

Legal News



The Cassis-de-Dijon principle: Application under Swiss law

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Dear clients and business friends

With the implementation of the revised federal law governing technical restraints on trade (THG) on 1 July 2010, the so-called Cassis-de-Dijon principle is to come into force unilaterally in Switzerland for certain products from the European Union (EU) or from the European Economic Community (EEC).

Products which have been legitimately placed on the market in a member state of the EU or EEC can therefore also circulate freely in future in Switzerland with certain exceptions.

The incorporation of this principle under Swiss law is intended to reduce the price differences with respect to the EU and EEC and in particular to reduce the prices of certain imported goods.

In addition, Swiss companies manufacturing products for export to an EU or EEC state or for the Swiss market will in future have the opportunity to produce in accordance with the technical regulations of the EU or of an EU or EEC member state.

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1. History of the Cassis-de-Dijon principle

The idea of the Cassis-de-Dijon principle dates back to the judgement of the same name by the European Court of Justice (EuGH) on 20 February 1979. This concerned a ban on the import of a French liqueur (Cassis de Dijon) to German national territory, since the alcoholic content was too low to comply with German legislation.

The EuGH was of the opinion that the ban was an obstacle to the free movement of goods (Art. 28 of the EU agreement). It stated that the product had been legitimately placed on the market in France, so that the German authorities could not ban its import and marketing.

Accordingly the Cassis-de-Dijon principle requires a product, which has been legitimately placed on the market in an EU or EEC country, also to circulate freely in the remaining member states.

This principle therefore makes a contribution towards the creation of a unified market.

2. Purpose of the Cassis-de-Dijon principle in Switzerland

Since Switzerland does not belong to either the EU or the EEC, it was not obliged to apply the Cassis-de-Dijon principle in practice for products from member states. Although specific strategies of the Swiss authorities were intended to provide a remedy, various technical restraints on trade have contributed to the

high level of prices in Switzerland compared to the EU for some 20 years.

With the revised federal law concerning the technical restraints on trade (THG), which will become effective on 1 July 2010, Swiss legislators intend to fight against the technical restraints on trade for certain imports from the EU by the autonomous application of the Cassis-de-Dijon principle and therefore make a contribution towards reducing the price of some goods.

3. Statutory innovations

3.1. Basic principle

Swiss legislators adopted the revision of the THG on 12 June 2009. This revised law introduces a unilateral application of the Cassis-de-Dijon principle for certain products from the EU (and/or EEC).

This means that certain products marketed legitimately in the EU or EEC, which are imported into Switzerland, may normally also circulate here without further restriction. Restrictions on imports of this kind are basically now only permissible in the case of overriding public interests.

In order not to disadvantage or discriminate against Swiss producers, the law stipulates among other things that:

- products manufactured in Switzerland for export to a country in the EU or EEC can also be placed on the market in Switzerland if they can be legitimately marketed in the original country of destination;

- ▶ Swiss companies, which do not export, can manufacture their products according to EU regulations or, if they are not reconciled, according to the regulations of an individual EU member state.

If the technical regulations of an individual state (member of the EU or EEC) are observed, Swiss producers can therefore manufacture products in future for the entire European market (including Switzerland).

3.2. Exceptions

Foodstuffs: The revised THG stipulates a special ruling for foodstuffs, which do not comply with the regulations effective in Switzerland.

The marketing of foodstuffs of this kind in Switzerland is dependent on special permission in the form of a general directive from the federal department of health. This is granted if the food:

- ▶ complies with EU regulations or the regulations of an EU/EEC country and has been legitimately placed on the market there;
- ▶ complies with the general level of protection in Switzerland;
- ▶ satisfies the requirements of the product information.

Products subject to an admission procedure: In accordance with the practice followed in the EU, the Cassis-de-Dijon principle does not apply to products, for which the marketing is subject to an admission procedure (e.g. pharmaceutical products, etc.).

Switzerland will therefore not apply the Cassis-de-Dijon principle to products subject to an admission procedure.

There is a general trend, however, towards simplifying the procedure in future, namely for products, which are already permitted outside the country according to regulations similar to those in Switzerland.

Negative list: With an executive order the federal council can deviate from the Cassis-de-Dijon principle in order to protect predominantly public interests. Included in the negative list above all, therefore, are sugared alcoholic beverages (Alcopops) and eggs from non-free-range chickens.

4. Conclusion

It can be seen that the unilateral application of the Cassis-de-Dijon principle may contribute towards reconciling the marketing of certain goods with the EU and to price reductions.

It will be interesting in future to follow the effects of this unilateral deregulation, not only on the price of the imported products, but in particular on the manufacturing costs of Swiss products. It could be worthwhile for Swiss manufacturers to become familiar with the technical requirements effective in the EU or EEC and to profit from any alleviations in foreign regulations.

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Imprint

Legal News

Electronic publication in German, French and English.

Designed and produced by

Ernst & Young Ltd
Marketing and External Communications
P.O. Box
8022 Zurich

Subscriptions / address changes

www.ey.com/ch/newsletter

www.ey.com/ch/legal

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