guide to contract negotiations, and the Vienna Convention governs the contracts formed between signatories. UNIDROIT principles have been widely

used in judicial proceedings (either in arbitration or in courts) and are widely referred to in the EU (Bonnell, 1996).

Australia has been deeply involved in European international law-making efforts for many years, on various UNIDROIT committees and studies, as well as becoming involved in many other agreements and conventions, such as:

- The 1961 Hague Foreign Public Documents Convention;
- The 1970 Hague Evidence Convention;
- The 1985 Hague Trusts Convention; and
- The 1985 UNCITRAL Model Law on International Commercial Arbitration.

Australia is also currently participating in the United Nations Commission on International Trade Law (UNCITRAL) Convention on Independent Guarantees and Standby Letters of Credit, and UNCITRAL Model Law on Legal Aspects of Electronic Data Exchange (EDI) and Related Means of Communication. Australia is also a supporter of the International Chamber of Commerce International Rules for the Interpretation of Trade Terms (INCOTERMS). These provide a detailed statement of what each party is required to do in reference to agreed trade terms (e.g., Cost, Insurance, Freight [CIF]) and provides a common set of rules for interpretation.

The Vienna Convention, which applies to Australian contracts with most of the countries in the EU, has a particularly European flavour to its law and has very different interpretation to Australian law in the areas of specific performance (a common contractual remedy in Europe, but not in Australia), damages (Articles 74, 77,78), validity (Article 4), avoidance (Articles 49, 63), transferred title, interpretation (Article 4) and the postal rule (see earlier). The Vienna Convention specifically excludes the *force majeure* clause, and the transfer of risk with transfer of title, as occurs in Australia. Unlike many international agreements, however, there is much flexibility built into the Vienna Convention, and this of interest because exporters can find many ways to avoid many of the apparent restrictions, or obtain a competitive advantage over another party.

If there is a dispute over a contract between signatories to the Convention, the dispute is usually settled by commercial arbitration. All terms and conditions, etc., will be determined according to the Convention, despite the understandings that may have been held by the contracting parties. Issues such as: *was the offer valid; was it withdrawn;*

was it irrevocable; was it accepted or rejected; was there a breach of the contract–all may be interpreted differently to Australian law. The remedies given may also be very different to those available for a similar dispute in Australia.

It can be seen that Australian exporters have little excuse for not being aware of the legal environment of the EU. Europe has long been an important destination for Australian exports, and Australia has been very active in Europe assisting the harmonisation process through involvement with all the major international legal organisations. There are EU offices in Australia specifically established to inform Australian businesses of developments in the EU, particularly with respect to changes in the law.

SOME QUESTIONS

Given the above, one would expect that Australian food companies exporting to Europe would be well versed in the EU legal environment and this would be reflected in their contracting and dispute resolution mechanisms. This would be particularly so for food exporters, where the product is politically sensitive and there is a high risk of loss due to the inherent perishability of the products. Any delays caused by legal problems or disputes might be catastrophic, so not only is freshness lost, there is also an impact on importers and distributors' perceptions of perceived reliability of supply.

In an exploratory study of marketing strategies used by Queensland seafood exporters in 1996, it was found by the author that that contracts used for sales to countries such as Japan and the USA were often standardised, simplistic, and very "open" with respect to contractual detail. In addition, exporters appeared to have very little knowledge of the countries they were dealing with, even though many had visited these countries several times, and overseas sales may have reached millions of dollars annually. These findings appeared counter-intuitive given the advice of the legal and marketing texts.

A search of the literature, however, suggested that perhaps there is a gap between theory and practice in this area. For example, a study by Macaulay (1963) found that most businessmen in his study (43 manufacturers in Wisconsin) paid little attention to legal issues in the course of their dealings. They used oral and written agreements, but these were generally so imprecise that most were not legally enforceable. Most did not consult lawyers, and even if they did have a sound written contract

prepared with the assistance of lawyers, they often proceeded to engage in behaviours which reduced its effect, such as deleting key clauses which might suggest the other party is not trustworthy. A similar study by Beale and Dugdale (1974) in the UK (19 engineering firms) had almost identical results.

