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Dear Sirs

BALANCE OF COMPETENCES: REVIEW OF THE INTERNAL MARKET

The UK Chamber of Shipping, the trade association for the UK shipping industry, is pleased to respond to your call for evidence to your review of the Internal Market. Our membership – which comprises 140 members, who operate a total of nearly 1,000 ships, including ferries, container ships, tankers, and bulk carriers – has extensive experience of carrying goods within the Internal Market and on sailings into and out of the EU which are subject to customs control.

The UK Chamber of Shipping accordingly has a keen interest both in the functioning of the Internal Market and in the facilitation of trade between the EU and the rest of the world – as HMRC will be aware from our participation in the Joint Customs Consultative Committee for the last 40 years. Our answers below are limited to questions 1-7 and 11-12, as we are not in a position to respond to questions 8-10 on intellectual property rights.

1. *What do you see as the advantages and disadvantages of EU action on the free movement of goods? How might the national interest be served by action being taken in this field at a different level (for example, at the WTO), either in addition to or as an alternative to EU action?*

Free movement within the Internal Market

In relation to free movement of goods within the Internal Market, EU action has been wholly advantageous. The creation of the Internal Market opened new markets for UK goods, gave UK consumers full access to European source markets, and greatly simplified the movement of those goods between the UK and other EU countries. Statistics on trade growth within the EU since the creation of the Internal Market are set out in answer to question 3 below.

The removal of customs (and other) controls on passengers' luggage when travelling within the Internal Market has also been wholly advantageous: removing an element of anxiety and hassle from holiday travel, easing business travel generally, and creating (in some contexts, like shopping for wine in France) an incentive to visit new places. This is clearly to the advantage (and enjoyment) of UK citizens, and all the businesses in the travel sector that serve them.

Ongoing EU action to uphold that right of free movement, as established (now) in the Treaty on the Functioning of the European Union, is similarly advantageous. There is, of course, a

role for national Courts to ensure that Member States fulfil their duties under the Treaty in relation to the Internal Market – but the prospect of EU action, with an accessible judicial process and effective remedies (large fines on miscreant Member States etc), is a necessary backstop.

It is not obvious that any other international body, such as the WTO, could have achieved an equivalent effect; and it is certain that no international organisation could enforce the Internal Market as effectively as the EU does.

Trade beyond the Internal Market

EU action in relation to the movement of goods into or out of the Internal Market has been less obviously advantageous. The existence of the Internal Market undoubtedly necessitates a single set of rules governing the movement of goods into it, but the shape of those rules and the manner in which they are set is less than optimal.

When the Internal Market was created in the 1990s, onerous new procedural constraints (mostly on health, rather than customs grounds) were imposed on long-established UK trades, such as meat and dairy imports from Australia and New Zealand – to the clear disadvantage of the merchants concerned and of the shipping lines that carried those trades.

Despite the progressive lowering of customs tariffs, which is inherently welcome and undoubtedly stimulates economic activity, the EU continues to impose complex (and costly) procedures on the actual movement of goods into and out of the Internal Market – see our answer to question 6 below.

There is no obvious scope for another body to regulate trade into and out of the Internal Market. The management of the external border of the EU is plainly an EU responsibility, but there is ample scope for it to be done in a manner that better facilitates trade.

2. To what extent do you think EU action on the free movement of goods helps UK businesses?

EU action on the free movement of goods is vital to UK businesses. Trading relationships within the Internal Market are predicated on the ability to buy and sell goods freely and the knowledge that the goods in question will be able to move freely from seller to buyer. These freedoms are established in the Treaty, but threats to them nonetheless arise from time to time. EU action (or the prospect of it) is absolutely vital in guarding against such threats: it underpins trade.

The European Commission's record of taking action against Member States that have sought to exclude particular products from elsewhere in the EU from their home markets is well known. As well as providing an effective remedy in individual cases, this also doubtless acts as an effective deterrent to other instances in which Member States may be tempted to erect protectionist barriers.

Both the prospect and reality of EU action are particularly important to UK businesses and consumers, because of HM Government's track record of seeking to frustrate the operation of the internal market, ostensibly on anti-smuggling grounds. Repeated attempts have been made since the late 1990s to deter UK residents from taking advantage of the Internal Market by shopping in neighbouring countries. In 2002 (in the Hoverspeed judgment), UK law on cross-Channel shopping was found to be wrong, and HM Customs & Excise's practice of confiscating shoppers' vehicles was found to be unreasonable. Such practices have largely ceased, but great publicity is now given to "indicative levels" in an obvious effort to deter large purchases. In 2011, the UK Border Agency even publicised these levels, entirely wrongly, as "limits" that shoppers had to "comply with".

