



BALANCE OF COMPETENCES BETWEEN THE UK AND THE EU
CONSULTATION ON INTERNAL MARKET: FREE MOVEMENT OF GOODS,
INCLUDING THE EU CUSTOMS UNION AND INTELLECTUAL PROPERTY RIGHTS
SCOTCH WHISKY ASSOCIATION COMMENTS

Overview

The Scotch Whisky Association (SWA) welcomes the opportunity to provide input to the UK government's Balance of Competences review.

The SWA is the industry's officially recognised representative body, responsible for protecting and promoting Scotch Whisky both at home and abroad. The Association's members export to over 200 markets worldwide; in 2012 industry exports were worth £4.27 billion, representing nearly 25% of all UK food and drink exports. (With member companies also owning the import and sales teams in many overseas markets, the real value to the industry and UK plc is far higher.)

In 2012, sales of Scotch Whisky within the then 27 EU Member States totalled more than half a billion bottles, or about 40% of the industry's volumes. The EU is vital to the industry's long term sustainability, both as an internal market and as a strong voice in international trade negotiations.

The trade environment within the EU internal market, in which one set of common rules applies, is immeasurably simpler than the alternative in which 28 different regulatory regimes would operate. The EU rules, agreed with considerable and very helpful input from UK officials and MEPs, impact on almost every facet of the trade in Scotch Whisky. These include: spirits definitions; protection of 'geographical indications' (such as Scotch Whisky); labelling; taxation; a standardised range of bottle sizes; holding and movement of excisable products; and environmental issues.

While the internal market is not perfect, the existing arrangements permit the UK Government to help shape the rules which govern it; they also greatly facilitate the resolution of problems arising from the inappropriate application of EU rules. Securing and maintaining an optimal trading environment requires a strong UK presence when legislation is being prepared or amended.

The influence of the EU extends well beyond the single market. The Commission, again with considerable input from UK officials, has been a strong and effective supporter of the industry's wider interests in international trade negotiations whether at the multilateral, regional or bilateral level. It has also successfully secured the removal of tax and other discrimination against Scotch Whisky in third countries using the World Trade Organisation's dispute settlement mechanism. As the world's foremost internationally traded spirit drink, Scotch Whisky derives enormous benefit from the EU's expertise and negotiating muscle in the areas of trade policy and market access globally.

Consequently, the SWA is a strong supporter of maintaining the UK's active involvement within the EU. In the fields of internal market regulatory harmonisation and international trade policy, we see no issues which require subsidiarity or to be repatriated to national level.

In the following sections we highlight our main observations concerning some of the questions in the consultation document.

Free movement of goods within the EU

- The EU is the world's largest trading bloc. The free movement of goods is facilitated by the harmonisation of rules for the trade environment (labelling, product definitions, excise tax structures for spirits, bottle sizes etc.). We are strong supporters of such harmonisation since it ensures Scotch Whisky can be sold freely throughout the EU and EEA without undue restriction. There are no credible alternatives if the trade and the UK are to have real influence (as at present) in shaping the framework in which trade occurs.
- EU rules have been exceptionally useful for the Scotch Whisky sector. Whether in providing common product definitions (which we also use globally in our legal protection work), tax rules (which we have used to secure non-discrimination in Denmark, France, Greece, Ireland and Italy - although much remains to be done), or harmonised bottle sizes, the advantages the industry derives from EU rules are numerous.
- Harmonised labelling rules for foodstuffs facilitate free movement in the Internal Market in a way that 28 separate national regimes could not. The facility for national labelling requirements, however, including quasi-mandatory schemes, always acts in the opposite way, i.e. they fragment the internal market, add costs and complicate free movement. On labelling issues the UK has more national 'rules' affecting spirit drinks than any other EU Member State.
- The Single Market is not complete or perfect and taxation is perhaps the key area where improvements would be welcome. At present tax rules discriminate in favour of wine and against spirits. The related application of 'strip stamps' or 'duty marks' exacerbates the divide. It would be better to have a regime in which all drinks, irrespective of category (wine, beer, spirits) were taxed according to their alcohol content. Furthermore, the existence of preferential tax regimes for particular spirits/categories distorts the market, leads to unfair competition and, in many cases, a large grey market. We believe therefore these should be abolished.
- EU mechanisms also permit industry (at minimal cost) to seek redress when Member States fail to meet *acquis* obligations. With the Commission responsible for harmonised application of EU rules, it is usually ready to take action against Member States that fail to comply. We have repeatedly used this facility to ensure that free movement and fair trade applies throughout the EU. While the infringements proceedings can be long, sometimes the threat is sufficient for Member States to come back into line.
- The Technical Regulation Information System (TRIS) in which proposed national legislation is submitted for scrutiny is of immense value in (a) helping ensure national legislation is *acquis*-compliant, and (b) providing early warning about forthcoming legislative changes. It is regrettable, however, that Detailed Opinions issued under TRIS are no longer publicly available, as they help highlight the problems occasioned by national action. We believe greater transparency, including open consultations with industry, is critical for the law-making process.

Intellectual Property Rights

- The EU Spirit Drinks Regulation (110/2008) protects both generic names such as "whisky", and geographical indications (GIs) such as "Scotch Whisky". As the EU's leading spirit GI, we and our member companies attach great importance to clear and reliable provisions for the

protection of such intellectual property rights (IPR). We use the EU's rules for the effort globally to protect the terms whisky and Scotch Whisky from misuse. The definition of 'whisky' at EU level was largely on the initiative of the UK, at the SWA's request.

- It is very welcome that FTA negotiations include the recognition of EU GIs. Protection for EU spirits in line with TRIPS is critical. This is particularly important in emerging markets where early success for Scotch Whisky can give rise to imitations by domestic producers or counterfeit products.
- The new EU Regulation on the customs enforcement of Intellectual Property Rights (IPR) is welcome but will, regrettably, permit the interception of fake GI goods in transit through the EU only if there are sufficient grounds for suspecting that the goods will be diverted into the EU market. We believe it would be preferable, and more consistent with the EU's stance against trade in counterfeit, if there were provisions for all fake GIs to be stopped, irrespective of their destination.

Future challenges

- EU enlargement has massively extended the benefits of the internal market and the free movement of goods through, among other things, acceding countries removing a variety of impediments to trade including tariffs and quotas, preferential tax rates, import permits, inappropriate laws defining whisky and national labelling rules. The SWA is an active supporter of EU enlargement.

Conclusion

The SWA firmly believes the UK's EU membership provides significant benefits in improving trading conditions for Scotch Whisky. Scotch Whisky is the EU's most important Geographical Indication spirit, and the UK government has a vital role in ensuring the trade environment is appropriate for our sector and other UK businesses through the EU mechanisms. The Association therefore sees no advantages in altering the current balance of competences in this area.

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