There are a number of explanations for such apparently irrational behaviour. Adams (1974) coined the term "non-contractual business dealings" to describe the situation. The firm may describe their transactions as being based on formal contracts, but there is often no intention to be legally bound. These agreements between the parties are not intended to be supported by the law.

Gava (1977) suggested two other explanations. The first is that where there is high trust in a business relationship, an unwritten "businessmen's code" ensures high compliance. This informal code contains elements such as "you don't break your promise" and "you stand by your product." A second view, based on economics, is that where both sides have substantial investments in a transaction, and these resources have little use for other purposes (i.e., tranfer costs are high), both sides are locked in to the transaction and have an incentive for achieving good outcomes for both sides, one of which is the opportunity to continue doing business. Both these views consider the market as being quite capable of settling disputes without recourse to the law. A fourth view, from the legal side, the relational school of contract theory, is that contracts are more than a series of one-off exchanges, and are really a long-term relationship involving non-contractual elements such as friendship, reputation, interdependence, flexibility and responsiveness (Starke et al., 1992).

These ideas suggested a number of research questions:

1. Are Australian food export firms exporting to the EU familiar with (have a detailed knowledge of) the EU legal environment?
2. Do Australian firms exporting to the EU have a detailed knowledge of the Vienna Convention?
3. Do Australian firms exporting to the EU have a legal strategy?
4. Do firms with a legal strategy use the contract as a vehicle for all or part of that strategy?
5. Are contracts with the EU detailed and in line with recommendations as per UNIDROIT and INCOTERMS?
6. Do contracts have dispute resolution clauses which reflect requirements of the Vienna Convention, with its emphasis on arbitration?

7. Do Australian firms trading with the EU evidence behaviours such as "non-contractual business dealings?"

THE SURVEY

An opportunity to seek answers to these questions arose as part of a wider study of legal aspects of food exporting. Information was obtained from a survey of all Queensland food exporters conducted and completed in 1998, and the partial results of an ongoing survey of food exporters in other states of Australia, which proceeded in July 1999. The same survey form was used for both surveys. The survey instrument was a mail survey of all firms listing themselves as "food exporters" in the various food categories (e.g., dairy products, meats, fruits, vegetables, nuts, etc.) in the Telecom Yellow Pages (Business Telephone Numbers) for all the States and Territories of Australia.

An exploratory study was conducted by personal interviews with five food exporting firms in South-East Queensland in 1998 to refine the content of the questionnaire in a situation where direct feedback could be obtained. The companies personally interviewed ranged in size from large (> 20 employees) to small (2-4 employees).

Questions were derived from the international legal literature and from discussions with leading international law firms in Brisbane, and were a mix of closed and open-ended questions. The survey was addressed to the manager and was designed to be completed in fifteen minutes. It consisted of eighteen questions that gathered information on legal aspects of the firm's overseas trading activities, and seven questions that gathered information specific to the firm. Questions relating to legal aspects of trading included the extent of use of legal services, extent of research done into legal aspects, legal problems experienced in export operations, and the nature and details of contracts used. Questions specific to the company included the size of the company (measured by the number of employees), the number of years in exporting, the legal expertise of staff, and the nature of food products exported, and their destinations.

A reminder note and another copy of the survey form was sent out three weeks after first mail-out, when the flow of responses had peaked and then markedly declined, and a random sample of twenty late respondents (those responding more than three weeks after second mail-out) were telephoned to ensure there was no significant late response bias. No such bias was evident. The survey (at that stage) generated 186 useable replies. While the survey was not designed to focus primarily on the Australia-EU relationship, 84 respondents in the survey as at July 1999 included the EU as an export destination for their product. It was the responses of these firms that were analysed. This sample was considered representative for the purposes of this study and is comparable with other studies done on exporting, especially as all exporters surveyed were of one type (food) (Kau and Tan, 1988; Harrison, 1990; Dean et al., 1998).

