

## Her Majesty's Revenue & Customs

### Review of the balance of competences between the United Kingdom and European Union: Internal Market

#### Free Movement of Goods, including the EU Customs Union and Intellectual Property Rights

#### Consumers for Health Choice Response

Consumers for Health Choice (CHC) is the leading consumer group working to protect the rights of the public across the European Union on natural health issues, including their choice to use safe and beneficial supplements and other products.

We would like to thank the HM Revenue & Customs for providing the opportunity to submit comments on the EU's competence on the free movement of goods and we hope the comments that are provided are of assistance.

This consultation response broadly focuses on how there needs to be a right balance between trade facilitation and regulation, arguing in particular that harmonisation at all costs has a negative impact on UK consumers.

#### Questions

- 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?*

The EU provides a good coordinating role and ensures that goods can move freely throughout the EU Member States. CHC represent consumers that welcome many aspects of the EU action on the free movement of goods, as this provides them with the possibility to access a wide range of high-quality products.

EU action in this area is also advantageous as it facilitates the spread of innovation across Member States and allows products to be sold without UK consumers having to foot the bill for additional custom duties.

Nevertheless, we believe that an approach focussed purely on product and standards harmonisation across the Member States will have negative consequences and will curtail consumer choice. For instance, in the food supplements sector the 'harmonisation drive' is failing to reflect the many different dietary habits across Member States.

While we do not believe that the national interest would be better served by action being taken at a different level, we are convinced that UK officials need to be more decisive in representing the UK's interests at EU level, particularly when negotiating with representatives from other Member States.

This would enable UK officials to ensure that the particular concerns of UK consumers were met early in the process of making legislation, rather than too late on.

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

NA

*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? To what extent has EU action on the free movement of goods brought additional costs and /or benefits to you as a consumer of goods?*

As highlighted above, CHC believe that, overall, EU action on the free movement of goods brings a number of benefits to UK consumers. However, an excessive focus on harmonisation – such as in the area of food supplements – has proven disadvantageous to the UK national interest, failing to take into account the particularities of our market and consumer needs.

The application of the target of harmonisation, with the target to improve the free movement of goods, must be improved notably in our opinion. Mutual recognition should have a much greater role in this area as opposed to harmonisation, as it makes it much easier to recognise and preserve historic differences in culture and habits.

*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?*

As already mentioned, and as highlighted in more detail below, 'harmonisation at all costs' can result in a restriction of consumer choice, something which would clearly undermine the benefits of the free movement of goods for EU consumers.

By making goods uniform across the EU, the wide and rich diversity of national products, which form part of the culture of each EU country, will become at risk of extinction.

We therefore believe that the EU action in this area should strike the right balance between harmonisation and mutual recognition, as the latter is a more appropriate tool in areas where products are characterised by important national differences, stemming from culture and habits.

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.*

While CHC acknowledge and welcome the principle of harmonisation as an important tool to avoid restrictions to the free movement of goods, we believe that a focus on 'harmonisation at all costs' has the potential to create negative outcomes in which consumer choice is restricted instead of enhanced by EU policies.

For instance, there has long been a focus on harmonising legislation governing foods and food supplements in the EU for the purpose of delivering a fully functioning internal market. This focus on harmonisation fails, however, to take into account the different dietary patterns across the EU. In such areas where there are important dietary and cultural differences, mutual recognition should be preferred to harmonisation at all cost.

Trying to facilitate the free movement of goods across 28 EU Member States should not result in restricted consumer choice if the products at risk are completely safe. A clear example in this area is that of the 2002 Food Supplements Directive, which seeks to set harmonised maximum permitted levels in vitamins and minerals in food supplements.

Intelligence has long suggested that these levels would be set much lower than those that have been used for decades in the UK. In the name of harmonisation this would end consumer access to safe, higher-potency food supplements that have been available on the market for many years.

As far as enforcement is concerned, it is clear that EU rules are not being implemented consistently across the Member States. The UK has long being characterised by a strict implementation of the law, something which is not true for other Members. For instance, other Member States maintain differences and preserve their national habits through exceptions to the free movement of goods, as provided by Article 36 TFEU.

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

NA

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.*

NA

Questions <b>Intellectual Property Rights</b>
8. <i>To what extent are specific national rights provided through EU legislation (e.g. Supplementary Protection Certificates) helpful or unhelpful to your activities as a business and/or as a consumer in the Internal Market?</i>
NA
9. <i>To what extent are specific Community-wide rights provided through EU legislation (e.g. Community Trade Mark, Community Design, Geographic Indicators and Community Plant Variety Rights) helpful or unhelpful to your activities as a business and/or as a consumer in the Internal Market?</i>
NA
10. <i>To what extent do wider EU rules (e.g. on free movement of goods or services) impact helpfully or unhelpfully on the conduct of your business or your experiences as a consumer in relation to intellectual property rights?</i>
NA
Question <b>Future Challenges</b>
11. <i>What future challenges/opportunities do you think will affect the free movement of goods and what impact do you think these might have?</i>
<p>The EU will continue to push regulatory solutions that may impinge on the interest of UK consumers. It is important that UK officials at all levels in the EU ensure that UK consumer needs are clearly communicated.</p> <p>CHC also believe that there are still some obstacles which are limiting the functioning of the Customs Union – mainly related to the incorrect implementation of the mutual recognition principle by Member States. These inconsistencies in the application of Customs Union rules mean that certain products are only available on certain national market and not others, thus restricting consumer choice. We believe that in this area the EU will need to ensure that the mutual recognition principle is implemented appropriately and consistently by all Member States.</p> <p>In terms of opportunities, the EU should take the chance to simplify legislation that affects consumers where it can and, in particular, should ensure that where legislation exists then clear and comprehensive guidance is also provided in a timely manner, so that businesses can deal with regulatory uncertainty and costs to the consumer are minimised.</p>

In addition, the EU should make sure that the objective of harmonisation does not take precedence over other important objectives, such as consumer choice and consumer information. For instance, we can mention the case of the Nutrition and Health Claims Regulation which has seen, because of a flawed authorisation process, the banning of many well-established claims that are vital for consumers to understand what a particular product does and when to use it.

This kind of approach has resulted in confusion for many consumers, who have seen products that had been used for generations now devoid of the accompanying information, something which is certainly not contributing to enhancing consumer choice and information.

In the area of product regulation, harmonisation should be sought only when this approach is really needed, and only when it does not compromise consumer choice. In other instances, mutual recognition should be preferred.

#### Question **General**

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

NA