

CBI response to the Balance of Competences Review of the Internal Market: Free Movement of Goods; including the EU Customs Union and Intellectual Property Rights

August 2013

1. The CBI welcomes the opportunity to provide evidence to the Government's review of the Balance of Competences between the United Kingdom and the European Union. Our response focuses on the call for evidence questions in the review of the Internal Market: Free Movement of Goods; including the EU Customs Union and Intellectual Property Rights.

About the CBI

The Confederation of British Industry (CBI) is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce.

The CBI helps create and sustain the conditions in which businesses can compete and prosper for the benefit of all. We are the premier lobbying organisation for UK business on national and international issues. We work with the UK government, international legislators and policymakers to help businesses compete effectively.

Executive Summary

For Britain to pay its way in the coming years, we need to renew our role as a premier trading nation. Exports are a crucial component of the necessary economic rebalancing that the UK must perform in order to secure sustained growth. And although growth falters across much of Europe, increasingly driving export towards high-growth markets, the Internal Market remains a key destination for UK exports and should continue to be exploited by British business.

The Internal Market has been a true success story for the European Union – and for Britain. It has created significant benefits to British businesses and consumers over the past twenty years and paved the way for economic growth in the European Union. Being part of the Internal Market has brought opportunities for cross-border activity in goods as well as services sectors. Access to a market of 500 million consumers has attracted inward investments thereby boosting British industry and industry-related services at home. As the EU's Internal Market has become the world's largest trading bloc, it has given Europe its global strength and made it a powerful launchpad for the UK to the rest of the world.

However, in an increasingly globally competitive world, Europe is under pressure. Internal Market rules must not undermine the performance of European goods in the global market. To stand a chance in the global race for growth and jobs EU policymakers must complete and renew the

1



James Allen | Policy Adviser – CBI Brussels Office
DL: +32 2286 1136 M: +32 4856 60365 E: james.allen@cbi.org.uk

CBI Centre Point 103 New Oxford Street London WC1A 1DU
T: +44 (0)20 7379 7400 F: +44 (0)20 7240 1578 W: www.cbi.org.uk

Director-General: John Cridland CBE President: Sir Mike Rake
Registered No: RC000139 (England and Wales) Registered Office: CBI Centre Point 103 New Oxford Street London WC1A 1DU

Internal Market within a global framework making it fit for the 21st century. The EU must continue to ensure implementation and enforcement of current legislation across Member States whilst allowing new industries to tap into its benefits. Moreover, an open Europe must trump protectionism by ensuring a free flow of the four freedoms within Europe and keeping the Internal Market open for business from third countries. Operating on a global market the EU must also make sure that its push for reform creates opportunities rather than disadvantages for European businesses.

Europe is going through a period of transformation fuelled by the need to solve the Euro crisis. This is both necessary and desirable as the future of Europe depends on the stability and prosperity of the Eurozone. However, as the Eurozone countries move towards closer integration the deepening of a multi-tiered Europe must be developed in a way that does not undermine decades of success by fragmenting the Internal Market. Closer integration will not be the solution for every Member State, and there must therefore be clear safeguards so the changes do not adversely affect the Internal Market for those members who wish to remain outside the 'core'. To ensure this it is vital that the UK remains at the table when decisions about Europe's future are being made.

Key questions

The Internal Market is one of Europe's greatest achievements and underpins Europe's economic success. It is the world's largest trading bloc and consequently gives Europe its global strength and competitiveness.

As a result of EU action on the free movement of goods, consumers benefit from the fact that the Internal Market has made it easier to purchase goods from a wide choice of products in 28 Member States. This has subsequently enabled consumers the opportunity to search for the best available offer, thus boosting competition in the EU.

The Internal Market has also enabled businesses to operate in non-domestic markets, providing goods to all of Europe's 500 million citizens. British business has greatly benefited from the EU's action on the free movement of goods. In particular, the EU's standardisation policy has performed a pivotal role in the proper functioning of the free movement of goods. Standardisation has encouraged market-based competition through achieving objectives such as the interoperability of complementary products and services, or by providing agreed test methods and requirements for health, safety and environmental performance. As the policy of standardisation has progressed and conflicting national standards have been removed, it has played an important part in successfully achieving an Internal Market for goods.