Various UK Government Agencies have also sought over the last 12 years or so to reintroduce, in effect, a requirement for customs declarations on movements of goods within the internal market. These are usually cast as a requirement on the haulier or ferry operator to notify full details of the goods (and of their buyers and sellers, etc), rather than as a requirement on the importer to lodge a customs declaration, but the effect would be the same. The Immigration, Asylum and Nationality Act 2006 created such a requirement, at Section 33, to provide such notifications to the Police (for sharing with HMRC). The UK Chamber of Shipping also has direct knowledge of several other unpublicised instances where HMRC and other Agencies have asserted equivalent requirements, either on the basis that Article 36 of the Treaty allows for any control regime that is badged as having a "public security" purpose, or simply on the basis that they will stop all lorries disembarking from a ferry if they are not provided with such notifications.

In all these instances, the prospect of EU action has sufficed (eventually) to dissuade the Agencies and Departments concerned from pursuing their intended requirements. It is certain that, had that prospect not existed, they would indeed have imposed those requirements, and put an end to free movement of goods within the Internal Market – to the detriment of all UK businesses concerned.

Although it is beyond the scope of this review, it is worth noting that the primary legal base for all HMRC control activity, the Customs and Excise Management Act 1979, pre-dates the creation of the Internal Market by 13 years and has not been updated to reflect the fact that goods may move freely between the UK and other EU Member States. The combination of inappropriate law and a dogged reluctance within HM Government to accept that goods moving within the Internal Market are not liable to controls when crossing the UK border creates an ongoing risk to free movement, against which the prospect of EU action provides the only reliable protection for UK businesses.

3. To what extent has EU action on the free movement of goods brought additional costs and /or benefits to you when trading with countries inside and outside the EU?

<u>Trade with countries inside the EU</u>

The existence of the Internal Market has brought tremendous economic benefits for all businesses engaged in trading within it. For the shipping sector, the greatest benefit is the growth in goods traffic between the UK and other Member States – best measured by the volume of road freight between the UK and the Continent (since almost all of these lorries will be engaged on journeys within the Internal Market). The number of goods vehicles travelling to/from the UK more than doubled from 1.4 million in 1992 to a peak of 2.9 million in 2007, before falling back to 2.4 million last year as a result of the economic recession.

All of these lorries are carried on ferries (or the Channel Tunnel), and freight traffic is now the motor of the UK ferry sector. It forms the core of ferry operators' business plans, and has led to the development of a new type of ship: the "ro-pax", very large ferries that are designed primarily to carry lorries rather than cars. Such vessels now dominate the UK ferry sector. Ferry schedules are similarly now oriented around hauliers' delivery schedules, rather than tourist travel patterns. The predictability of freight transport schedules within the Internal Market, made possible by the removal of customs controls, is vital to the highly efficient just-in-time delivery model on which large manufacturers and retailers rely.

EU action has been responsible for creating all these benefits, and remains responsible for ensuring that they are maintained.

Trade with countries outside the EU

The UK's trade in goods with countries outside the EU, as measured in numbers of containers shipped, has grown by a similar degree over the lifetime of the Internal Market: from 2.7 million in 1992 to a peak of 5.4 million in 2007, before falling back to just less than 5 million in 2010. The role of EU action in this context, however, is less obvious; much of the growth is usually attributed to rapid economic growth in countries outside, most notably China.

Moreover, EU action has imposed additional cost, in the form of procedural complexity, on trade with countries outside the EU. Examples are given in answer to question 6 below, but no figures for the resulting costs are available.

4. What types of EU action would be helpful or unhelpful for your activities as a business and/or as a consumer in the Internal Market?

EU action in relation to the carriage of goods by sea within the Internal Market can broadly be classed into three types.

1) Deregulation. The removal of burdens imposed by EU law on maritime traffic within the Internal Market would be helpful. Maintenance of those burdens would be unhelpful.