The study was limited by two main factors. The first was the deliberately short length of the mail survey questionnaire, a constraint imposed to improve response from food export firms. It was revealed in exploratory studies that food export firms are subject to many mandatory government surveys as well as those from well-meaning researchers, and firms were feeling somewhat over-surveyed. This limited the scope of the questions asked.

The second was the limitation of the sample to firms advertising in the Yellow Pages. This was done in order to locate exporters in current practice. It was found in exploratory work that lists provided by government departments were often very out of date. There appears to be both a high turnover of firms in the industry as well as many firms who are mainly domestic traders but who list themselves as exporters in the hope of attracting business. These might be referred to as "opportunistic" or "hopeful" exporters. This aspect became evident only after the survey was complete.

While the questions in the survey were designed to examine legal strategies of food exporters generally, and not specifically exporting to the EU, it was found that the survey provided some useful insights into the hypotheses listed.

FINDINGS

The results of the survey overall were that most firms (81%) exporting to the EU used contracts that were very simple in content, few using the full range of terms recommended for 'ideal' international practice (see earlier). Most (73%) reported that they used standard clauses as developed themselves over time or as recommended by the various industry associations. Only 26% of firms reported that they used "customised" clauses for each customer. However, 27.4% of firms indicated that they used INCOTERMS (e.g., C.I.F., F.A.S., etc.) as part of normal trading.

Most firms (69%) reported that they did not have a legal strategy, and that they did not use the contract in a way designed to give them any particular strategic advantage. Only five firms used the contract as a basis for legal strategy. Surprisingly, most (72%) reported that they were not concerned whether or not they had a legally enforceable contract.

With respect to disputes, 48% reported that they had experienced problems. Most were related to specifications, with the next major categories reported as delivery dates and damages. As to the resolution of disputes, most (60%) were resolved by personal negotiations, around 12% by commercial mediation, and 5% by litigation. Only 48% of respondents had a dispute resolution clause in their contracts.

While a question on specific knowledge of EU law was not asked directly in this survey, a telephone call to a random sample of 15 of the 84 respondents revealed that most firms had little or no knowledge of EU law, the Vienna Convention, or UNIDROIT. Most, however, were aware of INCOTERMS.

Few (30%) of the firms who exported to the EU reported that they used legal services at any stage of their export operations. Some firms reported that they did have in-house lawyers on staff. These were typically very large firms. Most firms (90%) reported that they had never experienced problems with customs or anti-dumping legislation.

In terms of the research questions, the evidence suggests that the first six should be answered in the negative. As to question seven it was clear from the responses to the open ended questions that Australian food exporters were ambivalent about the legal enforceability of their contracts. On the one hand they emphasised the importance of the personal relationship, but on the other still desired at least some of the security offered by a written contract, however poorly drafted. This was especially so for one-off transactions or where the relationship was new. Firms in long-standing relationships relied far more on the relationship than on contracts secured in law. Many referred to personal relationships with EU partners as the primary driver of their trading business. The responses suggest that both the relationship model described by Starke et al. (1992) *and* an international business code are primarily involved. Further work is required to clarify this issue.

DISCUSSION

It is clear that, despite the textbooks, food exporters trade successfully with the EU with little knowledge of the EU legal environment.

The fact that the Vienna Convention applies automatically to most of the contracts between Australia and the EU is not appreciated by most of the respondents, even though it is written into legislation in each Australian state.

The survey results suggested that most exporters use letters of credit as the primary means of exchange, and that this removes much of the perceived risk from the contract. In addition, it was found in the follow-up calls that most exporters relied on the personal relationship between the trading partners to solve problems via personal negotiation than on any dispute resolution mechanism contained in a contract. One respondent stated that an insistence on detailed written contracts and the use of letters of credit was often a sure way to lose business in Europe and also with the United States. This appears to be a competitive factor. Firms that are prepared to take more risk appear to gain more business.