Without standardisation in place, British businesses would be required to adhere to 28 different sets of technical and safety standards in order to place their products on the market in each Member State. With one set of standards to comply with across the EU, British businesses clearly benefit as a level playing field is achieved with their European counterparts and the competitiveness of the bloc as a whole improves. Global supply chains are a perfect example of the success behind the EU's action on standardisation as components are sourced from across Member States, with the safe knowledge that they all have been designed according to the same safety standards.

Whilst the benefits of EU action are clear for businesses and consumers alike, it is important that standards are based on risk and science, rather than protectionist tendencies for example, to ensure

that UK products are not put at a competitive disadvantage. Given that consumer safety is clearly in the business interest, an effective balance between safety and protectionism must be upheld, whilst offering Europe's citizens greater access to a wider range of products.

Protectionist tendencies can be found at the European level where details in legislative proposals attempt to close off the Internal Market by creating stringent rules for third countries based on strict equivalence and reciprocity. British business believes that it is crucial that Europe must remain open for business. European growth is dependent on capital, products, labour and services not only following within the Internal Market – but between Europe and the world. For this to be possible, we cannot overregulate European industry but instead aim to make it more globally competitive, through proportionate Internal Market legislation and an insistence on a global level playing field.

The recently adopted pieces of EU legislation on Alternative Dispute Resolution and Online Dispute Resolution are further examples which will benefit the free movement of goods as both consumers and businesses will be able to solve their disputes more easily and at less expense, no matter whether they purchased locally or cross-border, online or offline.

- *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 of goods?*

The EU has made considerable efforts in harmonising national laws which has been instrumental in progressing towards an efficient and effective Internal Market, removing a number of obstacles created by national legislation and as a consequence, promoting the free movement of goods and products. Where national laws are not harmonised, the free movement of goods is ensured by the principle of mutual recognition, under which a product lawfully marketed in a Member State may be marketed across the Union, unless it compromises essential public interest requirements.

The harmonisation of national laws through EU legislation is often perceived as beneficial to British business as it intends to simplify procedures for cross-border trade in the EU, preventing businesses from one Member State obtaining an economic advantage over another, and decreasing administrative burdens. Harmonisation is therefore important at a certain level as the burdens would be much greater for British businesses if they would have to comply with 28 different regimes. However, it is important that any level of harmonisation also provides adequate flexibility for Member States to deal with national differences.

Meanwhile, the principle of approving goods that have been legally manufactured and marketed in another Member State, known as mutual recognition, allows for the free movement of goods and services without the need to fully harmonise Member States' national laws. Mutual recognition is further enhanced by the obligation for Member States to report to the European Commission of any national legislation which may affect the free movement of goods.

Therefore, it would be beneficial for business if the European Commission placed more emphasis on ensuring the proper application of the mutual recognition principle. Complaint instruments such as SOLVIT are effective in addressing specific cases of misapplication of EU rules however they are not geared to handle complaints on national technical regulations.

Effective implementation and enforcement of existing legislation is central to the development of the Internal Market. However, this is one of the major obstacles towards completing the Internal Market as Member States are falling short of implementation and enforcement. In the Commission's Internal Market Scoreboard, which was presented in September 2012, the UK was the tenth poorest performing Member State for infringement proceedings, with 31 proceedings opened for the wrong application of legislation and 7 proceedings for incorrect transposition. However, the CBI welcomes the latest developments published in the July 2013 online edition which highlights that the UK has halved its transposition deficit from 1.0 % to 0.5 % since November 2012, after decreasing its number of outstanding directives by seven. The UK has also cut its delay in transposing overdue directives considerably from an average of 13.6 months 6 months ago to an average of 8.3 months currently. In addition, there are no longer any directives which are more than two years beyond their transposition deadline, which means that the UK has complied with the "zero tolerance" target¹.

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

On balance, we believe that any regulation of imports and exports by the EU should be consistent with international best practice. There are cases where it is understandable why regulations on imports and exports are required, such as those relating to dual-use export controls, and for many sector specific regulations usually relating to safety, such as chemical substances, type approval for vehicles, and sanitary and phyto-sanitary (SPS) measures for the agri-food sector to name a few. The EU-wide application and enforcement of these measures is an important part of the Internal Market for goods, and indeed the common rules throughout the EU create an incentive for overseas companies to invest in the EU, the world's largest economy. Without assessing each individual regulation, it is important that any import or export regulation takes into account rigorous scientific evidence, do not create unnecessary barriers to trade, and are as compatible as possible with other key trading partners, moving towards convergence in those cases where divergence currently exists. EU FTA negotiations, notably the on-going talks with the US and Japan but also with many other FTA negotiating partners, provide an excellent opportunity to reduce barriers that can be associated with import and export regulations. While many tariffs exist and still pose a major problem for some markets, the real trade barriers for EU exporters and importers are often safety and environmental measures, frequently termed non-tariff barriers (NTBs). It is key that new, unnecessary 'NTBs' to international trade activities are not created when new regulations are proposed by the EU. The CBI welcomes the fact that the EU has remained a force against protectionism in the aftermath of the global financial crisis, avoiding and speaking out against unnecessary export and import regulations that have been introduced in some parts of the world such as burdensome import licensing requirements and SPS measures, as well as other unjustified trade distortive measures such as moves to block access to public procurement markets and the introduction of new restrictions to overseas investment.