- Statistical reporting. Directive 2009/42 imposes a requirement for statistical reporting of movements of goods by sea within the Internal Market. Prior to 1993, such statistics were collected as a by-product of customs declarations; and, clearly, generating data for statistical purposes offsets the benefit of not having to generate it for customs purposes.
- Customs controls. The EU Customs Code discriminates against goods moving within the Internal Market by sea, rather than by land. Goods arriving from another Member State over a land boundary are assumed to be in free circulation. Goods travelling between the same two Member States by sea are assumed not to be in free circulation, unless carried on an authorised "regular shipping service" – leading to additional costs. This discrimination is based on the notion that Customs do not know where a ship has actually come from – a justification which has always been feeble and is now, when Customs can and do track the movement of every vessel electronically, entirely groundless and bogus.
- Ships Reporting. Directive 2010/65 similarly imposes a requirement on all ships carrying goods within the Internal Market, unless authorised as "regular shipping services", to report their movements to Customs or another competent authority. For same reasons as above in relation to controls on the goods, such reporting requirements are redundant and discriminatory.
- Environmental reporting. Under the Safe Sea Net programme, which exists in the UK as CERS (the Consolidated European Reporting System), ships trading within the Internal Market are required to generate a range of reports on their movement, cargoes, security arrangements, and waste disposal. In effect, trade within the Internal Market has been made conditional upon filing these reports, and the movement of the goods concerned is no longer free.
- Tax. Clearly, the disapplication of VAT on intra-EU maritime freight (by treating voyages between EU Member States as international voyages, to VAT does not apply) would be helpful, but there is no prospect of any such change.

2) Avoidance of new regulation. Similarly, it would be helpful if the EU were to avoid imposing new regulatory burdens and costs on movements of goods and ships within the Internal Market.

- Environmental restrictions. These are innumerable, but the imposition in January 2015 of a limit of 0.1% sulphur content on the exhaust emissions of ships trading between the UK and the Continent looks set to be particularly disruptive to the movement of goods within the Internal Market, significantly increasing fuel costs and possibly leading to the

closure of some long established ferry routes (and, ironically in view of the green objective of the regime, displacing traffic onto the roads).

- Tax. The European Commission's periodic attempts to apply VAT to passenger fares on sailings within the Internal Market and to restaurant catering sales on board such sailings threaten to disrupt the established business model for the provision of ferry services on which the Internal Market relies. The Commission has just last month (June) initiated a new study on a revision to the current arrangements, despite acknowledging only a year ago that there was no enthusiasm among Member States for any change.

3) Watchdog against national barriers. It would be particularly helpful – and it is clearly necessary – for the EU to remain on the alert for attempts by Member States to erect barriers to the free movement of goods within the Internal Market and to take action as necessary when they do so. Obvious examples of barriers of which a real risk remains include:

- Rogue controls, such as "requirements" for routine reporting of goods for anti-smuggling or security (or any other) purposes, or routine interventions in the physical movement of goods between Member States on similar bogus grounds.
- Interventions in the movement of vehicles between Member States, ostensibly on roadworthiness grounds, that interfere with the free movement of goods, especially when these interventions are targeted at vehicles registered in other Member States; or to collect road tolls or enforce unpaid traffic fines; or undue examination of drivers' passports and other documents.
- Obstruction by third parties, such as blockades of French ports by farmers, fishermen, or strikers, where EU action could help to ensure that the Member State concerned clears the obstruction immediately.

5. *To what extent do you think the harmonisation of national laws through EU legislation (as opposed to international treaties) is helpful or unhelpful to your activities as a business and/or as a consumer in the Internal Market? In your experience do Member States take a consistent approach to implementing and enforcing EU rules? Please give examples.*

EU harmonisation of national laws relating to ships or governing the movements of goods by sea within the internal market has been generally unhelpful. Typically, the process does not begin – as it unquestionably ought to – with a consideration from first principles of whether the topic should be regulated at all. Moreover, the process too often takes a lowest common denominator approach, with the effect that nothing gets any easier, and the outcome has been excessively prescriptive.

The EU harmonisation of ship's reporting, which resulted in Directive 2010/65, illustrates the problem well. There was no consideration of whether reporting ships' arrival in port any longer served a useful purpose now that all ships' movements are tracked electronically in real time, and the Directive prescribes the reporting of data (and the use of particular forms) that had passed out of use in the UK some years ago because they had been recognised to be redundant.

6. *Do you think that the EU strikes the right balance between regulating imports and exports and facilitating international trade?*

We take this question to apply only to trade with countries outside the EU, as the legal concepts of import and export do not apply to movements of goods within the internal market. The answer is "no", for two main reasons.

Firstly, the EU generally exhibits a readiness (and often an enthusiasm) to regulate, heedless of the cost to international trade. The requirement to report incoming imports to

Customs prior to arrival in the EU, which took effect in 2011, for example, was imposed without any regard to the compliance cost to the trade. Nor were the "benefits" ever set out in anything other than the most superficial terms. The plain purpose for introducing the regime was to match a similar requirement that had been imposed (similarly without regard to cost) in the USA.