On the other hand, the fact that 48% of the respondents had experienced disputes with EU trading partners over elements such as specifications and delivery dates remains a cause for concern. It was also reported by two respondents that where they had a dispute that they couldn't resolve by personal negotiations, they preferred to write off the loss, putting the event down to experience, and quickly moving on. It was felt that the loss of time, expense, and potential loss of firm reputation in the industry was not worth the value of the shipment in question. It was noted that both of these firms were large. Small firms may not be able to absorb such losses.

Other firms reported that they are able to insure against loss through Australia's Export Finance and Insurance Corporation (EFIC), which is underwritten by the Australian government. This places the burden of risk, much of which exporters might avoid, on the public purse.

CONCLUSION

The implications for management from the findings of this survey are that although many disputes with the EU may be resolved by personal negotiation, and a large part of the risk offset by the use of letters of credit or by government-subsidised insurance, substantial legal risk still remains. The fact that most Australian respondents were unaware of the Vienna Convention is particularly disturbing, as most EU countries, as well as Australia, are signatories, and the Vienna Convention is incorporated into domestic legislation. It is Australian law. The contract will be governed at all stages by the Convention.

The impression gained from the survey is that because Australian exporters can offset much of the legal risk through a reliance on personal negotiation, the use of letters of credit, and export insurance, the incentive for exporters to do the required legal research, or seek the assistance of an experienced international trade lawyer, is reduced. Most firms were unfamiliar with the notion of legal research and developing a legal strategy as the foundation of other marketing strategies, and the central role of the contract as a possible source of competitive advantage.

Recent survey research by the author of law firms in Queensland (Williams, 2000, unpublished) suggests that the level of capacity for law firms to give advice and to deal with legal aspects of exporting is high (64% of firms surveyed reported that they had expertise in international commercial transactions and international trade law). It was thought that one reason for the poor use of legal services may have been the lack of availability of such services, but this is clearly not the case.

Recently, the EU signed a memorandum extending the European Business Cooperation Network to Australia (known as BC-Net). This network of consultants is aimed at assisting Australian and EU enterprises establish commercial links and also to provide information to exporters. The European-Australia Chamber of Industry and Commerce is established in Australia with the objective of promotion of economic and commercial links between Australia and Europe. Other organisations present in Australia include the Australian Council for Europe (ACE) and the various Centres for European Studies within Australian universities. For example, the University of Queensland law library maintains an EU document centre holding all EU publications, and access is available free of charge. Australia also recently signed an Agreement on Mutual Recognition in Relation to Conformity Assessment with the EU, which should substantially reduce costs for Australian exporters (Anon, 1998).

Given the above, it is clear that there are substantial legal resources in Australia readily available to exporters, but is also clear that much of this important information is not getting through. Much more could be done to encourage exporters to seek this information and more could be done to bring important information on the EU legal environment to the attention of exporters. For example, the various government bodies and industry associations could be encouraged to run seminar and training sessions for exporters to inform them of current best practice with respect to the EU and new developments of interest. More information could be made directly available through hard-copy or on-line information services, or free via the internet, in much the same way Australia's

Commonwealth Quarantine Service distributes information. While information on EU law can be accessed via the European server on *http://europa.eu.int*, it is difficult to extract material immediately useable by Australian export firms. Such processing of information into a simpler and more useable form could be done at low cost by the relevant government departments or industry associations.

NOTE

1. Ashegian and Ebrahami (1996) define a legal risk strategy as the process of forecasting legal events in order to protect against loss *or* to help the firm take advantage of the opportunities that are available.

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Submitted: December 2001
First Revision: March 2002
Second Revision: May 2002
Accepted: July 2002

Making the Most Out of Export Information: An Exploratory Study of UK and New Zealand Exporters

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ABSTRACT. Export information is a prerequisite to effective export decision-making and ultimately impacts on export performance. This study measures the combined effects of export information acquisition and use on the export performance of exporting companies from two geographically distant countries, namely the UK and New Zealand. The overall results show that the extent to which export information is acquired is positively related to the extent of export information use, and that the extent of export information use is positively related to export performance. Additionally, the findings demonstrate a certain degree of consistency between the UK and New Zealand samples, in terms of the export information sources which impact on export information use.

KEYWORDS. Export information acquisition, export information use, export performance

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