- *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.*

¹ http://ec.europa.eu/internal_market/scoreboard/performance_by_member_state/united_kingdom/index_en.htm#maincontentSec1

As mentioned in the previous questions, the EU's action on the free movement of goods broadly offers significant benefits to British business. Without this action, many businesses would struggle with the burden of compliance with 28 different national pieces of legislation. Furthermore, it would have the likely impact of reducing the UK's competitiveness given the current statistics on intra-EU trade.

Intellectual Property Rights

Intellectual property rights are increasingly important in business, particularly as we become a knowledge-based economy in which an increasing share of the value of goods and services is in embedded intellectual property rather than the cost of production. A strong intellectual property policy must be at the centre of any strategy for growth. Therefore, a fully integrated Single Market for intellectual property rights would be an important step in the right direction towards innovation, competitiveness, jobs and growth.

CBI would strongly welcome the UK Government, specifically the Department for Business, Innovation and Skills and the Intellectual Property Office, taking a more active role in championing the business case for intellectual property at the EU level and raising the issue to a higher level in the EU decision making process. This would send a clear and unambiguous message of support for IP-rich industries. The UK must be an attractive place for firms of all sizes and from all sectors to create, protect and exploit intellectual property. Through increased engagement with the EU on intellectual property initiatives, the UK Government can help to ensure that the EU provides a supportive regime for intellectual property on the international stage. Robust intellectual property environments abroad are a key incentive behind encouraging exports from UK medium-sized businesses.

The creation of the community trademark allowed companies to protect their brands on the whole EU territory with a single registration at the Office for Harmonisation in the Internal Market (OHIM) in Alicante. The community trademark and the community design are best practices examples of EU wide protection for intellectual property rights. They both support creativity and investment in non-tangible assets.

The EU must pursue better protection of intellectual property rights, in particular for SMEs, including the creation of a unitary patent that meets the needs of all European users, in terms of costs and legal certainty. Furthermore, CBI wishes to see the UK Government taking steps in consultation on the rules of procedure of the Unitary Patent Court to minimise the risk that the system of bifurcation may exacerbate the threat from non-practising entities.

European companies also need to see more effective measures put in place to enhance the fight against counterfeiting and piracy. British business welcomes the generally more positive approach towards copyright in the EU compared with the approach adopted in the UK. In general, the EU's ethos towards copyright is seen by business as more sympathetic than in the UK. This is partially due to the fact that in the UK, we have a strong creative sector, with high exports, meaning that there are tensions between the UK national interests and the Government's stance.

Future Challenges

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

The completion of the Internal Market is a major opportunity for the future with substantial benefits for both companies and consumers. Determined and comprehensive action at EU level combined with effective national implementation and enforcement could help remove remaining barriers, creating a more competitive Europe and thereby boosting growth and jobs. The potential is particularly evident for 'new' markets where fragmentation is evident.

There are key challenges facing the Internal Market that risk undermining its principles eradicating the achievements of the past decades. Protectionism and regulatory fragmentation are a continued threat to the operation and completion of the Internal Market. Member States regularly attempt to introduce new rules favouring national industries and creating additional barriers. For instance, Denmark has banned several products that are legal under EU rules such as Marmite and Ovaltine, disrupting the free flow of goods within the Internal Market. Protectionism particularly resurfaced after the financial crisis with a number of Member States having adopted protectionist measures and showing home biases, hampering cross-border activity and creating business uncertainty.

The enhanced cooperation procedure allows for like-minded Member States to move forward with an initiative, rather than being held back by a few others with vested interests. Despite this clear positive, there is the potential that this procedure could create new layers of complexity and differing market conditions across the Internal Market.