Similarly, in 2006 (through Regulation 1013/2006), the EU created an entire regime of controls on exports of waste – including plastics and paper for recycling, which comprise a significant volume of UK exports. This regime operates in parallel with, but entirely separately from, the general regime of Customs controls of exports, leading to incompatible processes and duplicate compliance costs for shipping lines and other businesses affected. Trade facilitation was completely disregarded.

Secondly and more generally, the EU model for regulating imports and exports relies on a transaction-based control model – ie an individual declaration for every consignment – which may suit trucks crossing the EU's eastern frontier but is unhelpful in the context of carriage by sea, where a single ship carries many thousands of containers. Moreover, alongside the requirement for electronic declarations, the EU control model also prescribes an "accompanying document" (for Transit and Export purposes, and with a similar arrangement for excise) which must travel with the goods in order to serve as a basis for customs controls during the journey. Again, this may suit road haulage but is entirely inappropriate for carriage by sea (where mid-journey inspections do not happen and documents travel separately), but the EU insists upon it, regardless of its obvious faults and excessive cost.

It is important to note, however, that the inconvenience and cost of these EU regulations for UK businesses is often exacerbated by the way in which they are implemented in the UK. Implementation of the regime of controls on waste exports was entrusted to the Environment Agency, rather than to HMRC, thus ensuring that there would no integration with general export controls. HM Government sought to extend the EU regime for pre-arrival reporting of imports beyond imports, to include goods travelling within the Internal Market as well. And while HMRC sets service standards for processing EU import and export entries, it has refused (despite repeated requests) to set any comparable standards for the X-ray and other physical examinations it performs for UK anti-smuggling purposes. Specifically, it has refused to give a commitment to examine a consignment within a set time period from selecting it for examination; and goods have on occasion been held on the quayside at UK ports for several days awaiting examination, for no reason other than poor organisation.

7. Do you think the UK's ability to effectively regulate cross-border movements of goods would be better, worse or broadly the same as the result of more or less EU action? Please provide evidence or examples to illustrate your point.

Broadly the same. The crucial determinant of effectiveness is the extent to which controls do not impede the movement of goods that are either in free circulation or, if not, are being moved in full compliance with all customs requirements. More EU action appears unlikely to inhibit further UK regulation. And, while less EU action might be likely to allow the UK to rely on less obstructive audit-based controls for fiscal purposes, the resulting benefit would almost certainly be nullified by the imposition of transaction-based frontier controls for security or anti-smuggling purposes.

11. What future challenges/opportunities do you think will affect the free movement of goods and what impact do you think these might have?

The greatest challenge to the free movement of goods undoubtedly arises from restraints imposed by UK control agencies on goods arriving in the UK from other Member States, and on the vehicles in which they are being carried and on the individuals driving those vehicles.

HM Government exhibits an institutional propensity to respond to a wide variety of public policy imperatives by seeking to restrict traffic arriving from overseas, regardless of its origin. Without an effective EU safeguard, to ensure that such restrictions are not applied to goods moving within the internal market, it appears likely that free movement will be prejudiced.

A second challenge comes from the propensity of the EU to impose ever greater costs on ships sailing within the internal market, in the name of environmental protection – whether through more expensive fuel, or complex reporting and procedural requirements.

The greatest opportunity, by contrast, lies in a fundamental review and updating of UK customs law, and in particular the Customs and Excise Management Act 1979, to reflect the existence of the Internal Market (and of roll-on/roll-off freight, and electronic systems). The process of re-casting the law from first principles, with the free movement of goods as the starting point, will necessitate a review of the controls practices that arise from it and should cause incompatible ones to cease.

12. Do you have any other general comments that have not been addressed above?

For goods to move freely, it is not sufficient for the goods themselves to be free of restraints; the means of transport (be it a ship, lorry or train) needs to be equally free of restraints. This review of the free movement of goods within the internal market needs to have regard to the freedom of the movement of means of transport as well as of goods. There is scope for the regulation of the movement of ships and the regulation of the movement of goods to be much more closely co-ordinated. Both in the EU and in the UK, different bodies are responsible for each.

The UK Chamber of Shipping would be pleased to expand on any of these answers in discussions if you would find it helpful.

A copy of this letter goes to the Department for Transport, for their information.

Yours faithfully

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